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

Prepared by: DeSoto County Planning Commission
365 Losher, Suite 200
Hernando, MS 38632
662.429.1303

Return to: DeSoto County Planning Commission
365 Losher, Suite 200
Hernando, MS 38632
662.429.1303

Name of Subdivision: Castle Rock Creek

Phase or Section: II

Section: 33 Township: 3 Range: 6

Plat Book: III

Page: 3-4

**DESOTO COUNTY, MISSISSIPPI RESIDENTIAL
SUBDIVISION DEVELOPMENT CONTRACT**

INTRODUCTION

THIS SUBDIVISION DEVELOPMENT CONTRACT (the "Contract") is made and entered into effective this the 23rd day of January, 2012, by and between E.B.I. INC the address of which is P.O. Box 861
New Albany MS 38692, ("Developer"), and the DeSoto County, Mississippi, a political subdivision of the State of Mississippi, acting through its duly elected Board of Supervisors, existing under the laws of the State of Mississippi ("County").

WITNESSETH

WHEREAS, the Developer is the owner, or agent of the owner¹, of the Site, and desires to improve and develop the Site into a 5 lot subdivision to be known as Castle Rock Creek (the "Subdivision"); and

WHEREAS, the County has given Preliminary Subdivision Approval to the application for the Subdivision; and

WHEREAS, the Developer is required to install with respect to the Subdivision, as applicable and as provided herein, certain improvements; and

WHEREAS, the County is willing to enter into this Contract with the Developer relative to the development of the Subdivision and the County is willing to provide services to the Subdivision in accordance with the County's standard policies and applicable rates; and

WHEREAS, it is understood by the parties hereto that the intended manager of this Contract is the office of the Planning Commission; and

WHEREAS, the County is willing to approve the Subdivision, subject to the applicant's compliance with applicable existing laws, ordinances, and regulations and the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties herein contained, it is understood and agreed as follows:

I. DEFINITIONS

Administrative Guidelines: Collectively include the following codes and standards:

- (a) The standards of the American Society for Testing Materials (ASTM);
- (b) The requirements of the Occupational Safety and Health Administration (OSHA);
- (c) The requirements of the Federal Americans with Disabilities Act (ADA);
- (d) The Standard Specifications for Road and Bridge Construction of the Mississippi Department of Transportation; and
- (e) The Standards of the American National Standards Institute (ANSI);

¹ If the Developer is not the owner of the Subdivision site, but has permission from the owner to develop same, the owner will be required to join herein and all obligations imposed upon the Developer hereunder shall be the joint and several obligations of the Developer and the owner.

References herein to the Codes are to those in effect on the Effective Date unless amendments are hereafter made which apply to all improvements or subdivisions regardless of their date of commencement and/or completion of construction.

Codes: Collectively include the following ordinance, regulations and standards:

- (a) the County Zoning and Subdivision Regulations;
- (b) the County Construction Specifications;
- (c) the International Building Code (as adopted by the DeSoto County Board of Supervisors);
- (d) the International Building Code Fire Code; and
- (e) any and all other applicable Ordinances of the County.

References herein to the Codes are to those in effect on the Effective Date unless amendments are hereafter made which apply to all improvements or subdivisions regardless of their date of commencement and/or completion of construction.

Construction: is defined as (i) permanent fastening and positioning of construction materials and/or (ii) extensive grading (including demolishing or removing existing structures) necessary for the development of the Subdivision.

Effective Date: is the date that this Contract is entered into by and between the parties hereto as demonstrated by their execution of this Contract.

Final Subdivision Acceptance: shall occur after all required improvements have been completed by the Developer to the satisfaction of the Director of the DeSoto County Planning Commission and County Engineer; all applicable maintenance periods have expired, the terms and conditions of the Contract fully completed, and the Board of Supervisor's has approved the release of the Security.

Final Subdivision Approval: is the final approval of the Board of Supervisors for a subdivision before a plat is recorded.

Lot: A single fraction or part of the Subdivision as shown by the plat or survey of the Site, and without a home or other improvements built upon it.

Preliminary Subdivision Approval: is the initial approval of the Subdivision plans as given by the County.

Private Improvements: includes all specific improvements to be constructed, such as, but not limited to brick walls, landscaping, fencing, lighting, etc., as required by the County relative to the Subdivision, and which are not Public Improvements.

Public Improvements: those improvements to be constructed relative to the Subdivision that are to be dedicated to the County by virtue of the official recording of the plat of the Subdivision and accepted for perpetual maintenance by the County.

Security: a Letter of Credit issued by a bank qualified to do business in the State of Mississippi, to the Developer, naming the County as beneficiary, in the amount of \$ ~~8,000~~⁸⁰, and securing the completion of all Public Improvements and Private Improvements. Said letter of credit shall have an expiration date of not less than one (1) year and is callable upon a branch

of the issuing bank located in DeSoto, Tate, Marshall and Tunica Counties, or cash, or other adequate security acceptable to the County. In the sole discretion of the County, cash or alternative forms of security may be accepted upon approval of the Board of Supervisors.

Site: those parcels or tracts of land upon which the Developer intends to develop the Subdivision. The Site shall include all portions of the parcels or tracts of land shown on the plat which receives Preliminary Subdivision Approval, whether any construction activities will take place upon the same or not.

Substantial Completion: shall be when the Developer has completed all required Public Improvements to the Site, and all required Public Improvements off site, relative to the Subdivision, including the final surface asphalt course of off site Public Improvements, but not the final required surface asphalt course on the internal Subdivision streets, and same have been inspected, tested and approved by the County.

Subdivision: as defined in the County ordinances, is the division of a tract or parcel of land into two or more parcels or lots, any of which has an area of ten (10) acres or less. Also tracts or parcels of any size where one or more of the parcels not bordering a public road is a subdivision and must have approval from the Board of Supervisors. However, not included in this definition for the purposes and scope of application of this Contract is the division of land into lots or parcels of more than ten (10) acres each and that border a public road. The project contemplated hereunder may be developed under the ordinances and regulations of the County relative to Planned Developments. In such event, the term Subdivision shall be read so as to refer to such Planned Developments.

Subdivision Plans: are those documents and plans submitted to the DeSoto County Planning Commission in conjunction with an application for subdivision approval, including, but not limited to the application for Preliminary Subdivision Approval, plans for construction, plans for drainage, plans for storm water and erosion control, plats, drawings, road plans, and application for Final Subdivision Approval.

II. GENERAL CONDITIONS

1. **Construction Standards.** The Developer shall construct the Subdivision in accordance with the Subdivision Plans, as approved by the Planning Commission and/or Board of Supervisors, and in accordance with the requirements of the Codes, hereby made a part of this Contract by reference, and any other conditions established by the County, its Planning Commission and its Engineer. The conditions of approval established by the Planning Commission and/or the County, are set forth in Exhibit A to this Contract and are incorporated herein by reference and made a part hereof.

The Developer shall also construct the Subdivision in accordance with the Administrative Guidelines and Codes, which are made a part of this Contract by reference².

In the event there is a conflict between the Subdivision Plans, the Codes and the Administrative Guidelines, the Subdivision Plans will take precedence unless otherwise directed by law.

² The procedures for subdivision approvals are found within Article IV of the DeSoto County Subdivision Regulations.

2. In a timely manner, and after Preliminary Subdivision Approval, Developer shall submit to the County construction and drainage plans. Such plans shall be developed in conjunction with, but submitted after, a pre-construction meeting which the Developer shall have with the County's Engineer. All construction relating to the Subdivision shall be subject to inspection and approval by the County until Final Subdivision Acceptance.

III. OWNERSHIP

1. The Developer agrees it shall have no claim, direct or implied, in the title or ownership of the Public Improvements and the County, upon Final Subdivision Acceptance, will take full title to the Public Improvements. Maintenance responsibilities of the Developer prior to Final Subdivision Acceptance are provided for hereinafter.

