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October 25, 2023

Via Electronic Mail - Scott.weeks@madison-co.com

Scott Weeks, Zoning Administrator
Madison County, Mississippi
125 West North Street
Canton, Mississippi 39046

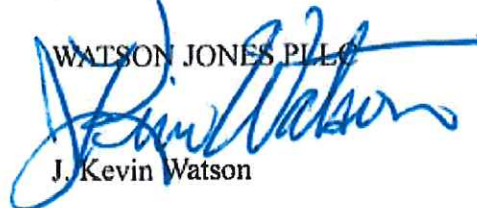
RE: Notice of Appeal of Planning Commission Action on
Chad Phillips - Conditional Use for a Public/Quasi-Public
Facility Utility (Assisted Living Facility) with Site Plan,
3265 Highway 22 Property Zoned C-1 Commercial

The Briar Patch, LLC, Cedar Rose, LLC, Accent on Design, LLC d/b/a The Palmetto – Men’s Shoppe, Mr. and Mrs. Arne Greaves, Dr. and Mrs. James Sutherland, Mr. and Mrs. Sebastian Greaves, Mr. and Mrs. John Mills, Mr. and Mrs. Henry Greaves (the “Greaves Family”) (collectively the “Appellants”) hereby appeal the Planning Commission’s October 19, 2023 recommendation to approve the Chad Phillips – Conditional Use Application for the property which proposes to grant a conditional use for an assisted living facility.

The Appellants request a public hearing on their appeal, as provided for in Section 813 of the Madison County Zoning Ordinance and the laws of the State of Mississippi. At the hearing, the Appellants will present additional evidence and arguments in support of their appeal.

Thank you for your assistance. If you have any questions or require additional information regarding the Appellants’ appeal, please do not hesitate to contact me.

Sincerely,

WATSON JONES PLLC

J. Kevin Watson

cc: Mike Espy, Attorney for the Madison County Board of Supervisors (*via electronic mail*)
Andy Clark, Attorney for the Madison County Planning Commission (*via electronic mail*)

**MINUTES OF THE MEETING OF THE MADISON COUNTY
PLANNING AND ZONING COMMISSION HELD AND CONDUCTED ON
THURSDAY, THE 19th DAY OF OCTOBER, 2023 AT 9:00 A.M. AT THE
MADISON COUNTY COMPLEX BUILDING**

BE IT REMEMBERED that a meeting of the Madison County Planning and Zoning Commission was duly called, held and conducted on Thursday, the 19th day of October, 2023, at 9:00 a.m. in the Madison County Complex Building.

Present: Dr. Keith Rouser
 Rev. Henry Brown
 Jean McCarty
 Mandy Sumerall

Scott Weeks, Planning and Zoning Administrator

Absent: Bill Billingsley

The meeting was opened with prayer by Chairman Rouser, and all present participated in pledging allegiance to our flag, led by Chairman Rouser.

There first came on for consideration the minutes of the September 14, 2023, meeting of the Commission. Upon motion by Commissioner McCarty, seconded by Commissioner Brown with all voting "aye," motion to approve the September 14, 2023, minutes passed.

There next came on for consideration, the need to open the meeting for public hearing of certain matters. Upon motion by Commissioner Brown to open the meeting for public hearing of certain matters, seconded by Commissioner McCarty, with all voting "aye," the public hearing was so opened.

There next came on for consideration the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan. The property subject to the application is at 3265 Highway 22, is zoned C-1 Commercial District with a Planned Unit Development ("PUD") overlay, and is in Supervisor District 4.

Prior to presentation, Attorney Clark advised the Commission that this Application was previously before the Commission at its August 14, 2023, meeting, and the Commission approved it conditioned on review by the Mannsdale-Livingston Historic Preservation District ("MLHPD"). MLHPD met following the Commission meeting, and denied the Application. Such denial is attached to these minutes as **Exhibit "A."** Since that time, the Phillips have engaged Steven H. Smith, Esq., and have supplemented their Application. Attorney Clark advised that he and Administrator Weeks had met with two (2) of the MLHPD Board members, and asked that they convene, and review the supplemental information provided by the Phillips. Attorney Clark advised that MLHPD had declined to meet and review, and instead rely on their August denial. See MLHPD Letter dated October 17, 2023, attached hereto as **Exhibit "B."** Attorney Clark

reminded the Commission that MLHPD and Planning & Zoning Commission approval are not contingent, or dependent on each other, and that the Commission has an opportunity to listen to the presentation, and make their decision.

Steven H. Smith, Esq. appeared on behalf of the Applicants. Mr. Smith advised that the Application was filed on April 1, 2023, and seeks to construct an assisted living facility in the PUD at the Town of Livingston. Mr. Smith reminded the Commission that the property was zoned as C-1, and that an assisted living facility is permitted thereunder. Mr. Smith also reminded the Commission that this Application was unanimously approved by the Commission on August 10, 2023, conditioned upon approval from MLHPD.

Mr. Smith explained that MLHPD reviewed the Application on August 14, 2023, and denied it for two (2) reasons: “lack of information about landscaping,” and “site elevations for the building were inappropriate.” *See Exhibit “A.”* Mr. Smith advised that his clients had revised the plans, addressed both issues raised, and requested that MLHPD revisit the revised plans. Mr. Smith submitted a screenshot of a text message between Crystal Gardner-Phillips, and MLHPD Chair, Rita McGuffie, advising that the Applicant should communicate with the Commission, or the Board of Supervisors regarding further submission. *See Exhibit “C,”* attached hereto. Mr. Smith advised that since that text, the Applicant had communicated and cooperated with the Commission, and on October 12, 2023, submitted a Supplemental Submission in Support of Application for Conditional Use setting forth the revised plans. *See Exhibit “D,”* attached hereto. Mr. Smith advised that on October 13, 2023, he received an email from Administrator Weeks outlining six (6) issues raised by MLHPD, and immediately revised their plans and met each issue by October 16, 2023. *See Exhibit “E,”* attached hereto. Mr. Smith addressed each of the six (6) issues raised, and argued that the Applicants had met each of the issues in order to comply with the Zoning Ordinance.

Mr. Smith advised that on October 17, 2023, having not heard from MLHPD on the request to review the supplemental submissions, Attorney Clark requested Rita McGuffie confirm whether MLHPD would so review the submission. Mr. Smith advised that Ms. McGuffie responded that MLHPD would not review the submission, and rely on their August 14, 2023, decision. *See Exhibit “F.”*

Mr. Smith argued that the Applicant had addressed and met each and every request from MLHPD, and was fully compliant with all required provisions of the Zoning Ordinance.

Mr. Smith reiterated that the proposed facility would be an assisted living facility, with only fifteen (15) beds, and a ratio of caretakers to residents that is much lower than a larger facility that is permitted. Mr. Smith argued that the surrounding uses are all commercial, and that the proposed facility is a Public/Quasi-Public Facility under Section 402 that is permitted in a C-1 Commercial use district, and a Planned Unit Development (“PUD”), both of which are applicable to the subject property.

Mr. Smith advised that the Applicant has a leadership team known as Residential Assisted Living Academy that is one of the top teams in the country to assist entrepreneurs in all aspects of operating and managing assisted living facilities. Mr. Smith stated that national statistics show

that assisted living facilities received approximately 85% of their residents from within a fifteen (15) mile radius of the location of the facility. Mr. Smith asked the Commission to acknowledge the residential growth in Madison County, and advised that based on the survey conducted by the Applicants, there is a need for the proposed facility, especially with such a low caretaker/resident ratio.

Mr. Smith next addressed the licensing and regulatory requirements for the proposed facility. Mr. Smith advised that the Applicants will have to get a license from the Mississippi State Department of Health, and submit a plan to meet all required criteria. Mr. Smith pointed to Miss. Code Ann. §43-11-13 as setting forth standards required by the State in the construction, operation, and management of the proposed facility, and entitled Minimum Standards for Personal Care Homes Assisted Living. *See Exhibit "G,"* attached hereto.

Mr. Smith next addressed concerns about how no one could have expected that an assisted living facility would be located at the Town of Livingston, that it would be out of character with the area, or doesn't fit with the architecture of the area. Mr. Smith advised that the rezoning of the Livingston Township PUD had been appealed to the Mississippi Supreme Court, and was upheld. Mr. Smith presented an architectural rendering of the Livingston Township PUD, which he argued was known to property owners in the area since 2010. Mr. Smith pointed out that the architectural rendering shows the property now owned by the Applicants as labeled "Active Senior Retirement." *See Exhibit "H."*

In response to questions from Chairman Rouser, Mr. Smith advised that the facility would not have a garbage dumpster area, but separate receptacles for garbage. Mr. Smith also pointed out where the facility would be located in relation to adjacent commercial development, and other residential areas in the vicinity.

