119554

PROTECTIVE COVENANTS
OAKMONT, PART ONE

WHEREAS, Smith & Stevens, LLC, a Mississippi Limited Liability Company (hereafter "Declarant"), is the owner of all lots situated in Oakmont, Part One, a subdivision in the City of Clinton, Second Judicial District, Hinds County, Mississippi, according to the map or plat thereof on file and of record in the office of the Chancery Clerk of Hinds County, Raymond, Mississippi, in Plat Cabinet A at Slide 77;

WHEREAS, said owner desires to impose certain Protective Covenants upon said subdivision for the protection and benefit of all purchasers, the present and future owners;

NOW, THEREFORE, in consideration of the advantages to accrue through such Protective Covenants and for good and valuable considerations, said owner hereby covenants and agrees with any and all purchasers and owners of a lot or lots in Oakmont, Part One, that the following protective and restrictive covenants shall apply to all lots of said subdivision, which are described as follows:

3543

Lots 1 through 21 and Lots 47 through 54, OAKMONT, PART ONE, a subdivision in the City of Clinton, Second Judicial District, Hinds County, Mississippi, as shown by the map or plat thereof in Plat Cabinet A at Slide 77 in the office of the Chancery Clerk of Hinds County at Raymond, Mississippi, reference to said map or plat being hereby made in aid hereof.

1. LOT USE: All lots shall be used for residential purposes only. No building shall be erected, altered, placed or permitted to remain on any lot other than one, detached, single-family dwelling not to exceed two stories in height and a private garage for not more than three care or less than two cars. Carports are expressly prohibited. No mobile homes shall be allowed to be placed on any residential lot, either temporarily or otherwise. In no case shall any one lot or any combination of more than one lot be redivided or subdivided or otherwise combined other than such lots are indicated on the aforementioned plat or survey. No commercial ventures or businesses may be initiated, effectuated or consummated to any lots within subject lands, including yard sales or garage sales. No kennels shall be

placed on any lot for commercial purposes so as to constitute a source of annoyance or nuisance to any persons owning property in or residing in the development.

All wiring has been run underground and other than those for street lighting, no poles have been erected to mar the appearance of the streets. All service lines from residences to the street, which include electrical, telephone, and television cables, shall be run underground. All residences must have front and sides of dwelling sodded within 60 days of final inspection of dwelling by the City of Clinton.

2. RESTRICTIONS AS TO QUALITY AND SIZE: No structure shall be erected, altered, placed, or permitted to remain on any residential lot or lots unless it shall possess a minimum of two thousand two hundred (2,200) square feet of heated floor area. Living areas are heated spaces including utility or storage rooms opening directly unto main portion of house and wall thicknesses. As to quality, all houses shall comply with or exceed the minimum property standards of the Federal Housing Administration under the single family 203-B program.

All stucco must be installed by a EEMA Certified Installer and all material used must carry a minimum of seven years manufacturer's warranty. All external pipe vents in roof must be painted to match roof color. All facia on any dwelling or out-building must be wood or aluminum, with vinyl facia expressly prohibited.

The exterior of all out-buildings and garages which are detached from the residential dwelling shall conform to the residential dwelling as to material and quality of workmanship. All windows in each structure shall be wooden clad windows only, with a minimum ten year warranty, all other window types are expressly prohibited. The quality of all roofing material on any residence, out-building, or garage must be a minimum of 25-year architectural shingle AR algae resistant. Roofs of white, red or green in color are expressly prohibited.

3. RESTRICTIONS AS TO ARCHITECTURAL STYLE: A lot owner in building or causing to be built the original dwelling on any lot in Oakmont, Part One, shall not substantially duplicate the exterior elevation, including design and architecture, of any other dwelling then existing on the same street within one thousand (1,000) feet within said Oakmont, Part One. For the purpose of this paragraph, the dwelling shall be considered in existence from the time excavations for the foundations are begun until said dwelling is removed from the development or is destroyed.

