

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
BROOKHAVEN**

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR BROOKHAVEN**

STATE OF FLORIDA
COUNTY OF ESCAMBIA

This Declaration of Covenants, Conditions, Restrictions and Easements for Brookhaven is made on this ____ day of _____, 2018, by Devine Farms, LLC, a Florida limited liability company (“Declarant”), and SNS Realty, Inc., a Florida corporation (“Developer”).

WITNESSETH:

WHEREAS, Declarant and Developer entered into an agreement dated April 14, 2015, as it may be amended from time to time (“Developer Agreement”). Pursuant to the Developer Agreement, Developer shall act as assignee of the Declarant and assume all duties, privileges and responsibilities of Declarant set forth herein related to the development of Brookhaven and said duties, privileges and responsibilities, shall be deemed to be the sole duties, privileges and responsibilities of the Developer rather than the Declarant;

WHEREAS, Declarant is the owner of all the property described in the attached Exhibit A, which property is the subject of the plat of Brookhaven to be recorded in the public records of Escambia County, Florida; and

WHEREAS, the Lots within Brookhaven will be used for single-family dwellings. The utility easements within Brookhaven will be used by the various utility providers to furnish services to the neighborhood. The common areas within Brookhaven will be transferred to a non-profit Florida corporation formed or to be formed by Declarant, which corporation will own such areas for the benefit of the homeowners in Brookhaven.

NOW THEREFORE, Declarant hereby establishes this Declaration of Covenants, Conditions, Restrictions and Easements for Brookhaven, which will run with the land and be binding on and inure to the benefit of every Owner of property within Brookhaven.

**ARTICLE I
DEFINITIONS**

The following definitions apply wherever the capitalized terms appear in this Declaration. Additional terms also may be defined the first time they appear.

1.1 “Articles” means the Articles of Incorporation of the Association, filed with the Secretary of State of Florida, as amended from time to time.

1.2 “Assessments” means, collectively, the following charges:

(a) “General Assessment” means the amount charged to each Member to meet the Association’s annual budgeted expenses.

(b) “Individual Lot Assessment” means the amount charged to a Member’s individual Lot for any charges particular to that Lot.

(c) “Special Assessment” means a charge to each Member for capital improvements or emergency expenses.

1.3 “Association” means the Brookhaven Homeowners’ Association, Inc., a Florida non-profit corporation, its successors and assigns, formed or to be formed by Declarant.

1.4 “Board” means the Board of Directors of the Association.

1.5 “Bylaws” means the Bylaws of the Association.

1.6 “Common Property” means those tracts of land that are: (a) deeded to the Association and designated in the deed as Common Property; or (b) labeled as a Common Area on the Plat. Common Property shall include, without limitation, the following labeled parcels on the Plat: Parcel “FF”, Parcel “GG”, Parcel “HH”, Parcel “JJ”, Parcel “KK”, and Parcel “MM”. The term “Common Property” also means any personal property appurtenant to any real property owned by the Association or acquired by the Association if the personal property is designated as such in the bill of sale or other instrument conveying it. “Common Property” does not mean any area that is dedicated in the Plat to the county or municipal government or other party other than the Association, or sold to the Association.

1.7 “Declarant” means Devine Farms, LLC, a Florida limited liability company, its successors and assigns. Declarant may also be an Owner. The various rights of Declarant under this Declaration may be separated and assigned to different parties and, if so assigned, each assignee will be considered “Declarant” as to the specific rights so assigned. Declarant has assigned rights hereunder to Developer pursuant to the Developer Agreement. Declarant may collaterally assign its rights as Declarant by mortgage or other instrument, and such assignees may elect to either exercise the assigned rights or designate another party to exercise such rights if such assignees succeed to Declarant’s interest in Brookhaven or any portion thereof.

1.8 “Declaration” means this Declaration of Covenants, Conditions, Restrictions, and Easements for Brookhaven and all supplements and amendments to this Declaration.

1.9 “Developer” means SNS Realty, Inc., a Florida corporation, its successors or assigns.

1.10 “Developer Agreement” means the agreement entered into by Declarant and Developer dated April 14, 2015, as amended.

1.11 “Governing Documents” means the recorded Declaration, along with any amendments, supplements and exhibits, the Articles and Bylaws of the Association including any amendments and any rules, regulations and guidelines duly adopted by the Association.

1.12 “Governmental Authorities” means the Board of County Commissioners of Escambia County, Florida and its agencies and departments, the State of Florida Department of

Environmental Protection, the Northwest Florida Water Management District or any other governmental entity involved in the planning, permitting and development approval process of Brookhaven.

1.13 “Lot” means any lot shown on the Plat along with any improvements constructed on the Lot.

1.14 “Member” means a member of the Association. Each Owner is also a Member. There are two classes of Members as further defined below.

1.15 “Mortgagee” means any institutional lender that holds a bona fide mortgage encumbering a Lot. The term “institutional lender” specifically includes, but is not limited to, a bank, credit union, savings and loan association, mortgage lending company, insurance company, securitized trust, and the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, Federal Housing Administration, Department of Housing and Urban Development, Department of Veterans Affairs or similar federal, state, or local agency.

1.16 “Owner” means the record owner, whether that be one or more persons or entities, of the fee simple title to any Lot, or a life estate in any Lot. “Owner” does not mean a Mortgagee.

1.17 “Plat” means the plat of Brookhaven and the plats of any additional land annexed to and made part of Brookhaven from time to time.

1.18 “Principal Builders” means CHB Holdings of Northwest Florida, LLC, Holiday Builders, Inc., and Adams Homes of Northwest Florida, Inc., their successors and assigns.

1.19 “Public Records” means and refers to the Official Public Records of Escambia County, Florida.

1.20 “Stormwater Management System” means a system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity or quality of discharges from the system, as permitted pursuant to Chapter 62-330, F.A.C. The Stormwater Management System shall include any easements indicated on the Plat as drainage easements and shall further include, but shall not be limited to the following public (dry) retention ponds: Parcels “AA”, “BB”, “CC”, as well as the 15’ Public Drainage/Access Easement located on Lots 12 and 13, Block C; Lots 3, 4, 27 and 28, Block E; and Lots 4, 5, 28 and 29, Block F. The Association is responsible for maintenance and repair of the (Private) Green Belt - Natural Vegetative Buffer Parcel “DD” and “EE” which parcels are to remain in their natural state.

1.21 “Subdivision” or “Brookhaven” refer to Brookhaven, the Plat of which is recorded or to be recorded in the Public Records, and to any land later annexed to and made part of Brookhaven and made subject to this Declaration, from time to time.

1.22 “Turnover” refers to the point in time in which the control of the Association is transferred to the Class A Members, being three (3) months after all phases of the community have been completed and made subject to this Declaration, and ninety percent (90%) of the Lots within all phases of the community have been conveyed to Members other than the Class B Member. The phrase “parcels in all phases of the community” means any additional phases developed or to be developed by Declarant in the future upon adjoining properties or properties adjoining such adjoining properties.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

This article describes the real property of which Brookhaven will initially be comprised, and provides the method of which additional property may be added.

2.1 Initial Property. The property initially subject to this Declaration consists of the Subdivision.

2.2 Annexation of Additional Property.

(a) Authority. Additional property may be annexed by the Declarant or the Association. The Association may only annex additional property after termination of the Class B membership. Unless waived by recorded instrument, Declarant will have the right, but not the obligation, from time to time in its sole discretion, to annex any property to Brookhaven, if such property is adjacent to or abuts any property shown on the Plat. In determining whether the property to be annexed is adjacent to or abuts the property shown on the Plat, Declarant may disregard any roads that are situated between the property shown on the Plat and the property to be annexed.

(b) Procedure. The party effecting the annexation shall record a Supplemental Declaration in the Public Records. The Supplemental Declaration shall be executed by the owner of the property to be annexed, and the Declarant, its assigns, or the president of the Association. The Supplemental Declaration shall contain the legal description of the property being annexed. The Supplemental Declaration may contain special provisions applicable to the property being annexed. These special provisions may limit the applicability of specific covenants, restrictions, and easements contained in this Declaration to the annexed property or may impose additional or different covenants, conditions, or restrictions to reflect the different character of the property being annexed. The parties making the Supplemental Declaration will have sole discretion to determine the special provisions to be contained in the Supplemental Declaration; however, no special provisions may be included that exempt the owners of the property being annexed from equitably sharing in common expense. Upon recording the Supplemental Declaration, the annexed property will become part of Brookhaven.

ARTICLE III
ARCHITECTURAL REVIEW AND CONSTRUCTION REQUIREMENTS

To ensure that the homes and accessory buildings within the neighborhood are harmonious, Declarant will create an Architectural Review Committee to approve all construction. Although certain requirements are specified herein, the Architectural Review Committee will not be limited to the specific requirements but rather will have broad discretion.

