

DECLARATION
OF
COVENANTS AND RESTRICTIONS
FOR
BROOKHAVEN
PHASE NINE, LOTS 957 AND 958 AND 960A THRU 999A
&
PHASE TEN, LOTS 1000A THRU 1010A AND 1011 THRU 1035

THIS DECLARATION, made this ____ day of October 2016, by Brookhaven Development Partners, LLC hereinafter referred to as "Declarant."

WITNESSETH:

WHEREAS, Lots 956 through 999 in Phase Nine and Lots 1000 through 1016 in Phase Ten of Brookhaven were previously subjected to covenants, conditions, and restrictions, recorded in the Office of the Judge of Probate of St. Clair County, Alabama at Book 2008, Page 8445, for the benefit of the property and its present and subsequent owners (the "Declarations");

WHEREAS, Declarant purchased Phase 9, Lots 959 thru 999 and Phase 10, Lots 1000 thru 1010 from Birmingham-Wesley Chapel Investments, LLC, successor through foreclosure to Ridgefield Development Corp., on or about August 19, 2016, which foreclosure deed was recorded in the Office of Judge of Probate of St. Clair County, Alabama at Book _____, Page ____;

WHEREAS, Phase 9, Lots 959 thru 999, and Phase 10, Lots 1000 thru 1010, were resurveyed by the Declarant, such resurvey being recorded on August 26, 2016 in the Office of Judge of Probate of St. Clair County, Alabama at Book 2016, Page 17, which had the effect of: (i) adjusting the minimum lot width from 90 feet to 65 feet, (ii) creating new lot ranges from 960A to 1010A and 1017 to 1035 (Lot 959 being deleted), and (ii) correcting an earlier re-survey of Phase Nine, Lots 957 thru 1010, recorded in the Office of the Judge of Probate of St. Clair County, Alabama at Book 2016, Page 6;

WHEREAS, Declarant purchased Phase 9, Lots 957 and 958 from [_____] on [_____] [____], 2016, which deed is recorded in the Office of Judge of Probate of St. Clair County, Alabama at Book [____], Page [____];

WHEREAS, Declarant purchased Phase 10, Lots 1011 thru 1016 from [_____] on [_____] [____], 2016 which deed is recorded in the Office of Judge of Probate of St. Clair County, Alabama at Book [____], Page [____];

WHEREAS, in connection with the purchase and resurvey of the aforementioned lots, the Developer desires to amend the Declarations for the benefit of the property and its present and subsequent owners; and

WHEREAS, the term "Association" shall mean and refer to Brookhaven Lot & Homeowners Association, Inc., a nonprofit corporation organized or to be organized under the laws of the State of Alabama, its successors and assigns;

NOW, THEREFORE, Declarant hereby declares that Brookhaven shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions, including, but not limited to, "SPECIAL PROVISIONS REGARDING WASTEWATER DISPOSAL" that are hereby made a part of these covenants, conditions, and restrictions and which shall attach to and run with the land, and shall be binding on all parties having any right, title, or interest in any lot or parcel contained within Brookhaven, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

1. Residential use only: No lot shall be used for except for residential purposes and no building shall be erected, altered, placed, or permitted to remain on any lot other than one detached, single family dwelling not to exceed two and one-half stories in height. Two or more lots may be used to accommodate one such dwelling, provided that no other dwelling shall be erected on the multiple lots so used as a unit. This shall not, however, prevent the constructions of a separate freestanding garage, provided the Architectural Control Committee has approved such separate freestanding garage.

2. Architectural Control: No home, garage, or other building shall be erected, placed or altered on any lot until the construction plan and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee. No fence or wall shall be erected, placed, or altered on any lot nearer to any street than the minimum building setback line unless in like manner approved. The committee shall have the power to alter setback lines on corner lots and other irregularly shaped lots when its sole judgment said alteration will not adversely affect the value of adjoining property or conflict with zoning regulations. Approval shall be as provided in the section hereof entitled "Architectural Control Committee."

3. Dwelling Quality and Size: It is the intention and purpose of this covenant to assure that all dwellings should be at a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded.

- A. The ground floor area of the main structure, exclusive of one story open porches and garages, shall not be less than 1,400 square feet of heated living area for a one-story dwelling. However, the ground floor area of the main structure located on a corner lot, exclusive of open porches and garages, shall not be less than 1,300 square feet of heated living area for a one-story dwelling.
- B. The ground floor area of the main structure, exclusive of one story open porches and garages, shall not be less than 1,200 square feet of heated living area for a dwelling of more than one story, with a total minimum of 1,800 square feet of heated living area.
- C. Unfinished basement space shall not be included in total heated living area.