4. ARCHITECTURAL CONTROL: In order to insure that all structures shall comply with these restrictions, prior to commencement of construction on any parcel, all plot plans and house plans, together with landscape plans, driveway plans, and the location of type of construction of out-buildings, shall be submitted to the Oakhurst Architectural Review Board, together with a one hundred ($100.00) non-refundable review fee. The construction of no dwelling shall be commenced on any lot or lots without the prior approval of the house and plot plans by the Oakhurst Architectural Review Board, which shall be appointed by Declarant, its successors and/or assigns.

5. RESTRICTIONS AS TO THE FRONT, SIDES, & REAR OF LOTS & RESIDENCES; DRIVEWAYS AND SIDEWALKS:

A. Front of Lot & Residences: Each dwelling constructed, placed, moved and maintained upon any lot shall have its front facing the front line or lines of the lot or lots. The front lot line of Lots 1, 15, 20, and 21 shall be Montaigne Way; the front lot line of Lots 47, 50, 51, and 54 shall be Stanton Place; the front lot lines of the remaining lots of said subdivision shall be the line of said lots as same adjoin the streets designated in the subdivision as Montaigne Way, Lantana Hill, Ravenna Court, or Stanton Place. No dwelling or out-building may be erected upon any lot or lots in

this subdivision which is nearer than 30 feet from the front line, nearer than 8 feet from any side line, or 25 feet from the rear line of said lot or lots of said subdivision; however in the event that the zoning ordinance of the City of Clinton, Mississippi, is more restrictive as to the set back lines of any residence upon any lot of this subdivision, then in such event the more restrictive set back guidelines shall apply.

B. Driveways & Sidewalks: All semi-circle driveways and garage entry driveways shall be of paved concrete which shall be approved by the Oakhurst Architectural Review Board. All garage entry driveways shall extend from the pavement on the street to the garage. All lots shall have a paved concrete driveway which shall be approved by the Oakhurst Arohitectural Review Board, extending from the pavement on the street on which the residence faces to the garage, which garage must be attached to the dwelling.

6. NUISANCES: No noxious or offensive activity of any kind shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any persons owning property in or residing in said development. No inoperative machinery, automobiles or other vehicles shall be allowed to remain or be maintained in any street of this development or in any yards, on any lots or upon any driveways to or from any lots. Campers, any recreational vehicles, boats, trailers, or commercial vehicles of any type may be parked only to the rear, screened from the front view and no vacant lots shall be used for the storage of any campers, recreational vehicles, boats, trailers, or commercial vehicles of any type. The installation and/or operation of any type of exterior satellite disc for the reception of television or radio signals upon any lot is strictly prohibited, except that an owner may

install a satellite disc no larger that eighteen (18") inches in circumference, but only in an area of the residence or the lot that is completely shielded from any street in Oakmont, Part One. All lots shall be kept and maintained in attractive order so as not to become a source of annoyance or nuisance to any persons owning property in or residing in the development; the developer or appropriate governing agency shall have the power to correct any such nuisances or annoyances with the particular lot owner bearing the cost of the corrective action. Outdoor clothes drying is expressly prohibited. All vacant lots must be kept maintained and weeds and grass cut. No pets shall be allowed to run loose in this subdivision and all loose pets shall be subject to impoundment at pet owner's expense.

7. TEMPORARY STRUCTURES: No structure of a temporary character, trailer, mobile home, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

8. GARBAGE, REFUSE OR WASTE: No lot shall be used or maintained as a dumping or collection ground for any items of garbage, waste, refuse, trash or items of a similar nature, except as such items may be present on a given lot for a temporary period of time as may be necessary to secure the removal thereof from a given lot, and in that circumstance, the same shall be maintained and kept in sanitary conditions.

9. DRAINAGE EASEMENTS: Drainage easements are as indicated on said subdivision plat and any abutting property owners will be responsible for maintenance.

10. MULTIPLE LOT OWNERSHIP: No restriction herein shall prevent any person from owning more than one lot; and in such cases, the following minimum setback restrictions shall apply to the outside boundaries of any such lots regardless of whether such outside boundary lines coincide with plot lot lines or not: Front - 30 feet; Side - 8 feet; Rear - 25 feet.

