

IMPROVEMENTS AGREEMENT

This Improvements Agreement (hereinafter the "Agreement"), is made and entered into this ___ day of December 2016, by and between Brookhaven Development Partners, LLC, located at 75 Four Star Lane, Odenville, Alabama 35120 (hereinafter referred to as "Brookhaven"), and Brookhaven Lot & Homeowner's Association, Inc., located at P.O. Box 81, Margaret, Alabama 35112 (hereinafter referred to as "HOA"). The effective date of this Agreement shall be _____, 20__ ("Effective Date").

WITNESSETH:

WHEREAS, Brookhaven is the developer of the Brookhaven subdivision located in the City of Margaret, St. Clair County, Alabama (the "Subdivision");

WHEREAS, Brookhaven is desirous of providing certain improvements within the subdivision;

WHEREAS, the HOA is desirous of accepting improvements to the Subdivision and any responsibilities of repair, maintenance and replacement that may be associated with such improvements; and

WHEREAS, Brookhaven and the HOA are desirous of entering and being bound by this Agreement;

NOW, THEREFORE, for and in consideration of the premises and the agreements hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are forever acknowledged and confessed, the parties hereto agree as follows:

AGREEMENT

1. **Improvements to Subdivision.** Brookhaven agrees to make the following improvements to the Subdivision:

(a) The basketball court and fence located at the front of the Subdivision will be removed, so that additional parking may be installed after a replacement court has been constructed.

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(i) ~~Brookhaven owns land near the Subdivision that will be donated to the City of Margaret for a public park. The basketball goal will be reinstalled in this park once the park is developed.~~

Deleted: The basketball goal will be placed in storage.

(ii) Brookhaven anticipates donation of the land to the City during 2017 and 2018. According to representations made to BDP by the City of Margaret, it will obtain a grant to construct the park. Brookhaven will have no control over when and how the City of Margaret will develop this park once the land is donated to the City of Margaret.

(b) The front entrance of the Subdivision's clubhouse, located 520 Brookhaven Drive, Margaret, Alabama (the "Clubhouse"), will be enhanced by adding a portico.

(c) The Clubhouse and its restroom facilities will be decoupled from the septic tank and connected to the sewer system. The septic tank will be removed and additional parking will be placed above where the septic tank is located.

(d) The men's and women's restroom facilities located at the rear of Clubhouse will be combined into one larger restroom for men. A similar sized restroom facility for women will be constructed adjacent to the new men's restroom. In order to build the women's restroom, the pump house for the pool will be removed and relocated elsewhere on the Subdivision property.

(e) The existing pool at the Clubhouse will be replaced with a new gunite pool. It is estimated that the dimensions of new pool will be 75 feet by 35 feet. However, the exact dimensions will be determined by the cost estimates received by Brookhaven. ~~The work to replace the pool shall commence no later than September 2017 to be completed by April 30th, 2018.~~

~~(f) Brookhaven shall setup a reserve account to hold the full funds to complete the pool construction.~~

~~(g) A fence will be constructed around the pool.~~

~~(h) The landscaping surrounding the Clubhouse will be upgraded and expanded.~~

2. **Workout Facility.** If it is economically feasible, based on the estimated cost and projected usage by residents, the north end of the Clubhouse, which is now partially covered, will be enclosed in order to create a workout facility. If the workout facility is determined by Brookhaven to be economically feasible and is constructed, Brookhaven reserves the right to convert workout room to another use benefitting the residents of the Subdivision, such as additional meeting space, in the event that workout facility is not, in the determination of Brookhaven, sufficiently utilized by the Subdivision residents.

3. **Payment for Construction of Improvements.** Brookhaven will pay for the construction of all of the improvements described in Section 1 of this Agreement. Brookhaven will also pay for the construction of the workout facility described in Section 2, if Brookhaven in fact determines that the construction of such workout facility is economically feasible.

4. **Responsibility for Maintenance, Repair and Replacements of Improvements.** The HOA will have the responsibility of paying for the ~~continuing maintenance, repair and replacement expense~~ associated with the improvements described in Section 1. With respect to each of the improvements described in Section 1, the HOA will assume responsibility for the maintenance, repair and replacement expenses at the time that the construction of such improvement is completed. Notwithstanding the foregoing, if the cost of the HOA's responsibility of maintaining and repairing the improvements described in Section 1 causes it to run an operating deficit, Brookhaven will cover the shortfall of funds caused by the expense of maintaining, repairing and replacing such improvements.

