

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS**

**FOR**

**ASHBROOKE, A COMMUNITY**

1826 547

THIS DECLARATION is made this the 24<sup>th</sup> day of August, 2004, by **GIDEON & SHOEMAKER, LLC, a Mississippi limited liability company; STRATFORD PROPERTIES, L.L.C., a Mississippi limited liability company, and TIMBER DEVELOPMENT, LLC, a Mississippi limited liability company**, all of whom are collectively referred to hereinafter as "Declarant":

**WITNESSETH:**

WHEREAS, the undersigned, being the said Gideon & Shoemaker, LLC, (hereinafter referred to as "**Gideon & Shoemaker**"); Stratford Properties, L.L.C., (hereinafter referred to as "**Stratford**"), and Timber Development, LLC, (hereinafter referred to as "**Timber**") are the Owners of those certain tracts or parcels of land as described in **Exhibits "A", "B" and "C"** respectively attached hereto who, although each Owner is the Owner in fee of a distinct and separate parcel of land as described in said **Exhibits "A", "B" and "C"** have agreed as a single Declarant that all of the parcels of property described in said **Exhibits "A", "B" and "C"** (which property is described as one tract in **Exhibit "D"**), shall be bound by a single set of Covenants and Conditions with the rights, duties, privileges and obligations of the Owners in the Ashbrooke Community to be defined as set forth in a declaration binding all three parcels of land as set forth herein; hence this Declaration; and,

WHEREAS, Declarant desires to create and develop thereon a residential community with designated common areas and with common facilities, for the benefit of the community; hereinafter referred to as the "Property"; and

WHEREAS, Declarant desires to provide for the preservation of the values in said community and for the maintenance of certain areas as may be designated by the Owners and, to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth, each and all of which is and are for the benefit of said Property and each Owner thereof; and

WHEREAS, the primary purposes of these covenants and the foremost consideration in the origin of same has been the creation of a desirable residential community, pleasing to visit, and functionally convenient. Declarant has deemed it desirable for the efficient preservation of the values in said community, to provide for an agency to which would be delegated and assigned the powers of administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created.

**NOW, THEREFORE**, Declarant declares that the Property is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

**ARTICLE I.  
DEFINITIONS**

BOOK 1826 548

The following words when used in the Declaration or any Supplement Declaration (unless the context shall otherwise prohibit) shall have the following meanings:

(A) **Assessment** shall mean an Owner's share of the common expenses from time to time assessed to such Property Owner by the Association. Assessment or Assessments refer to annual, replacement, or special assessment or any combination thereof.

(B) **Association** shall mean and refer to Ashbrooke Owners Association, Inc., a non-profit corporation, incorporated under the laws of the State of Mississippi for the purpose of effecting the intents and objectives herein set forth, its successors and assigns.

(C) **Board of Directors** or the "Board" shall mean and refer to the Board of Directors of the Association.

(D) **Bylaws** shall mean the bylaws of the Association as they exist from time to time.

(E) **Common Area** shall mean all real property (including the improvements thereon) owned by the Association, or any easement which the Declarant has reserved or conveyed to the Association for the benefit of Declarant and members of the Association, which property and easements are for the common use and enjoyment of the Owners.

(F) **Common Facilities** shall mean all buildings and improvements constructed on any portion of the Common Area for the common use, benefit, and enjoyment of the Members.

(G) **Declarant** shall mean and refer to Gideon & Shoemaker, LLC; Stratford Properties, L.L.C.; and Timber Development, LLC, their successors and assigns.

(H) **Declaration** shall mean this instrument as it is from time to time amended.

(I) **Dwelling** shall mean a single family residential detached house with attached or detached garage constructed as an improvement on the Lot.

(J) **Homebuilder** shall mean any person or entity licensed by state or local law to engage in the construction of dwellings and to whom a lot has been conveyed.

(K) **Invitees** shall mean an Owner's tenants, guests, employees, or other guests or invitees.

(L) **Lake** shall mean any body of water developed by the Declarant as a lake and which is bordered in whole or in part by a Lot in Ashbrooke and which is established and declared to be a Lake by Declarant.

(M) **Lot** shall mean and refer to any plot or tract of land as may be shown upon a recorded subdivision map or plat of the Property, or any part thereof, exclusive of the Common Area, or any part thereof, which is designated as a lot therein and which is or may be improved with a single family residential dwelling.

(N) **Member** shall mean and refer to each Owner as provided herein in Article III.

(O) **Mortgagee** shall mean a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, pension fund, corporation, recognized institutional type lender or its loan correspondent, agency of institutional type lender or its loan correspondent, agency of the United States Government, or individual(s) which own and which is the holder of a Recorded first mortgage.

(P) **Owner** or **Property Owner** shall mean and refer to the record Owner, whether one or more persons or entities, of a fee or undivided fee interest in any Lot which is part of the Property, including contract sellers, but excluding those persons or entities who hold an interest merely as security for the performance of an obligation.

(Q) **Person** shall mean an individual, firm, corporation, partnership, association, trust or other legal entity or any combination thereof, including Declarant.