11. VISUAL BARRIERS: All fence plans shall be submitted to the Oakhurst Architectural Review Board for approval; chain link and cyclone fences are expressly prohibited. No fence, wall or lot enclosure may project to a point nearer the street than the front setback line or the side street setback line, of adjoining property, except that shrubbery not over 2 feet high may be used to designate plot lines.

12. MAILBOX: No mailbox shall be constructed, placed, or maintained upon any lot or lots of Oakmont, Part One, which does not conform to the characteristics of the model provided by the Oakhurst Architectural Review Board, a model to be furnished for the inspection of all lot owners.

13. OAKHURST PROPERTY OWNERS ASSOCIATION: The Declarants deem it desirable, for the efficient preservation of the values and amenities in Oakmont, Part One to create an association which can be deligated and assigned the powers and duties of maintaining and administering any common area which may be designated as such and to administer and enforce these covenants.

Section 1. Membership. Each owner in Oakmont, Part One shall be a Member of the Oakhurst Property Owners Association, and this membership shall be inseparable or appurtenant to and shall pass with the title to each parcel of property in the subdivision. Parcels with multiple ownership shall be entitled to one membership in the Association and one of the owners of such parcel shall be designated in writing by the co-owners as their respective representative in matters pertaining to the Association.

Section 2. Voting Rights. Every Member of the Association shall have one vote for the election of all officers. For all other matters and purposes of the Association, every Member shall have one vote for each lot that that Member owns, except Declarants shall have three votes for each lot that they own until such time as 21 lots are conveyed by Declarants to third

parties, and after such time Declarants shall have one vote for each lot that Declarants own. If the fee title to a particular lot is owned by record by more that one person, the vote appurtenant to such lot may be exercised by only one of the fee owners thereof as designated in writing by the other co-owners of the subject lots or lots.

14. COVENANT FOR ASSESSMENT:

Section 1. Creation of the Lien and Personal Obligation for Assessment. The Declarants, for each parcel which they own within the Properties, hereby covenant and each Owner of any other parcel or lot of the property by acceptance of the deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following:

(A) A regular annual assessment payable on or before the first day of January for each year thereafter in an amount necessary to maintain each owner's contribution at an amount of Six Hundred and No/100 Dollars ($600.00) for each parcel or lot owned shall be due. It is the purpose of the provision that each Owner maintain with the Association a balance of Six Hundred and No/100 Dollars ($600.00) per lot or parcel owned to provide for the purpose of the Association as hereinafter set forth. For each lot sold by Declarants prior to July 1 of any year, the purchaser(s) of any lot or lots shall pay to the Association the full annual assessment; for each lot sold by Declarants after June 30 of any year, the annual assessment shall be prorated between Declarants and purchaser(s);

(B) Special assessments for maintenance and improvement as may be desired and required by the Association. Prior to such special assessments being levied, same shall be approved by at least a two-thirds (2/3) vote of the members of the Association with each Member being

entitled to one (1) vote for each lot or parcel owned. A meeting of the members of the Association shall be duly called for the purpose of approving any special maintenance or improvement assessment.

(C) The annual assessment set forth in Covenant 14 Section 1(A) hereinabove, shall not apply to an owner of a vacant lot or lots or to those owners of a lot or lots who are homebuilders and who purchase said lot or lots for the sole purpose of building dwellings upon same not for self occupation but for sale to third parties.

Section 2. General. This initial, annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the lot or parcel of Property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such lot or parcel of Property at the time when the assessment fell due. No Owner shall relieve himself of his personal obligation for deliquent assessments by passing such obligation to his successors in title unless expressly assumed by the successors in title with the written consent and approval of the Board of Directors of the Association.

