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DESOTO COUNTY, MS
W.E. DAVIS, CH CLERK

FIRST REVISION
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR SECTION "A"
ENCORE PUD
SECTION 5, TOWNSHIP 2 SOUTH, RANGE 9 WEST
AND
SECTION 8, TOWNSHIP 2 SOUTH, RANGE 9 WEST
PLAT BOOK 98, PAGES 46 & 47

THIS DECLARATION is made this 11th day of October, 2006, by **Reeves-Williams, LLC**, a Delaware Limited Liability Company, hereinafter referred to as "DECLARANT",

WITNESSETH

WHEREAS, Declarant is the Owner of certain real property located in the Town of Walls, and in the County of DeSoto, State of Mississippi, and more particularly described in Exhibit "A" to this Declaration.

WHEREAS, it is the intention of Declarant to subdivide said property described in Exhibit "A" into a Planned Single Family Residential Development (the Development) and to convey interests therein by appropriate deeds, and to impose thereon mutually beneficial restrictions under a general plan or scheme of improvements for the benefit of the entire Development.

NOW, THEREFORE, Declarant hereby declares that the aforesaid property is held, and shall be held, conveyed, hypothecated, encumbered, leased, rented, occupied and improved subject to the following limitations, restrictions, covenants and conditions, all of which are established and agreed upon for the purpose of enhancing and protecting the value and attractiveness of said property, and every part thereof. All of the remedies, covenants, conditions, and restrictions shall run with the land, and shall be binding upon all parties having or acquiring any right, title or interest in the aforesaid property, or any part hereof, and shall be for the benefit of each Owner of any portion of the aforesaid property, or any interest therein, and shall inure to the benefit of and be binding upon the successor in interest of the Owner thereof.

Definitions. As used herein, and unless the context otherwise requires, the following terms shall mean:

1. "ARTICLES" means the Articles of Incorporation of the Association.

2. "ASSESSMENT UNITS" shall mean the total number of lots subjected to this Declaration.

3. "ASSOCIATION" means Encore Owners Association, Inc., a non-profit Mississippi corporation, consisting of all Owners of lots in the Development including Declarant as long as any lot remains unsold.

Reeves Williams

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4. "BOARD" means the Board of Directors of the Association.

5. "BOARD OF DIRECTORS" means the Board of Directors of the Association.

6. "BY-LAWS" means the Bylaws of the Association.

7. "COMMON AREA" means any lot in the Development which may be deeded at no cost to the Association by the Declarant.

8. "DEVELOPMENT" means the property described in Exhibit "A" and subsequent sections which may be added.

9. "LANDSCAPE AND DRAINAGE EASEMENT" means those areas designated on the recorded plat(s) as such easements.

10. "LOT" means any one of the lots shown on the official plat for Section "A" consecutively numbered from 1 to 42, and subsequent sections as may be added.

11. "MAINTENANCE FUND" means the fund established for the specific purpose of depositing all assessments for the payment of operating expenses and establishing capital reserves for the Development.

12. "MEMBER" means an Owner.

13. "MORTGAGE" means a mortgage or deed of trust covering all or any part of the Development.

14. "MORTGAGEE" or "BENEFICIARY" means the holder of a mortgage or trust deed to all or any part of the Development.

15. "OWNER" means the record Owner, or Owners if more than one, of a lot (including Declarant as long as any lot remains unsold).

16. "PROPERTY" means Section "A" (Exhibit "A") and all additional real estate added to this Declaration.

2. Annexation of Subsequent Real Estate and Lots.

2.1 Declarant may elect at any time to annex other real estate to become a part of the Development and subject it to this Declaration. If Declarant determines to subject additional property to this Declaration, it may do so unilaterally, without the necessity of concurrence by the Owners of the real property then covered by this Declaration, by executing and filing for official record an instrument subjecting such additional property to the terms of this Declaration.

3. Common Area

3.1 Declarant shall transfer and convey to the Association, and the Association shall accept Declarant's fee interest in the Common Area, if any. Such real property may be subject to any or all of the following exceptions, liens and encumbrances:

3.1.1 The lien of real property taxes and assessments that are not delinquent;

3.1.2 Such easements and rights of way on, over or under all or any part thereof as may be reserved to Declarant or granted to any Owner for the use thereof in accordance with the provisions of this Declaration;

3.1.3 Such easements and rights of way on, over or under all or any part thereof as may be reserved to Declarant for access to real property contiguous to the Common Area;

3.1.4 Such easements and rights of way on, over and under any part thereof as may be reserved to Declarant or granted to or for the benefit of the United States of America, the State of Mississippi, the Town of Walls or the County of DeSoto, any other political subdivision or public organization, or any public utility corporation, for the purpose of constructing, erecting, operating and maintaining thereon, therein, and thereunder, at that time or at any time in the future (a) roads, streets, walks, driveways, parkways and park areas, (b) poles, wires and conduits for the transmission of electricity for lighting, heating, power, telephone, television and other purposes and for the necessary attachments in connection therewith, and (c) public and private sewers, sewage disposal systems, storm water drains, land drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes and any and all equipment in connection therewith;

3.1.5 The obligations imposed, directly or indirectly, by virtue of any statute, law, ordinance, resolution or regulation of the United States of America, the State of Mississippi or any other political subdivision or public organization having jurisdiction over such property, or by virtue of any organization or body politic created pursuant to any statute, law, ordinance or regulation; and

3.1.6 Any other lien, encumbrance or defect of title of any kind whatsoever (other than of the type that would at any time or from time to time create a lien upon such property to secure any obligation to pay money) that would not materially or actually prejudice owners in their use and enjoyment of such property.

4. Landscape and Drainage Easements, and Buffer Areas. Declarant or the Association may make improvements within designated easements and Common

Areas. The Association will maintain all landscape improvements. No lot Owner may modify, change or alter any improvements within the landscape easements or Common Areas. In addition, no lot Owner may modify any drainage swales or landscape buffers, and shall maintain such swales or buffer areas on their lot.

5. Members. Each Owner, by virtue of being an Owner, shall be a Member of the Association. The rights, duties, privileges and obligations of an Owner as a Member of the Association shall be those set forth in, and shall be exercised and imposed in accordance with this Declaration and the Association's Articles and By-Laws. The Association shall accept all Owners as Members of the Association. An Owner who is delinquent in his obligations to the Association shall not be entitled to vote as a Member of the Association during the term of such delinquency, but he shall at all times remain a Member of the Association. No Owner may withdraw from membership in the Association.