2. (a) (i) Until Final Subdivision Acceptance has occurred, the Developer agrees that neither the Site, nor any portion thereof, will be transferred to any other party, if such transfer includes the transfer of any obligations of the Developer to construct the Public Improvements and/or Private Improvements, without first providing the County with notice of when the proposed transfer is to occur and who the proposed transferee is, along with the appropriate address and telephone number of the proposed transferee (ii) If it is the proposed transferee's intention to develop the Site, or any portion thereof, pursuant to the Preliminary Subdivision Approval and any amendments thereto, and this Contract, and if the Developer is to be relieved of any responsibilities with respect to the Public Improvements and Private Improvements, the Developer agrees to furnish the County with an assumption agreement by which the transferee agrees to perform the obligations required of the Developer.

(b) If the Developer and the transferee intend to enter into an assumption agreement whereby the Developer is released from its obligations under this Contract, the Developer must present the assumption agreement to the County for consideration and approval. In the event of such approval, the transferee will be required to furnish new Security acceptable to the County. Any partial conveyance or transfer of ownership shall relieve Developer of the obligations of this Contract as to that portion of the Site which is conveyed or transferred, but will not relieve the Developer of any responsibilities with respect to the Public Improvements and Private Improvements, required to be constructed within the boundaries of the transferred property, unless an assumption agreement is executed, as set forth herein.

(c) If it is not the proposed transferee's intention to develop the Site or any portion thereof in accordance with the Preliminary Subdivision Approval, or any amendments thereto, and this Contract, the transferee must satisfy all applicable requirements of the County, including application for review and approval of any new plans by all appropriate Boards and Commissions.

3. The Developer (and the owner of the Site if different from Developer) understands that if it transfers title to the Site, or any portion thereof, without providing the notice of transfer and assumption agreement as provided for in Section 2 above, such action will be a breach of this Contract and the County may require that all work be stopped relative to all development activities within the Subdivision.

4. The Developer (and the owner of the Site if different from Developer) agrees to furnish, on demand, satisfactory evidence that it has the lawful right to enter into this Contract for the purposes herein contained.

5. The duration of the obligations of the Developer hereunder shall run with the Site until the Developer's obligations have been fully met.

IV. SECURITY

1. Time Frames.

(a) The Developer will furnish to the County, prior to recording of the final plat, an estimate as to quantity and cost of all Public Improvements and Private Improvements yet to be completed, less and except utilities not required of the Developer, followed by posting by Developer of the appropriate Security in such amount as determined reasonably necessary by the County Engineer after consultation with the Developer.

(b) The plat of the Subdivision shall not be officially recorded until the Subdivision has received Final Subdivision Approval. Further, the County shall not approve the recording of the plat, nor the issuance of building permits, until the Public Improvements and Private Improvements yet to be completed will, in the judgment of the County Engineer, cost less than the amount of the Security.

(c) The Security shall remain in force through the date of Final Subdivision Acceptance, although same may be reduced from time to time as provided herein.

(d) The Security shall be attached as a supplemental addendum to this Contract guaranteeing, to the extent of the Security, the faithful performance of this Contract by the Developer prior to the recording of the plat.

2. Determination of Amount of Security.

(a) Although the amount of the Security may be less than the total cost of Developer's obligations hereunder, it is understood and agreed that the Security, subject to its limit, is to furnish protection and assurance of the performance of all of the Developer's obligations hereunder and that such obligations are not limited by the amount of such Security.

(b) The Amount of the Security shall be determined as an amount equivalent to the cost of completing any Public Improvements and Private Improvements yet to be completed in that phase of the Subdivision for which recording of the Plat is being requested.

(c) All collection expenses, court costs and attorney's fees (as applicable and as provided for herein), necessarily incurred by the County in connection with collection under the Security, as a result of the Developer's Default of this Contract or the conditions of approval of the Subdivision Plan, shall be paid by the Developer.

(d) The Developer agrees that if the Security, due to inflation and/or rising costs, previous errors in estimation, or otherwise, is inadequate at the time an extension of time is sought, it will provide additional security to bring the Security amount in line with current cost projections as made by the County Engineer.

3. Release of Security.

(a) Following recording of the plat and at such time as the Public Improvements and Private Improvements yet to be completed in that phase for which the Security has been provided will, in the judgment of the County Engineer, cost less than the amount of the Security, the amount of the Security may be reduced to the cost, as estimated by the County, of uncompleted Public Improvements and Private Improvements, plus a reasonable sum to cover Developer's warranty obligations hereunder, upon application of the Developer and approval of the Board of Supervisors. The Developer shall be entitled to make the application for partial releases of the Security when (i) the ongoing maintenance costs of either the Public Improvements or Private Improvements are reduced by an amount not less than fifty percent (50%) of the value of the Security, or; (ii) the occurrence of the renewal date of the Security.

(b) The remaining Security will be released within thirty five (35) days of fulfillment of the provisions contained within Section VII. "Final Acceptance."

4. Calling on Security.

(a) Prior to making a Call on the Security, the County shall issue a notice of default, as provided in Article XIII, to the Developer specifying the nature of the default, the cure period, as well as an estimate of the amount that may be called upon the Security if the Developer fails to correct the alleged default.

(b) If, during the cure period, the Developer provides to the County written notice of Developer's dispute that any default exists (the "Default Dispute") no call may be made on the Security until such time as the Board of Supervisors has considered the facts and circumstances of the Default Dispute by hearing both parties, and shall determine whether Developer is in default of this Contract. Nothing contained herein shall be construed as waiving or limiting the County's right to proceed in enforcing its rights and remedies afforded to it by reason of and event of the default, including calling upon the Security.

(c) If Developer has not (i) cured such default, and (ii) the BOS determines Developer to be in default of this Contract, the County shall be entitled to Call on the Security to perform those actions addressed in the notice of default.

(d) The Security, if a Letter of Credit, shall provide that the physical presence of a representative of the County shall not be required for demand upon the same and that the venue relative to any litigation regarding same shall be DeSoto County, Mississippi.

V. TIME SCHEDULES

1. (a) It is agreed by the Developer and the County that the Developer must commence Construction within four (4) years from the Effective Date. The time permitted herein to commence construction shall, in no way, be deemed a waiver of the time constraints for filing for final plat approval as required by the County's subdivision regulations. If demolition of any improvement on the Subdivision Site is anticipated, a demolition permit from the County shall be required. Failure to commence Construction within the time permitted, or alternatively Developer's obtaining a formal extension of time to commence Construction, shall result in the withdrawal and termination of the Preliminary Plan and the Site shall not be developed without first seeking re-approval of the Subdivision Plans.

(b) The Developer must pay all fees, and provide the required certificate of insurance (proof of insurance coverage) on or before the Effective Date, all in accordance with the applicable provisions of this Contract.

2. The Developer shall complete the Subdivision on a timely schedule and in an expeditious manner, and in phases (where applicable), as provided below.

(a) All Public Improvements to or within the roads of the Subdivision (as they lie within each phase of the Subdivision currently being developed,) must be completed within _____ consecutive calendar days from the date construction begins on each phase of said roads. The Developer may, upon written approval from the County Engineer, be permitted to extend the calendar day time limit for this portion of the work to allow installation of the surface course of asphalt at a later date. In the event such time extension is permitted, all manholes, valve boxes, and/or other items protruding from the surface of the base asphalt course shall be protected by asphalt patching or other means as approved by the County Engineer.

(b) All Private Improvements within any one phase of the Subdivision Site shall be completed when fifty (50%) percent of lots within that phase have been owner occupied.

(c) The Developer agrees that if due to unforeseen circumstances it is unable to obtain Substantial Completion within the time specified herein, it will submit a written request for extension of the Contract period to the County at least sixty (60) days prior to the expiration of the existing Contract period, specifying the reason for its failure to complete the work as agreed, and include a prospective date for such completion.