3.1 Architectural Review Committee.

(a) Composition. The Architectural Review Committee will consist of a single person or a committee of persons selected by Declarant. Declarant may temporarily delegate this right to appoint members or may assign this right by written instrument recorded in the Public Records. Members of the Architectural Review Committee will serve at the pleasure of the entity entitled to select the members and may be replaced at any time. If Declarant (or assignee) fails to appoint at least one person to the Architectural Review Committee and such vacancy continues for thirty (30) days after the Association gives written notice to Declarant (or assignee) of such vacancy, the Association will have the right to appoint the members of the Architectural Review Committee until such time as Declarant (or assignee) exercises its right of appointment. At such time as Declarant (and/or its affiliates) owns no Lots within Brookhaven, the Association shall have the exclusive right and obligation to select the members of the Architectural Review Committee.

(b) Professional Advisor. The Architectural Review Committee may employ one or more architects or land planners to advise the Architectural Review Committee. Each advisor may sit on the Architectural Review Committee as either a voting or non-voting member, at the discretion of the other members of the Architectural Review Committee. At the discretion of the Architectural Review Committee, the advisor may be paid a reasonable fee derived from application fees or payable by the Association from the General Assessment.

3.2 Architectural Review Procedure.

(a) Construction Subject to Review. All construction, improvements, remodeling, or modification on or to a Lot, except interior alterations not affecting the external appearance of the Lot or improvements on a Lot, must be approved in advance by the Architectural Review Committee. This specifically includes, but is not limited to, painting or other alteration of a building (including doors, windows, and trim); replacement of roof or other parts of a building other than with duplicates of the original material; installation of antennas, satellite dishes or receivers, solar panels, or other devices; construction of fountains, swimming pools, whirlpools, or other pools; construction of privacy walls or other fences or gates; addition of awnings, flower boxes, shelves, statues, or other outdoor ornamentation; addition of window coverings, installation of a well; and initial landscaping and any material alteration of landscaping. This right is general and is not limited to the specific items listed in this section or in Section 3.4. Construction effected by or on behalf of Declarant will not be subject to approval by the Architectural Review Committee. Meetings of the Architectural Review Committee will be held in accordance with Section 720.303, Florida Statutes, as amended from time to time.

(b) Application. The plans to be submitted for approval shall include: (i) the construction plans and specifications, including all proposed clearing and landscaping; (ii) elevations of all proposed improvements; (iii) a Lot survey showing current improvements; and (iv) such other items as the Architectural Review Committee requires. No construction on any Lot shall be commenced and no Lot shall be modified except in accordance with the submitted plans. Any modification to the approved plans must also be reviewed and approved by the Architectural Review Committee.

(c) Basis for Decision. The Architectural Review Committee, in making its decisions, may consider purely aesthetic matters that in the sole opinion of the Architectural Review Committee will affect the desirability or suitability of the construction. The Architectural Review Committee will not be limited to the specific restrictions and requirements of this Article in making its decision.

(d) Application Fee; Deposit. The Architectural Review Committee may establish procedures for the review of applications, and impose a reasonable fee to be paid by the applicant. The Architectural Review Committee also may require an applicant to post a security deposit to ensure that all work is affected only in accordance with approved plans. The Architectural Review Committee may retain the security deposit until all work has been completed in accordance with the approved plans.

(e) Notification of Approval. The Architectural Review Committee must notify an applicant in writing of its decision within forty-five (45) days of receiving a completed application. If approval or disapproval is not given within forty-five (45) days after submission of a completed application, the application will be deemed approved unless the applicant agrees to an extension, provided, however, that a request by the Architectural Review Committee for additional information shall halt the running of the forty-five (45) day period.

(f) Enforcement. If any construction or modification is undertaken that has not been approved or that deviates in any material manner from the approved plans, Declarant or the party delegated or assigned Declarant's right to appoint the Architectural Review Committee or the Association, may bring an action for specific performance, declaratory decree, or injunction, and will be entitled to recover all costs incurred in enforcing these provisions, including all pre-suit and post-suit attorney fees. Any such enforcement action also shall determine entitlement to any retained security deposit. At such time as Declarant (and/or its affiliates) owns no Lots within Brookhaven, the Association and each Owner will have the right to enforce these provisions. The failure to strictly enforce these provisions as to a particular violation or violations will not be deemed a waiver to enforce these provisions as to future or continuing violations.

3.3 Liability. The Architectural Review Committee and Declarant will not be liable to the applicant or to any other party to ensure that the proposed plans comply with any applicable building codes, for inadequacy or deficiency in the plans resulting in defects in the improvements, or to ensure the construction was done in accordance with the plans. In the event any action, proceeding or claim is made or brought against the Architectural Review Committee,

the Association shall indemnify, hold harmless and defend the members of the Architectural Review Committee against such action, proceeding or claim.

3.4 Specific Restrictions. The following restrictions shall apply to the Lots; however, the Architectural Review Committee will not be limited to these items when reviewing plans and will have broad discretion in the interpretation of these restrictions.

(a) Residential Building. No structure may be erected, placed or permitted to remain on any Lot other than one single-family dwelling and a swimming pool or a detached structure. All dwellings must be new in construction. No detached structure may be constructed prior to the completion of the construction of the primary structure.

(b) Building Restriction Lines. No dwelling shall be located nearer to the streets or adjacent Lots than the applicable building setback requirements and sight triangles as shown on the Plat. Waiver of the fixed setback requirements is hereby granted for unintentional violations that do not exceed ten percent (10%) of the setback distance in question. In the event of any controversy between setbacks as shown on the Plat or as stated in other covenants, the Plat shall have dominance over these covenants. All setbacks and variances shall be in accordance with the rules and regulations as set forth by Escambia County, Florida.

(c) Minimum Floor Space; Roof Pitch. Each single story dwelling must contain at least 1,200 square feet of living space. Each two-story dwelling must contain at least 800 square feet of living space on the first floor. The minimum roof pitch shall be 5 on 12 slope (a 5" rise for every linear 12"). "Living space" means only enclosed livable floor area and does not include garages, porches (open or with screened enclosures), terraces or patios.

(d) Driveways. All Lots must have a paved driveway of stable and permanent construction extending from the adjacent street to the dwelling. All driveways must be concrete or other approved material.

(e) Pools, Play Facilities, and Lighting. All recreation facilities constructed or erected on a Lot including, without limitation, swimming pools and any other play or recreation structures, platforms, playhouses, dog houses, or other structures of a similar kind or nature, but not basketball backboards, must be adequately walled, fenced, or landscaped in a manner specifically approved by the Architectural Review Committee before such facility is constructed or erected. Basketball goals not attached to a house are allowed so long as they are kept in good condition.

(f) Garage. Unless otherwise specifically approved by the Architectural Review Committee, no building may be constructed separate and apart from the dwelling and each dwelling must have an enclosed garage to accommodate at least two and not more than three cars. No carports will be permitted. Without prior written approval of the Architectural Review Committee, no garage may be enclosed permanently or converted to another use without the substitution of another garage on the Lot meeting the requirements of this Declaration and the approval of the Architectural Review Committee.

(g) Non-Interference with Easements. No structure, planting, or other material may be placed or permitted to remain on a Lot if it may damage or interfere with the installation and maintenance of any entry way, hedge, planting, tree, grass, fence or other improvement or landscaping located within the Common Property. Any easement area located on a Lot and all improvements on an easement area shall be maintained by the Owner of the Lot whereon the easement area lies, except for those easement areas the maintenance of which is the responsibility of a public authority, utility, or the Association. In any event, an Owner may not interfere with the maintenance of an easement area on the Owner's Lot by the party responsible for maintaining the same. This provision may be enforced by any person or party benefiting from the easement or responsible for the maintenance of them. No fences or structures shall be located within five foot (5') private drainage easements that may prohibit or materially restrict the flow of stormwater. This provision shall apply to any and all Lots. Fences or other structures shall not be installed in public drainage/access easements. These easements shall be accessible at all times.

(h) Utility Connections. Connections for all utilities including, but not limited to, water, sewage, electricity, telephone, and television must be run underground from the connecting point therefrom to the dwelling in such a manner as is acceptable to the respective utility authority or company. Wells may be installed only for irrigation purposes.

(i) Air Conditioning Units. No window or through the wall air conditioning unit will be permitted on any Lot.

(j) Mailboxes. In that a centralized mailbox area is part of the Common Property, no mailboxes, paper boxes, or other receptacles of any kind for use in the delivery of mail, newspapers, magazines, or similar material shall be erected or permitted upon any Lot.

(k) Antennae, Aerials, and Satellite Dishes. No antennae or aerial may be placed on any Lot or affixed to the exterior of any building, and no antennae or aerial placed or affixed within a building may extend or protrude beyond the exterior of such building or in any way be visible from outside the building. Under no circumstances shall any satellite dish exceed 36 inches in diameter. Satellite dishes may only be affixed to the rear of a home and must not be visible from the street in front of the building.

(l) Clothes Drying Area. No clotheslines or other facilities or apparatus for the drying of clothes outside of a dwelling shall be constructed or maintained on a Lot if viewable from other Lots, Common Property or adjacent roads.