- D. The roof pitch on any residence shall not be less than 6 and 12 unless first approved in writing by the Architectural Control Committee.
- E. All garages attached to the home may have either a front, side, or rear entrance. Any detached garage must be located at the rear of the home. The garage for all houses must be of sufficient width to accommodate two automobiles side-by-side.
- F. All foundations to be either brick or stone. There shall be no exposed concrete block work.
- G. All homes shall have sod installed from the rear of the home to the front and side Property lines. The rear of the home may be seeded and covered with hay at the Discretion of the builder.

4. Building location: No building shall be located on any lot nearer to the front street line than 20 feet. Furthermore, no building shall be located on any lot nearer to the rear lot line than 20 feet. No building shall be located nearer than 5 feet to an interior lot line, including a garage or other permitted accessory building. For the purpose of this covenant, eaves, steps, and uncovered porches shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. Whenever, in the opinion of the Architectural Control Committee, the topography, size, shape, or the physical condition of any lot requires it, said Architectural Control Committee may, in its sole discretion, permit or allow variations or modifications of the provisions as provided in Paragraph 3 and/or in this paragraph. Such modifications or variations shall not violate any zoning or other ordinance of St. Clair County or any municipality having jurisdiction thereof.

5. Owner of any lot shall be responsible for compliance with all Alabama Development of Environmental Management regulations. Should it be necessary for the Developer(s) to bring any lot not owned by Developer(s) into compliance with any ADEM regulation, the Developer(s) shall have the right to do so and cost of same will be responsibility of owner of lot.

6. Completion of Construction: Upon commencement of construction of a residential dwelling house on any lot in the subdivision, the exterior of such house, the driveway and all landscaping shall be completed on or before the expiration of one (1) year from commencement of construction.

7. Easements: Easements for installation and maintenance of utilities, drainage facilities, and sewer/septic tank, including lateral lines to sewer trunk lines, are reserved as necessary.

8. Nuisances: No noxious or offensive activities shall be carried on upon any lot not shall anything be done thereon which may be or may become any annoyance or nuisance to the neighborhood.

9. Temporary Structures: No structures of temporary character, trailer, basement, tent, shack, garage, barn, or other out buildings shall be used on any lot at any time as a residence either temporarily or permanently.

10. Signs: No sign of any kind shall be displayed to the public view on any lot except that one identification sign not over 24 inches by 24 inches. One sign of not more than 12 square feet advertising the property for sale or signs used by builders or realtors to advertise the property during the construction and sales period shall also be permitted.

11. Livestock and Poultry: No animals, livestock or poultry of any kind shall be raised, bred, or maintained for any commercial purposes.

12. Garbage and Refuse Disposal: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers and all incinerators or other equipment for the storage of such material shall be kept in a clean and sanitary condition. No trash, rubbish, fluids, waste, water or chemicals shall be deposited in any way as to be washed by rain anywhere except in specified areas designated by the appropriate authorities of St. Clair County. With respect to sewer service, all developed lots must tie into and utilize the sewer service system provided to Brookhaven by Adenus. Each lot owner will be responsible for entering into a service agreement with Adenus and paying the monthly charges as they come due.

13. Site Distance at Intersection: No fence, hedge, or shrub plant which obstructs site lines at elevations between 3 feet and 8 feet above the roadways are permitted to remain on any corner of the lot within the triangular area formed by the street property lines and a line connecting them at a point 25 feet from the intersection of the street lines, or, in the case of a rounded property corner, from the intersection of the property line extended. The same sign limitations shall apply on any lot within 10 feet of the intersection of a street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distance of such intersection unless the foliage line is maintained at the sufficient height to prevent obstruction of such sight lines.

14. Architectural Control Committee: The Architectural Review Committee (the "Committee") is composed of Darrell D. Pittard and Andrew Schroer. A majority of the Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant.

The authority to review and approve any plans and specifications as provided herein is a right and not an obligation. Contractors and Owners shall have the sole obligation to oversee and to construct dwellings in accordance with the restrictions hereof and the plans and specifications approved by the Committee.

Neither the Committee nor any architect nor agent thereof nor the developer shall be responsible for checking for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

15. Procedure: The Committee's approval or disapproval as required in these covenants shall be in writing. The Committee shall not render its written approval or disapproval without first consulting

with the Association's Architectural Review Committee and obtaining its input and advice, which shall be advisory in nature and not binding upon the Committee. In the event that the Committee or its designated representative fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof approval will not be required and the related covenants shall be deemed to have been complied with.

16. Trees: Trees larger than 8 inches in diameter shall not be removed without the prior approval of the Committee; provided, however, trees larger than 8 inches may be removed by the builder of a residence if, in its sole discretion, it determines that the tree impedes construction of the residence, drainage swales, or installation of fences.

17. Driveways: All home sites shall have paved driveways to alleviate daily on-street parking. The driveway for all houses must be of sufficient width to accommodate two automobiles side-by-side.

18. Antennas: No satellite or microwave dishes shall be placed on a lot that shall be visible from the street.

19. Business/Commercial Activity: No business or commercial activity that would generate vehicular activity shall be conducted on any lot.

20. Planting: Each owner shall properly maintain the yard and keep free of trash, dead plantings, and other unsightly material; provided, however, that such owner shall not be responsible for maintenance of any areas as to which the Declarant of the Association has assumed responsibility.

21. Junk Automobiles: No junk or inoperative vehicle of any kind shall be permitted on any lot, and no automotive repairs shall be conducted on any lot, except for temporary repairs affected by an authorized outside mechanic.

22. No motor home, utility trailer, travel trailer, or boat may be stored on property unless in an enclosed garage. No tractor trailer trucks, panel vans, or other commercial truck in excess of a one ton classification shall be parked on any lot.

23. There shall be no gasoline motorized boats on any of the lakes.

24. Wood Piles: No exposed woodpiles shall be erected on the street side or side yard of any lot.

25. Fences: No fence of any kind may be placed on any lot without prior approval of the Committee, nor shall any fence be built on the street side of a dwelling or less than 20 feet from a roadway.

26. Pools. All pools installed on a lot must have approval of the Committee prior to the commencement of installation.

27. Leaf and rubbish piles: No leaf or rubbish piles shall be left on the roadways.

28. Mailboxes: In order for uniformity of appearance, only those mailboxes and lampposts approved by the Architectural Control Committee may be used.

29. Covenant Against Subdivision: No lot shall be split, divided or subdivided for sale, resale, gift, transfer or otherwise. No lot or portion of lot may be used to access property owned by persons other than Brookhaven Development Partners, LLC unless such access is approved in writing by Brookhaven Development Partners, LLC.

30. Mineral Exploration: No property within the subdivision shall be used in any manner to explore for or to remove any water, oil, or other hydrocarbons, minerals of any kind, graded earth, or any substance of any kind.

31. Machinery and Equipment: No machinery or equipment of any kind shall be placed, operated, or maintained upon any lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a residence or pertinent structures or other improvements.

32. Diseases and Insects: No owner shall permit any thing or condition to exist upon the property which shall induce, breed or harbor infectious plant diseases or noxious insects.

33. Damage or Destruction: In the event of damage or destruction to any structure within the subdivision, the respective owner thereof agrees as follows:

- i. In the event of total destruction, the owner of the lot shall promptly clear the lot of debris and leave the same in a neat and orderly condition until such time as he might elect to rebuild and reconstruct the structure. Any such rebuilding and reconstruction shall be accomplished in the conformity with the plans and specifications of the original so destroyed, subject to any changes or modifications as approved by the Committee.
- ii. In the case of partial damage or destruction, the owner shall, as promptly as an insurance adjustment may be made, cause the damage or destruction to be repaired and restored in a finest class condition in accordance with the plans and specifications of the original structure and in conformity with its original exterior painting and decor. Any material change or alteration must be approved by the committee. In no event shall any damaged structure be left unrepaired and unrestored in excess of ninety (90) days.

34. Rights of the Association: In the event that an owner fails to maintain a lot or any structure thereon as required by these covenants or any standard set by the Association and such failure continues for sixty (60) days after written notice to such owner to remedy the same, the Association may undertake to call such maintenance or repair to be made for such owner and the cost thereof shall be assessed to such owner as a special assessment.

35. Maintenance responsibilities of the Association: In addition to all other obligations, duties or responsibilities of the Association provided herein or as may be provided in the charter and bylaws the association shall operate, maintain, manage and repair the common facilities.