5.1 Authority of Members. In addition to any other powers and authority provided in this Declaration, beginning in the third fiscal year of the Association the Members of the Association shall have the following authority:

5.1.1 To elect a Board of Directors.

5.1.2 To effect necessary amendments to this Declaration, in the manner provided in paragraph 21 hereof.

5.1.3 To recall any member of the Board, with or without cause being shown, by affirmative vote of the majority of the Members present, at a duly noticed meeting of the Association at which a quorum is present.

5.1.4 To subject any action taken by the Board to levy any assessment greater than 115% of the prior year assessments, as provided in Paragraph 8.1 of this Declaration, to review by the Association. Such review may be had only upon petition to the Board signed by the Owners of at least one-fifth (1/5th) of the lots and delivered to the Board within fifteen (15) days from the date of notice of any assessment. Upon receipt of such petition, the Board shall call a meeting of the Association as promptly as practical, and, in the event that a majority of the Members of the Association present at such meeting at which a quorum is present vote to nullify the assessment, such vote shall be binding upon the Board and the assessment shall be limited to 115% of the prior year annual assessments.

5.2 Meetings. An organizational meeting shall be held at a time and place to

be designated by Declarant, reasonably near the first sale of a lot in the Development.

5.2.1 Beginning in the third fiscal year, annual meetings of the Association shall be held. The sole purpose of the annual meeting shall be to hold elections for members of the Board whose terms are expiring. The time and place of each annual meeting of the Association shall be determined by the Board so long as it is no longer than ninety (90) days after the end of the fiscal year and all Owners are given at least thirty (30) days written notice prior to the meeting date. At all meetings of the Association, fifteen percent (15%) of the then record Members shall constitute a quorum. At all meetings of the Association each lot shall be entitled to one vote. Every member entitled to vote at any election of the Board is entitled to one vote for each of the Directors to be elected, multiplied by the number of votes to which his lot or lots are entitled. Where a lot is held of record by two or more persons jointly or as tenants in common or as a partnership, or otherwise, said Members shall designate by written notice addressed to and filed with the Board the person from among their number who shall vote for the lot at all meetings of the Association. Such designation shall be revocable at any time by written notice filed with the Board signed by at least a majority of the persons entitled so to act. The rights of a record Member of any lot and such powers of designation and revocation may be exercised by the guardian of the record Member's estate or by his conservator, or in the case of a minor having no guardian, by the parent entitled to his custody, or during the administrator where the latter's interest in said property is subject to administration in his estate. Where no designation is made by the multiple owners of a lot, the Association shall accept the representation of one of the multiple owners that he has the right to cast the vote for such lot unless another multiple owner questions that right, in which event neither multiple owner shall have the right to cast the vote relating to such lot. An Owner may grant another the proxy to cast his vote by a writing delivered to the Association. BEGINNING IN THE THIRD FISCAL YEAR, THE DECLARANT IS ENTITLED TO THREE VOTES FOR EACH LOT OWNED BY IT.

If any meeting of the Association cannot be held because a quorum is not present, said meeting may be adjourned to a time not less than ten (10) days nor more than thirty (30) days later. Written notice of such adjournment and the date and place of the continued meeting shall be given to each Owner no later than seventy-two (72) hours following the date of the adjournment. At any such continued meeting, the total number of Members present shall constitute a quorum, regardless of the percentage of the total Members of the Association which is present

5.2.2 Beginning in the third fiscal year, Owners representing at least twenty percent (20%) of the entire membership in the Association may at any time request in writing that the Board call a special meeting of the Members of the Association at the earliest practicable date. Such written request shall state the matter or matters that the Members desire to discuss at such meeting.

6. Authority of Association. The Association, for the benefit of the lots and Owners thereof and acting through its Board of Directors and officers elected by such Board, shall enforce the provisions hereof and shall have the following powers and duties, to-wit:

6.1 To conduct, manage and control the affairs of the Association and the Development, and to make such rules and regulations therefore not inconsistent with the law or this Declaration as is deemed in the best interest of the Owners.

6.2 To appoint an agent or manager for the Development, and to delegate such of its powers to such agent or manager as may be required for its proper functioning, provided, however, that an agent or manager selected prior to the first annual meeting of the Association, after the initial organizational meeting, shall be employed to manage only until the first annual election, at which time the continuance of the same or the selection of another agent or manager shall be determined by the Board.

6.3 To contract and pay for out of the Maintenance Fund hereinafter provided the following:

6.3.1 Water, sewer, garbage, electrical, telephone, gas and other necessary utilities service for the Common Area;

6.3.2 Workmen's compensation insurance to the extent necessary to comply with any applicable laws;

6.3.3 Compensation for such agent or manager of the Development, and for other workmen and personnel as may be employed by the Association;

6.3.4 Legal and accounting fees for services necessary or proper in the operation of the Development and Association or enforcement of the restrictions and covenants herein contained;

6.3.5 Expenses for any other materials, supplies, labor, services, maintenance, or repairs that the Association is required to secure or pay for pursuant to the terms of this Declaration, or by law, or that,

in its opinion, shall be necessary or desirable for the Development or the enforcement of these restrictions;

6.3.6 Any amount necessary to discharge any lien or encumbrance levied against the entire Development or any part thereof that may, in the opinion of the Board, constitute a lien against the Common Area, rather than merely against the interest therein of a particular Owner or Owners, except that where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it;

6.3.7 Expenses for maintenance and repair of any lot if such maintenance and repair is necessary, in the opinion of the Board, to protect and preserve the Common Area, and the Owner or Owners of said lot have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered personally or by certified mail to said Owner or Owners (the Association, its agents, servants and employees, are hereby given the right and license to enter upon and in any lot for the purpose of making and effecting such maintenance or repair), provided that the Association shall levy a special assessment against the Owner or Owners of any such lot to pay for the costs or expenses arising out of or incident to said maintenance and repair, and assessment therefore;

6.3.8 Taxes and special assessments that are or would become a lien on the Common Area;

6.3.9 Maintenance of improvements in landscape and drainage easements, and repair of any drainage easement in the Development for which the Town of Walls and County of Desoto has declined to accept such responsibility;

6.3.10 Insurance policy or policies insuring the Association, Board and each and all of the Owners against any liability to the public or to the Owners or any other person resulting from or incident to the ownership, management and use of the Common Area by the Board, Owners, their invitees and tenants and members of the public, the liability limits under which insurance shall not be less that Five Hundred Thousand Dollars ($500,000.00) for the total personal injury from any one accident, Two Hundred Thousand Dollars ($200,000.00) personal injury to one person, Fifty Thousand Dollars ($50,000.00) for total medical payment for each accident, and Fifty Thousand Dollars ($50,000.00) for property damage (such limits to be reviewed at least annually by the Board and increased in its discretion). The Board may also obtain such errors and omissions insurance or other insurance as it deems advisable insuring the Board and each Member thereof against any liability for any act or omission in carrying out their obligation hereunder or resulting from their membership on the Board or any

committee thereof.

