

### Agreement to Convey Real Property

This Agreement is entered into by and between Diamondhead Country Club and Property Owners Association, Inc. (DPOA) and Elliott Land Developments, LLC (Elliott).

**Whereas**, The DPOA is the owner of the real property described on Exhibit "A" to this Agreement;

**Whereas**, Elliott has contracted to buy a certain parcel of real property located in Diamondhead, MS, consisting of approximately 29.174 acres, for the purpose of developing said land as a subdivision. Said 29.174 acre parcel shall sometimes be referred to herein as "proposed subdivision." The location of said 29.174 acre parcel is depicted on the plat of survey attached as Exhibit "B";

**Whereas**, said 29.174 acre parcel currently has no access to a public right of way which it needs in order to develop its proposed subdivision;

**Whereas**, Elliott has also purchased (or it has contracted to purchase) Lots 6 & 7 of the Highlands Subdivision, both of which lie adjacent to Diamondhead Drive West, and through which Elliott desires to access the 29.174 acre parcel for construction and development;

**Whereas** Elliott also desires to build a right of way over and across Lots 6 & 7 of the Highlands Subdivision, to ultimately be dedicated to the City of Diamondhead which will provide ingress and egress to and from its proposed subdivision;

**Whereas**, DPOA owns the land described on Exhibit "A" as Parcel A and Easement Parcel 1 which lie between the easterly boundaries of Lots 6 & 7 of the Highlands Subdivision and the westerly boundary of the proposed subdivision and at the point at which Elliott desires to construct the right of way;

**Whereas**, DPOA owns the land described on Exhibit "A" as Easement Parcel 2 which is currently used as a portion of a golf cart path and over which Elliott would like to eventually construct an additional right of way to be dedicated to the City for additional ingress and egress to and from the proposed subdivision;

**Whereas**, Elliott, therefore, needs to acquire title to the real property described in Exhibit "A" to be able to construct right of ways for the purpose of ingress and egress to the proposed subdivision;

**Therefore**, in exchange for the mutual covenants and promises contained in this contract, DPOA agrees to convey the real property described on Exhibit "A" to Elliott pursuant to the terms and conditions stipulated in the following schedule:

1. **DESCRIPTION.** The real property to be conveyed pursuant to this Agreement is described in Exhibit "A"; however DPOA shall retain an easement for golf cart paths over the parcels of the real property described on Exhibit "A" as "Easement Parcel 1" and "Easement Parcel 2."
2. **CONSIDERATION.** In addition to the mutual promises and covenants contained herein, Elliott shall, and does hereby warrant that, in platting and subdividing its proposed subdivision, the covenants for the subdivision will contain a provision or provisions which will run with the land and which will require that the lots developed in its proposed subdivision, upon acquisition of such lots by end purchasers (non-developers) from Elliott Land Developments, LLC and or its Assigns, shall be subject to Article XV and Article XVI of the Declaration of Restrictions, Conditions, Easements, Covenants, Agreements, Liens , and Charges for Diamondhead, Phase 1 (the Master Covenants) and that the owners of such lots shall become members of the DPOA and have full privileges (and obligations) of Members upon payment of dues and assessments as required by the DPOA bylaws and rules and regulations as may be in effect from time to time.

Elliott specifically agrees that it will adopt restrictive covenants for the proposed subdivision to be recorded, either simultaneously with or as soon thereafter as practical, the recordation of the plat for said subdivision which will include language to give effect to the immediate preceding paragraph and which will substantially provide as follows:

By acceptance of a deed from the Developer, the Buyer of any lot or lots obligates himself, his heirs, personal representatives, and assigns, to be bound by Article XV and Article XVI of the Declaration of Restrictions, Conditions, Easements, Covenants, Agreements, Liens , and Charges for Diamondhead, Phase 1 and to pay all charges and assessments as shall be determined and levied upon such lot and/or Buyer by the Diamondhead Country Club and Property Owners Association, Inc. including interest on such charges and assessments and collection costs thereof, if any, including attorney's fees; and, the obligation to pay such charges, assessments, interest and costs thereby constitutes an obligation running with the land.

Buyers of any lot or lots in this subdivision shall be a Member of Diamondhead Country Club and Property Owners Association, Inc. as that term is defined by the bylaws of that organization. Consequently, Buyers of any lots in this subdivision will enjoy all rights and privileges, including voting rights, so long as they remain a Member in good standing as set forth in the Bylaws of said Corporation.