36. Creation of Lien and Personal Obligation of Assessments: The Declarant, for each lot within the subdivision, hereby covenants, and the owner of any lot covenants, by acceptance of deed therefore, whether or not it shall be so expressed in such deed, to be a member of the Association, and further covenants and agrees to pay the Association annual assessments or charges any special assessments imposed by the Association with respect to improved lot(s) containing a completed dwelling as hereinafter provided and as may be provided in bylaws. The annual and special assessments together with interest, cost, and reasonable attorney's fees, shall be a charge on such improved lot(s) and shall be a continuing lien against which each such assessment is made. Each such assessment, together with interest, cost, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the improved lot(s) at the time when the assessment fell due. The amount of annual dues shall not exceed \$260.00 per year until the Association is formed.

37. Special Assessments: Special assessments shall be made upon the affirmative vote of a majority of the Board of Directors of the Homeowners Association called for that purpose. Special assessment against an owner may be levied in the event the Association elects to undertake the maintenance obligations of any owner who neglects to maintain a lot or any structure thereon as required by these covenants or by any standards established by the Association as provided previously.

38. Date of commencement of annual assessments and due dates: The annual assessments provided for herein shall commence as to each lot when title is transferred for a permanent residence. Any builder that owns a vacant lot(s) or improved lot(s) with an empty residence awaiting sale to a resident will not be subject to annual assessment by the Association with respect to such lot(s). Furthermore, any builder that owns a vacant lot(s) or improved lot(s) with an empty residence awaiting sale to a resident will not be subject to any special assessments by the Association with respect to such lot(s). The first annual assessment shall be prorated and adjusted according to the days and months remaining in the fiscal year after the conveyance of a lot for permanent residence. The Board of Directors of the Association shall establish the due date and, unless otherwise provided, the Association shall collect each year from the owner the annual assessment for such lot. the Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on any lots have been paid, and such certificate shall be conclusive evidence of the payment of such assessment.

39. Effective Non-payment of Assessments and Remedies of the Association: All assessments shall be due on or before the first day of June of each year or as may be otherwise provided in the notice to each owner from the Association. If any assessment, regularly or special, is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at a 4 percentage points above the annual prime rate as established by First Partners Bank, the same to float and fluctuate with the annual prime rate. If the interest rate chargeable herein shall exceed the maximum rate of interest allowed under applicable law, then the interest charged shall be the same as the maximum allowed to be charged under the laws of the State of Alabama.

If an owner defaults in his obligation to pay an assessment, the Association shall have the right to declare the entire assessment for the year to be due and payable in full, together with costs and attorneys' fees as provided herein, and may either: a) bring an action at law against the owner personally obligated to pay the same or b) foreclose the lien against the property, and interest, cost, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. Each owner, by acceptance of a deed to a lot, hereby expressly vests in the Board of Directors of the Association or its agents the right and power to bring all actions against such owner personally for the collection of such charges of the debt and to enforce the aforesaid lien by all methods for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or deed of trust lien on real property, and such owner hereby expressly grants to the Association an irrevocable power of sale as part of the security given to support such lien.

40. Additions to Existing Property: The Declarant, its successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of the development by filing of record a supplemental declaration extending the scheme of the covenants and restrictions of this Declaration to such property.

Such supplementary declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any of the added properties but in no event shall such supplementary declaration revoke, modify or add to the covenants established by this Declaration within these Phases of Brookhaven.

41. Term of Covenants: These covenants are to run with the land and all persons claiming under them for a period of 25 years from the date these covenants are recorded, after which time said covenants shall be automatically extended for ten years unless an instrument in writing signed by the majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part.

42. Modification by Developer: The officers of Brookhaven Development Partners, LLC hereby reserve the right to change or modify any of the foregoing restrictions by instrument in writing duly acknowledged, and filed for record in the Office of the Judge of Probate of St. Clair County, Alabama.

43. Enforcement: Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or recover damages.

44. Severability: Invalidation of any one of these judgements or court order shall in no wise effect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, Brookhaven Development Partners, LLC owner of said Brookhaven, Phase Nine, Lots 957 thru 958 and Lots 960A thru 999A, and Phase 10, Lots 1000A thru 1010A and Lots 1011 thru 1035 has caused this instrument to be executed on the ___ day of _____ 2016.

BY: _____

ITS: _____