If any additional insurance is required due to extra hazardous use made of any lot or because of improvements to any lot installed by its Owner, which increases the premiums for the required amount of coverage, the cost thereof shall be assessed to the Owner of such lot. In order to facilitate the provisions for maintenance of adequate and proper insurance, it is contemplated that Declarant may contract for insurance coverage covering the Common Area as contemplated by this paragraph prior to or concurrently with the first sale or sales of lots in connection with the financing of such sales, and any obligations or commitments for the payment of premiums or expenses otherwise incurred by Declarant under any such policy or coverage, whether or not the same is also a personal obligation of the purchaser or purchasers of any lot, shall become an obligation of the Association and shall be paid for out of the Maintenance Fund as provided herein.

An Owner may purchase such liability insurance as he may deem advisable for his own account and at his own expense, except that the carrying of any insurance individually by any Owner shall not relieve him of the obligation to pay such portion of assessments as may be made from time to time for purpose of paying premiums of other charges on liability insurance carried or contracted for by the Association for the benefit of the entire Development.

6.4 The agents of the Association may enter any lot when necessary in the opinion of such person or persons in connection with any maintenance or construction for which the Board is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage to the lot caused thereby shall be repaired by the Association at the expense of its Maintenance Fund. There is hereby specially reserved an easement for ingress and egress to each lot and in, over, and upon each lot for such purposes which shall be exercised by or upon the authority of the Association.

6.5 Nothing herein contained shall be construed to give the Association authority to conduct a business within the Development for profit on behalf of all of the Owners, or any of them, without the concurrence by affirmative vote of a majority of the total membership.

6.6 The Association, by a majority vote of its Board, may make expenditures in excess of the ten percent (10%) of its current annual budget only if the expenditure is included in the annual budget established by the Board. This provision does not apply to any expenditure needed on an emergency basis.

6.7 The Association shall have the authority and power to enter into contracts with owners and lessees of lands adjoining or near the Development and

with associations having powers with reference to said lands similar to the powers held by the Association. Any contracts so entered into may provide, among other things, for a joint installation, maintenance and repair of facilities benefiting the Development and said other lands, and for the joint retainer of and use of maintenance, professional and management services for the joint discharge of any of the duties of each party to such contract to the extent that the duties so defined shall not be inconsistent with the duties, powers and rights of the Association as herein defined. Without limiting the generality of the foregoing listed contractual purposes, the Association may also contract with such owners, lessees or associations to the end that enforcement of the liens established under Paragraph 9 (Liens) hereof may be exercised by such other owners, lessees or associations in the event that the Board should deem the same to be in the best interests of the Association.

6.8 The Association shall have the duty to enforce the provisions of this Declaration, including the duty to seek to enjoin any breach or threatened breach of any of the provisions hereof, and to pay all costs of any such action or other enforcement procedure.

7. Board of Directors. The Association shall be managed by a Board of Directors composed of five (5) of the Members or representative of Members which hold title to a lot(s) in a corporate or similar form. For the first two (2) fiscal years, the Board shall be appointed by the Declarant or its assignee, and thereafter shall be elected by vote of the Members at the annual meeting of Owners.

7.1 Meetings. Action by the Board shall, unless otherwise stated herein or by law, be by written consent of the Members of the Board as permitted by Mississippi law or by majority vote of those present at meetings held for that purpose at which a quorum is present.

7.2 Meetings of the Board may be held at such time and location as shall be determined from time to time by a majority of the Directors. The Board shall in all events have an annual meeting. Notice of annual meetings shall be given to each Director, personally or by mail, telephone or E-mail at least seven (7) days prior to the day named for such meeting unless such notice is waived. Such notice shall specify the date and hour of the meeting and the general nature of the business to be transacted. The first meeting of the Board shall be held as promptly as practicable following their appointment by Declarant or its designee. All meetings of the Board shall be open to all Members except that the Board may designate a part of each meeting as a closed executive session. With prior written approval by the Board, any Member may address the Board at any meeting but shall not be entitled to vote.

7.3 Notice of all meetings of the Board shall be given, on the same basis as to the Board, to any Member whose request to present an issue has been approved by the Board.

7.4 To constitute a quorum for the transaction of business by the Board, it is necessary that at least three (3) members of the Board be present. Every act or decision done or made by a majority of the Members present at a meeting duly held at which a quorum is present at the commencement of such meeting shall be regarded as the act of the Board, except as otherwise provided herein.

7.5 A quorum of the Members of the Board may adjourn any meeting of the Board to meet again at a stated day and hour, provided, however, that in the absence of a quorum, a majority of the Members present at any meeting of the Board may adjourn from time to time until the time fixed for the next regular meeting.

7.6 The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present, and if, either before or after the meeting, each of the Directors not present signs a written waiver of notice, or a consent to holding such meeting, or approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the records of the Board or made a part of the minutes of the meeting.

7.7 A President of the Association shall be elected at the first meeting of the Board in every year. At the same time the following officers shall be elected by the Board: Vice President, Treasurer, and Secretary. The President shall preside at all meetings of the Board and all officers shall exercise and perform such other powers and duties as may from time to time be assigned to them by the Board. If there shall occur during any year a vacancy in any office because of death, resignation, removal, disqualification or other cause, the Board shall elect a person to fill the vacancy so created, to serve in such capacity until the first regular meeting of the Board in the following year.

7.8 Special meetings of the Board may be called by the President and must be called at the written request of two-fifths (2/5ths) of the votes of the Board. Not less than three (3) days written notice of the meeting shall be given personally or by mail or E-mail, which notice shall state the time, place and purpose of the meeting. Written notice of the time of such meetings shall be given as provided above.

7.9 The Board may, by at least three (3) affirmative votes of the Board Members, designate an Executive Committee and such other committee or committees as it may from time to time deem desirable to assist it in the management of the Development. The committee may only make recommendations to the Board, and the Board may not delegate to any committee so created any of the powers and authority of the Board in the authority of the management of the Development.

8. Maintenance Fund: Assessments.

8.1 Declarant shall pay all assessments for the first two fiscal years. Thereafter, no later than sixty (60) days prior to the beginning of each fiscal year (which until changed shall begin on October 1), the Board shall estimate the operating expenses, capital additions and additions to the reserve funds required for performance of its functions during such year (including a reasonable provision for contingencies, plus any cash disbursements in excess of the budget for the prior year, and less any surplus from the prior year's fund). Said "estimated cash requirement" shall be assessed to the Owners (based on the formula in paragraph 8.5) no later than thirty (30) days prior to the end of each fiscal year for the following year. In the third fiscal year such assessment will not exceed $250.00 for each Owner. The Board may provide for payment of such assessment on a quarterly, semiannual or annual basis on such terms and conditions as determined by the Board. If said estimated sum proves inadequate for any reason, including non-payment of any Owner's assessment, the Board may at any time levy a further assessment, which shall be assessed to the Owners in the same manner. Each Owner shall be obligated and by accepting a deed to a lot shall be deemed to have agreed to pay assessments levied pursuant to this Paragraph 8 to the Association in installments commencing upon the first day of the fiscal year for which the assessment is made, provided, however, that any further assessment shall be paid at such times as may be designed by the Board. Any installment of an assessment not paid by its due date shall be delinquent.

8.2 Assessments shall be levied against the then Owners in the manner provided in Paragraph 8.5 hereof. Any such assessments charged or levied and that become payable with respect to a lot prior to the initial sale thereof by Declarant shall be the obligation of Declarant as the Owner thereof.

8.3 All funds collected hereunder, together with special assessments or charges as provided for in other sections of this Declaration, shall be controlled by the Association and shall constitute the Maintenance Fund referred to herein.

8.4 Beginning in the third fiscal year, within sixty (60) days after the end of each fiscal year, the Board shall have prepared and made available to all Owners a report with respect to the use of the Maintenance Fund for such year, which shall include a statement of cash income and expenditures and any amount remaining in such fund as of the end of such year.

8.5 Beginning in the third fiscal year, the Board shall divide the "total estimated cash requirement" by the total Assessment Units to determine the assessment to be paid by each Owner.

9. Liens. The Association shall have a continuing lien on the property of each Owner as security for any sum owed by an Owner to the Association, including, without limitation, any assessment made by the Association upon the property of an Owner. The Association may enforce said lien by appropriate action as

permitted by the laws of the State of Mississippi. Reasonable attorney's fees and expenses in connection with the enforcement of such lien shall be paid by the Owner. Such lien and the right to enforce same are in addition to and not in substitution for any other rights and remedies that the Association has hereunder or by law. Upon request and the payment of a reasonable fee, the Association, through an authorized representative, shall issue and deliver a certificate stating the amount, if any, owed by an Owner to the Association and secured by the aforesaid lien; said certificate shall be conclusive as to the Association in favor of all parties who rely thereon in good faith.

10. Mortgage Protection. Notwithstanding all other provisions hereof:

10.1 The liens authorized and created hereunder or by law upon the lot of any Owner or Owners shall be subject and subordinate to, and shall not affect the rights of the holder of any indebtedness secured by any recorded first Mortgage (meaning a mortgage with a first priority over other mortgages) upon such lot made in good faith and for value, provided that after the foreclosure of any such Mortgage, the Board shall have the authority to create, in the manner prescribed in Paragraphs 8 (Maintenance Fund: Assessments) and 9 (Liens) hereof, a lien on the interest of the purchaser at such foreclosure sale to secure all assessments, whether regular or special levied hereunder for or payable during any period after the date of such foreclosures sale, which lien shall have the same effect and be enforced in the same manner as provided herein in the case of other liens for unpaid assessments, and provided further that neither the purchaser at any such foreclosure sale (whether he be the Mortgage or Beneficiary of the indebtedness secured by the first Mortgage or otherwise), nor his grantee, shall be or become liable to any extent for any portion of any assessment levied for or payable during any period subsequent to such sale to the extent that such assessment is for the purpose of covering or making up any deficiency in the Maintenance Fund resulting from the failure of any Owner of any lot, which was the subject of any such foreclosure, to pay any assessment made prior to the date of such foreclosure sale, or deed, nor shall there be any such lien for any such portion of such assessment.

10.2 An amendment to any part of this Declaration shall not affect the rights of the Mortgagee or Beneficiary of any such Mortgage recorded prior to recording of such amendment.

10.3 Nothing in this Declaration shall be construed as limiting in any way the rights of the Mortgagee or Beneficiary of any indebtedness secured by any recorded first Mortgage on any lot hereunder to require from the mortgagor or trustor thereunder such fire or other insurance as the Mortgagee or Beneficiary thereof in its sole discretion may require.

11. Taxes and Assessments. Each Owner shall execute such instruments and take such action as may reasonably be requested by the Association to obtain a separate tax assessment of each lot. If any taxes and/or assessments may in

the opinion of the Association nevertheless be a lien on the entire Development, they shall be paid by the Association and shall be assessed by the Association to the Owners. Each Owner shall be obligated to pay the taxes or assessments assessed by the County Assessor or the City or any other municipal authority against his own lot and personal property. Each Owner shall be obligated to pay an equal portion of any assessment by the Association for the portion of any taxes or assessments assessed by the County Assessor or the City or any other governmental authority against any part of the Common Area. Such payment shall be made to the Association at least thirty (30) days prior to delinquency of such tax or assessment by the County or City or any other municipal authority. Such Board assessments shall be secured by the lien authorized to be created by Paragraph 9 (Liens) hereof. Each Owner of a lot shall be obligated to pay any and all assessments for water, sewage, electricity, other utilities, taxes and other charges assessed individually against such lot.

12. Restrictions on Use and Occupancy of Lots in Section "A". In addition to restrictions established by law, and regulations that may from time to time be promulgated by the Association for use of the Common Area, the following restrictions shall be observed by Owners:

12.1 All lots in the Development (other than the Common Area) shall only be used for residential purposes, and no structure shall be erected on any one lot other than one single family residence, a permitted detached garage, a permitted detached storage building, and a swimming pool. Each residence must have a double car garage.

12.2 No single lot may be subdivided into two or more lots for the purpose of building another dwelling, but subdivision is permitted to insure the usability of a lot or group of lots provided that no more lots are created and proper governmental approval is obtained.

12.3 Building setbacks will comply with local city ordinances, if any, but in no event will be less than the setbacks shown on the recorded subdivision plat. In the event that one building is constructed on two adjoining lots, the setback restrictions shall not apply to the interior lot line between such two lots.

12.4 The minimum heated area for each dwelling (exclusive of garages) shall be 1,250 square feet.

12.5 No portable storage buildings are allowed. All permanent storage buildings shall be approved by the Architectural Committee. No recreational vehicle, boat, camper or trailer of any kind may be parked on any lot unless it is stored in an enclosed structure or located in the rear yard behind a fence that prevents it from being visible from the street or adjacent lots. No trailer, garage or permitted storage building shall be used on any lot at any time as a residence either temporarily or permanently. Construction of new buildings only shall be permitted, it being the intent of this covenant to prohibit the moving of any existing building onto a lot and remodeling or converting same into a dwelling

unit. No trailer, mobile home or modular home will be permitted. No yard mounted antennas of any type may be taller than ten feet (10') in height and must be located in the rear and screened from the street and from adjoining lots. Any dish that exceeds 24 inches (24") in width must be screened from the street and from adjoining lots. Dust abatement and erosion control measures must be provided by the owner during construction.

12.6 No fence or wall may be erected on any portion of any lot between the front of the residence and the street. On corner lots no fence or wall may be erected on a side yard within the required front setback from a public street. No fence, wall, or hedge may be erected within or across a drainage easement on lots. No electric or barbed wire fences will be allowed on any lot. Where visible from a public street, and on rear and side lot lines, fence material will consist of wood, brick, stucco or other material approved by the Architectural Committee and shall not exceed six feet (6') in height.
On lots 18 thru 29, homeowners will NOT be allowed to construct a fence taller than 4' along the rear lot line. All side yard fences MUST be transitioned down to the existing 4' fence. See Exhibit "B" for details on how this transition MUST be done.

12.7 No commercial operation, drilling, mining, obnoxious or offensive trade or activity shall be conducted upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood, or which would violate local, state or federal environmental rules, regulations and laws. Vegetable gardening shall be allowed only to the rear of the home and may not be visible form the street. No animals, livestock, or poultry of any kind shall be raised, kept or bred on any lot, except dogs, cats, and other household pets which may be kept provided they are not kept or bred for any commercial purposes. No part of a residence may be used for the purpose of renting rooms.

12.8 All sidewalks and driveways visible from a public street will be concrete unless otherwise approved by the Architectural Committee. The entire area between a residence and the street shall be solid sodded unless otherwise approved by the Architectural Committee. The location and design of all mail boxes shall be subject to approval by the Architectural Committee.

12.9 Trash, garbage or other waste or rubbish shall be kept in sanitary containers and stored in the rear of the residence. All equipment for the storage or disposal of same shall be kept in a clean and orderly condition.

12.10 Owners of unimproved lots will maintain the lot, including removal of trash and periodic mowing during the growing season so that grass does not exceed twelve inches (12") in height.

12.11 No sign of any kind shall be displayed to the public view on any lot except one professional sign of not more than 12 square feet per side advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

12.12 No vehicle of any kind shall be kept on the lot unless it displays a current license plate and a current inspection sticker, except equipment used for maintenance of the property of the Association. No commercial vehicle with gross weight in excess of 15,000 pounds shall be permitted in the Development, except to make commercial deliveries.

12.13 All telephone, electric and other utility line connection between the main and primary utility lines and the residency and any other permitted buildings located on each lot shall be concealed and located underground so as not to be visible.

12.14 Sidewalks will be installed on the front of lots as required by the Town of Walls.

12.15 No house shall exceed twenty-five (25) feet in height without the written consent or approval of the Architectural Committee, height being measured from the natural grade on the mid point of the proposed house to the highest point of the roof or any projection there of. An Owner may apply to the Architectural Committee for a variance to allow the building of a house exceeding such height limit. The Architectural Committee shall determine within thirty (30) days from submission whether said variance shall be granted, applying a standard of reasonableness that takes into consideration all factors, including, but not limited to, the physical characteristics of the particular lot, the suitability of the proposed house to its location and the effect of the variance, if granted, on adjacent lots. The decision of the Architectural Committee may be appealed to the Board in the manner hereinabove provided.

12.16 No motorized boats are allowed on the lake. No motorized vehicles or ATVs are allowed in Common Areas, except for such vehicles which are necessary for upkeep and maintenance of the Common Areas by the Association.

12.17 Declarant reserves to itself the right to impose additional, separate and more stringent restrictions on any lot at the time of its sale.

12.18 The restriction and provision of this Paragraph 12 shall be applicable only to Section "A". Other sections may later be developed, and Declarant reserves unto itself the right to determine the nature of restrictions which may be imposed on those sections, which restrictions may differ from those applicable to Section "A". Restrictions to later phases shall be appropriately made of public record.

13. Restriction of Use of Common Area. Restrictions relating solely to the use and occupancy of the Common Area are as follows:

13.1 There shall be no violation of the rules for the use of Common Area adopted by the Association for the purpose of protecting the interest of all Owners or the Common Area and furnished in writing to the Owners.

13.2 There shall be no obstruction of the Common Area nor shall anything be stored in the Common Area without the prior written consent of the Board.

13.3 Nothing shall be altered or constructed in or removed from the Common Area, except upon the written consent of the Board.

13.4 The Common Area cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the Members (excluding Declarant).

14. Architectural Control. The following shall govern in connection with the improvement of any lot or any portion of the Common Area.

14.1 The Architectural Committee for Section "A" shall be the Declarant or its assignee acting through its authorized representatives until all houses are constructed in Section "A" or the Declarant or its assignees choose to assign this right to the Board of Directors of the Encore Owners Association.

14.2 No dwelling, garage, building, fence, wall, retaining wall, structure or other exterior improvements or excavation there of shall be commenced, erected or maintained on any lot, nor shall any addition to, change, or alteration therein, be made until the plans and specifications, lot plan, and landscape plan for same have been submitted to the Committee and the approval of said Committee has been secured, all in accordance with the procedures and standards from time to time established by said Committee. In the event that the Committee fails to approve or disapprove such filings within a period of thirty (30) days after required plans and specifications have been submitted to it, such approval will not be required, and this covenant shall be deemed fully complied with; provided, however, that in the event litigation should ensue involving the right to approve or disapprove such filings, the rights of the Association and the Committee shall extend for a period of thirty (30) days following the termination of such litigation.

14.3 The Committee may withhold its approval of plans and specifications submitted to it because of noncompliance with any of the provisions hereof, or any of the Committee's procedures and standards, or because of the reasonable dissatisfaction of the Committee with the location of the improvement on the building site or with the appearance of the proposed improvement, having in mind the character of the neighborhood in which it is proposed to be erected, the materials of which it is to be built, the harmony thereof with the surroundings and the effect of the building or other improvements, as planned, on the outlook from the neighboring or adjacent property or properties.

14.4 In the event the Committee disapproves of such plans and specifications, the Owner submitting same may appeal the decision of said Committee to the Board by filing a petition in writing within ten (10) days after being

notified in writing of said disapproval, stating the reasons for the appeal. The Board shall have the right and authority to review the matter and shall either confirm, modify, or reserve the Committee's decision. The decision of the Board shall be final and conclusive.

14.5 The Committee, the Board, and the Members thereof shall not be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of the approval or disapproval of any plans, drawings and specifications, whether or not defective, the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or the development or manner of development of any lot within the Development.

15. Easements. The following easements are hereby created:

15.1 There is reserved for the benefit of each lot an easement of maintenance and use to which the entire Development shall be subject for any and all encroachments resulting from roof, balcony, deck or wall overhangs and any other causes attributable to the design and construction of residences or other structures, and any and all encroachments resulting from construction errors, lateral shifting or settlement or any other cause, and any and all encroachments resulting from construction of sewer, water, and electrical lines and other utilities.

15.2 There is reserved to the Association an easement to which the entire Development shall be subject, of entry and of access for the performance generally of its rights and duties as provided in this Declaration. Entry onto any lot pursuant to this easement shall be restricted to reasonable times and must be preceded by reasonable notice to the Owner, unless entry is required by an emergency.

15.3 All rights-of-way licensees, and/or easements within ten (10) feet of lot lines that may be requested by any public utility, county water district or like body, including, but not limited to, utility companies, at any time, present or future, for the purpose of providing service to any part of said Development or any adjoining or adjacent subdivision shall also extend to any contractor acting as agent for Declarant who is engaged in the work of construction of the off-site improvements for this and any contiguous subdivision, and who requests such rights-of-way licenses, and/or easements to reasonably accomplish said work of improvements.

16. Repair and Restoration.

16.1 General. Notwithstanding the provisions for insurance in Paragraph 6.3.10, the Association and the Owners are under the obligation of maintenance, repair and restoration set forth as follows, provided, however, that all expenses to the extent covered by insurance shall be paid from such insurance proceeds.

16.2 Owners. The Owner of each lot shall maintain at his sole cost, and in the case of damage or destruction shall repair or restore, the interior or exterior of his residence and his lot. All such repair or restoration shall be done substantially in accordance with the original plans and specifications. In the event an Owner shall fail to properly maintain, repair or restore such areas after written demand from the Association, then the Association shall have the right to cause said work to be done with the cost thereof to be assessed against the Owner as provided herein.

16.3 Association. The Association shall have the obligation to maintain at its expense, and in case of damage or destruction shall repair or restore at its expense, promptly after such damage or destruction occurs, the Common Area and all improvements thereon.

16.4 Total Destruction. If the improvements on the Common Area or within the landscape easements of the Development are substantially or totally destroyed, the Association shall restore the improvements as nearly as possible to their condition immediately prior to their destruction.

17. Audit. Beginning in the third fiscal year, any Owner may at any time and at his own expense cause an audit or inspection to be made of the books and records of the Board or any manager appointed by the Board. The Board shall prepare, or have prepared, an annual report of its activities, including a statement of income and expenditures, which shall be distributed to each Owner.

18. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the development. Failure to enforce any provision hereof shall not constitute a waiver of the right to subsequently enforce said provision or any other provision thereof.

19. Severance of Interests. The component interest of a lot, including the ownership of the Common Area, and any easements granted, may not be severed, or separately sold, transferred or conveyed or subjected to any lien or encumbrance. Any sale, transfer or conveyance of or lien or encumbrance or claim against or affecting any lot shall cover and include the entire lot.

20. Partition. There shall be no judicial partition or subdivision of the Common Area or any lot, nor shall Declarant or any person acquiring any interest in the Development or any part thereof, seek any such judicial partition or subdivision thereof; provide, however, that if any lot shall be owned by two or more Owners as tenants-in-common, or as joint tenants, nothing contained herein shall be deemed to prevent a judicial partition as between such Owners so long as such judicial partition does not result in a physical partition.

21. Amendment. Except as otherwise expressly provided herein, the provisions of this document may be amended by an instrument in writing signed and acknowledged by seventy-five percent (75%) of the Owners, which amendment shall be effective upon recording in the Office of the Chancery Court Clerk of the

County of DeSoto. For purposes of voting on a proposed amendment, Declarant shall have three (3) votes for each lot it owns.

22. Effect of Violation on Liens. No breach of any of the terms or conditions of this Declaration shall defeat or render invalid the lien of any Mortgage made in good faith and for value.

23. Effectiveness of Creation of Development. The creation of the Development on the property shall become effective upon the first conveyance by deed by Declarant on a lot provided herein. Thereafter and until the conveyance of all lots included in this Development, it is understood that Declarant shall for all purposes be the Owner of the remaining lots until conveyed by Declarant and shall have all the rights and benefits of the Owner of such lots until conveyed by Declarant to some other person or entity.

24. Invalidity of Any Provision. In the event any condition or restriction herein contained is held invalid or void by any court of competent jurisdiction, such invalidity or nullity shall in no way affect any other condition or restriction herein contained.

25. Binding Effect of Covenants, Conditions and Restrictions. Each Owner and any successor in interest to said Owner takes his right, title, interest and estates subject to all of the covenants, conditions and restrictions set forth in this Declaration, and agrees to perform and be bound thereby. The covenants, conditions, restrictions and burdens imposed hereby constitute a general scheme for the benefit of each Owner in the Development, and will be imposed upon the first Owner of any lot by express reference thereto in the deeds they receive from Declarant. Said covenants, conditions and restrictions may be enforced by the Board or by any Owner or any combination of Owners for any violation or threatened violation by proceedings at law or in equity against the person(s) violating or attempting to violate same, either to prevent such violating or to recover damages for such violation. Said covenants, conditions and restrictions herein are intended to and shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and are intended to and shall be binding upon any and all future Owners.

26. Duration. All of the limitations, restrictions, covenants, and conditions of this Declaration shall continue and remain in full force and effect at all times with respect to the property, and each part thereof, included within the Development, to the Owners and to the Association, subject to the right to amend as provided for in Paragraph 21 (Amendment), for a period of twenty-five (25) years; provided, however, that unless within one (1) year prior to the expiration of said twenty-five (25) year period, there shall be recorded an instrument directing the termination of this Declaration, signed by the Owners of not less than three-fourths (3/4) of the lots, the Declaration for the Association in effect immediately prior to the expiration date shall be continued automatically, without any further notice, for an additional period of ten (10) years and thereafter for successive period of ten (10) years unless within (1) year prior to the expiration of any such period this Declaration is terminated as herein provided.

27. Non-Waiver-Breach. The waiver of a breach of any of the covenants, conditions and restriction hereof shall not be construed as a waiver of any succeeding breach or violation thereof or of any other covenants, conditions or restrictions.

28. Attorney's Fees. In the event the Board or any Owner or Owners shall bring legal action against any other Owner to enforce the terms, covenants, conditions and restrictions of this Declaration, and they shall be the prevailing party in said lawsuit, the Court shall award them reasonable attorney's and court costs.

29. Successors. This Declaration shall be for the benefit of and be binding upon the heirs, legatees, executors, devisees, administrators, guardians, conservators, successors, purchasers, lessees, encumbrances, donees, grantees, mortgagees, lienors, and assigns of and from the Owners of the Development.