(m) Signs. No sign of any kind shall be displayed to general view on any Lot (whether freestanding, attached to a building, or displayed in a window) except under any of the following circumstances:

i. Directional or traffic signs and entrance or other identification signs may be installed by or with the consent of the appropriate governmental authority, by Declarant, or by the Board;

ii. Declarant and Principal Builders may display signs for the sale of Lots, homes and promotion of the Subdivision;

iii. One "For Sale" sign not more than two square feet (as measured on each side of the sign) may be displayed on a Lot by the Owner or the agent for such Owner; and

iv. A small sign indicating a security company may be displayed near the front door. A sign no larger than two feet by three feet, advertising a company may be displayed, but only during the period that the company is working on the property on which the sign is displayed. No other signs may be displayed either inside or outside the building of any Lot except for special occasions such as garage sales or parties and then for a period not to exceed twenty-four (24) hours.

Notwithstanding the foregoing or anything in this Declaration to the contrary, the Architectural Review Committee will, subject to the requirements of law, have absolute authority for approval of any signs.

(n) Fences and Drainage Easements. All fences, hedges, walls or the like constructed upon any Lot shall comply with all applicable regulations of the relevant Governmental Authorities. As a general guideline all fences shall be of pressure-treated wood and six feet in height. Fences shall remain natural in color. No fence may be constructed and no hedge planted closer to the street than ten (10) feet behind or to the rear of the front face of the front corner of the dwelling (excluding garage). If a corner Lot, no fence may be constructed and no hedge planted any closer to the side street than the building setback required from the side street by the Plat. The rear Lot line shall be defined as being approximately parallel to the rear corners of the home and perpendicular to the boundary of the side Lot lines. No fences or structures shall be located within five foot (5') private drainage easements that may prohibit or materially restrict the flow of stormwater. Fences or other structures shall not be installed in public drainage/access easements. These easements shall be accessible at all times.

(o) Temporary Structures. No structure of a temporary nature, whether a trailer, tent, shack, garage, barn, or any other such building, is permitted on a Lot, nor shall any building that is unfinished on the exterior be occupied. This restriction does not apply to any temporary structure maintained for Lot sale and related purposes as provided in paragraph (q) of this section.

(p) Completion of Construction and Repairs. Other than original new home construction, all construction of improvements of a Lot and the construction, repair, or remodeling of any improvement must be completed within seven (7) months after commencement. All waste shall be contained during construction and any debris that becomes scattered shall be picked up immediately by the person or company performing the construction.

(q) Sales Offices. Notwithstanding anything in this Declaration to the contrary, Declarant and any other parties approved, in writing, by Declarant may construct and maintain sales offices, model homes, and sales trailers, together with a sign or signs relating

thereto, on a Lot or Lots or on any other property within Brookhaven until such time as all of the Lots are sold.

(r) Destruction or Damage to Subdivision Improvements. Owners will be responsible for any and all damage caused to Common Property or Subdivision improvements including, but not limited to, curbs, gutters, water hydrants, sidewalks, power poles, or fences erected by anyone, whether such damage is caused by the Owner or the Owner's employees, agents, invitees, guests, contractors, or subcontractors. Owners will, during construction, create such barricades or fencing as is required to prevent erosion of soils onto Common Property, public roads, or other Lots and police the areas of trash caused by those constructing improvements to the Owner's Lot. Any liability incurred under this provision will be both a personal obligation and an Individual Lot Assessment on such Owner's Lot.

(s) Lot Drainage. As part of the Subdivision design process, the developer of Brookhaven may have created an Escambia County, Florida, approved master drainage plan for the Subdivision, in which case the master drainage plan information may be contained on the recorded Plat and/or the construction plans for the Subdivision, a copy of which may be viewed or obtained from the Escambia County Planning and/or Engineering Departments or from Declarant. Each Owner shall comply with the provisions of the approved master drainage plan for Brookhaven. No elevation or topography changes shall be permitted on any Lot which materially affects the surface grade or drainage on said Lot or any adjoining Lot or property. Easements located on each Lot shall be accessible for maintenance at all times. No fences or structures shall be located within five foot (5') private drainage easements that may prohibit or materially restrict the flow of stormwater. Fences or other structures shall not be installed in public drainage/access easements. These easements shall be accessible at all times.

(t) Maintenance of Exteriors. Each Owner shall at all times maintain the exterior of all structures on the Owner's Lot and any and all fixtures attached thereto in a sightly manner.

(u) Noxious Vegetation. No Owner may permit the growth of noxious weeds or vegetation on the Owner's Lot or on the land lying between the street pavement and the front Lot line of Owner's Lot. All unimproved areas of a Lot must be maintained in an attractively landscaped and sightly manner.

(v) Litter, Trash, Garbage. No garbage, trash, refuse, or rubbish may be deposited, dumped, or kept on any Lot except in closed sanitary containers appropriately screened from view. Trash containers must be placed at the front of the Lot on the day designated for pickup, but only if promptly returned to the proper storage area as soon as possible.

(w) Nuisances. No Owner may cause or permit unreasonable noises or odors on the Owner's Lot. No Owner may commit or permit any nuisance, any immoral or illegal activity, or anything that may be an annoyance or a noxious or offensive activity to the other Owners or their guests. Soliciting within Brookhaven is strictly prohibited.

(x) Parking of Wheeled Vehicles, Boats and Water Vessels. Cars, trucks, tractors, recreational vehicles, golf carts and trailers (collectively called “Vehicles”) must be kept at all times completely inside a garage or on the driveway and are not permitted to be parked elsewhere on a Lot or on a street within the Plat except as otherwise specifically permitted in this paragraph. Boats and water vessels and trailers must be kept at all times completely inside a garage or parked in the rear yard behind a fence and shall not be readily visible from the street, and are not permitted to be parked elsewhere on a Lot or on a street within the Plat. Private cars or private trucks (exclusive of all other Vehicles) owned by an Owner or an Owner’s guest may be parked in the Owner’s driveway, but only if they do not display commercial signs. Commercial Vehicles may be parked in a street or driveway when necessary for providing services to an Owner, or for pickup and delivery service, but only while undertaking this activity and never overnight. Recreational vehicles, travel trailers, trailers, and campers may be parked in the driveway of a Lot for up to a total of 48 hours per week for loading and unloading only, and never for dwelling purposes. No Vehicles may be repaired or maintained on or adjacent to a Lot, except within a garage. Vehicles engaged in construction of Subdivision improvements or dwellings on behalf of Declarant will be permitted within Brookhaven for such purposes.

(y) Pets. Up to two “household pets” may be kept at a Lot. All other pets and animals are strictly forbidden to be kept, bred, or maintained within the Subdivision. A “household pet” is a dog, cat, or other common domestic animal approved by the Architectural Review Committee. In no event may any pet, including household pets, be kept, bred, or maintained for any commercial purpose. Each Owner will be strictly responsible for the behavior of his or her household pets. An Owner may not permit the household pet to become a nuisance or annoyance to other Owners. Each Owner will be responsible to immediately collect and dispose of waste and litter from the Owner’s pets. Pets will not be allowed on the Common Property except in designated areas (if any).

(z) Permanent Outside Storage Building. No outside storage building of any nature whatsoever will be permitted on any Lot unless approved by the Architectural Review Committee and built as follows:

i. Construction shall be of brick, vinyl siding or cement-based siding and the roof constructed using fiberglass shingles. The building shall be of a color and quality comparable to the main house on the Lot.

ii. No metal or plastic buildings shall be permitted and no building shall be moved onto the Lot from another location.

(aa) Retention Swales and Private Drainage Easements. Declarants hereby reserve unto the Association a right of entry on and across all retention swales and/or private drainage easements for purposes of improving and/or maintaining these areas should it desire to do so (although it is not obligated to do so) with the cost assessed to the affected Lot Owners as an Individual Lot Assessment (per Section 8.6 herein) or a General Assessment (per Section 8.4 herein). Within such areas, no structure, improvements, panning or other materials of a temporary or permanent nature shall be placed or permitted to remain by any Owner which might appear unsightly, destroy or adversely affect the natural buffer or drainage mechanism

inherently provided by such areas, or obstruct or interfere with any improvements made by the Association or maintained thereon by the Association. These areas shall be maintained by the Owners of the Lots upon which they are located in a natural state, except for those improvements, if any, made by the Association. The Association shall have the authority to formulate the maintenance requirements of the areas to ensure proper drainage and functioning of the areas and shall have the right to impose such requirements upon the Owners.

(bb) Flags. A homeowner may display one portable, removable United States Flag or official flag of the State of Florida, in a respectful place and manner as required by Section 720.3075, Florida Statutes, and one other portable, removable flag authorized by Section 720.304(2)(a), Florida Statutes, in a respectful place and manner, to be no larger than four and one-half feet by six feet. The Architectural Review Committee will, subject to the requirements of law, have absolute authority for approval of any flags.

3.5 Further Subdivision or Replat of Lots. All Lots shall be conveyed as a whole except that two or more contiguous Lots may be re-subdivided into an equal or lesser number of contiguous Lots provided that all regulations and ordinances of Escambia County, Florida applicable to the Lots are complied with. An Owner may also, by recording an instrument to that effect in the Public Records, combine two or more Lots for a single home site, whereupon the combined property will be deemed to be two or more separate Lots for all purposes, except that it shall be deemed to be a single Lot for the purposes set forth in Article III. Declarant shall have the right to modify the Plat to make adjustments to Lot boundary lines if the Owners of the affected Lots consent. Declarant may make other adjustments to the Plat if Owners are not materially affected or if all Owners who will be materially affected consent to the modification. Owners shall not unreasonably withhold their consent to an adjustment, and consent will be deemed given if an Owner does not object in writing to a request for the Owner's consent. Notwithstanding the foregoing, Declarant also may replat a Lot or Lots to Common Property, whereupon such replatted Lot or Lots will no longer be deemed a "Lot." Declarant also may establish additional easements on a Lot or Lots without the consent of the other Owners.

3.6 Conversion of Lots to Other Uses. Notwithstanding anything herein to the contrary, Declarant reserves the right to: (a) use any Lot owned by it for the purpose of ingress and egress to any adjoining property; (b) cause any Lot to be platted as a right of way; (c) impose additional easements on any Lot owned by Declarant; and (d) convert all or a portion of any Lot to Common Property.

3.7 Exemption. Notwithstanding anything hereto to the contrary, the Principal Builders are exempt from the Architectural Review Committee requirements.

3.8 Sidewalks. The homebuilder shall be required to construct: (a) a five (5) foot wide concrete sidewalk in front of each Lot within the right-of-way; and (b) with respect to corner lots, a five (5) foot sidewalk along the front Lot line and street side Lot line as well as a handicap ramp for appropriate curb cuts in accordance with the construction plans or ordinances or approvals of the Governmental Authorities.

ARTICLE IV COMMON PROPERTY

The Association will own and maintain the Common Property for the benefit of all Members and, when necessary, improve, convey, or lease the property.

4.1 Title to Common Property.

(a) Ownership. The Common Property will be owned by the Association for the benefit of all Owners.

(b) Conveyance. The Association is authorized to buy or lease real or personal property to be added to the Common Property. After termination of the Class B Membership, the Association may (with the consent of Declarant) sell or lease any part of the Common Property; however, membership approval is not needed for the Board to sell personal property or to grant easements on real property.

(c) Dedication. If the county or municipal government requests that the Association convey title to or dedicate the Common Property or any portion thereof to the public, the Association will be authorized to make such conveyance or dedication, but only with the approval of the Members. Upon such dedication, all obligations of the Association regarding the property so dedicated will cease except for requirements imposed as a condition of the dedication.

4.2 Maintenance; Management; Contracts.

(a) Association Responsibility. The Association will be responsible for the management, control, and improvement of the Common Property and must keep the same attractive, clean, and in good repair in accordance with the Declaration and applicable governmental regulations. The costs for such maintenance to be included within the Assessment.

(b) Management Agreements. The Association may contract with Declarant or any other party for the performance of all or any portion of the management of the Association and the Association's maintenance and repair obligations. Management cost will be included within the Assessment. The Association will be obligated to enter into a management agreement with Declarant and will not be entitled to cancel such agreement without Declarant's consent.

4.3 Capital Improvements. The Association may make capital improvements to the Common Property and may modify the use of the Common Property.

4.4 Damage or Destruction of Common Property by Owner. If any Owner or any guest, tenant, licensee, agent, employee, family member, or pet of an Owner damages any of the Common Property as a result of negligence or misuse, the Owner hereby authorizes the Association to repair the damage. The cost of repair will be the responsibility of the Owner and will become an Individual Lot Assessment payable by the responsible Owner.

4.5 Compliance with Laws. Lots and the Common Property may be used and must be maintained in accordance with all applicable law, ordinances, and regulations including, without limitation, all regulations and requirements of the Governmental Authorities.

4.6 Stormwater Management System. Escambia County is responsible for maintenance and repair of the Stormwater Management System on the following Public (Dry) Retention Pond Parcels "AA", "BB", "CC", as well as the 15' Public Drainage/Access Easement located on Lots 12 and 13, Block C; Lots 3, 4, 27 and 28, Block E; and Lots 4, 5, 28 and 29, Block F. The Association is responsible for maintenance and repair of the (Private) Green Belt - Natural Vegetative Buffer Parcel "DD" and "EE" which are to remain in their natural state.

4.7 Owners' Easement of Enjoyment of the Common Property. Every Owner will have a right and easement of enjoyment in and to the Common Property, subject to the restrictions imposed in this Declaration, the Plat, and any conservation easements encumbering the Common Property. This easement will be appurtenant to and shall pass with title to every Lot. Any Owner, subject to the provisions of this Declaration, the Articles and the Bylaws, may delegate the Owner's right to enjoyment of the Common Property to the Owner's family, tenants, and guests. The Board may suspend the right of any Owner, Owner's tenant, guest, or invitee, to use the Common Property and facilities for the failure of the Owner, Owner's tenant, occupant, licensee, guest or invitee to comply with any provision of the Declaration, Bylaws, or rules established by the Association as provided in Article X, below.

4.8 Easements in Favor of Declarant and Association. Declarant reserves for itself, its successors and assigns and for the Association the following perpetual easements:

(a) Utilities. Easements, for ingress, egress, installation, replacement, repair, and maintenance of all public and private utilities and conveniences, upon all property subject to public utility easements as shown on the Plat; across, over, through, and under the Common Property; and five feet in width along the front, rear, and side line of each Lot. This easement shall automatically be deemed abandoned as to the interior side Lot lines if two or more Lots are combined into a single home site.

(b) Police Powers; Security. A blanket easement throughout Brookhaven for police powers and services supplied by the local, state, and federal governments.

(c) Non-access Easement. There shall be a one (1) foot non-access easement in favor of the Declarant around the perimeter of the Subdivision prohibiting the use of a Lot or Common Property from being used for access to lands adjacent to the Subdivision except across those roads designated on the Plat of the Subdivision as recorded in the Public Records. This non-access easement shall run in favor of Declarant and Declarant's successors and assigns, and Declarant, in Declarant's sole discretion, may release any of its property from such easement by written instrument executed by Declarant. This section 4.8(c) shall not be amended without the express written consent of Declarant.

4.9 Easement in favor of ECUA. Declarant hereby grants and conveys to the Emerald Coast Utilities Authority any easements on the Plat indicated as being in favor of ECUA

including without limitation an easement across Parcel "GG" for ingress and egress to and from Parcel "LS".

ARTICLE V ASSOCIATION ORGANIZATION

Although Declarant will control the Association during the development stage, the Owners eventually will be responsible for the continuation of the Association.

5.1 Membership. Every Owner is a mandatory Member of the Association. Membership is appurtenant to and may not be separated from title to any Lot.

5.2 Voting Rights. The Association will have two classes of voting membership.

(a) Class A. Class A Members are all Owners of Lots other than Declarant, while Declarant is a Class B Member. Class A Members will be entitled to one vote for each Lot owned.

(b) Class B. The Class B Member is Declarant, who shall be entitled to ten (10) votes in all matters for each Lot owned by the Class B Member or its affiliates. Declarant may assign its Class B Membership. The Class B Membership will end and be converted to Class A Membership three (3) months after Turnover.

(c) Members other than Declarant may elect at least one Member to the Board, if fifty percent (50%) of the Lots in all phases of Brookhaven which will ultimately be operated by the Association have been conveyed to the Members.

5.3 Exercise of Vote. When more than one person holds an interest in any Lot, all such persons shall be Members; however, the number of votes for that Lot will not be increased, and the Members must determine among themselves how the Lot's vote may be exercised. Corporations, partnerships, and other entities must notify the Association of the natural person who will be considered a Member of the Association and be entitled to exercise its vote.

5.4 Board of Directors.

(a) Composition. The Board initially will consist of at least three persons appointed by Declarant. Upon termination of the Class B Membership, the Board will consist of at least three directors, selected in accordance with the Articles and Bylaws, but in any event, the number of directors must always be an odd number.

(b) Classes. Each director will be appointed or elected to one of three classes: Class 1, Class 2 or Class 3. Directors will be elected by class to provide for staggered terms. If the number of directors is increased, it shall be in multiples of three and each new position must be assigned to a class so that each class will have an equal number of directors.

(c) Term of Office. The initial term for the Class 1 director will be for one (1) year. The initial term for the Class 2 director will be for two (2) years. The initial term for the Class 3 director will be for three (3) years. Subsequent terms for directors of any class will be for three (3) years; however, directors will always serve until resignation, removal, or the election of their successors.

(d) Qualifications. After termination of the Class B Membership, each director must be a Member. If a director ceases to be a Member during the term of office, each person will be automatically removed from the Board, effective upon such occurrence.

(e) Voting Procedure. At each annual meeting, the Members will elect the directors to replace the directors of the class whose term of office is then expiring. Each Class A Member will have one vote for each seat to be filled and the Class B Member will have ten (10) votes for each Lot owned by the Class B Member or its affiliates, for each seat to be filled. No cumulative voting will be permitted. The candidate(s) receiving the highest number of votes will be declared elected. If there is a tie vote, the Class B Member will be given one additional vote and the opportunity to cast such vote to break the tie. The meeting will, in other respects, be conducted in accordance with the Articles and Bylaws.

(f) Removal. Any director may be removed from office, with or without cause, by at least a majority vote of the Members.

(g) Vacancies; Replacement of Directors. Any vacancy occurring in positions as director may be filled by a majority vote of the remaining Board members. If the remaining Board members do not constitute a quorum, a special meeting of the Association may be called by any officer or by any Member to elect new members to the Board.

(h) Compensation. Directors will not receive compensation for their services unless approved by the Members. This will not prevent a Class B Member or an affiliate of a Class B Member from being compensated for management or other services.

5.5 Relationship to Articles and Bylaws. The Articles and Bylaws will govern all matters of the Association not set forth in this Declaration. The terms of this Declaration will prevail over any conflicting provisions in the Articles and Bylaws.

ARTICLE VI OPERATION OF ASSOCIATION AND BOARD

In addition to this Declaration, the Association must operate in accordance with Chapters 617 (Corporation Not for Profit) and 720 (Homeowners Associations) of the Florida Statutes, as amended from time to time. Most day-to-day decisions about the maintenance of the Common Property and enforcement of the Declaration are the responsibility of the Board, acting on the Members' behalf. For those decisions requiring Members' approval, the community meeting provides a public opportunity for discussion.

6.1 Annual Meeting.

(a) When called. The Annual Meeting will be called every year for the election to the Board of the class of directors whose term then expires and for other business requiring approval of the Members. The meeting date shall be as determined by the Articles and Bylaws.

(b) Quorum. Voting at an annual meeting requires the presence of: (i) Members (in person or by proxy) representing twenty percent (20%) of votes; and (ii) Declarant or its representative so long as Declarant owns at least one (1) Lot.

(c) Notice. Notice of the annual meeting may be given by: (i) mailing a notice to each Member at the last address furnished to the Association; (ii) delivering notices to the Member's dwelling or Lots; or (iii) posting conspicuous notices for the meeting in the Common Property. Notice should be given at least thirty (30) days before the annual meeting.

6.2 Board Meetings.

(a) Board's Responsibility. Except as specifically provided in this Article or elsewhere in this Declaration, the Board has been delegated the power, and has the authority to act on behalf of the Association in all matters.

(b) Quorum. Voting at a Board meeting requires the presence of at least two (2) of the directors (in person or by proxy). Except as prohibited by law, action required to be taken by vote of the Board may be taken in the absence of a meeting by obtaining the written approval of a majority of the Board.

(c) Notices. Notices of all meetings of the Board shall be posted in a conspicuous place in the Common Property or otherwise at an entrance to the Subdivision, forty-eight (48) hours in advance, absent emergency. In the alternative, notice of each Board meeting must be mailed or delivered to each Member at least seven (7) days before the meeting, except in an emergency. Notice by electronic transmission may also be provided to Members for Board meetings, committee meetings requiring notice under this Section and annual and special meetings of the Members, as long as the manner of the electronic transmission is authorized by law for such meetings and the Members have consented in writing to receive notice by facsimile or e-mail and the Members have provided a facsimile number or e-mail address to be used by the Association. If the Board desires to levy an assessment at a meeting, the notice must include a statement describing the assessment being considered. If the Board desires to levy a special assessment or consider amendments to rules regarding parcel use at a meeting, the notice must be mailed, delivered, or electronically transmitted to the Members and Owners and posted conspicuously in the Common Property or otherwise at an entrance to the Subdivision, not less than fourteen (14) days before the meeting. All meetings must be open to the Members, except for meetings permitted by law to be closed. This provision shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of Association funds and to meetings of any body vested with the power to approve

or disapprove architectural decisions with respect to a specific parcel of residential property owned by a Member.

6.3 Record Keeping. The Board shall keep, or cause to be kept, a record of all meetings, both of the Board and of the Association. For each action taken, the record must state the vote and a description of the action approved, and, if applicable, the reasons why the action was considered necessary and a summary of the information on which the decision was based. The record must be available for inspection by any Member, except for records of closed meetings of the Board. Officers may be elected by the Board by secret ballot. The Association shall maintain such items as are designated official records in accordance with Chapter 720, Florida Statutes, for the time periods designated, with inspection and copying rights for members as prescribed therein.

ARTICLE VII ASSOCIATION BUDGET

To fulfill its obligation to administer and manage the Association and maintain the Common Property, the Board is responsible for the fiscal management of the Association.

7.1 Fiscal Year. The fiscal year of the Association will begin January 1 of each year and end on December 31 of that year. The Board may elect another fiscal year. The Board must prepare an annual Budget.

7.2 Budget. A copy of the budget must be provided to each Member or a notice must be given to the Members that a copy of the budget is available upon request and without charge. The annual budget will estimate total expenses to be incurred by the Association in carrying out responsibilities. The budget must include:

- (a) The cost of wages, materials, insurance premiums, services, supplies, and other expenses for the rendering of all services required or permitted under this Declaration;
- (b) Reasonable amounts, as determined by the Board, for working capital for the Association and for reserves;
- (c) Fees for professional management of the Association (which may include Declarant), legal counsel, and accounting;
- (d) Taxes, if the Common Property is taxed separately from the Lots;
- (e) An itemized list of all fees or charges for recreational amenities; and
- (f) An estimate of revenues from the General Assessment.

7.3 Reserves. The Association shall accumulate and maintain adequate reserves for working capital, contingencies, and replacements, to be included in the annual budget and collected as part of the annual General Assessment. This shall not occur until the termination of Declarant's guarantee described in Section 8.2 of this Declaration. Extraordinary expenses not

originally included in the annual budget will be charged first against such reserves. Except in the event of an emergency, reserves accumulated for one purpose may not be expended for any other purpose. If there is an excess of reserves at the end of a fiscal year, such excess may be used to reduce the following year's Assessments.

7.4 Preparation and Approval of Annual Budget.

(a) Initial Budget. Declarant will prepare the first annual budget. Any reserves established by the Declarant must designate the components for which the reserve accounts may be used.

(b) Subsequent Years. Budgets other than the initial budget will be prepared at the direction of the Board at least one (1) month before the end of the fiscal year. The budget and the annual General Assessment must be adopted by a majority of the Board.

7.5 Effect of Failure to Prepare or Adopt Budget. The Board's failure or delay in preparing or adopting the annual budget for any fiscal year will not waive or release a Member's obligation to pay General Assessments, whenever the amount of such Assessments is finally determined. In the absence of an annual Association budget, each Member shall continue to pay the assessment at the rate established for the previous fiscal period until notified otherwise.

7.6 Financial Reporting. The Board shall prepare an annual financial report for the Association within ninety (90) days of the close of the fiscal year and provide each Member with a copy of the report, or a written notice that a copy of the financial report is available upon request, without charge to the Member. The report must be in the form required by the Florida Statutes.

7.7 Capital Improvements. The Board shall determine whether capital improvements should be paid from General Assessments or by Special Assessment. If the cost of all capital improvements to be paid within a single year totals more than twenty-five percent (25%) of the Association's annual budget, the capital improvements must be approved by majority vote of the Members. Any repair or replacement of existing improvements will not be considered a capital improvement.

7.8 Reserves shall be kept separate from other Association funds. All other sums collected by the Board with respect to Assessments and charges of all types may be commingled in a single fund.

7.9 Amendment of Budget. The Board may amend the budget during any fiscal year and increase the amount of the annual General Assessment for such year if it appears that there will be insufficient income to meet the obligations of the Association.

ARTICLE VIII COVENANTS TO PAY ASSESSMENTS

The cost of fulfilling the Association's financial obligations is divided among the Members by means of Assessments in accordance with this Declaration. To ensure that the

Association has a reliable source of funds and to protect those Members who contribute their share, Assessments are mandatory and are secured both by a lien on the Lots and the Member's personal obligation.

8.1 Obligations for Assessments. Declarant covenants for each Lot, and, by acceptance of a deed or other transfer instrument, whether or not expressed in such deed or instrument, each Owner of any Lot is deemed to covenant and agree to pay to the Association the Assessments including:

- (a) General Assessments;
- (b) Special Assessments; and
- (c) Individual Lot Assessments.

