

**DECLARATION OF RESTRICTIONS
THE GATES AT CUNNINGHAM CREEK**

10/10/00
4145.50

WHEREAS, the undersigned ("Grantor") is the owner of certain property (the "Property") known as The Gates at Cunningham Creek, according to the plat thereof recorded in map book #26, pages 70 through 76, public records, St. Johns County, Florida (herein the "property").

WHEREAS, Grantor has established a general plan for the development of the Property, which general plan is and will be for the benefit of present and future owners of all or any part of the Property, and shall inure to the benefit of and run with each and every part of the Property;

NOW THEREFORE, in consideration of the premises and in order to accomplish the purposes herein set forth, Grantor does hereby establish the following restrictive covenants (hereinafter referred to as this Declaration or the "Covenants" or a "Covenant") as to the Property:

I. The Property:

The Property may be referred to as "The Gates at Cunningham Creek" and the lots or tracts thereof described within the plat may sometimes hereinafter be referred to as the "Lots" or a "Lot".

II. Purpose - Binding Effect:

(a) The purpose of the Covenants is to promote the use of the Property for residential purposes only, to prevent nuisances, to maintain the attractive and desirable character of the Property and to secure for the present and future owners of each of the Lots, their respective heirs, administrators, executors, personal representatives, successors and assigns, the full benefit and enjoyment of their respective lot with no greater restriction on the free use thereof than is necessary to provide the same advantages to all of the others.

(b) Each grantee of any part of the Property and all subsequent purchasers will, by accepting any conveyance, accept same subject to these Covenants. The Covenants run with the land and are binding upon and will inure to the benefit of all Lot owners.

III. Duration of the Covenants:

The Covenants shall continue and in full force and effect until January 2, 2013, on which date the Covenants shall terminate and be of no further effect. PROVIDED, HOWEVER, that the Covenants shall be automatically extended for a period of ten years and thereafter for successive ten-year periods unless prior to the end of one of such extension periods (or prior to January 2, 2013) the owners of a majority of the Lots shall by written instrument duly recorded declare a termination of the same.

IV. Application of Declaration to Purchasers at Foreclosure:

Should any mortgage, deed of trust, or other lien, consensual or nonconsensual, be foreclosed on any Lot or title conveyed in lieu of such foreclosure, the title acquired in connection therewith will be subject to and bound by this Declaration.

V. Required Prior Approvals:

Return to : Brett S Turner
17 Arbor Club Dr #214
Ponte Vedra Beach, FL 32082

(a) Prior to January 2, 2000, no structure shall be erected, placed, or altered on any Lot until the construction plans and specifications, proposed exterior colors, proposed fences, and a plan showing the location of such structures have been approved by Grantor, who may consider, among other factors, the quality of workmanship and materials, harmony of exterior design and color with existing structures on the Property, location with respect to topography, and finish grade elevation.

(b) Prior to January 2, 2000, no living tree having a diameter greater than eight (8) inches at a height of five (5) feet above ground level may be cut on the Property without prior written consent of the Grantor. Any trees within the building pad, driveway, sidewalk, patios, or swimming pool are not subject to this restriction.

(c) Notwithstanding the foregoing, Grantor reserves the unilateral right in its sole discretion to waive or terminate its right to the above described prior approvals, or any of them, by written instrument duly signed by Grantor.

VI. General Residence and Structure Restrictions:

(a) No structure whatsoever, except no more than one private dwelling house, including garages, boat houses, or animal enclosures, shall be erected, placed, or permitted on any Lot or any part thereof. Each dwelling house shall be used as a private residence only (although not necessarily a primary residence). Any garage shall be for not less than two (2) cars nor more than three (3) cars, and may also include a servant's or guest's or storage room or tool room as part of the garage structure. All garages must open toward the side or rear of the residence and cannot open directly onto any street. With regard to Lots 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, and 12, all side entry garages must be entered from the south or southwest side of the Lot unless given prior written approval from the Grantor. With regard to Lots 13, 14, 15, 16, 17, 19, 20, and 21, all side entry garages must be entered from the north or northeast side of the Lot unless given prior written approval from the Grantor.

(b) No dwelling house placed on any Lot shall have a heated and air conditioned enclosed living area (exclusive of screened porches, storage rooms, and garages) of less than 2,200 square feet. No residence or other permitted structure shall be constructed by the use of exposed concrete block, excluding foundations. No metal roofs are permitted on any structure.

(c) When the construction of any structure is once begun, work shall be prosecuted diligently and continuously until the full completion thereof. The main residence and all connected structures must be completed within nine (9) months after the start of construction, unless completion is rendered impossible as the result of strikes, fires, national emergencies, or natural calamities.

(d) Window air conditioners may not be installed or maintained on the exterior of any residence, and may not be installed on any other structure unless it is not visible from the street and faces a rear lot line.

(e) Swimming pools shall not be located between the street and the main dwelling. No above-ground swimming pools are permitted.

(f) Outside clothes lines may not be erected unless they are not visible from the street and they are behind the rear lot line.

(g) No structure, except as permitted hereinbelow for fences, shall be placed within ten (10) feet of any side or rear

lot line, or within forty (40) feet of any front lot line.

(h) Except in connection with the sale of a Lot or Lots, no signs of any kind shall be displayed to the public view on any Lot. Notwithstanding the foregoing, however, one small sign may be used to denote the name of the Lot owner and/or resident, provided such sign does not exceed one hundred fifty (150) square inches in size. Nothing herein shall be construed to restrict the Grantor from placing signs and advertising on the Property or any lot in connection with the sale of Lots or residences located therein. All signs shall be subject to approval of Grantor.

(i) Lots shall be used only for residential purposes and no manufacturing or commercial enterprise or any activity for profit shall be maintained on or in any connection with any Lot. No trees or other flora shall be grown on or removed from any Lot for commercial purposes. The operation of any quarry, mine, strip mine, or similar activity such as exploration for or removal of natural resources are not permitted, except that lot owners shall have the right to establish and maintain a water well for personal use.

(j) No Lot will be used for any purpose or maintained in a manner that, as a matter of common experience, tends to create or constitute a private or public nuisance. No rubbish or trash shall be allowed to accumulate on any Lot. Lots shall be maintained in a mowed and neatly maintained condition at all times. Structures on a Lot shall not be allowed to fall into disrepair and will be reasonably maintained.

(k) No temporary residence or temporary out-building shall be placed on any Lot and no mobile home, automobile house trailer, trailer coach, movable house, modular home, recreational vehicle or other like structure designed to be moved and occupied after movement with only minor unpacking and/or assembly or not needing a foundation, or movable without use of regular house-moving equipment, will be placed on any Lot whether for use as a dwelling house or any out-building.

(l) No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

(m) No satellite dish shall be allowed without prior approval of Grantor.

(n) All garbage and trash must be stored in closed containers and, until placed for pickup, shall be kept in such location so as to be hidden from view.

(o) There shall be no outside storage of materials prior to the construction of a dwelling on any Lot.

(p) Propane and other fuel tanks shall be buried or enclosed so as not to be visible from the street.

(q) All roads, driveways, and similar connections to the street shall be asphalt, concrete, or a smooth hard surface paving material similar thereto for at least twenty (20) feet from the point of access to the street. All such connections shall provide for proper grading and drainage to insure that no damage is done to, nor hazard created to the road or to vehicles or to individuals utilizing the road. Said connections shall at all times be maintained by the owner in a safe condition.

(r) All buildings within the Property shall connect to such central water and sewer utilities systems as serve the Property. In addition to those easements shown in the recorded plat of the Property, Grantor hereby reserves perpetual, non-exclusive, assignable easements and rights-of-way for the

construction, maintenance, and operation of utilities and drainage lines, whether public, quasi-public, or private. Such easements and rights-of-way are located within ten (10) feet of the front (street) line of each Lot, and within five (5) feet of all side and rear Lot lines. To the extent such easements overlap or conflict with those shown on the recorded plat of the Property, the easement which is greater in size shall be applicable.

(s) No owner or occupant of any Lot abutting on a retention area, drainage area or jurisdictional wetland shall clear, dredge, fill, discharge into or otherwise impair or impact such retention area, drainage area or jurisdictional wetland.

(t) No vehicles (except passenger vehicles in running order) including but not limited to boats, boat trailers, travel trailers, trucks, camp trailers, motor homes, and mobile homes or any similar property may be kept on any street or stored on any Lot except within a garage or behind the front line of the residence structure and shielded from view from the street. With regard to Lots 8, 9, 10, 11, 12, 13, 14, and 15, all items referred to herein shall also be shielded from view from State Road 13.

VII. Animals, Birds, Livestock, and Pets:

No livestock may be maintained on any Lot, except that up to four (4) pets (including dogs, cats, and/or other small animals not exceeding one hundred (100) pounds in weight) may be permitted on any Lot, provided that the residence on such Lot is complete and occupied and further provided that such animals are controlled on such Lot by a method commonly used for that species. Any outdoor pets other than dogs or cats must be approved in writing by Grantor.

VIII. Further Subdivision:

Without Grantor's prior written consent, no Lot will be sold, subdivided, partitioned or in any way disposed of in a parcel or parcels smaller than that originally shown in the recorded plat of the Property.

IX. Fences and Hedges:

As to all Lots, all fences, and hedges:

(a) shall not exceed six (6) feet in height and shall be of all wood construction unless prior written approval is obtained from Grantor to use another material for construction;

(b) shall not be placed in any jurisdictional wetland, drainage area, or retention area;

(c) shall not be placed any closer to the front property than ten (10) feet behind the front line of the residence, and in the case of corner lots, shall not be placed any closer to the street bordering the side of the house than five feet behind the side line of the residence;

(d) as to design, shall be approved in advance by Grantor. As to Lots bordering on State Road 13, all fences and hedges shall be subject to a uniform standard for fences visible from State Road 13 and shall be subject to approval by Grantor as to color, materials, and design.

X. Amendments to Declaration:

Any provision of this Declaration (except XVI.(e)v.) may be amended at any time, but only by written instrument duly recorded and signed by the owners of not less than two thirds of the Lots.

Any amendment to the Covenants and which alters the surface water or storm water management system, including the water

management portions of the common areas, must have prior approval of the St. Johns River Water Management District.

XI. Enforcement of Covenants:

(a) These Covenants attach to and run with the Property and the Lots, and it shall be lawful not only for the Grantor, its successors and assigns, but also for the present or future owner or owners of any Lot or Lots, their respective heirs, administrators, executors, personal representatives, successors, and assigns to institute and prosecute any proceedings at law or in equity against the person or persons violating or threatening to violate any of the Covenants.

(b) No delay or omission on the part of any person entitled to enforce the Covenants in exercising any rights, power or remedy available to them shall be construed as a waiver of such right or acquiescence in the breach of any provisions of this Declaration. No claim for relief and no right of action shall accrue in favor of any person against any other person entitled to enforce the Covenants for or on account of the failure of the latter to bring any action on account of any breach of the Covenants or for the imposition of any provision in this Declaration which may be held unenforceable.

(c) Notwithstanding anything herein to the contrary, Grantor shall have the right to waive deviations from these Covenants which are deemed, in its sole judgment, as minor deviations.

(d) The St. Johns River Water Management District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation, and repair of the surface water or storm water management system.

XII. Effect of Partial Invalidity of Indenture:

(a) In the event any provision of this Declaration is declared invalid by a court of competent jurisdiction, such provision shall not in any manner affect, modify, or nullify any of the other provisions of this Declaration, and such other provisions shall continue unimpaired, in full force and effect.

(b) In the event any provision of this Declaration is declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the provisions shall be effective, then, the relevant provision shall be reduced to a period of time which does not violate the laws of the State of Florida.

(c) This Declaration or any part thereof notwithstanding, the Property is subject to all rights and privileges which any governmental authority may have acquired through dedication or the filing or recording of maps or plats of any part of the Property. This Declaration or any part thereof in conflict with any present or future ordinance, law, regulation, or statute of the State of Florida, the County of St. Johns, or any governmental subdivision within the jurisdiction of which all or any part of the Property is now or may hereafter be located, is or will be invalid to the extent of such conflict.

XIII. Successors of Grantors:

(a) The Grantor has the sole and exclusive right to transfer, assign to, and withdraw from such person or entity as it shall select, any or all of the rights, powers, and privileges given to or reserved by the Grantor by any part of this Declaration.

(b) The Grantor may (but need not) establish one or more corporations or other entities in which each owner of any part of the Property shall be a member. Any such entity may (but need not) be granted part or all of the authorities granted or reserved under this Declaration as well as any other instruments.

(c) To exercise any of the foregoing options reserved to the Grantor under the provisions of this Section XIII, the Grantor shall record an instrument in the public records of St. Johns County, Florida, referring to this Section XIII and specifying in reasonable detail the particulars of the action taken by the Grantor hereunder.

(d) If at any time hereafter there shall be no person or entity entitled to exercise the rights, powers, and privileges given or reserved by the Grantor under the provisions hereof, same shall be vested in and exercised by a committee of five (5) persons to be selected by the owners of a majority of the Lots; provided, however, that nothing herein contained shall be construed to confer any rights, powers, or privileges upon such a committee except in the event described above.

XIV. Homeowners' Association:

(a) Owners. A Lot may be owned by one or more natural persons or an entity other than a natural person, so long as such entity is wholly owned by one natural person, a married couple or two persons of the same family; provided, however, that a Lot may be owned by a corporation or partnership that is in the business of building homes for resale and purchases the Lot with such intent. The term "Owner" or "Owners" as used in Section XIV - XVI of this Declaration shall not include Grantor.

(b) Members. Grantor and every Owner shall be a member of The Gates at Cunningham Creek Homeowners' Association, a Florida not for profit corporation (the "Association"). Membership shall be appurtenant to and may not be separated from title to any Lot except as provided herein.

(c) Voting Rights. The Association has two classes of voting membership:

i. Class A. Class A Members are the Owners with the exception of the Grantor, while the Grantor is a Class B Member. Class A Members are entitled to one vote for each Lot owned. If more than one person holds an interest in any Lot, other than as security for the performance of an obligation, all such persons shall be Members. The vote for each Lot shall be exercised as they, among themselves, determine, by written designation to the Association, but in no event shall any Lot carry more than one appurtenant right to vote. The vote appurtenant to any Lot shall be suspended if and for so long as more than one Member holding an interest in that Lot lawfully seeks to exercise it.

ii. Class B. The Grantor is the sole Class B Member and is entitled to four (4) votes for each Lot owned by it as long as Grantor remains a Class B Member. The Class B membership shall cease ninety (90) days after the Grantor has conveyed at least sixty (60) percent of the Lots included in the Property, after which Grantor shall become a Class A member.

(d) Board Of Directors. The term "Board of Directors" as used herein and in the Articles of Incorporation and Bylaws of the Association shall mean the Board of Directors of the Association.

XV. Duties and Powers of the Homeowners' Association:

(a) Duties and Powers. The duties and powers of the Association are those provided for by law and set forth in this Declaration, the Association's Bylaws and Articles of

Incorporation, together with those duties and powers that may be reasonably implied to effect the purposes of the Association. Such duties and powers include, but are not to be limited to, maintaining the roadways and street lights within the Property (to the extent they are not maintained by St. Johns County) and operating, maintaining, and repairing of the surface water or storm water management system. Maintenance of the surface water or storm water management system(s) means the exercise of practices which allow the systems to provide drainage, water storage, conveyance, or other surface water or storm water management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the surface water or storm water management system shall be as permitted, or if modified, as approved by the St. Johns River Water Management District. "Surface water or storm water management system" means a system which is designed to be 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 and quality of discharge from the system as permitted pursuant to Chapters 40C-4, 40C-40, or 40C-42, F.A.C. The Association may also take such measures and perform such services that in the judgment of the Board of Directors are necessary or desirable to perform such duties, to eliminate fire, health, or safety hazards, and to provide such other services or facilities as may be of general benefit to the Members ("Members") of the Association and the Property.

(b) Exterior Maintenance. Except as provided for herein, the Association is not responsible for any exterior maintenance of houses, including but not limited to glass surfaces on doors, screens and screen doors, exterior door and window fixtures, terraces, patio and deck improvements or roofs.

(c) Owner's Responsibility. To the extent that maintenance is not provided by the Association, each Owner shall keep all parts of that Owner's Lot in good order and repair and free of debris. If an Owner fails to maintain the exterior portions of that Owner's house and Lot in a good and attractive manner, the Association, after written notice to the Owner and approval by a 2/3 vote of the Board of Directors, may enter upon such Lot to correct, repair, restore, paint, landscape and maintain any such part of the house and Lot. All costs related to such performance by the Association shall constitute an assessment against that lot.

(d) Third Party Contracts. Subject to the approval of the Class B Member, if any, the Association may employ or contract with one or more third parties to perform all or any portion of the Association's management, maintenance, and repair activities and the associated costs shall be included within the General Assessments.

XVI. Covenants for Maintenance Assessments:

(a) Creation of Lien and Personal Obligations for Assessments. Each owner of a Lot by acceptance of a deed or other transfer document therefore, whether or not such deed or transfer document so states, is deemed to agree to pay to the Association the General Assessments and the Entry Way Assessment described in subparagraphs (b) and (c) of this paragraph XVI (collectively referred to herein as the "Assessments"). The assessments, together with interest, costs and reasonable attorney's fees incurred in the collection thereof shall be a charge on each Lot and shall be a continuing lien upon any Lot against which the Assessments are made and shall also be the personal obligation of the Owner of such Lot when any assessment falls due. No diminution or abatement of any assessment shall be allowed due to any alleged failure of the Association to perform a required function or any

alleged negligent or wrongful acts of the Association or its officers, agents and employees. The personal obligation for delinquent Assessments shall not pass to an Owner's successor(s) in title unless such successor(s) expressly assume such obligation.

(b) General Assessments. The Association shall collect quarterly General Assessments to perform the duties of the Association and promote the recreation, health, safety and welfare of the Property and Owners. The Board of Directors shall by majority vote set the quarterly assessments at a level sufficient to perform the duties and meet the obligations of the Association. The Board of Directors may increase the General Assessments to meet Association expenses and operating costs on a current basis during any fiscal year. The Board of Directors shall set the date or dates that Assessments shall come due.

(c) Entry Way Assessment: In addition to the Quarterly dues, each homeowner shall pay \$35.00 per year per association member to the Cunningham Creek Entry Way Fund, c/o Mr. Mo Kashmiry, 1136 Wood Duck Hollow, Jacksonville, FL 32259 for the maintenance of the entry way sign to Cunningham Creek Estates and the landscaped island found on Cunningham Estates Road which serves as the primary entry road to Cunningham Creek Estates. This commitment is contingent upon said organization continuing to maintain said property regularly and in an attractive manner.

(d) Commencement of General Assessments. The Assessments shall commence as to each Lot on the day of the conveyance of the Lot subject to this Declaration to an Owner and shall be paid quarterly thereafter on the date set by the Association.

(e) Effect of Nonpayment of Assessments: Remedies of the Association. Any Assessment not paid with thirty (30) days after the due date shall bear interest from the due date at the highest rate then permitted by law.

i. Lien. The Assessments against any Lot pursuant to this Declaration, together with any interest and costs of collection (including reasonable attorney's fees, whether suit is filed or not), shall become a lien on such Lot. The Association may bring an action in law or equity against the Owner personally obligated to pay the same, foreclose the lien against the Lot, or both. Costs and reasonable attorney's fees incurred in any such action shall be awarded to the prevailing party. The lien provided for in this section shall be in favor of the Association. The Association, acting on behalf of the owners, may bid for an interest in any Lot foreclosed at any foreclosure sale of such Lot and hold, lease, mortgage and convey that Lot.

ii. Owner's Obligations. Each owner, by acquisition of a Lot, hereby expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of the Assessments and to enforce the aforesaid by all methods available for the enforcement of such debts or the enforcement of liens, including foreclosures, by an action brought in the name of the Association in a like manner as a mortgage lien on real property. No Owner may waive or otherwise escape liability for the Assessments by abandonment of the Lot.

iii. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein is inferior and subordinate to the lien of a mortgage now or hereafter placed on any Lot so long as such mortgage lien is recorded prior to any claim of any lien recorded by the Association. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure or any proceedings in lieu thereof, however, shall terminate the lien of such assessments as to payments that become due prior to such sale or transfer.

iv. Certificate of Payment. The Treasurer of the Association, upon demand of any owner liable for assessments, shall furnish to that owner a certificate in writing signed setting forth whether such assessments have been paid.

v. Lots Owned by Grantor. Notwithstanding anything contained herein to the contrary, any Lot owned by Grantor is not subject to assessment by the Association or any lien created by this Declaration.

IN WITNESS WHEREOF, Brett S. Turner, as Vice President of Brookwood Properties, Inc., has executed this indenture as of the 17th day of March, 1993.

Witnessed By:

Stephen C. Meadows
Stephen C. Meadows

Brookwood Properties, Inc.

By: Brett S. Turner
Brett S. Turner
Vice President

Ann White
Ann White

STATE OF FLORIDA
COUNTY OF Duval

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared Brett S. Turner, to me well known to be the Vice President of Brookwood Properties, Inc. in whose name the foregoing instrument was executed, and that he acknowledged executing the same on behalf of Brookwood Properties, Inc. freely and voluntarily under authority duly vested in him by said Brookwood Properties, Inc.

WITNESS my hand and official seal in the State and County last aforesaid this 17th day of March, 1993.

Brenda Ann White
Notary Public, County and State aforesaid
My Commission expires:
Brenda Ann White
Notary Public, State of Florida
My Commission Expires Oct. 31, 1995
Bonded thru Troy Fair - Insurance Inc.

Joinder By Mortgagee

American National Bank of Florida, the owner and holder of that certain mortgage dated January 4, 1993, and recorded in Official records book 976, page 768, public records of St. Johns County, Florida, hereby joins in this Declaration for the purpose of subordinating its mortgage to the provisions hereof, such that a foreclosure of said mortgage shall not terminate or otherwise affect the provisions of this Declaration.

Witnessed By:

Ann White
Ann White
Brenda Murphy
Brenda Murphy

American National Bank of Florida

By: Stephen C. Meadows
Stephen C. Meadows
Vice-President

STATE OF FLORIDA
COUNTY OF Duval

I HEREBY CERTIFY that on this day before me, an officer duly

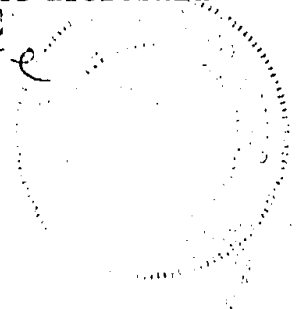
authorized in the State and County aforesaid to take acknowledgements, personally appeared Stephen C. Meadows, to me well known to be the Vice-President of American National Bank of Florida, in whose name the foregoing instrument was executed, and that he acknowledged executing the same on behalf of American National Bank of Florida, freely and voluntarily under authority duly vested in him by said American National Bank of Florida.

WITNESS my hand and official seal in the State and County last aforesaid this 17th day of March, 1993.

Brenda Ann White
Notary Public, County and State aforesaid
My Commission expires:
Brenda Ann White

CONSTRUCTION LOAN DEPT.

Notary Public, State of Florida
My Commission Expires Oct. 31, 1993
Bonded Thru Troy Fain - Insurance Inc.



COPY

Prepared By :

Brett S Turner

17 Arbor Club Dr #211

Ponte Vedra Bch, FL

32082