These covenants, conditions and restrictions are to replace the ones which are recorded in Book 540, Pages 704 thru 726.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed this 11th day of October, 2006.

REEVES-WILLIAMS, LLC
A Delaware Limited Liability Company

By: _____
V.P.

STATE OF MISSISSIPPI
COUNTY OF DESOTO

Personally appeared before me, a Notary Public in and for said state and county, on the 11 day of October, 2006, within my jurisdiction, the within named Mike Davis, who acknowledged that he is the Vice President of Reeves-Williams, LLC, a Delaware Limited Liability Company, and that for and on behalf of the said company, and as its act and deed, he executed and delivered the above and foregoing instrument, after first having been duly authorized by said company so to do.

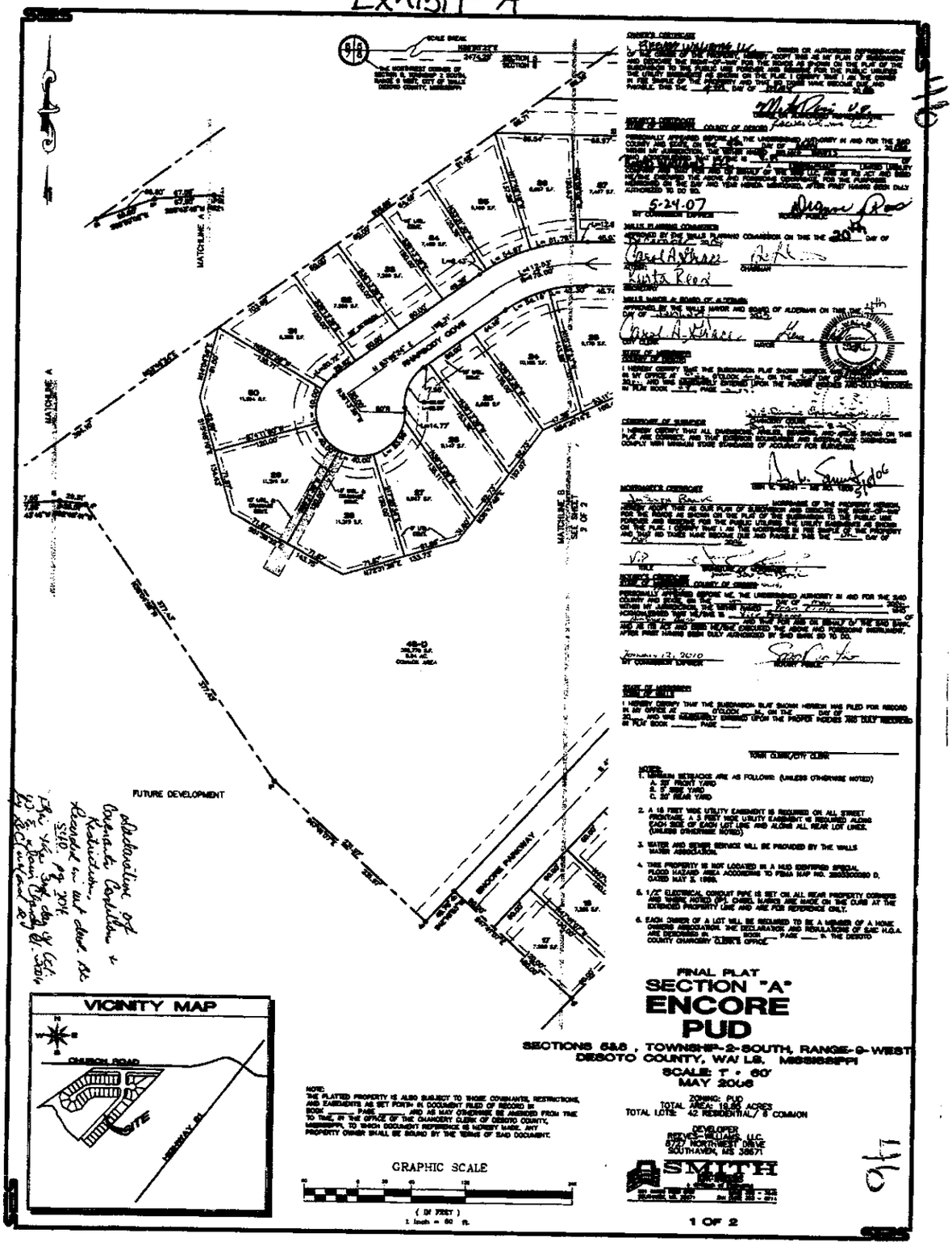
_____
Notary Public

My Commission Expires: 5-24-2007

DIANNE J. ROSS, DESOTO COUNTY, MS
NOTARY PUBLIC
My Commission Expires May 24, 2007

PREPARED BY:
Reeves-Williams, LLC
P.O. Box 167
Southaven, MS 38671
662-393-4250

Exhibit "A"



Declaration of Covenants Conditions & Restrictions Recorded in Mt. Clerk Bk. 5540 pg 304 This the 3rd day of Oct. 2006 E. Lewis Chancery Cl. 2006 by Rec'd and Ret'd

46

Exhibit "A"