8.2 Guarantee of Class B Member. The Class B Member agrees that, until the end of the first fiscal year of the Association or such extended period as set forth hereinbelow, it will guarantee that the General Assessments shall not exceed \$200.00 per Lot per year during the first fiscal year of the Association. The Class B Member will be exempt from General Assessments in consideration of its guarantee. The Class B Member may elect to renew the Budget Guarantee for one or more additional fiscal years, during which the Class B Member will not be liable for any Assessments on any Lots it owns. Such election shall be deemed to occur on an annual basis unless, prior to the end of the fiscal year of the Association, the Class B Member gives notice of its intention to not elect to renew its guarantee. A Lot exempt from Assessments pursuant to this section is referred to as an "Exempt Lot." The amount of the guarantee will increase so that Assessments will not be greater than fifteen percent (15%) more than in the previous year.

8.3 Equitable Division of Assessments. The General Assessments and Special Assessments shall be assessed among all Lots equally, except that Exempt Lots will not be subject to assessment. The General Assessment will be assessed on Lots at the rate established by the Board.

8.4 General Assessment.

(a) Establishment by Board. The Board will set the date or dates the General Assessment will be due, and it may provide for payment in monthly, quarterly, semiannual, or annual installments.

(b) All of Declarant's Lots shall be exempt forever to the extent allowed by Florida law.

(c) Late Fee and Interest. The Board may impose a reasonable late fee. Additionally, interest will accrue at the highest lawful rate on delinquent payments.

8.5 Special Assessment. In addition to the General Assessment, the Board may levy, in any fiscal year, a Special Assessment applicable as follows:

(a) Capital Improvements. Any capital improvement that has been approved in accordance with this Declaration.

(b) Emergency Assessment. By a two-thirds (2/3) vote, the Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense that this Declaration requires the Association to pay (including, after depletion of reserves, any unexpected expenditures not provided by the budget, or unanticipated increases in the amounts budgeted).

(c) Exemption. Exempt Lots will not be subject to Special Assessments, nor will an Exempt Lot be subject to payment of any Special Assessment or any portion thereof declared or assessed while such Lot was an Exempt Lot even if payments for such Special Assessments are made in installments becoming due subsequent to the time such Lot no longer is considered an Exempt Lot. [For example, if a Special Assessment is declared on January 1 while Lot 7 is an Exempt Lot, but the payment of the Special Assessment is not required until March of the same year, then even if Lot 7 is not an Exempt Lot as of February of such year, Lot 7 still will be considered exempt from such Special Assessment.]

8.6 Individual Lot Assessments. The Association may levy at any time an Individual Lot Assessment against a particular Lot for the purpose of defraying, in whole or in part, the cost of any special services to that Lot or any other charges designated in this Declaration as an Individual Lot Assessment. An Individual Lot Assessment may be levied on account of any legal expenses (at trial or on appeal) and costs incurred by the Association in enforcing this Declaration or in enforcing any other declaration the Association is authorized to enforce.

8.7 Effect of Nonpayment of Assessment; Remedies.

(a) Personal Obligation. All Assessments, together with any late fees, interest, and costs of collection when delinquent, including reasonable attorneys' fees (pre-suit or post-suit) whether or not a lawsuit is brought (collectively, the "Assessment Charge") shall be the personal obligation of the person or entity who was the Owner of the Lot at the time the Assessment Charge was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of the Lot.

(b) Creation of Lien. The Assessment Charge also shall be a continuing lien on the Lot against which the Assessment Charge is made, which lien is effective upon recording a claim of lien, but relating back to and having a priority as of the date of this Declaration. This lien in favor of the Association will secure the Assessment Charge that is then due and that may accrue subsequent to the recording of the claim of lien and before entry of final judgment of foreclosure. The lien in favor of the Assessment Charge is subject to the subordination provisions of Section 8.7(d).

(c) Lawsuit for Payment; Foreclosure of Lien. The Association may bring an action at law against the Owner personally obligated to pay the Assessment Charge, or may foreclose the lien in a manner similar to foreclosure of a mortgage lien, or both, as provided in Section 720.3085, Florida Statutes. The Association, acting on behalf of the Owners, shall have

the power to bid for an interest in any Lot foreclosed at such foreclosure sale to acquire, hold, lease, mortgage, and convey the Lot.

(d) Subordination of the Lien to Mortgages. The lien of the Assessment Charge will be inferior to the first mortgage lien of any Mortgagee. Sale or transfer of any Lot pursuant to foreclosure of such a mortgage, including a deed in lieu of foreclosure, shall extinguish the lien as to payments that became due before the sale or transfer. The transferees of such Lot shall be liable for any Assessments coming due after the sale or transfer.

(e) Other Remedies. Subject to applicable law and as set forth in Article X, the Association may assess fines and suspend the use of Common Property and facilities, and voting rights of any Member, Owner, or any Member or Owner's occupant, tenant, guest, licensee, or invitee for any period for failure to comply with any provision of the Governing Documents, or during which any Assessments against the Owner's Lot remain unpaid.

8.8 Certificate of Payment. The treasurer of the Association or the manager of the Association, upon request of any Owner, shall furnish a certificate signed by a member of the Board or by the manager, if authorized by the Board, stating whether any Assessments are owed by that Owner. The Board may establish a reasonable fee for such certificate. Such certificate will be conclusive evidence of payment of Assessments through the date of the certificate.

ARTICLE IX INSURANCE AND INDEMNITY

Insurance is essential to protect the interests of the various Owners and to ensure that funds will be available for rebuilding after a casualty; however, because insurance costs may increase significantly or new types of coverage may be available, this Article gives some flexibility to the Board to select insurance coverage that is reasonable for the conditions that exist at that time.

9.1 Review of Coverage. The Board shall review limits of coverage for each type of insurance at least once each year.

9.2 Casualty Insurance. The Board shall be required to obtain and maintain fire insurance as appropriate. Endorsements for extended coverage, vandalism, malicious mischief, and windstorm should be obtained if available at reasonable cost. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than eighty percent (80%) of the insurable value (based upon replacement) of the improvements constructed on the Common Property.

9.3 Public Liability. The Board shall obtain public liability insurance, in such limits as the Board may from time to time determine, insuring against any liability arising out of, or incident to, the ownership and use of the Common Property. Whenever practicable, such insurance should be issued on a comprehensive liability basis and should contain a "severability of interest" endorsement that shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Board, or other Owners. Such insurance must

always name Declarant as additional insureds until fifty (50) years after the date of this Declaration.

9.4 Association Management. Unless waived annually by a majority of the voting interests present at a properly called Association meeting, the Association is required to maintain insurance or a fidelity bond for all persons who control or disburse funds of the Association in an amount to cover the maximum funds that will be in the custody of the Association or its management at any one time. The term “persons who control or disburse funds of the Association” shall include, but not be limited to, all individuals authorized to sign checks on behalf of the Association, the Association’s President, Secretary, Treasurer and the Association’s Manager. The cost of such insurance shall be included as a common expense of the Association.

9.5 Director’s Liability Insurance. The Board may obtain liability insurance insuring against personal loss for actions taken by members of the Board and Board appointed committees in the performance of their duties. Such insurance shall be of the type and amount determined by the Board in its discretion.

9.6 Other Insurance. The Board shall obtain and maintain worker’s compensation insurance if and to the extent necessary to meet the requirements of law, and such other insurance as the Board may deem prudent.

9.7 Repair and Reconstruction after Fire or Other Casualty. If fire or other casualty damages or destroys any of the Common Property, the Board shall arrange for and supervise the prompt repair and restoration of the improvements. The Board shall obtain funds for such reconstruction first from the insurance proceeds, then from reserves for the repair and replacement of such improvements, and then from any Special Assessments that may be necessary after exhausting insurance and reserves.

9.8 Indemnity of Declarant. In consideration of Declarant conveying the Common Property to the Association, the Association releases, indemnifies, and holds Declarant, its officers, employees and agents harmless from any and all liability arising out of the Common Property and shall defend Declarant against all claims of any third party. Such indemnity includes any attorneys’ fees and costs incurred by Declarant at trial and on appeal.

9.9 Attorney Fees. In the event of any litigation arising out of this Declaration, the prevailing party shall be entitled to recover all costs incurred including, but not limited to, reasonable attorney’s fees at all trial and appellate levels and post-judgment proceedings.

ARTICLE X ENFORCEMENT

This Article provides for the enforcement of the covenants, conditions and restrictions contained in the Declaration and the procedure for enforcement and imposition of fines, suspensions and other remedies.

10.1 Release from Minor Violations. Declarant and the Architectural Review Committee or either of them shall have the right, by written instrument, at any time to release a Lot from minor violations of this Declaration or the Plat including, without limitation: (a) encroachments into easements; (b) encroachments over building restriction lines; and (c) construction of less than the required minimum square footage for the dwelling provided that the square footage is at least ninety-five percent (95%) of the required minimum. Notwithstanding the foregoing, only Escambia County can release a Lot from violations of an ordinance or an encroachment of an easement in favor of Escambia County.

10.2 Enforcement. In addition to the enforcement provisions set forth in Section 3.2(f), the covenants and restrictions contained in this Declaration may be enforced by Declarant, the Association, any Owner, and any Mortgagee in any judicial proceeding seeking any remedy recognizable at law or in equity, including an action or lawsuit seeking damages, injunction, specific performance, or any other form of relief, against any person, firm or entity violating or attempting to violate any covenant or restriction contained herein. The failure by any party to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of such covenant or restriction or of the right of such party to thereafter enforce such covenant or restriction. The prevailing party in any such litigation shall be entitled to reasonable attorneys' fees and court costs at all trial and appellate levels. The Governmental Authorities will have the right to enforce, by proceedings at law or in equity, the provisions contained in the Declaration that relate to the maintenance, operation, and repair of the Stormwater Management System. ALL PARTIES AGREE THAT ANY DISPUTE SHALL BE DETERMINED BY A JUDGE AND NOT A JURY, AND WAIVE THEIR RIGHT TO A JURY TRIAL IN ANY LITIGATION ARISING OUT OF THIS DECLARATION OR AMENDMENTS.

10.3 Member Fines and Suspensions. In compliance with Section 720.305(2), Florida Statutes, the Board may levy reasonable fines or suspensions.

(a) Fines. Up to \$100 per violation against any Member, Owner, or any Member's or Owner's occupant, tenant, guest, licensee, or invitee for the failure to comply with any provision of the Declaration, Bylaws, or rules established by the Association. A fine may be levied for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed \$5,000 in the aggregate. A fine of less than \$1,000 may not become a lien against a Lot, however, an aggregate fine of \$1,000 or more may be converted into a lien against the Lot by recordation. Any such lien is effective upon recording, but relates back to and has priority as of the date of the recording of this Declaration and is subject to the subordination provisions of Section 8.7(d). In any action to recover a fine or foreclose a lien, the prevailing party is entitled to reasonable attorneys' fees and costs from the non-prevailing party as determined by the court.

(b) Suspensions. In addition, the Board may suspend the right of any Member, Owner, or any Member's or Owner's occupant, tenant, guest, licensee, or invitee, to use the Common Property and facilities for the failure to comply with any provision of the Declaration, Bylaws, or rules established by the Association. Any suspension does not apply to: that portion of Common Property used to provide access or utility services to the Lot; or

vehicular and pedestrian ingress to and egress from the parcel including, but limited to, the right to park.

(c) Fines and Suspensions Committee.

i. The Board shall appoint a Fines and Suspensions Committee (the “Committee”) of no less than three Members. A Committee Member shall not be an officer of the Association, a director or employee of the Association, or the spouse, parent, child, brother, or sister of an officer, director or employee of the Association.

ii. A fine or suspension may not be imposed by the Board without a minimum of fourteen (14) days notice to the Owner(s) and Member(s) and if applicable, occupant, tenant, guest, licensee or invitee and an opportunity to be heard before the Committee. To insure all Members or other persons against whom a fine or suspension is levied by the Board are equally afforded an opportunity to be heard, the Committee will hear all fines and suspensions of the right to use Common Property and facilities levied by the Board.

iii. The Committee’s role shall be limited to confirmation or rejection of a fine or suspension levied by the Board. A fine or suspension must be confirmed by a majority vote of the Committee prior to imposition by the Board. If a fine or suspension is not approved by majority vote of the Committee, the fine or suspension shall not be imposed.

10.4 Board Procedure for Imposition of Fines, Suspensions of the Use of Common Property and Facilities and the Suspension of Voting Rights.

(a) If confirmed by the Committee, the Board’s proposed fine or suspension of the right to use Common Property and facilities is imposed without further Board action. If imposed, the Association must provide written notice of the fine or suspension by U.S. Mail or hand delivery to the Member, Owner and, if applicable, occupant, tenant, guest, licensee or invitee. Payment for any fine imposed is due on or before five (5) days from the date of the Committee meeting at which the fine was approved. Any suspension is effective on the date of the written notice.

(b) If a Member is more than ninety (90) days delinquent in paying any fee, fine or other monetary obligation due to the Association, the Board may suspend the rights of the Member, Owner, or any Member or Owner’s occupant, tenant, guest, licensee, or invitee to use Common Property and facilities until the fee, fine or other monetary obligation is paid in full. This suspension does not apply to that portion of Common Property used to provide access or utility services to the Lot. A suspension may not prohibit a Member, Owner, occupant, tenant, guest or invitee from having vehicular and pedestrian ingress and egress from the Lot including, but not limited to, the right to park. The notice and hearing requirements in Section 10.3 above do not apply to a suspension under this provision. The suspension must be approved at a properly noticed meeting of the Board. Upon approval, the Board must notify the Member, Owner, and any Member’s or Owner’s occupant, tenant, guest, licensee, or invitee by U.S. Mail or hand delivery.

(c) The Board may also suspend the voting rights of a Lot, Member or Owner for the nonpayment of any fee, fine, or other monetary obligation due to the Association that is more than ninety (90) days delinquent. A voting interest or consent right allocated to a Lot, Member or Owner which has been suspended by the Association shall be subtracted from the total number of voting interests in the Association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action by this Declaration. The notice and hearing requirements in Section 10.3 above do not apply to a suspension under this provision. The suspension imposed under this provision shall terminate upon full payment of the delinquent monetary obligation due or overdue to the Association. The suspension must be approved at a properly noticed meeting of the Board. Upon approval, the Board must notify the Member or Owner by U.S. Mail or hand delivery.

10.5 Owner's Failure to Maintain Lot. If an Owner shall fail to maintain his or her Lot or any improvements located thereon in compliance with the covenants and restrictions contained in this Declaration and all other Governing Documents, the Association shall have the right and may, through its agents, employees, and contractors, enter into or upon said Lot and repair, maintain, and restore the Lot and/or the exterior portions of any building or improvement located on the Lot. The cost of such repair, maintenance, or restoration, together with a reasonable administrative charge shall be charged against the Lot as an individual Lot Assessment. Before the Association may enter into or upon said Lot, a written notice shall be mailed to the owner at the address for the Owner on record with the Association informing the Owner of the Lot violation(s). If the Owner fails to correct the Lot violation(s) within thirty (30) days from the receipt of the notice, the Association may immediately enter onto or upon said Lot in order to repair, maintain, or restore the Lot. The thirty (30) day notice requirement contained in this Section 10.5 is waived in the event of an emergency.

10.6 Tenant Violations. In addition to the remedies provided above, in the event the Association determines that a tenant is in violation of the Declaration or the Rules, the Association shall notify the Owner and the tenant of the violation and afford the tenant and the Owner an opportunity for a hearing. If the violation continues for fifteen (15) days, the Association shall have the right to evict the tenant. Each Owner by acceptance of a deed for a Lot hereby irrevocably appoints the Association as its attorney in fact and agent in such an eviction action. All costs related to such action shall be the responsibility of the Owner and shall constitute an Individual Lot Assessment.

ARTICLE XI GENERAL PROVISIONS

This article sets forth rules of interpreting the Declaration and amending the Declaration.

11.1 Incorporation of the Land Use Documents. Any and all deeds conveying a Lot shall be conclusively presumed to have incorporated therein all of the terms and conditions of this Declaration.

11.2 Assignment. Declarant shall have the right, from time to time, to assign any of its rights or obligations pursuant hereto in part or in whole.

11.3 Notices. Notices shall be given as to Owners by posting at the Owner's dwelling or vacant Lot, or mailing first class postage prepaid to the Owner's address maintained by the Association, or by posting a notice applicable to all Owners at the Common Property, and as to Declarant, by sending certified mail to the corporate address of Declarant filed with the Florida Secretary of State.

11.4 Amendment.

(a) Subject to the provisions of Section 11.5, Declarant specifically reserves the absolute and unconditional right, as long as Declarant owns any of the Lots, to amend this Declaration without the consent or joinder of any party to: (i) conform to the requirements of Escambia County, Florida, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veterans Administration, Department of Housing and Urban Development, or any other generally recognized institution involved in the purchase and sale of home loan mortgages; (ii) conform to the requirements of mortgage lenders or title insurance companies; or (iii) perfect, clarify, or make internally consistent the provisions herein.

(b) Subject to the provisions of Section 11.5 and applicable law, Declarant reserves the right to amend this Declaration in any other manner without the joinder of any party, as long as said amendment is made in good faith and is not arbitrary or capricious, does not destroy the general plan of the development, does not prejudice the rights of the Members to enjoy the benefits of Common Property, does not materially shift the economic burdens from the Declarant to the Members and no Owner's right to the use and enjoyment of the Owner's Lot is materially altered.

(c) Subject to the provisions of Section 11.5 and applicable law, this Declaration may be amended by consent of Owners of fifty percent (50%) or more of the Lots as evidenced by recording an instrument executed by said Owners in the Public Records, provided that no such amendment will be effective without the consent of Declarant, or its assigns, until Declarant and its affiliates own no Lots or other property within Brookhaven. Within thirty (30) days of the recording of an Amendment in the Public Records, the Association shall provide copies of the Amendment to all of the Members.

(d) Declarant, without the consent of any party, may bring within the scheme of this Declaration additional land by Supplementary Declaration in accordance with the procedures set forth in Section 2.2.

(e) Any amendment to the Declaration that would alter the Stormwater Management System, beyond maintenance in its original condition, including mitigation or

preservation areas and the water management portions of the common areas, must have the prior approval of the District or other applicable governing authority.

11.5 Mortgagee's Consent to Amendments. This Declaration contains provisions concerning various rights, priorities, remedies, and interests of the Mortgagees. Such provisions are to be construed as covenants for the protection of the Mortgagees on which they may rely in making loans secured by mortgages on the Lots. Accordingly, no amendment or modification of this Declaration impairing such rights, priorities, remedies, or interests of a Mortgagee shall be adopted without the prior written consent of Mortgagees holding liens on thirty percent (30%) or more of the Lots encumbered by mortgages to Mortgagees. Each Mortgagee agrees that it will either consent to a proposed amendment or give notice of refusal to consent by written notice to the party requesting such consent within thirty (30) days after the request is received. If a Mortgagee does not respond within sixty (60) days after the date of mailing of the written notice, the Mortgagee's consent will be deemed given, and an affidavit to such effect recorded in the Public Records by the party requesting the consent will be sufficient evidence to make the requested amendment; provided, that a photocopy of the documentation proving receipt of the request to the Mortgagee is attached to the affidavit. This Section shall not apply or be construed as a limitation on those rights of Declarant, the Association, or the Owners to make amendments that do not adversely affect the Mortgagees.

11.6 Captions and Statement of Purpose. Captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only, and in no way shall such captions or headings define, limit, or in any way affect any of the terms or provisions of this Declaration. The Statement of Purpose is a summary of general information only and in no way shall such statement define, limit, or in any way affect any of the terms or provisions of this Declaration.

11.7 Gender and Plural Terms. Whenever the context so requires, any pronoun used herein maybe deemed to mean the corresponding masculine, feminine, or neuter form thereof, and the singular form of any noun or pronoun herein maybe deemed the corresponding plural form thereof and vice versa.

11.8 Severability; Amendments to Laws. If any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, that judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Without limitation of the foregoing, the invalidation of any of the covenants, restrictions, terms, or conditions of this Declaration, or a reduction in the term of the same by reason of the legal rule against perpetuities, shall in no way affect any other provision, which shall remain in full force and effect for such period of time as may be permitted by law. Any amendment to applicable law that has the effect of reducing the rights of Declarant or increasing the liabilities of or duties imposed on Declarant will not be incorporated into this Declaration by reference. All other references to applicable laws and regulations will incorporate amendments to those laws and regulations.

11.9 Duration and Renewal. This Declaration (but excluding the easements herein created, which are perpetual) and the terms, provisions, conditions, covenants, restrictions,

reservations, regulations, burdens, and liens contained herein including, without limitation, the provisions for assessment of Lots, shall run with and bind all of the Lots and inure to the benefit of Declarant, the Owners, and their respective legal representatives, heirs, successors, and assigns, for a term of ninety (90) years from the date hereof, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year before the termination of the 90-year period or before each such 10-year extension, as the case may be, there is recorded in the Public Records an instrument agreeing to terminate this Declaration, which instrument is signed by a majority of all Owners and all Mortgagees, upon which event this Declaration shall be terminated upon the expiration of the 90-year term or the 10-year extension during which such instrument was recorded, as the case may be.

11.10 Venue. This Declaration shall be governed by and enforced and construed under the laws of the State of Florida, without regard to its conflicts of law provisions. Venue in any proceeding involving this Declaration will be in Escambia County, Florida.

11.11 DISCLAIMER OF REPRESENTATIONS OR WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS DECLARATION, NO REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, HAS BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF. IF ANY SUCH WARRANTY CANNOT BE DISCLAIMED, AND AS TO ANY CLAIMS WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED. THIS SECTION 11.11 SHALL NOT BE AMENDED.

11.12 DISCLOSURES. (a) DECLARANT WILL CREATE A MUNICIPAL SERVICE BENEFIT UNIT (MSBU) FOR FINANCING THE SUBDIVISION STREET LIGHTS. THE MSBU WILL BE ASSESSED IN THE SAME MANNER AS AD VALOREM TAXES AND WILL BE A LINE ITEM ON ALL AD VALOREM TAX BILLS; (b) DECLARANT INTENDS TO CREATE ADDITIONAL PHASES OF THE SUBDIVISION AND WILL HAVE THE RIGHT TO USE THE ROADS AND COMMON PROPERTY WITHIN THE SUBDIVISION. ADDITIONALLY, DECLARANT'S LOTS IN ADDITIONAL PHASE(S) SHALL BE CLASS A MEMBERSHIP LOTS AND HAVE THE VOTING RIGHTS SET FORTH IN SECTION 5.2.

(end of text – signature page(s) to follow)

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed the day and year first above written.

Signed, sealed and delivered
in the presence of:

DEVINE FARMS, LLC,
a Florida limited liability company

Print Name: _____

By: _____
Its: Managing Member

Print Name: _____

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, as Managing Member of Devine Farms, LLC, a Florida limited liability company, on behalf of the company.

NOTARY PUBLIC
Print Name: _____

Personally Known
OR

Produced Identification
Type of Identification Produced _____

IN WITNESS WHEREOF, Developer has caused this Declaration to be executed the day and year first above written.

Signed, sealed and delivered
in the presence of:

SNS REALTY, INC., a Florida corporation

Print Name: _____

By: Neal B. Nash
Its: President

Print Name: _____

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Neal B. Nash, as President of SNS Realty, Inc., a Florida corporation, on behalf of the corporation.

NOTARY PUBLIC
Print Name: _____

____ Personally Known
OR
____ Produced Identification
Type of Identification Produced _____

JOINDER OF PRINCIPAL BUILDER

CHB Holdings of Northwest Florida, LLC, a Florida limited liability company, hereby consents to and joins in the Declaration of Covenants, Conditions, Restrictions and Easements for Brookhaven.

The sole purpose of this Joinder is to acknowledge the consent of said Principal Builder to the Declaration.

Signed, sealed and delivered in our presence as witnesses:

CHB Holdings of Northwest Florida, LLC,
a Florida limited liability company

Print Name: _____

Print Name: _____

By: _____, its member

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, as member of CHB Holdings of Northwest Florida, LLC, a Florida limited liability company, on behalf of the company.

NOTARY PUBLIC
Print Name: _____

Personally Known
OR

Produced Identification
Type of Identification Produced _____

JOINDER OF PRINCIPAL BUILDER

Holiday Builders, Inc., a Florida corporation, hereby consents to and joins in the Declaration of Covenants, Conditions, Restrictions and Easements for Brookhaven.

The sole purpose of this Joinder is to acknowledge the consent of said Principal Builder to the Declaration.

Signed, sealed and delivered in our presence as witnesses:

Holiday Builders, Inc.,
a Florida corporation

Print Name: _____

Print Name: _____

By: _____, its _____

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ___ day of _____, 2018, by _____, as _____ of Holiday Builders, Inc., a Florida corporation, on behalf of the corporation.

NOTARY PUBLIC

Print Name: _____

Personally Known
OR

Produced Identification
Type of Identification Produced _____

JOINDER OF PRINCIPAL BUILDER

Adams Homes of Northwest Florida, Inc., a Florida corporation, hereby consents to and joins in the Declaration of Covenants, Conditions, Restrictions and Easements for Brookhaven.

The sole purpose of this Joinder is to acknowledge the consent of said Principal Builder to the Declaration.

Signed, sealed and delivered in our presence as witnesses:

Adams Homes of Northwest Florida, Inc.,
a Florida corporation

Print Name: _____

Print Name: _____

By: _____, its _____

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, as _____ of Adams Homes of Northwest Florida, Inc., a Florida corporation, on behalf of the corporation.

NOTARY PUBLIC

Print Name: _____

Personally Known

OR

Produced Identification

Type of Identification Produced _____

JOINDER OF MORTGAGEE

Trustmark National Bank, as holder of a mortgage encumbering the property known as Brookhaven, as described in the foregoing Declaration, hereby consents to and joins in the Declaration of Covenants, Conditions, Restrictions and Easements for Brookhaven.

Nothing contained herein shall be deemed to or in any way limit or effect the mortgage held by Trustmark National Bank over the priority of the lien created thereby and the sole purpose of this joinder is to acknowledge the consent of said mortgagee to the Declaration.

Signed, sealed and delivered in our presence as witnesses:

Trustmark National Bank

Print Name: _____

By: _____
Its: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ESCAMBIA

The foregoing instrument was sworn to and acknowledged before me this ____ day of _____, 2018, by _____, as _____ of Trustmark National Bank, on behalf of the bank.

NOTARY PUBLIC
Print Name: _____

Personally Known
OR

Produced Identification
Type of Identification Produced _____

EXHIBIT A