(R) (i) **Property.** That parcel of land described in **Exhibit "E"** which is subject to the Declaration.

(ii) **Additional Property.** Any parcel of land brought within the purview of the Declaration pursuant to Article XIII. Upon the filing of a supplement annexing all or any part of the Additional Property as described in **Exhibit "F"**, the same becomes "Property" as a part of Ashbrooke Community.

(S) **Recorded First Mortgage.** A mortgage or deed of trust, properly recorded in the office of the Chancery Clerk of Madison County, Mississippi, or other public Office designated by the Statutes and the Laws of the State of Mississippi for the recording of Mortgages in Madison County, Mississippi, or other public office designated by the statutes and laws of The State of Mississippi, for the recording of mortgages in Madison County, Mississippi, the lien of which is prior, paramount, and superior to the lien of all other mortgages and deeds of trust.

(T) **Ashbrooke, Ashbrooke Community or Community** shall mean that area contained within the Property as described in **Exhibit "E"** or any part of that property contained and described in **Exhibit "D"** and becoming a subdivision phase of the Community.

## **ARTICLE II. PROPERTY RIGHTS**

**SECTION 1. Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area and Common Facilities which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(A) The right of the Association, acting by and through its Board of Directors, to levy reasonable fees for the use of any Common Area or Common Facilities situated on the Property by the Members and their families, tenants, and guests; provided, however, that any such fees shall be charged on a uniform basis for each Member; and

(B) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless sixty-seven (67%) percent of the voting power of all Member is in favor of such dedication, transfer, purpose, and conditions at a special meeting of the Members duly called for such purpose or an instrument agreeing to such dedication or transfer signed by the Owners having at least sixty-seven (67%) percent of the voting power has been recorded; and

(C) The right of the Association, in accordance with its Charter of Incorporation and Bylaws, to borrow money for the purpose of improving the Common Areas and Common Facilities in a manner designed to promote the enjoyment and welfare of the Members, and in aid thereof to mortgage any of the Common Areas and Common Facilities, provided, however, that no such borrowing shall be done and no such mortgage shall be executed unless and until same has been approved by the vote of the Owners having at least sixty-seven (67%) percent of the voting power has been recorded; and

(D) The right of the Association, acting by and through its Board of Directors, to take such steps as are reasonably necessary to protect the property of the Association against mortgage default and foreclosure; provided, however, that any such steps are in conformity with the other provisions of this Declaration; and

(E) The right of the Association, acting by and through its Board of Directors, to adopt reasonable rules respecting use of the Common Areas and common facilities to reasonably limit the number of family members or guests of Members who may use any facilities on the Property; and

(F) The right of the Association, acting by and through its Board of Directors, to grant licenses, rights of way and easements for access or for the construction, reconstruction, maintenance, and repair of any utility lines or appurtenances, whether public or private, to any municipal agency, public utility, the Declarant or any other person, provided, however, that no such licenses, rights of way or easements shall be unreasonably and permanently inconsistent with the rights of the Members to the use and enjoyment of the Common Areas and Common Facilities; and

(G) The right of each Member to use the streets, roadways, and vehicular parking areas situated upon the Common Areas and Common Facilities; provided, however, that each Member shall comply in all respects with all supplementary rules and regulations which are not inconsistent with the provisions of this Declaration and which the Board of Directors of the Association may from time to time adopt and promulgate with respect to parking and traffic control upon the Common Areas and Common Facilities; and

(H) Lots \_\_\_\_\_ through \_\_\_\_\_ are encroached on by a Lake constructed by Declarant, Gideon & Shoemaker, LLC. Declarant or Declarant's successor in title shall form an association, a corporation or other governing entity for the purpose of maintenance and upkeep, and rules for supervising and controlling the use of said Lake. It is agreed that membership in said Association shall be an appurtenance to said Lot and shall run with the title thereto. Appropriate documents will be drawn to effect this purpose, membership in said Association being a condition of ownership of a Lot. Such lake association shall have its own bylaws and declaration, but which Declaration shall be controlled by the instant declaration in the event of a conflict.

**SECTION 2. Rights Not Subject to Suspension.** Notwithstanding anything in this Declaration to the contrary, the Association shall have no authority to suspend, either temporarily or permanently, any of the rights specified in Sub-Paragraph (G) of Section 1 of this Article II for any reason whatsoever.

**SECTION 3. Delegation of Use.** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to such person(s) and to such number of persons as may be permitted by the By-Laws to accompany the Owner, or to such members of his or her family, as are approved by the Association, the Owner's tenants, or contract purchasers who reside on the Property and guests, all subject to such rules and regulations as the Board of Directors of the Association may adopt and uniformly apply and enforce. Notwithstanding anything to the contrary appearing elsewhere herein, the children of the Owner and their spouses may use the facilities whether or not accompanied by the Owner.