In response to question from Commissioner Sumerall regarding deed restrictions, Attorney Clark advised that in looking at the historical land records, the Greaves family owned this property for quite some time. They conveyed the property with deed restrictions that it would only be used for residential use, and houses not less than 2,400sf. Attorney Clark advised that there is a clear record of termination of those covenants/restrictions, and in the deed from the Greaves to Chestnut Developers, there is clear language that the Grantor and Grantee understand that the property will be used for commercial development, and that any use would comply with the MLHPD. *See Exhibit "I,"* attached hereto. Attorney Clark advised that there is no doubt that the property falls under the MLHPD, but that the inclusion of the language in the 2007 Special Warranty Deed regarding MLHPD compliance was really unnecessary because the Board of Supervisors had already created the MLHPD in 2003, and the Greaves property was already in the MLHPD District at the time of the 2007 conveyance to the predecessor in title to the Applicant. Attorney Clark advised that there have been three (3) amendments to the Zoning Ordinance since the 2003 creation of the MLHPD—being 2005, 2013, and 2019. Attorney Clark advised that any time there is an amendment to the Zoning Ordinance, the old ordinance is repealed. As such, the governing ordinance applicable to the subject property is the 2019 Zoning Ordinance.

Mr. Smith also responded to Commissioner Sumerall that there are no current plans for the additional property owned by the Applicants.

Greta Barber-Mills appeared in opposition. Ms. Barber-Mills advised that she, and her siblings are adjacent property owners, and have many concerns regarding the proposed use. Ms. Barber-Mills stated that the subject property is subject to the provisions of the MLHPD based on the 2007 Special Warranty Deed for a period of fifty (50) years, and that time has not passed. Ms. Barber-Mills argued that the Applicants are proceeding forward without the approval of MLHPD, which they are obligated to have. Ms. Barber-Mills argued that one of the objective of the MLHPD is to protect the integrity of the area, and to encourage premium architecture for new construction. Ms. Barber-Mills argued that the proposed architecture does not meet the standards of the MLHPD, and would be out of harmony with the existing structures. Ms. Barber-Mills further stated that the unspecified definition of a personal care home is worrisome as it is vague, and could open the door to unwanted services. As an example, Ms. Barber-Mills stated that one of the definitions of a personal care home under the Mississippi Department of Health is any facility operating 24 hours a day, 7 days a week, accepting individuals who require personal care services or mental care services. Ms. Barber-Mills inquired as to whether this would involve drug or alcohol rehab. Ms. Barber-Mills argued that they have no way of knowing what type of services would be provided, and do not want to leave the door open to see. Ms. Barber-Mills argued that the MLHPD prohibits overnight occupancy other than residential—no hotels, no apartments, no inns. Ms. Barber-Mills argued that the Applicant's facility would house 15-30 occupants, and staff, which is in complete violation of the MLHPD. Ms. Barber-Mills argued that the rooms at the facility would be apartments—30 people living under the same roof for an extended period. Ms. Barber-Mills asked why have rules if they are not to be followed? Ms. Barber-Mills argued that all of the businesses at the Town of Livingston have met the requirements of the MLHPD, and has contributed greatly to the Town's beauty and charm, and have enhanced the real estate value of the surrounding property. Ms. Barber-Mills argued that the Applicants would benefit from the rich history of the area, but that there appears to be a general disregard for the surrounding property owners and businesses due to the proposed building materials, lack of adequate landscaping, and a proper buffer zone between the Applicant's property and the adjoining land. Ms. Barber-Mills argued that the Applicants wish to be a part of the high standards, but are unwilling to meet the same standards which they are obligated to meet.

Mr. Smith responded to Ms. Barber-Mills, and stated that she brought nothing of substance, or that could be proved. Mr. Smith stated that everything she raised had already been addressed or debunked. Mr. Smith reiterated that MLHPD had two (2) initial reasons for denial, and then an additional six (6) issues raised. Mr. Smith argued that the Applicant had met and addressed each of them, and that there is nothing left to address. Mr. Smith specifically denied that there would be any sort of drug or alcohol rehab at the facility. Mr. Smith further denied that this use is an apartment, condominium, or boarding house, but is an assisted living facility, which is allowed in any zoning district under the Zoning Ordinance. Mr. Smith argued that the proposed facility does not violate anyone's integrity or does not go with the community. Mr. Smith argued that the hours of operation would be less than those allowed under MLHPD, as they would be open to the public from 8:00 a.m. to 8:00 p.m., whereas MLHPD hours of operation are 6:00 a.m. to 9:00 p.m.

Sebastian Greaves appeared in opposition. Mr. Greaves advised that he lives adjacent to the proposed facility. Mr. Greaves advised that he has a background in title, and runs title for timber companies, oil and gas companies, and real estate developers. Mr. Greaves advised that when his family was approached by the developers of the Town of Livingston in 2007, they

conveyed the subject property subject to restrictions. Mr. Greaves argued that there are legal issues here, and that the property is subject to the standards of MLHPD. Mr. Greaves argued that there is a legal issue, and a zoning issue. Mr. Greaves argued that boarding houses, apartments, and multi-family residences are not allowed. Mr. Greaves argued that the MLHPD has authority to grant general descriptions. Mr. Greaves argued that a Board of Supervisors resolution was approved, and defined boarding house. He argued that if you are paying for a room and a meal, it's a boarding house. Mr. Greaves argued that everyone knows this use is an apartment or a boarding house, and is not a single family dwelling. Mr. Greaves argued that when one goes into an area to rezone, you have to look at what restrictions are in place. As an example, he argued that if he were to go into Annandale Subdivision, you have to look at their covenants and restrictions. He argued this is no different as there is a deed with restrictions that is tied to the MLHPD charter. Mr. Greaves argued that MLHPD approval had not been gained, and approval of the facility would be in violation of the standards of the MLHPD. Mr. Greaves asked that a copy of the deed be admitted to the minutes. *See Exhibit "J."*

Ms. Barber-Mills stated that in response to Mr. Smith's statement that he does not know of anything else the Applicant could do, she believed that approval of the MLHPD is the starting point. She further argued that the proposed facility not being apartments is "splitting hairs," and that she disagreed that there are no longer covenants that need to be enforced or upheld.

Mr. Smith responded that there are no legal issues preventing the construction of the Applicant's facility. He argued that the "hocus-pocus" about covenants, things not being allowed, and improper zoning is wrong. He argued that arbitrary denial by MLHPD is not lawful, and that everything else set forth in opposition is a "scare tactic."

Sebastian Greaves responded that this is a legal issue because when you have restrictions in a deed, they must be abided by.

Loistine Worthy of the Greater Livingston Missionary Baptist Church appeared and stated that she was not in opposition or in favor of the Application. Ms. Worthy advised that they had just heard of this Application, and that the church simply wanted to be included so that they could make an informed decision of what they want. Of particular concern to Ms. Worthy was the rear of the property because it adjoins the church's graveyard.

Chad Phillips responded and advised that they are there to serve the community, and he would be happy to share their plans with the church. He stated that they had complied with the notice requirements of the Zoning Ordinance as far as posting signs, and running ads in the newspaper, and apologized if the church was unaware.

Crystal Gardner-Phillips appeared and advised that they had done their due diligence to ensure that they were not in violation of the Zoning Ordinance. Ms. Gardner-Phillips advised that they have worked diligently with MLHPD and had hired a historic architectural specialist to ensure that they proposed facility is true Greek Revival to ensure compatibility with the area. Ms. Gardner-Phillips reiterated that the Applicants are more than willing to discuss the matter further with those in opposition.

In response to question from Commissioner McCarty, Mr. Smith responded that this facility would not fall under the Mississippi Landlord-Tenant Act; the residents would not sign leases for specific space within the facility, and the facility would not fall under any rental ordinance of Madison County, but that the resident's bedrooms would be a part of the services that they are contracting for, and all of those matters would be regulated by the State Department of Health.

Rita McGuffie, MLHPD Chair, appeared and wanted to address the fact that their request that the Applicants approach Planning & Zoning first is simply standard procedure. In response to question from Commissioner McCarty as to whether there was a chance that MLHPD would reconsider its decision to stand on their August 14, 2023, denial, Ms. McGuffie stated that MLHPD had met with the Applicant on four (4) occasions, and MLHPD was concerned with the procedure of review because this was not a new submission, and was not a re-opening of a matter that they had already voted as being a final submission.

Upon motion by Commissioner McCarty to approve the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan, seconded by Commissioner Brown, with the vote being as follows:

Chairman Rouser	Aye.
Commissioner McCarty	Aye.
Commissioner Brown	Aye.
Commissioner Sumerall	Nay.

As such, the Application of Chad Phillips for a Conditional Use for Public/Quasi Public Facility (The Oaks-Assisted Living Facility) with Site Plan, was approved 3-1.

There next came on for consideration, the need to close the public hearing. Upon motion by Commissioner Brown to close the public hearing, seconded by Commissioner McCarty, with all voting "aye," the public hearing was so closed.

With there being no further business, the October 19, 2023, meeting of the Madison County Planning and Zoning Commission was recessed until October 20, 2023, at 9:00 a.m.