Section 3. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the owners and occupants of Oakmont, Part One and the subdivisions of Oakhurst; to defray all costs incurred in properly caring for and maintaining Oakmont, Part One and the subdivisions of Oakhurst as a prestigious development; and to accomplish the intent of this Declaration. The assessments provided herein shall include, but not be limited to, the costs of providing materials and services to accomplish the following: (a) Maintaining any common areas and open areas

within the Property; (b) Maintaining the landscaping at the entrances to Oakmont, Part One; (c) Maintaining any improvements and amenities such as piers, beaches, tennis courts and clubhouse if said improvements are constructed by the Association; (d) General policing of Oakmont and the subdivisions of Oakhurst on a regular basis to remove bottles, cans, trash or debris discarded by the public along the streets or roadways; (e) Maintaining utilities, in particular lighting, a sprinkler system, drainage ditches and other services which may be provided by the Association; (f) Paying the costs of insurance premiums on any insurance which the Association carries; (g) Paying all ad valorem taxes and other taxes and fees which may accrue to the Association; (h) Paying all necessary and reasonable costs of administration, management, legal and accounting services connected with the Association, including, the payment of a reasonable fee to any management agent designated by the Association; (i) Provide such other services as the Association may deem to be in the best interest of the development and the members of the Association.

Section 4. Assessments are not dues. All assessments herein provided are not intended to be, and shall not be construed as being, in whole or in part, dues for membership in the Association.

Section 5. Changes in Assessments. After January 1, 2001, the Board of Directors of the Association may, after consideration of the then current costs of providing service hereinabove enumerated, increase the initial or annual assessments to cover the acutal costs of such services. The Board of Directors of the Association may also, after consideration of the then current maintenance costs and future needs of the Association, fix the regular annual assessment and initial assessment for any subsequent year or years at a lesser amount.

Section 6. Notice and Quorum for Action on Assessments. Written notice of any hearing called for the purpose of taking action on any assessment provided herein (including special assessments and changes in annual and initial assessments) shall be sent to all memebers of the Association by certified mail, not less than five (5) days not more than thirty (30) days, in advance of the meeting. At least sixty percent (60%) of the owners or proxies of owners must be present at such meeting in order to constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at this subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. In addition, written notice of the regular annual assessment provided herein shall be sent to every Owner subject thereto.

Section 7. Effect of Non-Payment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association.

A. If any assessment or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment shall, together with such interest thereon and cost of collection thereof as hereinafter provided, become a continued lien on the Lot of the non-paying Owner, which lien shall be binding upon such Lot and the Owner thereof, his/her heirs, executors, devisees, personal representatives and assignee. The Association shall have the right to reject partial payments of an assessment and demand the full payment thereof. The obligation of the then existing Owner to pay such assessment, however, shall remain his personal obligation and shall not be extinguished by transfer of title. The lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive

or otherwise escape liability for the assessment provided herein by abandonment of his Lot;

B. The Association shall give written notification to the holder(s) of the mortgage on the Lot of the non-paying Owner of such Owner's default in paying any assessment when such default has not been cured within sixty (60) days, if such mortgagee has requested same;

C. If any assessment or part thereof is not paid within thirty (30) days after the due date, the unpaid amount of such assessment shall bear interest from the date of delinquency at the maximum interest rate per annum which can be charged to individuals and the Association may, at its election, bring an action at law against the Owner personally obligated to pay the same in order to enforce payment. There shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and attorney's fee to be fixed by the court, together with the costs of the action and/or all costs of foreclosure, including a reasonable attorney's fee.

Section 8. Subordination of Lien to Mortgages. The lien upon any lot or parcel provided herein to secure any assessment shall be subordinate to the lien of any duly recorded first mortgage on such lot or parcel made in good faith and for value received and the lien hereunder shall in no way effect the rights of the holder of any such first mortgage. Sale or transfer of any Property shall not effect the assessment lien. However, the sale or transfer of any Property pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall release such

Property from liability for any assessment thereafter becoming due or from the lien thereof. Such foreclosure, deed, assignment or other proceeding arrangement in lieu of foreclosure shall not relieve the mortgagee in possession or the purchaser at foreclosure shall not relieve the mortgagee in possession or the purchaser at foreclosure shall not relieve the mortgagee in possession or the purchaser at foreclosure or the transferee under any deed, assignment or other proceeding or arrangement in lieu of foreclosure from liability for any maintenance assessments thereafter becoming due, or from the lien herein created to secure the payment of such maintenance assessments, which lien, if to be assertive as to any such assessments thereafter becoming due, shall have the same effect and be enforced in the same manner as provided herein.