**SECTION 4. Limited Common Area.** Ownership of certain lots shall entitle the Owners or Owner thereof to permanent exclusive use of certain portions of the Common Area designated as Limited Common Area. The assignment of the Limited Common Area to a Lot shall be included in the conveyance to the appropriate Grantee by Declarant, and reserved therein. Owners may not claim a right to use the Limited Common Area assigned to other owners by virtue of the general easements or property rights granted in this Article II.

**ARTICLE III.  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

**SECTION 1. Membership.** The Members of the Association shall be and consist of each and all of the following, to-wit: Every person who is, or who hereafter becomes, an Owner of record of the fee title to a Lot. The expression "Owner of record of the fee title to a Lot" shall include a contract seller of any such Lot, but shall not include any person who owns such title solely as security for the performance of an obligation or payment of a debt.

**SECTION 2. Voting Rights.** The voting rights of the Members shall be as follows, to-wit:

(A) Each person, other than the Declarant, who is or who hereafter becomes an Owner of a Lot shall be entitled to one (1) vote for each Lot owned. Upon the sub-division of any Lot as initially conveyed by Declarant, each sub-divided part thereof meeting the requirements of the Declaration shall be considered a Lot and the Owner thereof entitled to one (1) vote.

(B) The Declarant and its nominee or nominees, if any, shall be entitled to seven (7) votes for each Lot owned.

(C) Whenever any provision of the Declaration requires a vote of a specified percentage of the voting power of the Members, then such provision shall require a vote by the specified percentage of the voting power of all Members, and Declarant shall be entitled to the seven (7) to one (1) ratio herein granted.

**SECTION 3. Memberships Appurtenant to Real Property.** Each owner, by purchasing a lot in the subdivision shall automatically become a member of the association and shall be bound by the terms and conditions of this declaration, the articles and bylaws of the association, and such rules and regulation as may be promulgated and adopted by the association under such articles and bylaws.

**SECTION 4. Other Voting Provisions.** If the fee title to a particular Lot is owned of record by more than one person or entity, then the vote appurtenant to such Lot may be exercised by any one of the fee owners thereof, unless the other owner or owners of such fee title shall object prior to the completion of voting upon the particular matter under consideration. In the case of any such objection, the vote appurtenant to said Lot shall not be counted.

**SECTION 5. Covenant of Compliance by Owners.**

(A) **Covenants to Comply.** Every person or persons who accept a deed to a parcel of the Property within Ashbrooke Community covenants, whether or not it shall be so expressed in the deed of conveyance, that he will faithfully comply with and abide by the letter and spirit of the provisions of this Declaration and the bylaws and rules and regulations of the Association as same may be constituted and as they may be lawfully amended from time-to-time.

(B) Owner and each purchaser from an Owner agrees to notify the Association of a change in ownership.

**ARTICLE IV.  
COVENANTS FOR ASSESSMENTS**

**SECTION 1. Creation of the Lien and Personal Obligation of Assessments.** Declarant, for each Lot owned by it within the Properties, hereby covenants and agrees, and each purchaser of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual maintenance assessments or charges for purposes set forth in this Article IV, Section 2, and (2) special assessments as set forth in this Article IV, Section 4, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual maintenance and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the continuing personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

**SECTION 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents of the Properties, and in particular for the supervision, maintenance, and improvement of the Common Area; and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for the management and supervision of the Common Area, including but in no way limited to the following:

(A) The amount of all operating expenses for operating the Common Areas and Common Facilities and furnishing the services furnished to or in connection with the Common Areas and Common Facilities, including charges by the Association for any services furnished by it; and

(B) The cost of necessary management and administration of the Common Areas and Common Facilities, including fees paid to any managing agents; and

(C) The amount of all taxes and assessments levied against the Common Area and Common Facilities; and

(D) The cost of fire and extended coverage and liability insurance on the Common Areas and Common Facilities and the cost of such other insurance as the Association may place in force with respect to the Common Areas and Common Facilities; and

(E) The cost of garbage and trash collection to the extent provided by the Association, and of utilities and other services which may be provided by the Association, whether for the Common Areas and Common Facilities or for the Lots, or both; and

(F) The cost of maintaining, replacing, repairing, and landscaping the Common Areas and Common Facilities (including, without limitation, the cost of maintaining, replacing and repairing any sidewalks, streets, or roadway, other than those accepted by Madison County, Mississippi, for maintenance, and open areas in the Property, the cost of such equipment as the Board of Directors shall determine to be necessary and proper in connection therewith; and

(G) The cost of funding all reserves established by the Association, including, when appropriate, a general operating reserve and a reserve for replacement.

**SECTION 3. Maximum Annual Assessment.** Each Lot Owner shall pay a prorata share of the annual assessment at the time of conveyance by Declarant to the initial Owner.

(A) The annual assessment may be increased each year not more than ten (10%) percent above the maximum assessment for the previous year without the affirmative vote of sixty-seven (67%) percent of the membership.

(B) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum assessment permitted under the provisions of Section 3(A) of this Article IV.

**SECTION 4. Special Assessments.**

(A) Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, purchase, repair, or replacement of capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty-seven (67%) percent of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose.