(d) The County will not unreasonably withhold approval of extensions of time where the Developer has complied with the requirements of notice to the County and provided the required additional Security, if any, as needed.

4. The Developer agrees that should it fail to complete any part of the work outlined in this Contract in a good and workmanlike manner, as approved by the County Engineer, the County shall reserve the right to withhold, suspend or withdraw all development permits, and/or issue stop work orders for any permits, issued to the Developer within the Subdivision until all items of this Contract have been completed by the Developer in a good and workmanlike manner. The Developer may appeal to the Board of Supervisors the decisions of the County Engineer or County Planning Commission to withhold, suspend or withdraw development permits and/or stop work orders. Such appeals must be presented to the Board of Supervisors within thirty (30) days of the notice of withholding, suspension or withdrawal of the permit, or the issuance of the stop work order.

5. (a) It is agreed that after the date of Final Subdivision Approval, the County will submit to the Chancery Clerk of DeSoto County for recording the final plat (Mylar) of the Subdivision in the Chancery Court Clerk's Office of DeSoto County, Mississippi within five (5) business days after the Developer has submitted a final plat suitable for recording, provided the necessary Security and all required supportive documents and signatures have been provided to County. County agrees to use reasonable efforts to secure the necessary County signatures within five (5) business days, beginning from the date of receipt from the Developer or all required supportive documents and signatures.

(b) The final plat shall be retained by the County as a permanent record. The Developer shall be responsible for paying the initial recording cost and any future re - recording costs.

(c) Prior to plat recording, the Developer shall furnish to the County "as built" drawings on a reproducible, stable media, which shall show all improvements, grading, streets, sanitary sewer system, storm drainage system, water system and all appurtenances that relate to each item within the Subdivision. The Developer shall provide such "as built" drawings, using State Plane Coordinate System with NAD - 83 datum on disk or CD in DXF or DWG format prior to recording of the plat of the Subdivision. All MTEXT must be exploded, including all blocks.

(d) Departure from the original plans and specifications of the Subdivision Plans shall not be permitted without the prior approval of the County Engineer or, as necessary, the Board of Supervisors.

6. All required landscaping, irrigation, fencing and all other extraordinary improvements within the Subdivision, or where applicable a phase in the Subdivision, shall be completed within the timeline specified in Section V(2)(b) above.

7. (a) Sidewalks. Notwithstanding any provision in this Contract to the contrary, all required sidewalks along reverse frontage lots, common open space and park land, and all sidewalks which do not front on lots, shall be completed prior to recording the final plat of the Subdivision. All sidewalks along individual lot frontages must be complete and without defect prior to the final inspection for the house constructed on the relevant lot. The Developer may subcontract this responsibility along to the builder or other buyer of each lot. Subcontracting will not result in a waiver of the Developer's obligation to have sidewalks constructed and, in the event the builder and/or buyer fails to properly construct a sidewalk, the Developer shall be responsible for construction of said sidewalks prior to Final Subdivision Acceptance, unless a waiver is provided by the Board of Supervisors. The Developer shall be responsible for repairing any latent defects in the sidewalks and for installing all incomplete sidewalk sections prior to Final Subdivision Acceptance. (All references to sidewalks include required handicap ramps.)

(b.) Curbs and Gutters. All required curb and gutter along reverse frontage lots, common open space and park land, and all curb and gutter which does not front on lots, shall be completed prior to recording the final plat of the Subdivision. All required curbs and gutters along individual lot frontages must be completed and without defect prior to the allowance of a final inspection for the house constructed on the relevant lot. The Developer may subcontract the responsibility to repair any curb and/or gutter which is damaged during the construction of the house on the relevant lot along to the builder or other buyer of each lot. Subcontracting will not result in a waiver of the Developer's obligation to have sidewalks constructed and, in the event the builder and/or buyer fails to properly repair the curb and gutter prior to a final inspection being conducted on the subject lot/house, the Developer shall be responsible for repair of said curb and gutter. The Developer shall also be responsible for repairing any latent defects and/or failures in the curbs and gutters, which occur or first appear after the conduct of a final inspection on the subject lot/house and prior to final surface asphalt installation and, as necessary, prior to Final Subdivision Acceptance.

8. The final lift of surface asphalt on streets within the Subdivision shall be completed not later than four years from the date of recording of the final plat in the Office of the DeSoto

County Chancery Clerk. All streets shall remain bonded for a period of a minimum of one (1) year after the date they are completed and approved by the County Engineer.

{Alternate 1. (a) The Developer agrees to pay to the County a payment in-lieu of installation of the final lift of surface in the amount of _____ Dollars, (\$_____) for the required improvement to _____.

NOTE: THIS ALTERNATE PARAGRAPH 1.(a) MUST BE PREAPPROVED BY THE BOARD OF SUPERVISORS}

VI. WARRANTY

1. The Developer is required to complete the Public Improvements and Private Improvements, and all other improvements required by the County relative to the Subdivision, in accordance with the terms of this Contract. Further, unless the responsibility has been accepted by the County or performed by the County, the Developer is to correct any defects or failures in all of such improvements that occur within one (1) year of the installation of the final lift of asphalt surface course on the streets in the Subdivision. Any defect first appearing within the applicable one (1) year period shall be required to be corrected by the Developer; and thereafter the Developer shall correct any defect again occurring in or relating to what was previously corrected within a one (1) year period commencing from the date of approval by the County Engineer of such correction.

VII. FINAL ACCEPTANCE OF WARRANTED WORK ON PUBLIC IMPROVEMENTS AND PRIVATE IMPROVEMENTS

1. (a) No sooner than one year after the completion of the installation of the final lift of surface asphalt on the streets in the Subdivision, the Developer shall so notify the County Engineer, and the County Engineer, or his designee, shall inspect the Public Improvements and Private Improvements and all other required warranty improvements to determine any defects or failures of the same. If no defects or failures are found, the County Engineer shall report the same to the Board of Supervisors at a regular or special meeting within thirty (30) days of the date of said inspection.

(b) If defects or failures are found during the aforesaid inspection, a written notification outlining deficiencies to be corrected shall be provided to the Developer along with the time period for corrections, not to exceed sixty (60) days. Within seven (7) days of notification by the Developer that such corrections have been made or the expiration of the time period, whichever occurs first, the County Engineer shall re-inspect for correction of defects and failures. If all deficiencies have not been corrected, the County Engineer shall provide an updated written notification of deficiencies and the Developer shall have thirty (30) days to make the remaining corrections. If all corrections are not made at this time, the County may demand payment on the Security as provided herein, and, upon collection, shall proceed to make the corrections. It is the intention of the parties hereto that any Public Improvement required of the Developer relative to the Subdivision, after Final Subdivision Acceptance, shall thereafter be the obligation of the County to maintain.

(c) The actions of the County in undertaking any corrections shall not be deemed a waiver of Developer's obligations required by this Contract, including Developer's obligations to warranty the work, except upon such work completed by the County. If and when the Developer or the County, as the case may be, has corrected all failures and defects, and a period of one (1) year has expired from the date of such corrections without defects again appearing in the

corrected work, the County Engineer shall report the same to the Board of Supervisors at a regular or special meeting within thirty (30) days of the date of said re-inspection. The Board of Supervisors, provided it agrees with the County Engineer, shall approve the final release of the Security, which shall constitute Final Subdivision Acceptance.

2. However, any such Public Improvement found to be unsatisfactory by the County Engineer upon the initial inspection as provided in Section VII(1)(a) – (b) or any later inspection made pursuant to Section VII(1)(a) – (b) shall not become the obligation of the County to maintain, unless such repairs were completed by the County, until same remains satisfactory to the County for a period of one (1) year from the date it was inspected and found to be satisfactory by the County Engineer.