Date

Dr. Keith Rouser, Chairman

APPLICATION FOR CONDITIONAL USE Public/Quasi-Public Facilities

Name and Address of Applicant: Madison County Economic Development Authority 135 Mississippi Parkway Canton, MS 39046	Street Address of Property (if different address): Parcel 1: Along Highway 22 at the intersection of Highway 22 and Nissan Parkway Parcels 2 and 3: Along Virililia Road
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APPLICATION DATE	Present Zoning of Property	Legal Description of Property:	TAX PARCEL NUMBER	FLOOD ZONE	MAP/PLAT OF PROPERTY
9/01/2023	Parcel 1: I-2 Parcel 2: I-2 Parcel 3: A-1	See (Exhibit A)	Parcel 1: 092H-28-002/01.01 Parcel 2: 092E-21-003/01.00 Parcel 3: 092E-21-001/00.00	No	See (Exhibit B)

Other Comments: As per Article 805 of the Madison County Zoning Ordinance.

Comments

Conditional Use Permit(s) are requested for purposes of anticipated construction of multiple electrical power substations and related electrical power infrastructure including, without limitation, associated above ground and below ground transmission lines and equipment.

Respectfully Submitted



Petition submitted to Madison County Planning and Development Commission on _____

Recommendation of Madison County Planning and Development Commission on Petition _____

Public Hearing date as established by the Madison County Board of Supervisors _____

Final disposition of Petition _____

Exhibit A

Parcel 1

Tract 1: A parcel or tract of land, containing **164.15 acres**, more or less, lying and being situated in Section 28, T9N-R2E, Madison County, Mississippi, being a part of the Walker Lands II, LLC property as described in Deed Book 3385 at Page 454 of the Records of the Office of the Chancery Clerk of said Madison County, at Canton, Mississippi, and being more particularly described as follows:

COMMENCING at the SW corner of the SW $\frac{1}{4}$ of Section 29, T9N-R2E, Madison County, Mississippi; run thence East along the Southerly boundary of the SW $\frac{1}{4}$ of said Section 29, T9N-R2E, for a distance of 2,667.77 feet to the SE corner, thereof, said point also lying at the SW corner of a parcel of land described as the "West $\frac{1}{2}$ of the SE $\frac{1}{4}$ less a strip of 4.0 chains evenly off East side of same"; thence continue East along the Southerly boundary of said parcel of land described as the "West $\frac{1}{2}$ of the SE $\frac{1}{4}$ less a strip of 4.0 chains evenly off East side of same" for a distance of 1,069.89 feet to the SE corner, thereof, said point also being and lying at the SW corner of Parcel 2 of the above referenced Walker Lands II, LLC property; thence North along the Easterly boundary of said parcel of land described as the "West $\frac{1}{2}$ of the SE $\frac{1}{4}$ less a strip of 4.0 chains evenly off East side of same" and the Westerly boundary of Parcel 2 of said Walker Lands II, LLC property, for a distance of 494.94 feet; thence continue North along the Easterly boundary of said parcel of land described as the "West $\frac{1}{2}$ of the SE $\frac{1}{4}$ less a strip of 4.0 chains evenly off East side of same", the Easterly boundary of a parcel of land described as the "SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ less a strip of 4.0 chains evenly off East side of same" and the Westerly boundary of Parcel 2 of said Walker Lands II, LLC property, for a distance of 2,702.87 feet to an iron pin; thence leaving the Easterly boundary of a said parcel of land described as the "SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ less a strip of 4.0 chains evenly off East side of same" and the Westerly boundary of Parcel 2 of said Walker Lands II, LLC property, run East for a distance of 4255.16 feet to an iron pin lying on the Easterly boundary of the NW $\frac{1}{4}$ of Section 28, T9N-R2E, said point also lying on the Westerly boundary of the NE $\frac{1}{4}$ of said Section 28, T9N-R2E and POINT OF BEGINNING of the herein described property; thence North along the Westerly boundary of the NE $\frac{1}{4}$ of said Section 28, T9N-R2E, for a distance of 2,081.47 feet to an iron pin lying at the NW corner, thereof; thence East along the Northerly boundary of the NE $\frac{1}{4}$ of said Section 28, T9N-R2E, for a distance of 2,481.56 feet to an iron pin; thence leaving the Northerly boundary of the NE $\frac{1}{4}$ of said Section 28, T9N-R2E, run to points at each of the following calls; South 01 degrees 22 minutes 39 seconds East for a distance of 1,260.46 feet to an iron pin; thence 572.40 feet along the arc of a 825.00 foot radius curve to the right, said arc having a 560.99 foot chord which bears South 18 degrees 29 minutes 56 seconds West to an iron pin; thence South 38 degrees 22 minutes 31 seconds West for a distance of 276.51 feet to an iron pin; thence 452.55 feet along the arc of a 825.00 foot radius curve to the left, said arc having a 446.90 foot chord which bears South 22 degrees 39 minutes 39 seconds West to an iron pin; thence South 06 degrees 56 minutes 46 seconds West for a distance of 113.98 feet to an iron pin; thence 230.09 feet along the arc of a 825.00 foot radius curve to the left, said arc having a 229.34 foot chord which bears South 01 degrees 02 minutes 37 seconds East to an iron pin; thence South 80 degrees 57 minutes 59 seconds West for a distance of 818.24 feet to an iron pin; thence 550.31 feet along the arc of a 825.00 foot radius curve to the left, said arc having a 540.17 foot chord which bears South 61 degrees 51 minutes 25 seconds West to an iron pin; thence South 42 degrees 44 minutes 51 seconds West for a distance of 1,017.18 feet to an iron pin; thence 86.96 feet along the arc of a 675.00 foot radius curve to the right, said arc having a 86.90 foot chord which bears North 03 degrees 41 minutes 26 seconds West to an iron pin lying on the Westerly boundary of the SE $\frac{1}{4}$ of said Section 28, T9N-R2E, said point also lying on the Easterly boundary of the certain "32.21 acre tract of land" described in Deed Book 3706 at Page 976 of the Records of said Madison County, Mississippi; thence North along the Westerly boundary of the SE $\frac{1}{4}$ of said Section 28, T9N-R2E and the Easterly boundary of said "32.21 acre tract of land" for a distance of 338.60 feet to an iron pin at the NE corner of said "32.21 acre tract of land"; thence continue North along the Westerly boundary of the SE $\frac{1}{4}$ and NE $\frac{1}{4}$ of said Section 28, T9N-R2E, for a distance of 1,387.14 feet to the POINT OF BEGINNING of the above described parcel or tract of land.

LESS AND EXCEPT a tract of land being in part of the Northwest and Northeast quarters of Section 28, Township 9 North, Range 2 East in Madison County, Mississippi and being particularly described as:

COMMENCING at a found wood fence post commonly accepted as the Southwest corner of Section 28, thence North a distance of 2729.45 feet to a point; thence East a distance of 1926.35 feet to a set ½ inch iron rod with civil-link cap in the East R.O.W. of Nissan Parkway (150' R.O.W.) and being the true point of beginning; thence along such said right of way North 00°07'16" West a distance of 2158.74 feet to a set ½ inch iron rod with civil-link cap; thence leaving said right of way North 44°52'44" East a distance of 199.76 feet to a set ½ inch iron rod with civil-link cap; thence South 89°44'17" East a distance of 523.89 feet to a set ½ inch rod with civil-link cap; thence East a distance of 476.12 feet to a set ½ inch iron rod with civil-link cap; thence South a distance of 2297.61 feet to a set ½ inch iron rod with civil-link cap; then South 89°59'08" West a distance of 1136.39 feet to the POINT OF BEGINNING of the land herein described, containing 59.864 acres, more or less.

Tract 2: A parcel or tract of land, containing **81.82 acres**, more or less, lying and being situated in the SE ¼ of Section 28, T9N-R2E, Madison County, Mississippi, being a part of the Walker Lands II, LLC property as described in Deed Book 3385 at Page 454 of the Records of the Office of the Chancery Clerk of said Madison County, at Canton, Mississippi, and being more particularly described as follows:

COMMENCING at the SW corner of the SW ¼ of Section 29, T9N-R2E, Madison County, Mississippi; run thence East along the Southerly boundary of the SW ¼ of said Section 29, T9N-R2E, for a distance of 2,667.77 feet to the SE corner, thereof, said point also lying at the SW corner of a parcel of land described as the "West ½ of the SE ¼ less a strip of 4.0 chains evenly off East side of same"; thence continue East along the Southerly boundary of said parcel of land described as the "West ½ of the SE ¼ less a strip of 4.0 chains evenly off East side of same" for a distance of 1,069.89 feet to the SE corner, thereof, said point also being and lying at the SW corner of Parcel 2 of the above referenced Walker Lands II, LLC property; thence North along the Easterly boundary of said parcel of land described as the "West ½ of the SE ¼ less a strip of 4.0 chains evenly off East side of same" and the Westerly boundary of Parcel 2 of said Walker Lands II, LLC property, for a distance of 494.94 feet; thence continue North along the Easterly boundary of said parcel of land described as the "West ½ of the SE ¼ less a strip of 4.0 chains evenly off East side of same", the Easterly boundary of a parcel of land described as the "SW ¼ of the NE ¼ less a strip of 4.0 chains evenly off East side of same" and the Westerly boundary of Parcel 2 of said Walker Lands II, LLC property, for a distance of 2,702.87 feet to an iron pin; thence leaving the Easterly boundary of a said parcel of land described as the "SW ¼ of the NE ¼ less a strip of 4.0 chains evenly off East side of same" and the Westerly boundary of Parcel 2 of said Walker Lands II, LLC property, run East for a distance of 4255.16 feet to an iron pin lying on the Easterly boundary of the NW ¼ of Section 28, T9N-R2E, said point also lying on the Westerly boundary of the NE ¼ of said Section 28, T9N-R2E; thence North along the Westerly boundary of the NW ¼ of said Section 28, T9N-R2E, for a distance of 2,081.47 feet to an iron pin lying at the NW corner, thereof; thence East along the Northerly boundary of the NE ¼ of said Section 28, T9N-R2E, for a distance of 2,481.56 feet to an iron pin; thence leaving the Northerly boundary of the NE ¼ of said Section 28, T9N-R2E, run to points at each of the following calls; South 01 degrees 22 minutes 39 seconds East for a distance of 1,260.46 feet to an iron pin; thence 572.40 feet along the arc of a 825.00 foot radius curve to the right, said arc having a 560.99 foot chord which bears South 18 degrees 29 minutes 56 seconds West to an iron pin; thence South 38 degrees 22 minutes 31 seconds West for a distance of 276.51 feet to an iron pin; thence 452.55 feet along the arc of a 825.00 foot radius curve to the left, said arc having a 446.90 foot chord which bears South 22 degrees 39 minutes 39 seconds West to an iron pin; thence South 06 degrees 56 minutes 46 seconds West for a distance of 113.98 feet to an iron pin; thence 230.09 feet along the arc of a 825.00 foot radius curve to the left, said arc having a 229.34 foot chord which bears South 01 degrees 02 minutes 37 seconds East to an iron pin and POINT OF BEGINNING of the herein described property; thence South 80 degrees 57 minutes 59 seconds West for a distance of 818.24 feet to an iron pin; thence 550.31 feet along the arc of a 825.00 foot radius curve to the left, said arc having a 540.17 foot chord which bears South 61 degrees 51 minutes 25 seconds West to an iron pin; thence South 42 degrees 44 minutes 51 seconds West for a distance of 1,017.18 feet to an iron pin; thence 625.37 feet along the arc of a 675.00 foot radius curve to the left, said arc having a 603.24 foot chord which bears South 33 degrees 55 minutes 22 seconds East to an iron pin; thence South 60 degrees 27 minutes 51 seconds East for a distance of 395.30 feet to an iron pin; thence 261.49 feet along the arc of a 787.00 foot radius curve to the right, said arc having a 260.29 foot chord which bears South 50 degrees 56 minutes 44 seconds East to an iron pin; thence South 41 degrees 25 minutes 38 seconds East for a distance of 285.62 feet to an iron pin; thence North 48 degrees 34 minutes 22 seconds East for a distance of 25.00 feet to an iron pin; thence South 41 degrees 25 minutes 38

seconds East for a distance of 300.00 feet to an iron pin; thence North 88 degrees 34 minutes 22 seconds East for a distance of 261.96 feet to an iron pin lying on the Northerly Right-Of-Way of Mississippi Highway No. 22, as it existed in September, 2020, said right-of-way being more fully and particularly described in that certain conveyance from Mississippi Major Economic Authority to the Mississippi Department of Transportation recorded on June 17, 2010 in Deed Book 2548 at Page 667 of the Records of said Madison County at Canton, Mississippi; thence along the Northerly Right-Of-Way of said Mississippi Highway No. 22 to points at each of the following calls; 174.28 feet along the arc of a 1819.86 foot radius curve to the left, said arc having a 174.22 foot chord which bears North 32 degrees 58 minutes 11 seconds East feet to an iron pin; thence North 29 degrees 26 minutes 32 seconds East for a distance of 1,096.07 feet to an iron pin; thence North 32 degrees 22 minutes 47 seconds East for a distance of 399.19 feet to an iron pin; thence 228.35 feet along the arc of a 2954.79 foot radius curve to the right, said arc having a 228.30 foot chord which bears North 32 degrees 26 minutes 26 seconds East to an iron pin; thence leaving the Northerly Right-Of-Way of said Mississippi Highway No. 22, run to points at each of the following calls; North 56 degrees 05 minutes 48 seconds West for a distance of 180.17 feet to an iron pin; thence 530.88 feet along the arc of a 825.00 foot radius curve to the right, said arc having a 521.77 foot chord which bears North 37 degrees 39 minutes 43 seconds West to an iron pin; thence North 19 degrees 13 minutes 38 seconds West for a distance of 126.58 feet to an iron pin; thence 146.78 feet along the arc of a 825.00 foot radius curve to the right, said arc having a 146.59 foot chord which bears North 14 degrees 07 minutes 50 seconds West to the POINT OF BEGINNING of the above described parcel or tract of land.

Parcel 2

A parcel or tract of land, containing **105.71 acres**, more or less, lying and being situated in Section 21, T9N-R2E, Madison County, Mississippi, being a part of the Walker Lands II, LLC property as described in Deed Book 3385 at Page 454 of the Records of the Office of the Chancery Clerk of said Madison County, at Canton, Mississippi, and being more particularly described as follows:

COMMENCING at the SW corner of the SW $\frac{1}{4}$ of Section 29, T9N-R2E, Madison County, Mississippi; run thence East along the Southerly boundary of the SW $\frac{1}{4}$ of said Section 29, T9N-R2E, for a distance of 2,667.77 feet to the SE corner, thereof, said point also lying at the SW corner of a parcel of land described as the "West $\frac{1}{2}$ of the SE $\frac{1}{4}$ less a strip of 4.0 chains evenly off East side of same"; thence continue East along the Southerly boundary of said parcel of land described as the "West $\frac{1}{2}$ of the SE $\frac{1}{4}$ less a strip of 4.0 chains evenly off East side of same" for a distance of 1,069.89 feet to the SE corner, thereof, said point also being and lying at the SW corner of Parcel 2 of the above referenced Walker Lands II, LLC property; thence North along the Easterly boundary of said parcel of land described as the "West $\frac{1}{2}$ of the SE $\frac{1}{4}$ less a strip of 4.0 chains evenly off East side of same" and the Westerly boundary of Parcel 2 of said Walker Lands II, LLC property, for a distance of 494.94 feet; thence continue North along the Easterly boundary of said parcel of land described as the "West $\frac{1}{2}$ of the SE $\frac{1}{4}$ less a strip of 4.0 chains evenly off East side of same", the Easterly boundary of a parcel of land described as the "SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ less a strip of 4.0 chains evenly off East side of same" and the Westerly boundary of Parcel 2 of said Walker Lands II, LLC property, for a distance of 2,702.87 feet to an iron pin; thence leaving the Easterly boundary of a said parcel of land described as the "SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ less a strip of 4.0 chains evenly off East side of same" and the Westerly boundary of Parcel 2 of said Walker Lands II, LLC property, run East for a distance of 4255.16 feet to an iron pin lying on the Easterly boundary of the NW $\frac{1}{4}$ of Section 28, T9N-R2E; thence North along the Easterly boundary of the NW $\frac{1}{4}$ of said Section 28, T9N-R2E, for a distance of 2,081.47 feet to an iron pin lying at the NE corner, thereof, said point also being and lying at the SE corner of the East $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 21, T9N-R2E; thence West along the Southerly boundary of the East $\frac{1}{2}$ of the SW $\frac{1}{4}$ of said Section 21, T9N-R2E, for a distance of 26.00 feet to an iron pin and POINT OF BEGINNING of the herein described property; thence continue West along the Southerly boundary of the East $\frac{1}{2}$ of the SW $\frac{1}{4}$ of said Section 21, T9N-R2E, for a distance of 1,302.64 feet to an iron pin lying at the SW corner, thereof, said point also lying at the SE corner of the South $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 21, T9N-R2E; thence North along the Westerly boundary of the East $\frac{1}{2}$ of the SW $\frac{1}{4}$ and the Easterly boundary of the South $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 21, T9N-R2E, for a distance of 660.48 feet to an iron pin lying at the NE corner of the South $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 21, T9N-R2E; thence leaving the Westerly boundary of the East $\frac{1}{2}$ of the SW $\frac{1}{4}$ of said Section 21, T9N-R2E, run West along the Northerly boundary of the South $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of said Section 21, T9N-R2E, for a distance of 643.11 feet to an iron pin lying on the Westerly boundary of Parcel 6 of the above referenced Walker Lands II, LLC property as described

in Deed Book 3385 at Page 454 of the Records of said Madison County, Mississippi; thence North 00 degrees 16 minutes 27 seconds West along the Westerly boundary of Parcel 6 of said Walker Lands, LLC property, for a distance of 109.23 feet to an iron pin lying on the Easterly boundary of Tract 2 of the Michelle Marie Walden property as described in Deed Book 529 at Page 941 of the Records of said Madison County, Mississippi; thence leaving the Westerly boundary of Parcel 6 of said Walker Lands, LLC property, run North along the Easterly boundary of Tract 2 of said Michelle Marie Walden property, for a distance of 2,360.38 feet to an iron pin at the NE corner, thereof, said point also lying on the Southerly Right-Of-Way of Virililia Road (formerly Vernon-Ballard Road as per Federal Aid Secondary Project No. S-514(2)1 & State Aid Project No. SAP-45(40)), as it existed in September, 2020; thence South 63 degrees 03 minutes 52 seconds East along the Southerly Right-Of-Way of said Virililia Road, for a distance of 28.59 feet to an iron pin; thence South 63 degrees 00 minutes 52 seconds East along the Southerly Right-Of-Way of said Virililia Road for a distance of 454.14 feet to an iron pin lying on the Westerly boundary of the Bottom Land Properties, LLC property as described in Deed Book 3620 at Page 980 of the Records of said Madison County, Mississippi; thence leaving the Southerly Right-Of-Way of said Virililia Road, run along the Westerly and Southerly boundary of said Bottom Land Properties, LLC property to points at each of the following calls; South 41 degrees 39 minutes 40 seconds West for a distance of 105.06 feet to an iron pin; thence South 18 degrees 57 minutes 58 seconds East for a distance of 207.90 feet to an iron pin; thence South 78 degrees 21 minutes 21 seconds East for a distance of 211.44 feet to an iron pin at the SE corner, thereof, said point also lying on the Easterly boundary of the above referenced Parcel 6 of said Walker Lands II, LLC property; thence South along the Easterly boundary of Parcel 6 of said Walker Lands II, LLC property, for a distance of 413.38 feet to an iron pin; thence continue South along the Easterly boundary of Parcel 6 of said Walker Lands II, LLC property, for a distance of 10.07 feet to an iron pin lying at a fence corner; thence leaving the Easterly boundary of Parcel 6 of said Walker Lands II, LLC property, run South 83 degrees 43 minutes 12 seconds East along an existing wire fence for a distance of 468.49 feet to an iron pin at a fence corner; thence North 11 degrees 22 minutes 58 seconds East along said existing wire fence for a distance of 533.82 feet to an iron pin lying on the Northerly boundary of the East ½ of the SW ¼ of said Section 21, T9N-R2E; thence leaving said existing wire fence, run East along the Northerly boundary of the East ½ of the SW ¼ of said Section 21, T9N-R2E, for a distance of 740.24 feet to an iron pin; thence leaving the Northerly boundary of the East ½ of the SW ¼ of said Section 21, T9N-R2E, run South along an existing wire fence, for a distance of 2,641.91 feet to the POINT OF BEGINNING of the above described parcel or tract of land.

Parcel 3

That certain parcel of real property located in Madison County, Mississippi, is comprised of the parcel depicted on the Madison County, Mississippi, tax map as parcel number 092E-21-001/00.00, and which is more particularly described in that certain warranty deed recorded in the land records of Madison County, Mississippi, in Deed Book 3901 at Page 352, as follows:

Tract 1: S1/2 SW1/4 SW1/4 of Section 21, Township 9 North, Range 2 East, Madison County, Mississippi, containing 20 acres more or less; and

Tract 2: A strip of land 685 feet wide off of the west side of tract of land described as: N1/2 SW1/4 SW1/4 and NW1/4 SW1/4 and all of the SW1/4 NW1/4 lying south of the gravel road, all being in Section 21, Township 9 North, Range 2 East, Madison County, Mississippi, said strip of land containing 40 acres, more or less.

Exhibit B
(See attached)

**BEFORE THE PLANNING AND ZONING COMMISSION
OF MADISON COUNTY, MISSISSIPPI**

**IN THE MATTER OF THE
APPLICATION FOR CONDITIONAL
USE; THE OAKS RESIDENCE
ASSISTED LIVING FACILITY**

**PETITIONERS: JAMES PHILLIPS AND CRYSTAL GARDNER-PHILLIPS
AND CPOR REI, LLC**

**SUPPLEMENTAL SUBMISSION IN SUPPORT OF
APPLICATION FOR CONDITIONAL USE**

Come now the Petitioners, James Phillips and Crystal Gardner-Phillips and CPOR REI, LLC and file this their *Supplemental Submission in Support of Application for Conditional Use* before the Planning Commission of Madison County, Mississippi (“Commission”) to construct and develop a Public/Quasi-Public Facility in the form of a personal residential assisted living facility on property which is currently zoned C-1 commercial and located within the Livingston Township Planned Unit Development (“LPUD”) and as defined and provided for under and pursuant to Article III, Article IV, Section 402 and Article VIII; Section 805, Madison County Zoning Ordinance (“MCZO”), and in support thereof would state unto the Commission the following, to wit:

I.

PROCEDURAL HISTORY

The Petitioners filed their “Application for Conditional Use” (“Application”) to construct “The Oaks Residence” (“The Oaks”) personal care residential assisted living facility with the Madison County Zoning Administrator on April 1, 2023. The Commission took up for consideration The Oaks’ application on August 10, 2023 and unanimously approved same

conditioned upon approval by the Mannsdale-Livingston Historic Preservation District ("MLHPD") at its next meeting.

MLHPD took up the Petitioners' application at its August 14, 2023 meeting but denied same based upon (1) "lack of information about landscaping" and (2) "side elevations of the building were inappropriate." Pursuant to the actions of the MLHPD, the Petitioners revised their plans to fully address the MLHPD concerns as is set forth and contained on page 2 "landscaping" and pages 9 and 11 "elevations" of their revised plan. When the Petitioners' attempted to present their revised plan to the MLHPD they were directed to "correspond directly with P&Z and/or The Board of Supervisors on this matter" (See **Exhibit "1"** hereto). The Petitioner's revised plan was provided to the Madison County Zoning Administrator on October 10, 2023 and is currently now before this Commission. A copy of the undersigned's letter of October 10, 2023 is attached hereto as **Exhibit "2"** and the revised plans are incorporated herein and made a part hereof for all intents and purposes.

The Petitioners' application and revised plans specifically address all of the provisions set forth and contained in Sections 805.01-805.05 "Conditional Use Permits," MCZO, adopted in November 2019. The Petitioners' revised plan also addresses each and every requirement for "site plan" review and approval as set forth under and pursuant to Section 807 and 810 "Site Plan Review" of the MCZO.

II.

THE OAKS FACILITY

As depicted in the The Oak's revised plans it is designed to look and feel like a beautiful southern greek revival home. The Oaks will be located within the Livingston Township PUD ("LTP") on five acres of property currently zoned C-1. A copy of the Warranty Deed and description of the five (5) acre parcel are attached hereto as **Exhibits "3" and "4"** respectively and Survey made a part hereof. The underlying C-1 commercial designation of The Oaks property specifically permits "Public or Quasi-Public facilities and utilities in compliance with Section 402 of this ordinance." (Section 2101 A MCZO pg. 142). Under Article XXVII, "PUD" Section 2704, A. "The uses that are permitted out right in PUD districts are subject to the regulations and restrictions as prescribed in the initial zone over which the PUD is superimposed." Section 2705 states that a public or quasi-public facilities or utilities may be considered for location in a PUD district in compliance with Section 402 of this ordinance. (MCZO pg. 163-164)

The Oak's application is not for a residential use. The property is zoned as a PUD superimposed over a C-1 general commercial use district designation. The Oaks' application is for a personal care assisted living facility which is clearly permitted as a conditional use for a Public/Quasi Facility in a C-1 District and all districts in the County. (See Section 402, pg. 47, MCZO).

The Oak's facility will accommodate a total of 15 residents giving it a smaller "home" feeling while providing exceptional senior services and upscale amenities. Another unique offering is The Oak's ratio of caretaker to residents unlike larger assisted living facilities. The Oak's will have only five (5) residents to one caretaker during the day, which far exceeds state and federal minimum requirements. Perhaps even more important is the fact that The Oaks will be

located within close proximity to many residential neighborhoods giving residents the opportunity to be close to their loved ones. This is also consistent with the research and publications by the Assisted Living Federation of America which found that the typical assisted living facility draws 85% of their residents from within 15 miles of their locations. The hours of operation for which The Oaks which will be open to the public will be from 8:00 a.m. to 8:00 p.m. which is well within the hours of operation proscribed under Article XIX (See MLHPD, Section 1914, MCZO, pg. 136).

III.

OWNERSHIP AND OPERATION OF THE OAKS ASSISTED LIVING FACILITY

James Phillips and Crystal Gardner-Phillips are the sole owners and managers of The Oaks.

James is a registered charge nurse who has substantial experience in various ICU settings. James is licensed in Mississippi and Louisiana with Compact/Multistate, BLS, ACLS, PALS and National Assisted Living Manager certifications. Crystal is part of the fourth generation Gardner Real Estate Family. As Vice President of Gardner Realtors, founded by her great grandmother, Gertrude Gardner, Crystal led the Company with over 750 Realtors and 5,000+ local real estate transactions in excess of one billion dollars annually. Crystal is recognized nationally as an expert in the industry speaking at many national conferences including Leading Real Estate Companies of the World, Luxury Real Estate and The Realty Alliance.