Delinquent assessments to the Diamondhead Country Club and Property Owners Association, Inc. shall constitute a lien upon the member's real property. All liens herein provided for shall be enforceable by appropriate legal proceedings, in the manner provided by law. No

proceedings for enforcement of any such lien or liens shall be commenced except upon the expiration of four (4) months from and after the date the charge or assessment giving rise to such lien becomes due and payable.

Liens of first mortgages and/or first trust deeds placed upon any of said lots and recorded in accordance with the laws of the State of Mississippi shall be from the date of such recordation superior to any and all liens provided for herein.

3. **COVENANT TO EXPIRE UPON EXPIRATION OF DIAMONDHEAD COVENANTS.** The final version of the covenant anticipated by Section 2 above shall run with the land and it will expire no earlier than the expiration of the Covenants which effect and regulate land use in the Highlands Subdivision (the Highlands Covenants). In the event that the Master Covenants, which regulate Diamondhead generally, are extended, and/or in the event that the Highlands Covenants are extended, the covenant anticipated by Section 2 shall be extended so that it terminates upon the latter of the expiration dates of the Master Covenants and the Highlands Covenants.
4. **FINAL LANGUAGE SUBJECT TO APPROVAL.** The language proposed in Section 2 above is not to be considered a final version of the language to be included in the covenants regulating land use in the proposed subdivision. Prior to finalizing such covenants Elliott agrees that it shall first submit a proposed draft of the entirety of the covenants for approval to the DPOA. Such approval will not unreasonably be withheld or delayed.
5. **AUTONOMOUS ARCHITECTURAL CONTROL.** It is expressly understood that DPOA shall maintain no architectural control within the proposed subdivision.
6. **GOLF COURSE ALTERATIONS.** As partial additional consideration to be tendered by Elliott, within sixty (60) days of commencement of construction of the proposed subdivision (including clearing for, or construction of, an access road across Lots 6 & 7 of the Highlands Subdivision) or within thirty (30) days of the disturbance of the ground within seventy (70) feet of the edge of the putting green on Hole #14, Cardinal Course, whichever occurs first (said time period to be extended day-for-day for each day during which one inch or more of rain occurs), Elliott shall alter the land between the back of the putting green on Hole #14, Cardinal Course, and the southwest border of the real property described as Parcel A on Exhibit "A" so that said land includes a bunker with an approximate 3:1 slope. Prior to commencing construction of the alteration to the putting green on Hole #14, Cardinal Course, DPOA shall submit construction plans for said alteration to Elliott in sufficient time for Elliott to complete the alteration.
7. **DEVELOPER'S EXEMPTION.** Elliott shall be exempt from any assessments from the DPOA including, but not limited to monthly assessments, special assessments and transfer fees. This exemption from assessments shall be assignable by Elliott, with the approval and consent of DPOA, to any other individual(s) or entity/entities who/which purchase lots for

purposes of development, or who/which lend money to Elliott for the purpose of development and construction of the proposed subdivision and record a deed(s) of trust upon the real property comprising the proposed subdivision or a portion thereof. The approval and consent of DPOA shall not be unreasonably withheld and shall be only be withheld in the event that a proposed assignee is an individual or entity/ entities other than individuals or entities who/which purchase lots for purposes of development, or who lend money to Elliott for the purpose of development and construction of the proposed subdivision.

Elliott and or permitted assigns shall have no membership rights, including voting rights, in the DPOA.

**8. ADJACENT LAND OWNERS AND GOLF COURSE USERS.** Elliott shall warrant, and does hereby warrant, that during the construction and development of its proposed subdivision, it shall use its best efforts to minimize interference and inconvenience to adjacent land owners regarding the use and enjoyment of their real property and to minimize interference and inconvenience to POA members and other golfers regarding the use of the golf course.

**9. GOLF CART PATHS.**

- a. In the grant of the conveyance anticipated herein, DPOA shall reserve easements over and above the real property described in Exhibit "A"'s Easement Parcel 1 and Easement Parcel 2.
- b. Elliott shall, and does hereby, warrant that during the construction and development of its proposed subdivision, that it shall maintain such golf cart paths in a state of good repair and efficiency and that, in the event that such construction and development impedes the use of the golf cart paths located on the real property to be conveyed, it will construct and provide temporary golf cart paths in a manner and in a time frame such that there shall be no interference or impediment to the use of the path. Elliott further warrants that any golf cart path, or portion thereof, which is relocated by Elliott, shall be returned to its original (or better) condition at the sole expense of Elliott.
- c. Prior to relocating the golf cart paths (or any portion thereof). Elliott will first contact and coordinate same with the General Manager of the DPOA
- d. After completion of the construction and development of the proposed subdivision, DPOA shall have the right to maintain such golf cart paths to the extent they are not crossing the right of way(s) which are ultimately going to be constructed over and above said easements.
- e. To the extent that such golf cart paths do cross the right of way(s) which are ultimately going to be constructed over and above said easements, Elliott shall, and does hereby, warrant that it will mark such paths with striping and signage in a manner equivalent to the same standards currently observed in the Diamondhead community.