3. At any time following one (1) year from the date of installation of the final surface asphalt on the streets in the Subdivision, the County Engineer may recommend to the Board of Supervisors that a portion of the Security be released based upon the County Engineer's estimation of the needed Security to ensure that funds will be available to correct any then outstanding defects in the improvements, or to correct any defects which have been corrected but reoccur, or to complete any uncompleted requirements such as sidewalks.

VIII. REQUIRED IMPROVEMENTS AND RELATED ACTIVITIES

1. (a) The Developer agrees to construct and/or improve, at no cost to the County, all public and/or private streets located within the Subdivision and/or required by the Subdivision plans in compliance with the road standards of the County, and to the satisfaction and approval of the County Engineer..

{Alternate 1. (a) The Developer agrees to pay to the County a payment in-lieu of construction in the amount of _____ Dollars, (\$_____) for the required improvement to _____.

NOTE: THIS ALTERNATE PARAGRAPH 1.(a) MUST BE PREAPPROVED BY THE BOARD OF SUPERVISORS}

2. The Developer shall bear the cost of all engineering, inspection and laboratory costs procured by the Developer incidental to the construction of street(s) to be constructed or improved pursuant to this Contract, including, but not limited to, material and density testing; and, if the County deems it necessary to have additional work of such nature performed, the Developer shall bear such costs also.

3. Unless otherwise paid by the Developer and an agreement entered into with the County for the County to asphalt the road(s), the Developer shall furnish and install asphalt base and a final asphalt surface course (wearing surface) on all streets, public and private, as required hereunder in accordance with the County specifications.

4. The Developer shall make all necessary adjustments to manholes and valve boxes to meet finished surface grade and to repair subsurface or base repair, as required, in areas designated by the County prior to the application of the final asphalt surface.

5. It is agreed and understood that if it is not necessary to change the existing grade, alignment or disturb the pavement of an existing street or road, the Developer shall only be required to construct drainage, sub - base, base and pavement to match the existing pavement and construct sidewalks, curb and gutter as required. If the existing grade and/or alignment is

Improvements or amenities which are likely to require future maintenance; or (iii) where there will be covenants applicable to the Subdivision that may require enforcement. Notwithstanding the foregoing, the Developer may apply to the County for a waiver of the establishment of a homeowners association, which may be granted only with the approval of the Board of Supervisors.

2. (a) In the event a homeowners association is required, the Developer shall form a homeowners association by filing the necessary legal documentation with the State not later than when the final plat is recorded. At the time of formation of the homeowner's association, the Developer shall convey title to all common space and private improvements to the homeowners association.

(b) The homeowners association bylaws shall include a provision to the effect that all owners of Lots in the Subdivision, as well as any additional phase of the Subdivision, shall become part of the homeowner's association at the time they take ownership of the Lot (s).

(c) When the Subdivision, or phase of a Subdivision, reaches an occupancy (homes initially sold and occupied) of twenty-five percent³ (25%) of the total lots developed therein, the Developer, or a representative of Developer, shall call a meeting of all homeowners no less than twice annually to update the homeowners upon the status of the development efforts within the subdivision, the status of common area development, and to provide the homeowners opportunity for feedback on development efforts and concerns.

(d) When the Subdivision, or phase of a Subdivision, reaches an occupancy (homes initially sold and occupied) of eighty percent⁴ (80%) of the total lots developed therein, or such lesser amount as the homeowners and Developer may agree but not less than fifty percent (50%), and the County has approved the Public Improvements and Private Improvements and certified in writing to the Developer the fulfillment of these obligations, and the Developer has conveyed title to all common space and Private Improvements to the homeowners association, the Developer shall turn over the homeowners association to the homeowners. This shall be done by Developer calling a meeting of the homeowners wherein there shall be elected directors and officers of the association who shall assume, among other responsibilities, the responsibility for maintenance of the common areas of any phase of the Subdivision which has been turned over to the homeowners association.

(e) In multi-phase subdivisions where the County has approved the Public Improvements and Private Improvements within a phase, the Developer may turn over the homeowners association in phases, so long as eighty (80%) percent of the total homes in the subject phase have been initially sold and occupied, or such lesser amount as the homeowners and Developer may agree but not less than fifty percent (50%), by following the same process as specified in subsection (d) above.

(f) When the homeowners association is turned over as provided in 2 (e) above, any homeowners purchasing a Lot in a subsequent phase shall become a member of the

³ For consideration of this Article XIV, in determining the percentage equating to twenty-five (25%), the numerator shall be the total number of constructed, initially sold and occupied houses and the denominator the total number of lots in the Subdivision, or alternatively for application of subsection (e), the total number of lots in the subject phase.

⁴ For consideration of this Article XIV, in determining the percentage equating to eighty (80%), the numerator shall be the total number of constructed, initially sold and occupied houses and the denominator the total number of lots in the Subdivision, or subject phase of a Subdivision.

homeowner association at the time they close on their house, commencing their obligation to homeowners association dues, subject to any applicable proration of fees, and enjoying the rights and responsibilities of homeowner association membership.

3. (a) The Developer shall have full responsibility for maintenance of all of the common areas and Private Improvements of the Subdivision, or phase thereof, until such time as the Subdivision, or phase thereof, is turned over to the homeowners association. If the homeowners association is established in phases, Developer will be relieved of the maintenance responsibilities only as to those phases turned over to the homeowners association.

(b) Should the Developer elect to sell Lots to builders, or individual owners, and prior to the first sale of such Lots, the Developer shall establish an escrow account in the name of the homeowners association at a local financial institution and deposit therein an amount of dues equal to the annual per lot budgeted fee times all of the lots included in the Subdivision (or alternatively, the subject phase). Such budget shall be prepared by the Developer and approved by the County Engineer and shall minimally include an allocation for common area repairs and maintenance, future maintenance of open ditches and detention areas, utilities, insurance, association management, and replacement reserve⁵ allocations for monuments and depreciable buildings and systems.

(c) Developer shall annually continue to deposit such sums until the homeowners association assumes maintenance of the Subdivision (or alternatively, the subject phase), at which time Developer's obligations to make payments into the escrow account will cease except as to those lots which Developer continues to own. This process will be followed for each subsequent phase of the Subdivision.

(d) Notwithstanding the provisions of Section 3 (b) and (c), a Developer having an in-house maintenance operation may provide for continued maintenance of the common areas of the Subdivision, and be entitled to an offset of the portion of the annual fee budgeted to the common area maintenance.

(e) Prior to turning over the Subdivision (or phase), the Developer shall be entitled to use such fees deposited into the homeowner association account for the maintenance of the common areas within the applicable phase where Lots are subject to homebuilding, though Developer shall maintain a strict segregated accounting for the use of such funds for these purposes.

(f) Upon the sale of Lots, Developer is entitled to a pro-ration of that year's contribution made to the homeowners association fund, provided, however, the purchaser of such Lot(s) (including home builders) shall assume the responsibility for their prorated portion of the funds, and a continuing responsibility for making contributions to the homeowner association fund until such time as an individual homeowner assumes such responsibility through ownership of the Lot.

⁵ The replacement reserve allocation is meant to be an annual contribution to a reserve savings account in the name of the homeowner association to be used for future replacement of depreciable assets of the common area improvements, roughly determined by calculating the total cost of such improvements divided by the expected life of such improvements (in years), then adding an inflation factor. The per lot allocation of replacement reserve is a part of the annual homeowner association fee.

4. Developer shall include in all deeds conveying title to any lots sold within the Subdivision, a covenant running with the land that membership in the homeowners association, and payment of homeowners association dues are mandatory.

5. Developer shall include language on the face of the final plat, as recorded, substantially similar to the following:

"The covenants and restrictions set out herein, or in deeds to the lots of this Subdivision, are private in nature and are not subject to enforcement by DeSoto County, Mississippi. The developer of this Subdivision will establish a home owners association, which will have total responsibility for maintenance and repair of the Subdivision common areas and improvements. All owners of lots within this Subdivision will be required to become members of the home owners association and pay homeowner's dues monthly, annually or otherwise as set out in the covenants."