Section 9. Assessment of Declarant. Any regular or special assessment upon any lot or lots owned by Declarant shall be in an amount equal to twenty-five percent (25%) of the assessment of the other lots owned by owners. This provision shall apply only so long as said lots are owned by Declarant.

Section 10. Ad valorem Property Taxes. (a) Each Owner shall be responsible for his own ad valorem taxes; (b) The Association shall be responsible for the payment of ad valorem taxes on lots, parcels, streets, or common areas which the Association may hereinafter take fee title.

Section 11. Limitation of Liability. The Association shall not be liable for any failure of any service to be furnished by the Association or paid for out of the common expense fund, or for injury or damage to person or Property caused by the elements or resulting from water which may leak or flow from the streets, sidewalks or any common areas or from any pipe, drain, conduit or the like. The Association shall not be liable to any Member for loss or damage to any articles, by theft or otherwise, which may be left or stored upon any common areas. No diminution or

abatement of assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvement to the streets, sidewalks or common areas, or from any action taken by the Association to comply with any of the provision of the Declaration or with any law or ordinance or with the order or directive of any county or governmental authority.

15. TERM: These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants are executed, after which time said covenants shall be automatically extended for successive period of ten (10) years, unless an instrument signed by seventy-five (75%) percent of the then owners of the lots in Oakmont, Part One shall have been executed, agreeing to change the covenants in whole or in part; likewise any provision or term of these declarations may be amended at any time in the same fashion and by the same procedure.

16. ENFORCEMENT: Enforcement of any of the terms, conditions and covenants of this instrument shall be by appropriate proceedings at law or in equity against any persons violating or attempting to violate any covenant herein contained, to restrain violation thereof or to recover damages as a result of said violation. Failure by the declarant, or any owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do thereafter. In any legal or equitable proceeding for the enforcement or to restrain the violation of any of these Protective Covenants or any provision hereof by reference to otherwise, the prevailing party or parties shall also be entitled to an award of reasonable attorney's fees and costs, in such amount as may be fixed by the Court in such proceeding, including the costs of any expert witness or witnesses.

17. **DECLARANT HELD HARMLESS:** Each and every owner and occupant of any portion of Oakmont, Part One shall and does, by accepting title to its interest in the property, agree to indemnify, defend, and hold harmless declarant, its agents, employees and successors, against and from all claims for injury or death to persons, or damage to or loss of property arising out of the construction, use, operation and/or maintenance of the improvements on the portion of the Property occupied by, owned by, or under the control of such Owner or occupant, the use and/or possession of such portion of the property, and the conduct of business in any other activities by such Owner or occupant or his guests or invitees on any portion of the Property.

18. **SEVERABILITY:** Invalidation of any of these covenants by Judgment or Court order shall in no way or manner affect any of the other provisions hereof, which other provisions shall remain in full force and effect for the term herein specified.

WITNESS WHEREOF AND CONFIRMATION THE EXECUTION OF THESE PRESENTS, on this 26 day of January, 2001.

SMITH & STEVENS, LLC

BY: _____ Managing Member
GARY L. SMITH, Managing Member

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me, the undersigned authority in and for said County and State, within my jurisdiction, the within named Gary L. Smith, Managing Member, of Smith & Stevens, LLC, and that for and on behalf of the said company, and its act and deed, he executed the above and foregoing instrument on the day and year therein mentioned, after first having been duly authorized by said company so to do.

Given under my hand and seal of office, this the 26 day of January, 2001.

_____
NOTARY PUBLIC
My commission expires: 7/31/2001

STATE OF MS
COUNTY OF HINDS
FILED - RECORDED

JAN 29 1 51 PM '01

BOOK 474
PAGE 81
L. GLYNN PLUNKETT
CHANCERY CLERK

7-10