**10. LANDSCAPING.** As partial additional consideration to be tendered by Elliot, Elliott shall, and does hereby warrant that it shall:

- a. landscape and maintain all of the real property described on Exhibit "A", which is not used as a public right of way, in a manner consistent with landscaping and maintenance standards currently observed in the Diamondhead Community and that prior to conveying such real property to an assignee or property owners or home owners association, it will require that such assignee or association agree to the same warranty.
- b. plant trees from the east corner of Lot 8, Highlands Subdivision, along the southwest border of the real property described as Parcel A on Exhibit "A", to a point – the specific location of which shall be to be determined by the General Manager of the DPOA -- near the newly constructed bunker (required in Section 6 above). The cost thereof to be incurred by Elliott shall not exceed \$2,000.00. Prior to planting such trees, DPOA shall submit a landscaping plan identifying the type of trees to be planted, the number of trees to be planted, the location of the trees to be planted, and the time frame for the planting to be accomplished and completed.

**11. REVERTER OPTION.** In the event that Elliott does not take title to the 29.174 acre parcel of real property depicted on Exhibit "B" within 60 days of the conveyance to it of the real property described in Exhibit "A" or in the event that Elliott has not commenced construction or development of 29.174 acre parcel of real property depicted on Exhibit "A" as a subdivision by May 31, 2020, then Elliott shall convey the real property described in Exhibit "A" to the DPOA unless DPOA agrees to extend these time frames. A request to extend these time frames shall not unreasonably be withheld.

**12. REVERTER UPON DEFAULT.** In the event that Elliott and or its assigns breach any obligation imposed upon Elliott by this Agreement, in addition to all other remedies afforded by law to DPOA under such circumstances, DPOA shall have the option, but not the obligation, to demand specific performance of the obligation and or to demand that Elliott shall convey the real property described in Exhibit "A" to the DPOA. Upon such demand, Elliott shall convey the real property described in Exhibit "A" to the DPOA

**13. ASSIGNMENT.** Elliott warrants that it will not assign the rights, or convey the real property, obtained in this transaction without ensuring that the obligations of Elliott are assumed by the Assignee. The rights and obligations of Elliott contained in this Agreement shall not be assigned to any party or entity, including the property owners or home owners association of the proposed subdivision, and/or the City of Diamondhead (regarding right of way dedication) without approval of DPOA, which shall not unreasonably be withheld. DPOA retains a right of approval to ensure compliance of any assignee with the obligations imposed upon Elliott herein.

**14. TAXES.** Any and all Ad Valorem Taxes assessed against the real property to be conveyed, if any, for the current year shall be paid by Elliott when they become due in 2019

**15. TITLE.** DPOA shall deliver the property "AS IS and WHERE IS". It shall convey same by Quitclaim Deed and the conveyance shall be subject to any and all existing encumbrances, easements and right of ways.

16. **CLOSING COSTS.** Elliott and DPOA shall each be responsible for the payment of their respective attorney fees. Otherwise Elliott shall be responsible for the payment off all costs, fees and expenses associated with this transaction.
17. **POSSESSION.** Said real property is to be delivered at closing.
18. **CLOSING DATE.** The conveyance contemplated by this Agreement is to be made immediately upon the execution of this contract.
19. **ATTORNEY'S FEES.** If it becomes necessary to insure the performance of the conditions of this Agreement to employ an attorney, then the prevailing party or parties agree to pay reasonable attorney fees and court costs therewith.
20. **NO BROKER.** This Agreement was negotiated by DPOA without the assistance of a real estate broker or real estate agent. Accordingly, Elliot warrants that no real estate commissions are due from DPOA and Elliot hereby holds DPOA harmless and indemnifies DPOA from any and all claims made by brokers or agents for commissions due for this transaction.
21. **TIME IS OF THE ESSENCE.** Time is of the essence in the performance of the terms and covenants of this contract.
22. **INDEMNIFICATION.** Elliott shall, and hereby indemnifies and holds harmless, the DPOA along with its Officers, Board Members and Agents, for any and all claims, demands, suits and losses of any nature whatsoever which may result from, or be claimed to have resulted from, the construction and development of the proposed subdivision, and or Elliott's use of the real property described in Exhibit "B". The claims, demands and suits for which Elliott holds DPOA harmless include, personal injury, death, damage to personal property, buildings, fixtures and appurtenances, as well as hidden damage to property including trees, shrubs, sod, bushes or any vegetation, lost wages, attorneys' fees and any other loss or damage whatsoever.
23. **GOOD FAITH AND COOPERATION.** DPOA and Elliot agree to cooperate and work with each other and in good faith as necessary to fulfill the terms of this agreement.
24. **SURVIVAL.** The terms and covenants of this Agreement shall survive the conveyance anticipated herein and shall remain enforceable after the execution and delivery of the Quitclaim deed to Elliott.
25. **CONSTRUCTION OF LANGUAGE.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter gender thereof or to the plurals of each, as the identity of the person or persons or the context may require. The descriptive headings contained in this Agreement are for reference purposes only and are not intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision

contained in this Agreement. The Parties and their legal counsel have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement.

**26. BINDING EFFECT.** This Agreement shall be binding only upon execution of this Agreement by all parties hereto. Thereafter, this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and permitted assigns, as provided herein.

**27. UNENFORCEABILITY.** If any provision contained in this Agreement shall for any reason be held to be invalid, illegal, void or unenforceable in any respect, such provision shall be deemed modified so as to constitute a provision conforming as nearly as possible to such invalid, illegal, void or unenforceable provision while still remaining valid and enforceable; and the remaining terms or provisions contained herein shall not be affected thereby.

**28. GOVERNING LAW.** This Agreement shall be construed, enforced and governed in accordance with the laws of the State of Mississippi.

**29. COUNTERPARTS.** This agreement may be executed in counterparts.

**WITNESS OUR SIGNATURES** on the dates reflected below.

DIAMONDHEAD COUNTRY CLUB AND  
PROPERTY OWNERS ASSOCIATION, INC.

ELLIOTT LAND DEVELOPMENTS, LLC

By: \_\_\_\_\_  
Craig Harvey, It's Vice President

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT "A"

### Parcel A

A PARCEL OF LAND ADJACENT TO THE SOUTH LINE OF SAID LOTS LYING IN THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 26, TOWNSHIP 7 SOUTH, RANGE 14 WEST, AND IN THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 35, CITY OF DIAMONDHEAD, HANCOCK COUNTY, MISSISSIPPI BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH THE BEARINGS BASED ON STATE PLANE GRID NORTH (MS EAST ZONE):

BEGINNING AT THE SOUTHWEST OR SOUTHERNMOST CORNER OF SAID LOT 7; THENCE S77°32'00"E 40.89' TO AN IRON ROD FOUND ON THE BOUNDARY OF PROPERTY OF DIAMONDHEAD COUNTRY CLUB & POA, INC.; THENCE ALONG SAID BOUNDARY, N87°10'35"E 73.67'; THENCE FURTHER ALONG SAID BOUNDARY, S54°08'47"E 102.57'; THENCE FURTHER ALONG SAID BOUNDARY, THENCE CONTINUE S54°08'47"E 25.13' TO ANOTHER BOUNDARY OF SAID PROPERTY; THENCE ALONG SAID BOUNDARY, N37°13'23"E 29.60'; THENCE FURTHER ALONG SAID BOUNDARY, N40°56'00"E 76.97' TO AN IRON ROD FOUND; THENCE FURTHER ALONG SAID BOUNDARY, N54°09'20"E 45.45'; THENCE N51°48'19"W 22.81' TO AN IRON ROD FOUND ON AFORESAID BOUNDARY LINE; THENCE ALONG SAID BOUNDARY, N51°48'19"W 73.61' TO AN IRON ROD FOUND; THENCE N61°57'45"W 58.14' TO THE SOUTHEAST OR EASTERNMOST CORNER OF LOT 6, THE HIGHLANDS SUBDIVISION; THENCE ALONG THE SOUTH LINE OF LOTS 6 AND 7 OF SAID SUBDIVISION, S62°02'47"W 174.56'; THENCE ALONG THE SOUTH LINE OF SAID LOT 7, S50°42'47"W 52.84' TO THE POINT OF BEGINNING.

### Easement Parcel 1

AN INGRESS AND EGRESS EASEMENT SITUATED IN THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 35, TOWNSHIP 7 SOUTH, RANGE 14 WEST, CITY OF DIAMONDHEAD, HANCOCK COUNTY, MISSISSIPPI BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH THE BEARINGS BASED ON STATE PLANE GRID NORTH (MS EAST ZONE):

COMMENCING AT THE SOUTHWEST OR SOUTHERNMOST CORNER OF LOT 7, THE HIGHLANDS SUBDIVISION, CITY OF DIAMONDHEAD, HANCOCK COUNTY, MISSISSIPPI; THENCE S77°32'00"E 40.89' TO AN IRON ROD FOUND ON THE BOUNDARY OF PROPERTY OF DIAMONDHEAD COUNTRY CLUB & POA, INC.; THENCE ALONG SAID BOUNDARY, N87°10'35"E 73.67'; THENCE FURTHER ALONG SAID BOUNDARY, S54°08'47"E 102.57' TO THE POINT OF BEGINNING; THENCE S54°08'47"E 25.13' TO ANOTHER BOUNDARY OF SAID PROPERTY; THENCE ALONG SAID BOUNDARY, N37°13'23"E 29.60'; THENCE FURTHER ALONG SAID BOUNDARY, N40°56'00"E 76.97' TO AN IRON ROD FOUND; THENCE FURTHER ALONG SAID BOUNDARY, N54°09'20"E 45.45'; THENCE N51°48'19"W 22.81' TO AN IRON ROD FOUND ON THE BOUNDARY OF SAID PROPERTY; THENCE ALONG SAID BOUNDARY, S44°58'25"W 152.26' TO THE POINT OF



BEGINNING, CONTAINING 2,931.62 SQUARE FEET OR 0.067 ACRE. HEREIN DESCRIBED EASEMENT LYING WITHIN COUNTY DESIGNATED PARCEL NUMBER 067P-0-35-184.000.

Easement Parcel 2

A ROADWAY AND UTILITY EASEMENT SITUATED IN THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 35, TOWNSHIP 7 SOUTH, RANGE 14 WEST, CITY OF DIAMONDHEAD, HANCOCK COUNTY, MISSISSIPPI BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS WITH THE BEARINGS BASED ON STATE PLANE GRID NORTH (MS EAST ZONE):

COMMENCING AT THE SOUTHWEST OR SOUTHERNMOST CORNER OF LOT 7, THE HIGHLANDS SUBDIVISION, CITY OF DIAMONDHEAD, HANCOCK COUNTY, MISSISSIPPI; THENCE S77°32'00"E 40.89' TO AN IRON ROD FOUND ON THE BOUNDARY OF PROPERTY OF DIAMONDHEAD COUNTRY CLUB & POA, INC.; THENCE ALONG SAID BOUNDARY, N87°10'35"E 73.67'; THENCE FURTHER ALONG SAID BOUNDARY, S54°08'47"E 102.57'; THENCE CONTINUE S54°08'47"E 25.13', LYING ON ANOTHER BOUNDARY OF SAID PROPERTY; THENCE S28°15'38"E 845.19' TO AN IRON ROD FOUND ON ANOTHER BOUNDARY OF SAID PROPERTY, AND BEING THE POINT OF BEGINNING; THENCE S60°55'22"E 33.80' TO AN IRON ROD FOUND ON ANOTHER BOUNDARY OF SAID PROPERTY; THENCE ALONG SAID BOUNDARY, N68°56'30"E 147.32'; THENCE FURTHER ALONG SAID BOUNDARY, N47°16'41"E 95.44' TO AN IRON ROD FOUND; THENCE FURTHER ALONG SAID BOUNDARY, N56°02'58"E 105.97' TO AN IRON ROD FOUND; THENCE N15°19'04"W 14.08' TO ANOTHER BOUNDARY OF SAID PROPERTY; THENCE ALONG SAID BOUNDARY, S61°59'58"W 65.45' TO AN IRON ROD FOUND; THENCE FURTHER ALONG SAID BOUNDARY, S47°57'43"W 134.62' TO AN IRON ROD FOUND; THENCE FURTHER ALONG SAID BOUNDARY, S71°59'50"W 171.97' TO THE POINT OF BEGINNING, CONTAINING 6,486.90 SQUARE FEET OR 0.149 ACRE.