XIII. DEFAULT, NOTICE OF DEFAULT, AND CURE PROVISIONS

1. Except for those defaults subject to Section 2 of this Article below, should the Developer default in the performance or observance of any material term, covenant, condition or provision of this Contract, and remains in default for fourteen (14) days after notice is given of said default the County shall, if it so elects, shall have the right to terminate the Contract, or pursue in a court of law or equity, such default remedies it may be entitled, upon giving the Developer notice of its intention. If the County elects to terminate the Contract and all rights of the Developer there under, and, upon the effective date of such termination specified in such notice (which shall not be less than ten (10) days after the giving of such notice), the Contract shall end as fully and completely as if that were the date herein fixed for the expiration of the Contract.

2. Should the Developer default in the performance or observance of any material term, covenant, condition or provision of this Contract, and the default is of a nature that cure is possible or remediable but the curing or remedying of such default requires the doing of work, or the taking of action, which cannot with due diligence be completed in any sixty (60) day period, and such default continues beyond the end of the 60 day period after the service of a notice of default, and such additional time as is reasonably necessary to cure or remedy such default, taking into account unavoidable delays to do the work required or to complete such other action as is required to cure or remedy the default in question the County shall, if it so elects, shall have the right to terminate the Contract, or pursue in a court of law or equity, such default remedies it may be entitled, upon giving the Developer notice of its intention. If the County elects to terminate the Contract and all rights of the Developer there under, and, upon the effective date of such termination specified in such notice (which shall not be less than ten (10) days after the giving of such notice), the Contract shall end as fully and completely as if that were the date herein fixed for the expiration of the Contract.

3. In the event there shall be filed against the Developer in any court pursuant to any federal or state statute, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or substantially all of said party's property and within one hundred and twenty (120) days of such filing said party fails to secure a discharge of such petition or the dismissal of such proceedings, or said party files a voluntary petition in bankruptcy or insolvency or for such reorganization or for the appointment of such a receiver or trustee or makes an assignment for the benefit of creditors or petitions for or enters into an arrangement for the benefit of creditors the County shall, if it so elects, have the right to terminate the Contract upon giving the Developer notice of intention to terminate the Contract

and all rights of the Developer party there under and , upon the effective date of such termination specified in such notice (which shall not be less than ten (10) days after the giving of such notice), the Contract shall end as fully and completely as if that were the date herein fixed for the expiration of the Contract.

4. In the event County defaults in the performance or observance of any term, covenant condition or provision of this Contract or its part to be performed, and such default is of a kind which is curable or remediable within a thirty (30) day period, and such default continues for a period of thirty (30) days after service of a written notice of default, the Developer shall, if it so elects, have the right to pursue such remedies as appropriate in a court of law or equity.

5. The rights and remedies given to the parties in this Contract are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by a party, shall be deemed to be in exclusion of any of the others provide herein or by equity

XIV. MISCELLANEOUS CONDITIONS

1. Easements/Rights of Way. The Developer agrees that it will grant the reasonably necessary easements and rights-of-way across its property for roads and drainage for the Subdivision. Any off-site easements and/or rights-of-way owned by others but required for the project must be obtained by Developer and recorded prior to plat recording.

2. Construction Supervision. It is understood and agreed that the County is not and could not be expected to oversee, supervise and/or direct the construction of all construction and improvements contemplated hereunder. Neither is the County Engineer or County Planning Commission vested with the original design responsibility nor the means to formally survey elevations, capacity, structural integrity, type, adequacy or the locations of improvements at every stage of the construction process. The County Engineer and the County Planning Commission Director are vested with the right to conduct periodic inspections, approve all construction and improvements, and the authority to issue stop work orders against the Developer as a measure of secondary or subsequent enforcement. The Developer has, and shall retain, the responsibility to properly anticipate, survey, design and construct the development improvements and give reasonable assurance that same shall not adversely affect the rate of flow of surface water from or upon any property. In providing technical assistance, plan and design review, the County does not and shall not relieve the Developer from or accept any liability from the Developer.

3. Emergencies. In the event the County has to use its resources in response to an emergency caused by conditions existing within the Development during the course of the development activities and until Final Subdivision Acceptance, it is agreed that the County will keep a record of costs associated therewith and the Developer shall reimburse the County for the same. Further, the Developer agrees that the County shall have the right to enter the Subdivision Site and make emergency repairs to any improvements when authorized to do so by laws of the State of Mississippi to protect the health and safety of the general public. The Developer will reimburse the County for all costs incurred by it in making such repairs.

4. Permits. The Developer agrees to secure all required permits for the demolition of structures on the subject property. The Developer further agrees that it will haul all scrap, buildings, materials, debris, rubbish and other degradable materials to an authorized landfill and not bury such materials within any Site (or subdivision Lot) where any structures will or are scheduled to be constructed including residential or commercial buildings.

5. **Subcontractors Affidavits.** Prior to Final Subdivision Acceptance by the County, and with respect to development activities, the Developer shall deliver to the County an affidavit certifying that all subcontractors and material suppliers furnishing labor and/or material for the Public Improvements and Private Improvements required under this Contract have been paid in full.
6. **Infrastructure Relocation.** The Developer shall be responsible for the cost of any and all relocation, adjustment, modification, installation and/or removal of utilities, streets, curbs, gutters, sidewalks, drainage and all other improvements made necessary by the development of the Subdivision.,
7. **Indemnity.** The Developer will indemnify and hold the County harmless against all claims that may arise out of or result from the Developer's negligent performance under this Contract, whether such claims arise out of the actions of the Developer, any subcontractor of the Developer, or anyone directly or indirectly employed by either of them. This indemnity agreement includes, without limitation, all tort claims, both intentional and otherwise, and all claims based upon any right of recovery for property damage, personal injuries, death, damages caused by downstream deposits, sediment or debris from drainage damages resulting from the Developer changing the volume or velocity of water leaving the Site and entering upon the property of others, and claims under any statutes, Federal or state, relative to water, drainage and/or wetlands, and reasonable attorney's fees and costs incurred by the County in defending itself as a result of the aforesaid.
8. **Safety.** The Developer shall maintain barricades, fences, guards and flagmen as reasonably necessary to ensure the safety of all persons at or near the Subdivision Site during construction. All construction material, including, without limitation, mud, silt, dirt and gravel, shall be kept off existing streets at all times. In the event such mud, silt, dirt, gravel or other construction material is washed, blown or carried into an existing street, the Developer shall take immediate steps to remove such materials. If the Developer does not remove such materials after notification by the County, and the County deems it necessary to clean the affected streets, the Developer agrees to reimburse the County for all such cleaning expenses.
9. **Construction Activity.**
- (a) The Developer agrees to include in all contracts between the Developer and the purchaser of any Lot in the Subdivision ("Lot Owner") and deeds the following, unless otherwise authorized in writing by the County Engineer:
- "All streets shall be kept clear and free of dirt and debris."
- (b) The Developer and Lot Owner shall provide the DeSoto County Building Department with the name, address and phone number of person(s) to be contacted and responsible for correcting any of the above should the occasion arise to do so.
10. **Gender References.** The use of the neuter pronoun herein shall include the neuter and both genders as the context shall require.
11. **Costs of Default.** The Parties agree, that should either party default in performing any of its obligations under this Contract, and litigation ensues between the County and the Developer with respect to this Contract, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorney's fees and the costs and expenses of such litigation,

including same related to any appeal. The court(s) before which such litigation is pending shall determine which party prevailed and the amount of such fees, costs, and expenses to be recovered by the prevailing party as a result of prevailing in the action; and, if one party prevails in part, but not in whole, an equitable award of its attorney's fees and expenses may be made by the court(s). The same provision as immediately aforesaid shall be applicable to any litigation necessary to establish the County's right to recover under the Security. The Security shall cover all of the Developer's obligations under this Contract, including, without limitation, the obligation of the Developer to pay the fees, costs and expenses of the County as provided for in this Section of the Contract, should the County be declared the prevailing party in any such action.

12. Interpretation and Severability. If any provision of this Contract is held to be unlawful, invalid or unenforceable under present or future laws effective during the terms hereof, such provisions shall be fully severable and this Contract shall be construed and enforced as if such unlawful, invalid or unenforceable provision was not a part of this contract. Furthermore, if any provision of this Contract is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

13. Construction of Contract. Each party has received and had the opportunity to review this Contract, and each party has had the opportunity, whether exercised or not, to have each respective party's attorney review this Contract, and, accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract.

14. No Waiver. The failure of the County to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Contract, or to exercise any right herein conferred, in any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking or right.

15. Amendments and Modification. This Contract shall not be modified in any manner, except by an instrument in writing executed by or on behalf of all parties.

16. Authority to Execute. County and Developer each warrant and represent that the party signing this Contract on behalf of each has authority to enter into this Contract and to bind the County and Developer, respectively, to the terms, covenants and conditions contained herein. Each party shall deliver to the other, upon request, all documents reasonably requested by the other evidencing such authority, including a copy of all resolutions, consents or minutes reflecting the authority of persons or parties to enter into agreements on behalf of such party.

17. Notices. All notices, demands and requests required or permitted by this Contract shall be in writing (including telecopy communications) and shall be sent by facsimile transmission, air or other courier, or hand delivery, as follows:

- (i) To: COUNTY
DeSoto County Planning Department
Attn: Director of the Planning Commission Office
365 Loshier Street
Suite 200
Hernando, MS 38632

Telephone: 662-429-1303
 Telecopier: 662-429-1307

With Required Copy To:
 DeSoto County Engineering Department
 Attn: County Engineer
 POB 389
 Nesbit, MS 38651

Telephone: 662-429-1347
 Telecopier: 662-429-1521

(ii) To: DEVELOPER
 EBI, INC.
 P.O. Box 867
 New Albany MS 38652
 Telephone: 662-534-4774
 Telecopier: 662-534-4775

Any notice, demand or request sent by facsimile transmission shall be deemed given for all purposes under this Contract when properly transmitted by telecommunication device. Any notice, demand or request which is hand delivered or sent by air or other courier shall be deemed given for all purposes under this Contract when delivered to the intended address.

Any party to this Contract may change such party's address for the purpose of notices, demands and requests required or permitted under this Contract by providing written notice of such change of address to the other party, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

18. Choice of Law. This Contract is being executed and delivered and is intended to be performed in the State of Mississippi, and the laws (without regard to principles of conflicts of law) of the State of Mississippi shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof.

19. Supplemental Conditions/Additional Requirements.

a. For Subdivisions with fifty (50) or more Lots, the Developer agrees to consult with a representative of the DeSoto County School District, within thirty days following the Effective Date, in good faith, regarding the possibility of entering into an agreement by which the Developer would agree to impose a development fee to be pledged to the District pursuant to Miss. Code Annotated section 37-7-487. As provided in §37-7-487 (5), nothing in this section shall be construed as giving school districts additional authority to levy debt or to levy any additional taxes other than as allowed by law. Additionally, Developer shall not be subjected to any impact fee by virtue of such voluntary meeting with the school district.

b. Developer agrees to complete and submit, in a timely manner, all applications, forms and checklists, including, but not limited to, those for Preliminary Subdivision Approval, Final

Subdivision Approval, plat approval and recording, required by the DeSoto County Planning Commission and/or Board of Supervisors

c. Developer agrees to participate in a pre-construction meeting with the DeSoto County Engineer, Director of the DeSoto County Planning Commission and DeSoto County road manager not less than thirty (30) days prior to the commencement of Construction.

d. Developer agrees to pay all applicable permit fees required by the DeSoto County Storm Water Ordinance, regardless of whether the application for the necessary storm water permit is applied for before or after construction activities or Site disturbance activities (as are defined in the DeSoto County Storm Water Ordinance) have occurred.

e. Other: Any additional special terms or conditions to this agreement are attached hereto and made a part hereof by reference.

20. Joinder of Owner. In the event that the Developer is not the owner of the Subdivision Site, the owner joins in this Contract and by the Owner's execution of this Contract, the owner is jointly and severally liable for the representations, warranties, covenants, agreements and indemnities as expressly set forth in this Contract.

21. Non Waiver of DeSoto County Zoning Ordinance and Subdivision Regulations. Developer agrees to fully abide by all terms, provisions and conditions of the DeSoto County Zoning Ordinance and Subdivision Regulations. Further, Developer acknowledges that Preliminary Subdivision Approval and Final Subdivision Approval do not constitute a waiver of any terms, provisions and conditions of the DeSoto County Zoning Ordinance and Subdivision Regulations; such requirements may be imposed during any phase of construction of the Subdivision whether or not set forth in this Contract or order of the Board of Supervisors. Nothing in this Contract shall be deemed a waiver of any terms, provisions and conditions of the DeSoto County Zoning Ordinance and Subdivision Regulations.

WITNESS the due execution hereof.

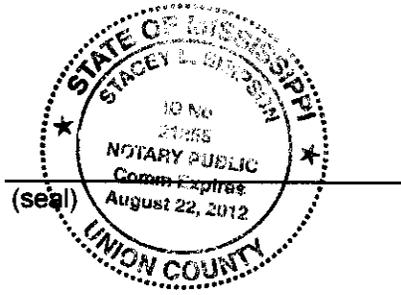
DEVELOPER

EBI, INC
By: Robert M Bentley
Title: President
Date: 1/23/12

STATE OF Mississippi
COUNTY OF Union

Personally appeared before me, the undersigned authority in and for said county and state, on this 23rd day of January, 2012, within my jurisdiction, the within named Robert M. Bailey, who acknowledged that (he)(she) (they) executed the above and foregoing instrument.

Stacey L. Simpson



STATE OF _____
COUNTY OF _____

Personally appeared before me, the undersigned authority in and for said county and state, on this _____ day of _____, _____, within my jurisdiction, the within named _____, who acknowledged that (he) (she) (they) is the _____ of _____. And that for and on behalf of said corporation, and as its act and deed, he/she executed the above and foregoing instrument, after first having been duly authorized by said corporation to do so.

Given under my personal hand and official seal of office this the _____ day of _____, 20____.

(seal)

OWNER (if applicable):

By: _____

Title: _____

Date: _____

STATE OF _____
COUNTY OF _____

Personally appeared before me, the undersigned authority in and for said county and state, on this the _____ day of _____, 20____, within my jurisdiction, the within named _____

_____, who acknowledged that (he) (she) (they) executed the above and foregoing instrument.

(seal)

STATE OF _____

COUNTY OF _____

Personally appeared before me, the undersigned authority in and for said county and state, on this ____ day of _____, _____, within my jurisdiction, the within named _____, who acknowledged that (he) (she) (they) is the _____ of _____. And that for and on behalf of said corporation, and as its act and deed, he/she executed the above and foregoing instrument, after first having been duly authorized by said corporation to do so.

Given under my personal hand and official seal of office this the ____ day of _____, 20____.

(seal)

COUNTY OF DESOTO, MISSISSIPPI

X By: Jessie L. Medli
President, DeSoto County Board of Supervisors or Director of Planning per BOS Order Dated 08-18-2008

Date: _____

ATTEST: _____
DeSoto County Chancery Clerk - Clerk of the DeSoto County Board of Supervisors

By: _____ D.C.

Exhibit A-- Erosion Control Agreement

Conditions of approval established by the Planning Commission, and, as applicable, the Design Review Commission or the Historic District Commission and, as applicable, modified by the Board of Supervisors are attached hereto.

Erosion Control Agreement**INTRODUCTION AND SCOPE OF THE AGREEMENT**

THIS Erosion Control Agreement (the "Agreement") is made and entered into effective this the 23rd day of January, 2012, by and between Mike Bailey the address of which is P.O. Box 867 New Albany MS 38652, ("Developer"), and DeSoto County, Mississippi, a political subdivision of the State of Mississippi, acting through its duly elected Board of Supervisors ("County").

WITNESSETH

WHEREAS, the Developer is the owner, or agent of the owner¹, of the Site, and desires to undertake Construction Activities within the Site which activities are subject to the mandates and requirements of the County's Stormwater Ordinance; and

WHEREAS the Developer and County each desire and agree to execute this Agreement as a condition to said parties approval and execution of the Residential Subdivision Development Contract; and

WHEREAS, it is understood by the parties hereto that the intended manager of this Agreement is the office of the Desoto County Engineer; and

WHEREAS, the parties agree and understand this Agreement will, subsequently, be made an exhibit to the Residential Subdivision Development Contract and incorporated therein by reference; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties herein contained, it is understood and agreed as follows:

I. DEFINITIONS

Construction Activities: any clearing, grading, excavating, or equipment usage that will result in the disturbance of the land surface and is subject to the National Pollutant Discharge Elimination System (NPDES) construction permits. This includes construction projects resulting in land disturbances of 1 acre or more or projects less than 1 acre but are part of a larger common plan of development, as required by 40 CFR 122. The term shall not include:

- (1). Such minor construction activities as home gardens and individual home landscaping, home repairs, home maintenance work and other related activities that result in minor soil erosion;
- (2). Individual service and sewer connections for single or two family residences;
- (3). Agricultural practices involving the establishment, cultivation or harvesting of products of the field or orchard, preparing and planting of pasture land, forestry land management practices including harvesting, farm ponds, dairy operations, and livestock and poultry management practices and the construction of farm buildings;
- (4). Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture; and

¹ If the Developer is not the owner of the Subdivision site, but has permission from the owner to develop same, the owner will be required to join herein and all obligations imposed upon the Developer hereunder shall be the joint and several obligations of the Developer and the owner.

(5). Installation, maintenance, and repair of any underground public utility line when such activity occurs in an existing hard surface road, street or sidewalk, provided the activity is confined to the area of the road, street or sidewalk that is hard surfaced and a street, curb, gutter or sidewalk permit has been obtained.

Erosion and Sediment Control Plan: a plan that is designed to minimize the accelerated erosion and sediment runoff at a Construction Activities or Land Disturbance site.

Final Subdivision Acceptance: shall occur after all required improvements have been completed by the Developer to the satisfaction of the Director of the DeSoto County Planning Commission and County Engineer; all applicable maintenance periods have expired, the terms and conditions of the Residential Subdivision Contract fully completed, and the Board of Supervisor's has approved the release of the Security.

Land Disturbance: any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made Watercourse.

NPDES Permit: a permit issued pursuant to 33 U.S.C. Chapter 26 (Water Pollution Prevention and Control), Subchapter IV (Permits and Licenses), Section 1342 that authorizes the discharge of Pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Residential Subdivision Development Contract: That agreement prepared by the County, for execution by the County and the Developer, setting forth certain conditions, obligations and requirements for the development of real property as a subdivision and styled "DeSoto County, Mississippi Residential Subdivision Development Contract."

Security: a Letter of Credit issued by a bank qualified to do business in the State of Mississippi, to the Developer, naming the County as beneficiary, and securing the completion of all requirements set forth herein and set forth in the Stormwater Ordinance. Said letter of credit shall have an expiration date of not less than one (1) year and is callable upon a branch of the issuing bank located in DeSoto, Tate, Marshall and Tunica Counties, or cash, or other adequate security acceptable to the County. In the sole discretion of the County, cash or alternative forms of security may be accepted upon approval of the Board of Supervisors. This Security shall be posted separate and apart from any other security posted by Developer for development of the Site.

Site: those parcels or tracts of land upon which the Developer intends to develop the Subdivision. The Site shall include all portions of the parcels or tracts of land shown on the plat which receives Preliminary Subdivision Approval, whether any construction activities will take place upon the same or not.

Stormwater Ordinance: The "ORDINANCE ESTABLISHING STORMWATER CONTROLS AND MANAGEMENT PRACTICES FOR DESOTO COUNTY, MISSISSIPPI", adopted by the County on December 19, 2005.

Subdivision: as defined in the County ordinances, is the division of a tract or parcel of land into two or more parcels or lots, any of which has an area of ten (10) acres or less. Also tracts or parcels of any size where one or more of the parcels not bordering a public road is a subdivision and must have approval from the Board of Supervisors. However, not included in this definition for the purposes and scope of application of this Agreement is the division of land into lots or parcels of more than ten (10) acres each and that border a public road. The project contemplated hereunder may be developed under the ordinances and

regulations of the County relative to Planned Developments. In such event, the term Subdivision shall be read so as to refer to such Planned Developments.

Subdivision Plans: are those documents and plans submitted to the DeSoto County Planning Commission in conjunction with an application for subdivision approval, including, but not limited to the application for Preliminary Subdivision Approval, plans for construction, plans for drainage, plans for storm water and erosion control, plats, drawings, road plans, and application for Final Subdivision Approval.

II. DRAINAGE

1. The Developer agrees that all drainage and related facilities, including, without limitation, ditch paving, bank protection and fencing adjacent to open ditches, detention ponds, culvert installation and the like, as are made necessary by the development of the Site are to be constructed by the Developer according to plans and specifications approved by the County Engineer.
2. The Developer, unless responsibility is transferred to another person or entity by the appropriate issuing of a "Transfer of Responsibility" by the Mississippi Department of Environmental Quality, transferring the NPDES permit, agrees that it will provide necessary stormwater and erosion control measures, including, but not limited to silt fencing/hay bales, rip-rap, seeding for gentle slopes (4 to 1 or less), grass sod for steeper slopes, with special grading and terracing, in accordance with the specifications of the County Engineer and the Stormwater Ordinance. Compliance with the Stormwater Ordinance requires, but is not limited to requiring, that all freshly excavated and embankment areas not covered with satisfactory vegetation be fertilized, mulched and seeded and/or sodded as required by the County Engineer to prevent erosion. In the event that the County Engineer determines that necessary erosion control is not being provided by the Developer, the County shall officially notify the Developer in writing of the problem and identify options for the acceptable cure of the problem and proceed in accordance with the Stormwater Ordinance. Prior to releasing any Security hereunder, all expenses incurred by the governing authority relative to the foregoing shall be paid in full by the Developer plus interest thereon at the rate of ten percent (10%) per annum.
3. Any and all open watercourses lying partially or wholly within the boundary of the Site shall be constructed to an adequate cross section to provide design flow without threat of erosion or flooding of any property within the Site or any adjoining property. This provision does not in any way supersede the authority of the Corp of Engineers for management of the streams and watercourses of the United States.
4. All drainage structures referenced or incorporated in the approved Subdivision Plans, affecting any watercourse lying partially or wholly within the Site, are to be provided, installed and/or constructed by the Developer prior to the recording of the final Subdivision plat.
5. The Developer agrees to provide and deliver the formal written opinion of a certified and licensed professional engineer in the State of Mississippi, certifying as a professional engineer that he or she has reviewed the entire drainage system within the Site and that upon full development at the greatest allowable use density under existing zoning of all land within that watershed, the proposed development of the Subdivision, as designed and certifying to the County Standard, will not increase the rate of flow of surface water leaving the Site, nor damage or flood any neighboring property so long as the construction comports to the design and the Developer maintains proper erosion control measures.

III. SECURITY

1. Time Frames.

(a) The Developer will furnish to the County, prior to commencement of any Construction Activities on the Site, an Erosion and Sediment Control Plan in accordance with the requirements of the Stormwater Ordinance.