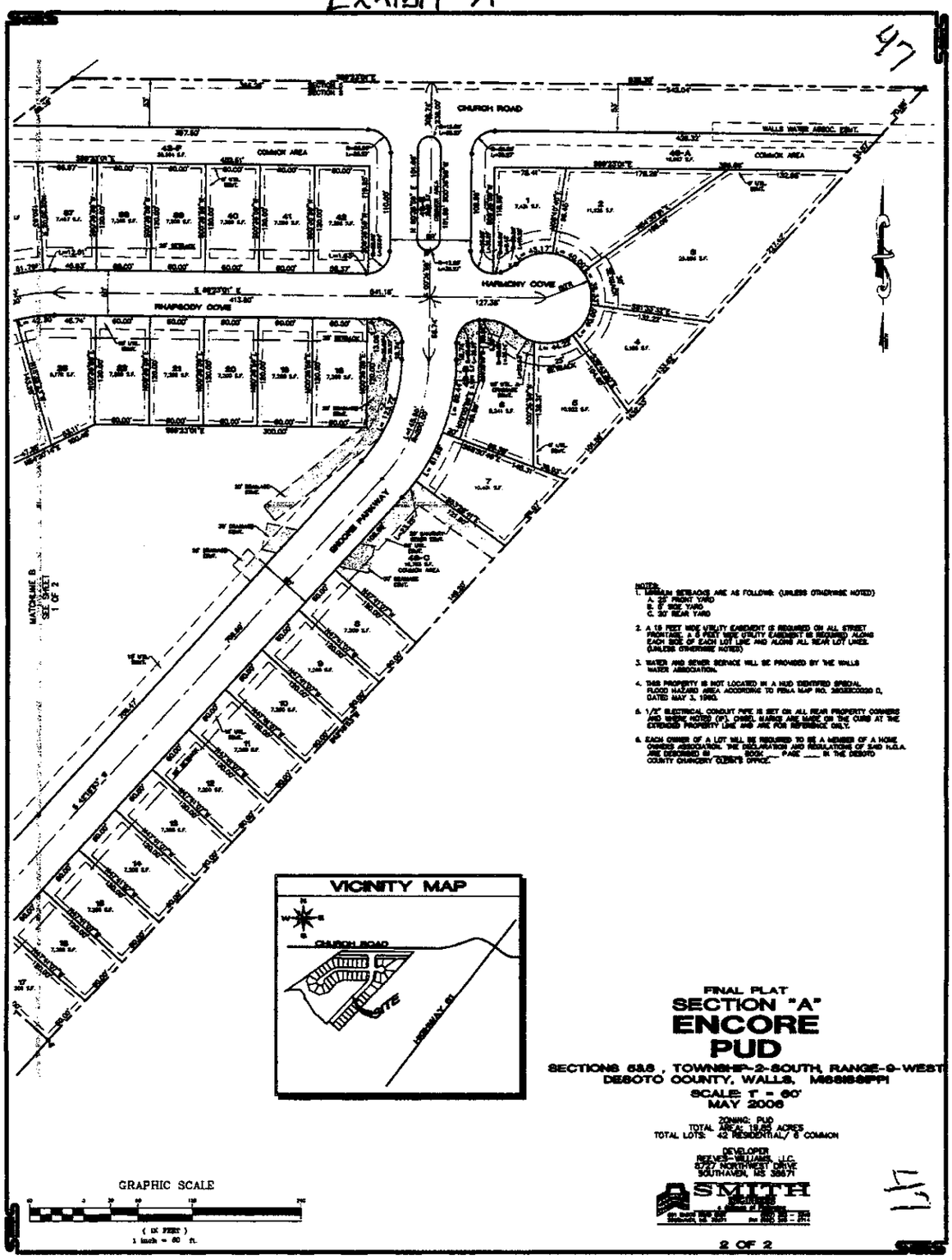
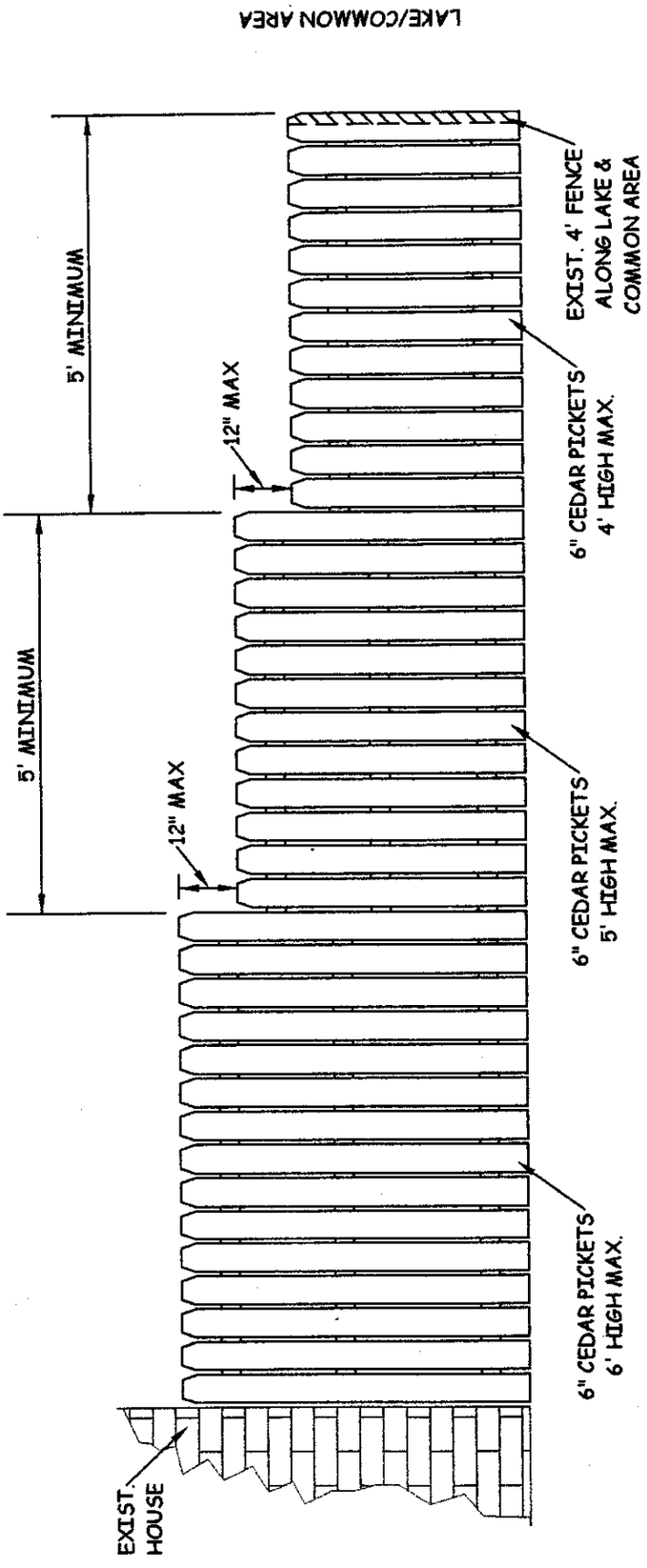

CHURCH ROAD
COMMON AREA
HARMONY COVE
RHAPSODY COVE
ENCORE PARKWAY
MATCHLINE B
SEE SHEET 1 OF 2
VICINITY MAP
CHURCH ROAD
SITE
HIGHWAY 61
GRAPHIC SCALE
(IN FEET)
1 inch = 60 ft.
FINAL PLAT
SECTION "A"
ENCORE
PUD
SECTIONS 5&8 , TOWNSHIP-2-SOUTH, RANGE-9-WEST
DESOTO COUNTY, WALLS, MISSISSIPPI
SCALE: 1" = 60'
MAY 2006
ZONING: PUD
TOTAL AREA: 19.85 ACRES
TOTAL LOTS: 42 RESIDENTIAL/ 6 COMMON
DEVELOPER
REEVES-WILLIAMS, LLC
8727 NORTHWEST DRIVE
SOUTHAVEN, MS 38671
SMITH
2 OF 2

EXHIBIT "B"

SIDE YARD FENCE TRANSITION DETAIL

ENCORE SUBDIVISION
LOTS 18 THRU 29
PLAT BOOK 98
PAGES 46 & 47



NOT TO SCALE