James and Crystal not only have substantial health care and real estate experience, but they have also secured an expert advisory team for ongoing conversations and network consisting of top operators around the country for adoption of best practices in site selection, architectural design and review, construction, business planning, financial operation, and management. Residential

Assisted Living Academy (RAL) is one of America's industry leaders in educating and supporting investors and entrepreneurs in the process of investing in and operating Residential Assisted Living Care homes throughout the United States. The principles in RAL have over twenty (20) years of experience in assisting owners and investors in the ownership, operation, and successful management of senior residential assisted living facilities.

IV.

MADISON COUNTY ZONING ORDINANCES

The Madison County, MS Zoning Ordinance adopted by the Madison County, MS Board of Supervisors in November 2019 is the governing document and standards to be applied to The Oaks application for a conditional use.¹

As stated above The Oak's application is for an assisted living facility (commercial use) located within the LTPUD which is superimposed over a C-1 General Commercial District. As set forth herein The Oaks is permissible as a conditional use for a Public/Quasi-Public Facility in a C-1 district and ~~all other zoning districts as defined and designated thereunder~~ (See Section 402; Section 2102 A.; Section 2705 A. MCZO).²

¹ "AN ORDINANCE ESTABLISHING COMPREHENSIVE ZONING REGULATION FOR MADISON COUNTY MISSISSIPPI, AND PROVIDING FOR THE ADMINISTRATION ENFORCEMENT, AND THE AMENDMENT THEREOF; AND FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT THEREWITH."

² Section 402 Public/Quasi-Public Facilities and Utilities

All public and quasi-public facilities and utilities, as defined under Article III of this Ordinance, may be located in any district in the County Provided:

- a. That all applicable requirements of federal, state and county laws shall be met.
- b. That all such proposed uses shall be subject to the procedures stated under Section 805 relative to Conditional Uses.
- c. No public or quasi-public facility or utility shall be located in any area where the proposed use would be incompatible with surrounding land uses.

Article III of the MCZO defines **Public/Quasi Public Facilities and Utilities** as:

Any building, structure, system use, or combination of uses, which is customarily and ordinarily provided by either public or private agencies, groups, societies, corporations, or organizations, whose purpose is the provision of necessary and desirable goods and/or services for the general public health, safety, and welfare. Such uses shall include, but not be limited to:

E. Convalescent homes or nursing homes.

Under Article III E. "**Convalescent homes or nursing home**" are specifically designated as Public/Quasi Public Facilities.

Article III defines **Nursing Home** as:

Those health facilities where persons are housed and furnished with meals and continuing nursing services for a fee. Also known as Convalescent Home or Rest Home.


Under Article III **Assisted Living** is defined as follows:

Assisted refers to a type of physical assistance rather than monetary assistance. In assisted living facilities, residents live independently in apartment or condominium style accommodation, and may be assisted by the provision of meals, housekeeping, security and social programs. Additional planned care, such as bathing, dressing and assistance with medication may also be provided.

Petitioners submit that it is clear that convalescent homes or nursing homes are Public/Quasi Public Facilities which are allowed as a conditional use not only in C-1 and PUD zoning classifications, but "in any district in the county" (See Section 402, MCZO). Consequently, The Oak's application for conditional use is proper and warranted under the MCZO and request is hereby made that it be approved by the Planning and Zoning Commission of Madison County, Mississippi.

RESPECTFULLY SUBMITTED, this the 12th day of October, 2023.

JAMES PHILLIPS, CRYSTAL
GARDENER-PHILLIPS, AND
CPOR REI, LLC, APPLICANTS

By: 
STEVEN H. SMITH, ATTORNEY FOR
APPLICANTS



Madison County, MS
 I CERTIFY THIS INSTRUMENT FILED/RECORDED
 7/12/2023 10:17:05 AM
 INST: 985331 PAGE 1 OF 4
 BOOK W - 4349/288
 WITNESS MY HAND AND SEAL
 Ronny Lott, C.C. BY: RGK D.C.

~~This instrument prepared by and should be returned to:~~

ROBERT D. HARRISON, MSB#2029
 717 Rice Road, Suite H
 Ridgeland, Mississippi 39157
 (601) 957-0002

INDEXING INSTRUCTIONS:

Madison County, Mississippi
Section 8, T8N, R1E - entire section

WARRANTY DEED

GRANTORS' ADDRESS/PHONE:

4829 Sheridan Avenue
 Metairie, Louisiana 70002
 504-236-4826

GRANTEE'S ADDRESS/PHONE:

282 Lake Village Drive
 Madison, Mississippi 39110
 504-251-1576

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the undersigned SHARON DIPAOLA GARDNER, acting in her capacity as the surviving Co-Trustee of the GLENN M. GARDNER AND SHARON GARDNER LIVING TRUST, does hereby sell, convey, and warrant unto CPOR REI, LLC, a Mississippi limited liability company, the following described land and property lying and being situated in Madison County, Mississippi, more particularly described as follows, to-wit:

5.08 acres located in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi, and being further described as follows:

Commencing at a ½" iron rebar found marking the northwest corner of Lot 67 of Chestnut Hill, Part 1D as referenced in Plat Cabinet "E" at slide 141B and 142A and as recorded in the office of the Chancery Clerk of Madison County at Canton, Mississippi and thence run North 52 degrees 46 minutes 44 seconds West for a distance of 2,014.07 feet to a ½" iron rebar set and also being the Point of Beginning of the tract herein described:

From the POINT OF BEGINNING thence run North 78 degrees 41 minutes 31 seconds West for a distance of 29.76 feet to a ½" iron rebar found; thence run North 42 degrees 47 minutes 56 seconds West for a distance of 141.39 feet to a ½" iron rebar found; thence run North 38 degrees 28 minutes 33 seconds West for a distance of 87.83 feet to a ½" iron rebar found; thence run North 66 degrees 09 minutes 08 seconds West for a distance of 105.85 feet to a ½" iron rebar set; thence run North 06 degrees 39 minutes 18 seconds East for a distance of 471.74 feet to a ½" iron rebar set; thence run North 30 degrees 49 minutes 27 seconds East for a distance of 99.83 feet to a concrete monument found on the south right-of-way line of MS Highway #22; thence run North 31 degrees 17 minutes 23 seconds East, along said right-of-way, for a distance of 19.96 feet to a concrete monument found; thence run South 59 degrees 01 minutes 33 seconds East, along said right-of-way, for a distance of 100.19 feet to a concrete monument found; thence run South 31 degrees 09 minutes 45 seconds West, along said right-of-way, for a distance of 19.99 feet to a ½" iron rebar found; thence run South 58 degrees 54 minutes 47 seconds East, along said right-of-way, for a distance of 58.72 feet to a ½" iron rebar set; thence run along a curve to the left with the following data: Chord Bearing of South 65 degrees 09 minutes 05 seconds East, Chord Length of 256.41 feet, Radius of 1,195.92 feet, Arc Length of 256.91 feet to a ½" iron rebar set; thence run South 18 degrees 40 minutes 38 seconds West for a distance of 618.30 feet back to the POINT OF BEGINNING and being 5.08 acres, more or less.

Being the same land and property described and conveyed in Warranty Deed recorded in Book 4315 at Page 314 of the Madison County land records.

TOGETHER WITH THE FOLLOWING EASEMENTS:

1. 20' wide Sanitary Sewer Easement described and conveyed in the aforementioned Warranty Deed recorded in Book 4315 at Page 314, being appurtenant to the 5.08 acre parcel described herein.

2. 50' wide Ingress/Egress Easement described and conveyed in the aforementioned Warranty Deed recorded in Book 4315 at Page 314, being appurtenant to the 5.08 acre parcel described herein.

Excepted from the warranty of this conveyance are:

1. Prior recorded reservations and conveyances of oil, gas and other minerals in, on and under the subject property.
2. Ad valorem taxes for the current year and subsequent years not yet due and payable.
3. Terms and conditions of Decree of Chancery Court establishing the Persimmon Burnt Corn Water Management District in Minute Book 37 at Page 524.
4. Declaration of Covenants, Conditions and Restrictions for Livingston Township, dated December 6, 2018, recorded in Book 3695 at Page 115.
5. Covenant for meeting standards of the Mannedale-Livingston Heritage Preservation District contained in Special Warranty Deed dated August 24, 2007, recorded in Book 2232 at Page 315.
6. Reciprocal Easement Agreement dated February 27, 2019, recorded in Book 3695 at Page 182.
7. Right of Way and Easement Deed to Centerpoint Energy Resources Corp. d/b/a Centerpoint Energy Mississippi Gas dated July 23, 2014, recorded in Book 3109 at Page 716.
8. Matters depicted on the plat of survey of the subject property prepared by Baird Engineering, Inc., dated February 17, 2023.

Grantor and Grantee acknowledge that the ad valorem taxes for the present year were prorated on an estimated basis using the tax information for the preceding year. If this proration proves to be inaccurate upon receipt of the actual tax statement for the present year, Grantor and Grantee shall adjust this proration based on the actual tax figures.

DATED, this the 10 day of July, 2023,

GLENN M. GARDNER AND SHARON
GARDNER LIVING TRUST

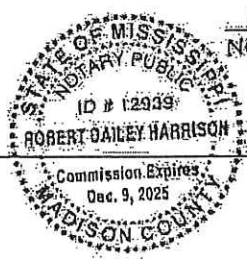
By: Sharon Dipaola Gardner
SHARON DIPAOLO GARDNER,
Surviving Co-Trustee

STATE OF MS
COUNTY/PARISH OF Madison

THIS instrument was acknowledged before me on this the 10 day of July, 2023, by SHARON DIPAOLO GARDNER, acting in her capacity as the surviving Co-Trustee of the GLENN M. GARDNER AND SHARON GARDNER LIVING TRUST.

[Signature]
NOTARY PUBLIC

My Commission Expires: _____



MADISON COUNTY, MS, POWELL, LOTT
CERTIFY THIS INSTRUMENT WAS FILED ON 7/12/2023 10:17:05 AM AND RECORDED IN W BOOK-4349 PAGE-288

Steven H. Smith, PLLC
ATTORNEY AT LAW

Steven H. Smith

Legal Assistant:
Angela Dees

Telephone:
(601) 987-4800
Facsimile:
(601) 987-6600

October 16, 2023

Address:
4316 Old Canton Road
Suite 200
Jackson, MS 39211

E-Mail:
ssmith@shsattorneys.com
angela@shsattorneys.com

Via Email Only:

Scott Weeks
Madison County Planning & Zoning Administrator
Scott.weeks@madison-co-com

Re: The Oaks Residence, residential
Assisted Living Facility
Revisions to Plans as per
Your October 13, 2023 email

Dear Scott:

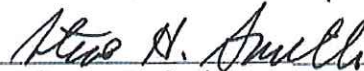
Attached is another set of the Plans for The Oaks Residence which have been revised to address each of the six (6) points presented in your email to me of October 13, 2023. Your email of October 13, 2023 to me is attached for your convenience. For your convenience and review each of the six (6) points referenced above are continued on the following pages of the attached plans.

- Point No. 1: Page A-1; Since our side yard abuts property which is zoned commercial (C-1) our 10' set back complies with Section 2103.04 of the Madison Co. Zoning Ordinance.
- Point No. 2: Page A-1; The front set back is shown to be 35' from the Hwy 22 right of way along with an additional 80' buffer, for a total set back/buffer of 115' from the Hwy 22 right of way.
- Point No. 3: Page A-1-2. The number of plants and type of plants are listed.
- Point No. 4: The front, rear, and both side elevations are shown on pages A-4 and A-4.1.
- Point No. 5: Page A-1; The total Gross Lot Coverages is 13,120 Sq Ft.
- Point No. 6: The Oaks Residence will not use/have a dumpster on its premises.

Also, enclosed is the Application for Certificate of Appropriateness/Certificate of Appropriateness, along with property description which we have completed.

Upon receipt and review of my letter and the additional revisions to our plans, if you have any questions or if I have failed to provide you any requested information/revisions, please contact me at your earliest convenience.

Steven H. Smith, PLLC

By: 
Steven H. Smith

Enclosures:

cc: James & Crystal Phillips

**APPLICATION FOR CERTIFICATE OF APPROPRIATENESS/
CERTIFICATE OF APPROPRIATENESS:**

MANNSDALE-LIVINGSTON HERITAGE PRESERVATION (MHLF) DISTRICT

APPLICANT NAME: James Phillips and Crystal Gardner-Phillips
APPLICANT ADDRESS: 282 Lake Village Dr. Madison, CPOR, REI, LLC
APPLICANT TELEPHONE NUMBER 601-955-7911 MS 39110
DATE SUBMITTED TO ZONING ADMINISTRATOR: 10/16/23

LOCATION OF PROPERTY FOR WHICH CERTIFICATE OF APPROPRIATENESS IS REQUESTED: (PLEASE ATTACH MAP INDICATING BOUNDARIES OF PROPERTY INVOLVED AND/ OR A LEGAL DESCRIPTION).

See attached

PLEASE SPECIFY PROPOSED USE OR USES OF THE SUBJECT PROPERTY FOR WHICH CERTIFICATE OF APPROPRIATENESS IS REQUESTED: (IF MORE THAN ONE USE, INDICATE ON THE REQUIRED SITE PLAN THE LOCATION OF ALL THE PROPOSED USES).

CHECK LIST ALL OF THE FOLLOWING THAT APPLY:

Uses Allowed Only As Special Exceptions:

- Public/ quasi-public facility or utility: Specify: personal residential assisted living
- Commercial uses (See Zoning Ordinance for uses allowed as special exceptions) Please describe specific uses: _____

- Surface mining operations of a temporary type: Please describe: _____

SITE PLAN REQUIRED: A site plan is required for all proposed buildings or structures (except single-family dwellings) in the MLHP District. If the applicant proposes the subdivision of land inside the MLHP, he/she must submit a subdivision plat in accordance with the Madison County *Subdivision Regulations*. All site plans (required for construction on a single lot) shall be prepared in accordance with Sections 402.16-19 and 505 of the Madison County Zoning Ordinance.

Previously submitted

ADDITIONAL INFORMATION REQUIRED FOR DEVELOPMENT OF ALL COMMERCIAL PROPERTIES:

1. Detailed lighting plan for grounds and buildings.
2. Detailed landscaping plan.

Approval of this application for a Certificate of Appropriateness is required under Section 402.16-21 of the Madison County Zoning Ordinance. The Mannsdale-Livingston Heritage Preservation Commission will review this application and make a recommendation to the Board of Supervisors as to whether a Certificate of Appropriateness should be issued to the applicant. For approval of this application, the applicant must demonstrate that the proposed building or structure is not excessively similar or dissimilar to other like buildings or structures in the MLHP district and that the proposed building/structure or use would not provoke one of the harmful effects listed below:

- Lower property values;
- Decreased economic growth; and/ or
- Diminished future opportunities for land use and development.

No building permit shall be issued by the County Building Official for any proposed construction in the MLHP district without a Certificate of Appropriateness.

CERTIFICATE OF APPROPRIATENESS

Following review of the above application for a Certificate of Appropriateness with the required site plan and all supporting information, the Chairman of the Mannsdale-Livingston Heritage Preservation Commission may sign this Certificate indicating a recommendation for approval of the application and issuance of a Certificate. However, if the application for issuance of a Certificate is recommended for *denial*, the applicant shall have the right to appeal the recommendation of the Commission directly to the Board of Supervisors. *The Minutes of the Commission shall accompany the application indicating specific findings in this case, whether recommended for approval or denial.*

We, the Mannsdale-Livingston Heritage Preservation Commission, have reviewed the above application for a Certificate of Appropriateness with the required site plan and do hereby recommend issuance of this Certificate to the Applicant.

Chairman
Mannsdale-Livingston Heritage Preservation Commission

Date

APPROVED BY THE MADISON COUNTY BOARD OF SUPERVISORS:

President

Date

EXHIBIT "A"

5.08 acres located in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi, and being further described as follows:

Commencing at a ½" iron rebar found marking the northwest corner of Lot 67 of Chestnut Hill, Part 1D as referenced in Plat Cabinet "E" at slide 141B and 142A and as recorded in the office of the Chancery Clerk of Madison County at Canton, Mississippi and thence run North 52 degrees 46 minutes 44 seconds West for a distance of 2,014.07 feet to a ½" iron rebar set and also being the Point of Beginning of the tract herein described:

From the POINT OF BEGINNING thence run North 78 degrees 41 minutes 31 seconds West for a distance of 29.76 feet to a ½" iron rebar found; thence run North 42 degrees 47 minutes 56 seconds West for a distance of 141.39 feet to a ½" iron rebar found; thence run North 38 degrees 28 minutes 33 seconds West for a distance of 87.83 feet to a ½" iron rebar found; thence run North 66 degrees 09 minutes 08 seconds West for a distance of 105.85 feet to a ½" iron rebar set; thence run North 06 degrees 39 minutes 18 seconds East for a distance of 471.74 feet to a ½" iron rebar set; thence run North 30 degrees 49 minutes 27 seconds East for a distance of 99.83 feet to a concrete monument found on the south right-of-way line of MS Highway #22; thence run North 31 degrees 17 minutes 23 seconds East, along said right-of-way, for a distance of 19.96 feet to a concrete monument found; thence run South 59 degrees 01 minutes 33 seconds East, along said right-of-way, for a distance of 100.19 feet to a concrete monument found; thence run South 31 degrees 09 minutes 45 seconds West, along said right-of-way, for a distance of 19.99 feet to a ½" iron rebar found; thence run South 58 degrees 54 minutes 47 seconds East, along said right-of-way, for a distance of 58.72 feet to a ½" iron rebar set; thence run along a curve to the left with the following data: Chord Bearing of South 65 degrees 09 minutes 05 seconds East, Chord Length of 256.41 feet, Radius of 1,195.92 feet, Arc Length of 256.91 feet to a ½" iron rebar set; thence run South 18 degrees 40 minutes 38 seconds West for a distance of 618.30 feet back to the POINT OF BEGINNING and being 5.08 acres, more or less.

(Copy of survey plat attached as Exhibit "A")

Prepared by:

Colin L. Baird, PE, PLS

Baird Engineering, Inc.

Clinton, Mississippi

Date: February 20, 2023

Job #4735

TOGETHER WITH THE FOLLOWING EASEMENTS:

20' wide Sanitary Sewer Easement

861.90 square feet located in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi, and being further described as follows:

Commencing at a ½" iron rebar found marking the northwest corner of Lot 67 of Chestnut Hill, Part 1D as referenced in Plat Cabinet "E" at slide 141B and 142A and as recorded in the office of the Chancery Clerk of Madison County at Canton, Mississippi and thence run North 52 degrees 46 minutes 44 seconds West for a distance of 2,014.07 feet to a ½" iron rebar set; thence run North 18 degrees 40 minutes 38 seconds East for a distance of 186.71 feet to a ½" iron rebar set and also being the Point of Beginning of the tract herein described:

From the POINT OF BEGINNING thence continue North 18 degrees 40 minutes 38 seconds East for a distance of 20.46 feet to a ½" iron rebar set thence run South 59 degrees 08 minutes 23 seconds East for a distance of 48.11 feet to a ½" iron rebar set; thence run South 46 degrees 49 minutes 20 seconds West for a distance of 20.80 feet to a ½" iron rebar set; thence run North 59 degrees 08 minutes 23 seconds West for a distance of 38.08 feet back to the POINT OF BEGINNING and being 861.90 square feet, more or less.

AND,

50' wide Ingress/Egress Easement

0.27 acres (11,700 square feet) located in Section 8, Township 8 North, Range 1 East, Madison County, Mississippi, and being further described as follows:

Commencing at a ½" iron rebar found marking the northwest corner of Lot 67 of Chestnut Hill, Part 1D as referenced in Plat Cabinet "E" at slide 141B and 142A and as recorded in the office of the Chancery Clerk of Madison County at Canton, Mississippi and thence run North 52 degrees 46 minutes 44 seconds West for a distance of 2,014.07 feet to a ½" iron rebar set; thence run North 18 degrees 40 minutes 38 seconds East for a distance of 518.30 feet to a ½" iron rebar set and also being the Point of Beginning of the tract herein described:

From the POINT OF BEGINNING thence continue North 18 degrees 40 minutes 38 seconds East for a distance of 50.00 feet to a ½" iron rebar set; thence run along a curve to the left with the following data: Chord Bearing of South 76 degrees 33 minutes 00 seconds East, Chord Length of 227.74 feet, Radius of 1,245.92 feet, Arc Length of 228.06 feet to a ½" iron rebar set; thence run South 05 degrees 01 minutes 39 seconds West for a distance of

50.07 feet to a ½" iron rebar set; thence run along a curve to the left with the following data: Chord Bearing of North 76 degrees 36 minutes 42 seconds West, Chord Length of 239.63 feet, Radius of 1,245.92 feet, Arc Length of 239.97 feet back to the POINT OF BEGINNING and being 0.27 acres (11,700 square feet), more or less.

PROPERTY LING AND BEING SITUATED IN THE SE 1/4 OF THE NW 1/4, THE NE 1/4 OF THE SW 1/4, THE SW 1/4 OF THE NE 1/4 AND THE NW 1/4 OF THE SE 1/4 OF SECTION 14-34-N, R-1-E, MADISON COUNTY, MISSISSIPPI

MS ONE CALL
 1048723210100060513
 Water/Sewer/Pipe/Gas/Water/Jamoc - not marked
 Phone/AT&T Distribution - marked
 Gas/Centrapoint Energy MS - clear
 Electric/Energy MS - clear
 Fiber/Optical/USA C/Signt Fiber - marked

This property may be subject to recorded or unrecorded easements, rights-of-way or other encumbrances which are shown on this map. The survey was conducted and recorded by a title search performed by a competent attorney.

This boundary survey was performed and this plat was prepared by Bold Engineering, Inc.
 506 Jefferson Street, Clarks, MS 39056
 Phone: (601) 923-5015

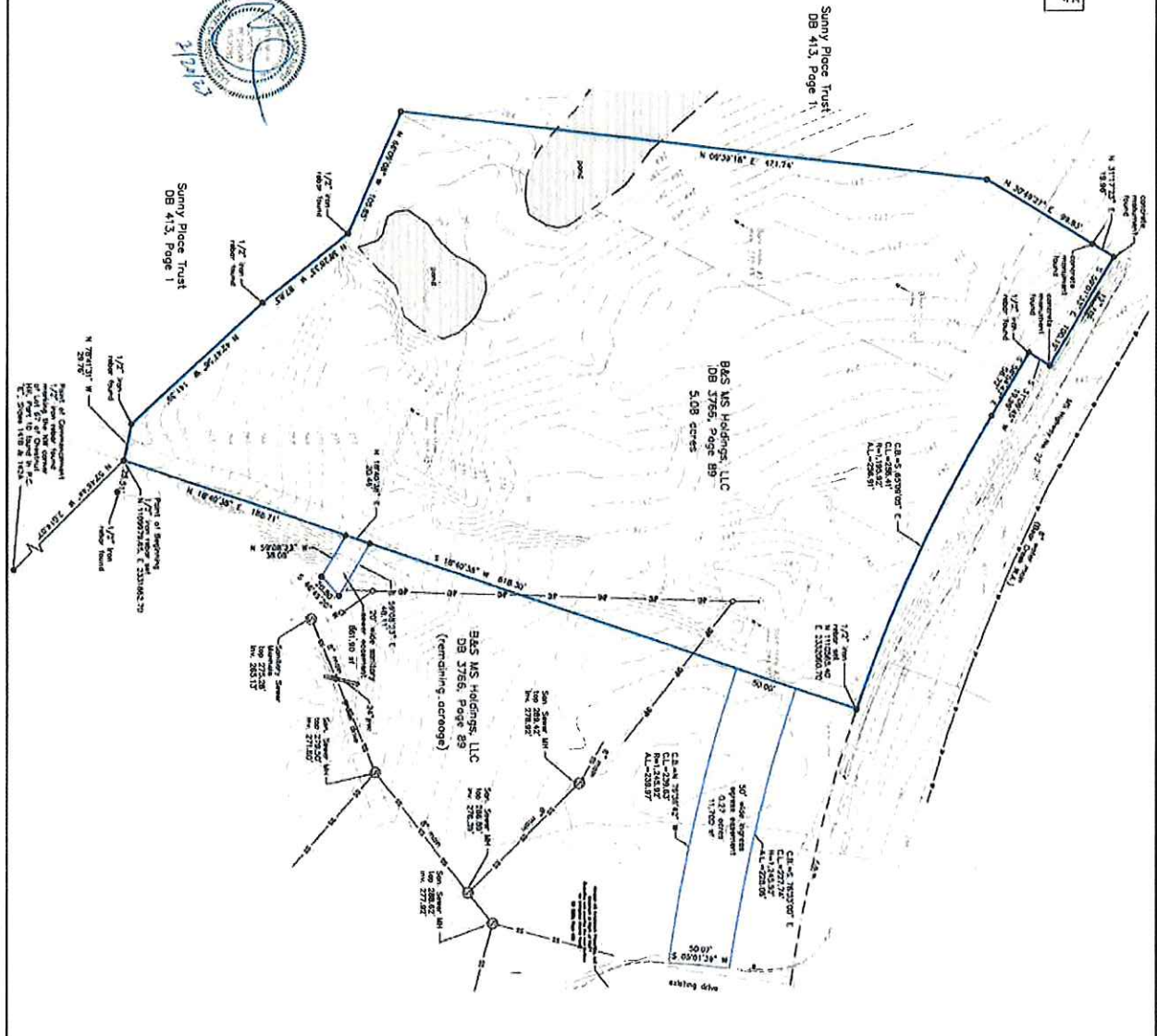
This survey is considered valid only when original seal and signature of surveyor or record is obtained hereon.

I, Colin L. Bold, do hereby certify that the features depicted on this plat are a correct representation of the conditions as they existed on February 10, 2023.

Date of Field Survey Completed: February 9, 2023

Class "B" survey in accordance with the minimum standards for land surveying in the State of Mississippi. Subsurface and environmental conditions were not examined or considered as a part of this survey.

Notes of Bearing: the bearings on this plat are based on and referenced to the Mississippi State Plane Coordinate System observations using CORS Stations MSJK and MSZ. Convergence Angle = N 00'03.45" W. Combined Factor = 1.00004832940060 (Goid to Ground) (Computed at N=110236.189, E=2323447.501)



LEGEND

- 1/2" iron rebar found
- 1/2" iron rebar set
- concrete curb, lane & surface
- street address
- easement
- 50' easement

Sheet 1 of 1 Sheets	BOUNDARY & TOPOGRAPHIC SURVEY for R & S HOLDINGS	PAIRK ENGINEERING, P.C. 506 Jefferson Street, Clarks, MS 39056 Phone: (601) 923-5015	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>No.</th> <th>Revisions</th> <th>By</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	No.	Revisions	By	Date				
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