(b) In the context of the Residential Subdivision Development Contract, this Agreement shall be in place and proper Security posted at the earlier of the Effective Date of the Residential Subdivision Development Contract or the issuance of the NPDES Permit. In the context of the transfer of an NPDES Permit, the transferee must execute an acknowledgement and joinder of this Agreement, or a separate but substantially identical agreement, at the earlier of the issuance to transferee or the required NPDES Permit or the issuance of the permit for the construction of improvements on the Site.

(c) In the context of the Subdivision Approval Process, the Security required herein shall remain in force through the date of Final Subdivision Acceptance, although same may be reduced from time to time as provided herein.

(d) The Security shall be attached as a supplement to this Agreement, and guarantee, to the extent of the Security, the faithful performance of this Agreement by the Developer.

2. Determination of Amount of Security.

(a) Although the amount of the Security may be less than the total cost of Developer's obligations hereunder, it is understood and agreed that the Security, subject to its limit, is to furnish protection for, and assurance of, the performance of all of the Developer's obligations hereunder and that such obligations are not limited by the amount of such Security.

(b) The amount of the Security shall be determined by the County Engineer and be in an amount equivalent to the cost of completing the Erosion and Sediment Control Plan, plus a reasonable amount necessary to cover Developer's maintenance obligations set forth in this Agreement.

(c) All collection expenses, court costs and attorney's fees (as applicable and as provided for herein), necessarily incurred by the County in connection with collection under the Security, as a result of the Developer's default of this Agreement shall be paid by the Developer.

3. Release of Security.

(a) The Developer shall be entitled to make application for partial releases of Security when (i) the costs of compliance with the Erosion and Sediment Control Plan are reduced to by amount not less than fifty (50%) percent of the value of the Security or, (ii) the occurrence of the renewal date of the letter of credit supporting such Security. In such instances, the amount of the Security may be reduced to the cost, as estimated by the County, of any anticipated further costs of compliance with the Erosion and Sediment Control Plan.

(b) Any Security not released in accordance with (a) will otherwise be released within ten (10) days of fulfillment of all responsibilities detailed in this Agreement and the Residential Subdivision Development Contract.

4. Calling on Security.

(a) Prior to making a call on the Security, the County shall issue a notice to the Developer specifying the nature of Developer's failure to perform any of the obligations of this Agreement, or the Stormwater Ordinance, as well as an estimate of the amount that may be called upon the Security if the Developer fails to correct the alleged default within the specified cure period, which cure period shall be not

less than 30 days, or such time period to cure as is proscribed by the Stormwater Ordinance, from the date of mailing of such notice.

(b) Nothing contained herein shall be construed as waiving or limiting either party's rights to appeal the decision of the County Engineer to the Board of Supervisors, as applicable.

(c) If Developer has not (i) cured the default within the cure period set forth in the default notice, or such amount of time as is reasonably necessary to cure or remedy such default, taking into account unavoidable delays to perform the work required, and (ii) the County Engineer has determined the Developer remains in default of the terms of this Agreement, and (iii) Developer has not appealed such determination, the County shall be entitled to call on the Security posted to secure the performance of those actions addressed in the notice of default.

(d) The Security, if a Letter of Credit, shall provide that the physical presence of a representative of the County shall not be required for demand upon the same and that the venue relative to any litigation regarding same shall be DeSoto County, Mississippi.

IV. MISCELLANEOUS CONDITIONS

1. NPDES Transfers: Developer acknowledges and understands that the NPDES Permit is transferable to third parties who may undertake Construction Activities within the Site, such as home builders. Developer specifically agrees that any transfer of the NPDES Permit, or rights under said permit, which is a transfer of less than the permit for all Construction Activities within the Site, will relieve Developer of his obligations set forth in this Agreement or the Stormwater Ordinance only as to that portion of Site covered by the transferring permit.

2. Costs of Default. The parties agree, should either default in performing any of its obligations under this Agreement, and litigation ensues between them with respect to this Agreement, the party who prevails therein shall be entitled to recover from the other its reasonable attorney's fees and the costs and expenses of such litigation, including same related to any appeal. The court(s) before which such litigation is pending shall determine which party prevailed and the amount of such fees, costs, and expenses to be recovered by the prevailing party; and, if either party prevails in part, but not in whole, an equitable award of its attorney's fees and expenses shall be made by the court(s).

3. Interpretation and Severability. If any provision of this Agreement is held to be unlawful, invalid or unenforceable under present or future laws effective during the terms hereof, such provisions shall be fully severable and this Agreement shall be construed and enforced as if such unlawful, invalid or unenforceable provision was not a part of this Agreement. Furthermore, if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

4. Construction of Agreement. Each party has received and had the opportunity to review this Agreement, and each party has had the opportunity, whether exercised or not, to have each respective party's attorney review this Agreement, and, accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

5. No Waiver. The failure of either party to insist upon prompt and strict performance of any of the terms, conditions or undertakings of this Agreement, or to exercise any right herein conferred, in any one or more instances, shall not be construed as a waiver of the same or any other term, condition, undertaking or right.

6. Amendments and Modification. This Agreement shall not be modified in any manner, except by an instrument in writing executed by or on behalf of all parties.

7. Authority to Execute. County and Developer each warrant and represent that the party signing this Agreement on behalf of each has authority to enter into this Agreement and to bind the County and Developer, respectively, to the terms, covenants and conditions contained herein. Each party shall deliver to the other, upon request, all documents reasonably requested by the other evidencing such authority, including a copy of all resolutions, consents or minutes reflecting the authority of persons or parties to enter into agreements on behalf of such party.

8. Notices. All notices, demands and requests required or permitted by this Agreement shall be in writing (including telecopy communications) and shall be sent by facsimile transmission, air or other courier, or hand delivery, as follows:

(i) To: COUNTY
DeSoto County Planning Department
Attn: Director of the Planning Commission Office
365 Loshier Street
Suite 200
Hernando, MS 38632

Telephone: 662-429-1303
Telecopier: 662-429-1307

With Required Copy To:
DeSoto County Engineering Department
Attn: County Engineer
P.O. Box 389
Nesbit, MS 38651

Telephone: 662-429-1347
Telecopier: 662-429-1521

(ii) To: DEVELOPER

Telephone: _____
Telecopier: _____

Any notice, demand or request sent by facsimile transmission shall be deemed given for all purposes under this Agreement when properly transmitted by telecommunication device. Any notice, demand or request which is hand delivered or sent by air or other courier shall be deemed given for all purposes under this Agreement when delivered to the intended address.

Any party to this Agreement may change such party's address for the purpose of notices, demands and requests required or permitted under this Agreement by providing written notice of such change of address to the other party, which change of address shall only be effective when notice of the change is actually received by the party who thereafter sends any notice, demand or request.

9. Choice of Law. This Agreement is being executed and delivered and is intended to be performed in the State of Mississippi, County of DeSoto, and the laws (without regard to principles of conflicts of law) of the State of Mississippi shall govern the rights and duties of the parties hereto in the validity, construction, enforcement and interpretation hereof.

10. Incorporation in Other Contracts: This Agreement will be made an exhibit to the Residential Subdivision Development Contract, upon the execution of the same, and immediately deemed to be incorporated therein by reference without the need for the execution of any modifications or addendums hereto.

WITNESS the due execution hereof.

DEVELOPER

EBI, Inc.

By: Robert M. Bailey

Title: President

Date: 1/23/12

OWNER (if applicable):

By: _____

Title: _____

Date: _____

COUNTY OF DESOTO, MISSISSIPPI

X By: Jessie L. Medhi
President, DeSoto County Board of Supervisors

Date: _____

ATTEST: _____
DeSoto County Chancery Clerk - Clerk of the
DeSoto County Board of Supervisors