5. **Security.** The HOA shall be responsible for providing ~~access controls and~~ security for property and persons at the Clubhouse, pool, and the various improvements described in Section 1 of this Agreement. If the workout facility described in Section 2 is constructed, the HOA will be responsible for installing a card reader system that regulates ingress and egress to and from the facility. Brookhaven shall ~~be kept informed of the status~~ of all security measures taken pursuant to this Section 5.

6. **Display Boxes for Subdivision.** Brookhaven will be permitted to place plexiglass display boxes outside the Clubhouse, so that realtors and prospective home purchasers can conveniently view depictions of the home styles available in the Subdivision.

7. **Board Authority to Negotiate Agreement and Bind HOA.** ~~The members of the HOA have been presented with a copy of this Agreement. The members of the HOA have granted the Board of Directors of the HOA the authority to negotiate any of the terms appearing in this Agreement. The members~~

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of the HOA have further consented to the Board of Directors of the HOA being able to sign the resulting negotiated Agreement—and thus binding the HOA and Brookhaven to this Agreement—as long as the resulting Agreement is substantially similar to what has been presented to the HOA membership.

8. **Disclaimer.** Given that the HOA membership has provided its Board of Directors the authority to negotiate the terms of this Agreement, no guaranty is provided by Brookhaven to the HOA or its members that the actual improvements made will be identical to the improvements listed in the Agreement presented to the HOA membership for approval.

9. **Overflow Parking.** ~~Brookhaven will donate 3 lots in the cul de sac of Hathaway Lane and Kincaid Cove Lane to the HOA for overflow parking for the Phase 5 & 6 homes.~~

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10. **Road Ownership.** Brookhaven will see that roads constructed will meet city specifications and ownership will be passed to the City upon completion.

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11. **Notice of Commencement of Work.** Brookhaven will provide email notice of work to be done on all proposed amenities no less than 7 days prior to beginning to the HOA Board. This will allow time for the board to notify the residents.

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12. **Miscellaneous.**

(a) **Not Assignable.** This Agreement shall not be assignable by Brookhaven or the HOA without the consent of the other, except that Brookhaven may assign this Agreement to an entity which has identical ownership to Brookhaven. Nothing in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto and their successors, any rights or remedies under or by reason of this Agreement.

(b) **Expenses.** Each of the parties shall bear all their own expenses incurred by them in connection with this Agreement.

(c) **Amendment and Waiver.** This Agreement may be amended or modified at any time and in all respects, or any provisions may be waived by an instrument in writing executed by Brookhaven and the HOA, or either of them in the case of the waiver of a requirement contained in this Agreement.

(d) **Notices.** Any notices or other communications required or permitted hereunder shall be sufficiently give if delivered personally or sent by registered or certified mail, postage prepaid, address to Brookhaven or the HOA at an address as shall be furnished in writing by any party to the others, and shall be deemed to have been given as of the date so delivered or deposited in the United States mail postage paid, as the case may be.

(e) **Choice of Law.** It is the intention of the parties that the laws of the State of Alabama should govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties.

(f) **Section and Other Headings.** Section, paragraph, and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(g) **Counterpart Execution.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

(h) **Gender.** All personal pronouns are used in this Agreement shall include the other genders whether used in the masculine or feminine or neuter gender, and the singular shall include the plural whenever and as often as may be appropriate.

(i) **Parties of Interest.** All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, Brookhaven and the HOA and their successors and assigns.

(k) **Integrated Agreement.** This Agreement constitutes the entire agreement between the parties hereto, and there are no agreements, understandings, restrictions, warranties, or representations between the parties other than those set forth herein or herein provided for.

[signatures on following page]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on this the ____ day of December 2016.

BROOKHAVEN DEVELOPMENT PARTNES, LLC, an Alabama limited liability company

By: _____
Darrell Pittard

Its: Managing Member

BROOKHAVEN LOT & HOMEOWNER'S ASSOCIATION, INC., an Alabama corporation

By: _____

Its: