

DECLARATION



PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

OF

MILL BROOK

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
OF MILL BROOK

THIS DECLARATION is made this 24th day of June, 2002, by Mill Creek Developers, LLC, a South Carolina limited liability company (hereinafter "Developer").

W-I-T-N-E-S-S-E-T-H:

WHEREAS, Developer is the owner of certain lots of land in Spartanburg County, South Carolina, located on the south side of Old Georgia Road, and more particularly shown and described upon a plat entitled Mill Brook Subdivision prepared for Mill Creek Developers by Neil R. Phillips, RLS, dated May 24, 2002, and recorded in Plat Book 152, page 544, ROD Office of Spartanburg county, and

WHEREAS, Mill Brook Subdivision will be a residential community, and the Developer desires to provide for the preservation of values and amenities of said community and for the maintenance of common facilities and, to these ends, desires to subject all of the lots and property in Mill Brook to the within Protective Covenants, Conditions, Restrictions, Easements, Charges and liens (herein referred to as Covenants and/or Restrictions) for the benefit of each and every owner in Mill Brook, and

WHEREAS, Developer deems it desirable to create an agency to which should be delegated and assigned the powers of maintaining and administering common facilities and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereafter created, and is incorporating under the laws of the State of South Carolina, as a non-profit corporation, Mill Brook Homeowners' Association, Inc., for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the mutual benefits and advantages to the Developer and to future property owners of lots shown on the above plat, Developer does hereby impose upon Mill Brook the following covenants, conditions, restrictions, easements, charges and liens, which shall bind the Developer, its successors and assigns, and all future owners of said lots, their respective heirs and assigns:

1. DEFINITIONS. The following words when used herein (unless the context shall require a different meaning) shall have the following meanings:

A. "Association" shall mean and refer to Mill Brook Homeowners' Association, Inc.

B. "Mill Brook" shall mean and refer to all of the lots and property shown upon plat of "Mill Brook" referred to above and upon any subsequent plat of "Mill Brook" prepared for the Developer and recorded in the ROD Office of Spartanburg County.

C. "Common Properties" shall mean and refer to any and all properties or property rights, such as easements or other rights, which may be conveyed by the Developer or other grantors to the Association, which property and rights shall be held, managed and maintained by the Association in accordance with its rules, regulations, Bylaws and the within Covenants.

D. "Developer" shall mean and refer to Mill Creek Developers, LLC.

E. "Lot" or "lot" shall mean and refer to any numbered parcel of land shown upon a plat of Mill Brook prepared for the Developer and recorded in the ROD Office of Spartanburg County.

F. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any lot situated within Mill Brook, but notwithstanding any applicable theory of mortgage law, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding or deed in lieu of foreclosure.

G. "Member" shall mean and refer to any Owner who is a member of the Association as provided in paragraph 36 hereof.

2. SINGLE FAMILY RESIDENTIAL USE. No lot shall be used except for private, single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling, not to exceed 2½ stories in height and, if approved in advance in writing by Developer, a private detached garage or a hobby-type/storage building.

3. SUBDIVISION OF LOTS. Developer or any subsequent owner of a lot, with the prior written consent of Developer or its nominee, may sell and convey a portion of any lot to the owner of an adjoining lot, provided that any such sale of a portion of a lot does not result in the creation of another lot or a greater number of lots than that shown on said plat and does not violate any other provisions hereof. No lot may be subdivided to create an additional lot. In any such sale of a portion of a lot, the portion shall merge into and become part of the adjoining lot, and the terms and conditions herein shall apply to the lot and portion of a lot as though they were originally platted as one lot. After Developer has conveyed all the lots, adjoining owners may adjust their boundary lines without additional approval provided that under no circumstances shall a new lot be created by such adjustment.

4. MINIMUM HEATED AREA. Each dwelling shall have at least two (2) full bathrooms and no less than fourteen hundred (1400') square feet of heated floor area, and the plan must include an attached garage unless waived in writing by the Developer. The floor area required by this paragraph shall not include basements, porches, verandas, breezeways, terraces, garages, carports or hobby-type/storage buildings.

5. BUILDING SETBACK LINES. All parts of the dwelling structure, including stoops, verandas, steps and porches shall be located behind all front, rear and side property setback lines as shown on the plat for such lot referred to in the deed of such lot from the Developer. Nonetheless, Developer reserves the right and privilege to give a waiver to any setback restrictions on a lot, but such waiver must be given in writing to be valid. Developer reserves the right to deny a waiver for any reason deemed appropriate in its sole discretion.

6. SEWER EASEMENTS. Certain lots are subject to an easement and right-of-way for sanitary sewer purposes as shown on the plat referred to in such deed and described in the recorded easements or upon plat or plats referred to in such easement agreements. Ownership of such lots is subject to the rights of the Spartanburg Sanitary Sewer District. Any portion of a lot subject to a sewer easement is for the installation, maintenance and repair of the sanitary sewer line and/or manhole, and no lot owner shall build permanent above-ground improvements upon said easement or do any other act or deed which would interfere with or interrupt the use of the easement for sanitary sewer line purposes.

7. APPROVAL OF BUILDING PLANS - SPECIAL CONDITIONS.

A. No building or structure, whether it be the dwelling, garage, hobby-type building or driveway shall be erected, placed or altered on any lot until the building plans, elevations, location, specifications and driveway have been approved in writing by Developer or its nominee. If such shall not be approved or disapproved within thirty (30) days after being submitted, then such approval shall not be required, provided, however, the design and location of the proposed construction shall conform to the specific building requirements stated herein and otherwise be in harmony with the existing structures in the subdivision. Any proposed hobby-type/storage building must be built as a permanent structure and be designed in harmony with the main dwelling. Disapproval of plans, elevations, location or specifications may be based purely upon aesthetic reasons in the sole discretion of the Developer or its nominee.

B. The completion of improvements upon a lot shall include the landscaping of the yard, including the grassing or sodding of the yard and the planting of shrubs and/or decorative plants or bushes along the front elevation of the dwelling.

8. PROHIBITED BUILDING MATERIALS. Concrete blocks or cement bricks shall not be used in the construction of any building, garage or hobby-type/storage building unless the exterior of same is faced with brick, stone, stucco or some other material approved by Developer or its nominee. No asbestos shingles or asbestos siding shall be used for the exterior of any dwelling or other structure.

9. TRAILERS AND MOBILE HOMES PROHIBITED. Trailers, mobile homes, including typical double-wide mobile homes, manufactured homes and other factory or pre-built homes are absolutely prohibited. Furthermore, no residence or building may be moved from another location and placed or allowed to remain on any lot.

10. REQUIREMENTS FOR DRIVEWAYS. All driveways shall be constructed of either asphalt paving or concrete and shall be maintained by the owner of a lot in a good state of repair and suitable appearance. Where driveways from a lot intersect with the public street, said driveway will abut the existing "rolled" curb, thereby keeping the "rolled" curb in tact and undamaged. If during construction or otherwise, the curb or pavement adjacent to a construction site is broken, removed or otherwise damaged, the owner of the lot upon which such construction or work is being done shall bear the cost of replacing or repairing such damage to the satisfaction of the Developer.

11. DEVELOPER'S DISCLAIMER. DEVELOPER, AND ITS SUCCESSORS AND ASSIGNS, ITS AGENTS, CONSULTANTS AND EMPLOYEES, HEREBY DISCLAIM ANY AND

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ALL WARRANTIES, EXPRESS OR IMPLIED, OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OR ANY REPRESENTATION CONCERNING SAME, AND NO WARRANTIES OF ANY KIND SHALL ARISE AS A RESULT OF ANY PLANS, SPECIFICATIONS, STANDARDS OR APPROVALS MADE OR APPROVED BY DEVELOPER, OR ITS NOMINEES, AND DEVELOPER SHALL NOT BE LIABLE TO ANY OWNER OR ANY OTHER PERSON ON ACCOUNT OF ANY CLAIM, LIABILITY, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY OR THREATENED AGAINST ANY OWNER OR SUCH OTHER PERSON ARISING OUT OF OR IN ANY WAY RELATED TO THE SUBJECT MATTER OF ANY REVIEW, ACCEPTANCE, INSPECTION, PERMISSION, CONSENT OR REQUIRED APPROVAL WHICH MUST BE OBTAINED FROM THE DEVELOPER, WHETHER GRANTED OR DENIED.

12. GENERAL EASEMENTS. Developer reserves an easement seven and one-half (7-1/2') feet inside the front, side and rear lot lines of each lot for the installation, maintenance and repair of utilities, sewer lines, and/or storm drainage facilities. Furthermore, certain lots shall be subject to an additional easement for drainage purposes as will be shown upon a duly recorded plat of Mill Brook. All utility service lines, including cable television, telephone, gas, electric or other utility, from existing streets shall be installed underground to any dwelling or other structure located upon a lot.

13. SEWAGE. All sewage shall be disposed of through the sanitary sewer collection lines located within the subdivision and owned by the Spartanburg Sanitary Sewer District, and all connections to such lines shall be made only with the written approval of the Spartanburg Sanitary Sewer District in accordance with its rules and regulations.

14. FENCING. All fencing must be approved in advance in writing by the Developer, although Developer will generally approve chain link or other wire or metal type fences so long as they are not visible from the street and are coated black or dark green. The height, location and construction specifications must be submitted for approval, and the Developer reserves the right to disapprove fencing for purely aesthetic reasons.

15. BUSINESS ACTIVITIES PROHIBITED. No commercial operations, business operations, manufacture or production shall be permitted upon any lot. The selling, showing or marketing from a lot of any kind of goods, products or apparel is expressly prohibited. The provisions of this item shall not be construed to prohibit the making of handcrafted items for occasional off premises sale.

16. NUISANCES AND OFFENSIVE ACTIVITIES. No nuisance or other noxious, offensive, unsightly or unsanitary activity or condition shall be conducted or allowed to exist on any lot or the adjoining street or streets.

17. PARKING OF BOATS AND RECREATIONAL VEHICLES. No camping trailer, boat, boat trailer or other similar recreational vehicle or other device or equipment shall be permitted to be parked on the front portion of any lot. No inoperable motor vehicle, wrecked vehicle or motor vehicle not currently licensed shall be parked in the street right-of-way or be kept on any lot in the subdivision unless stored in an enclosed garage. Also, no buses, trucks or trailers other than pick-up trucks not to exceed three-quarter (3/4) ton in size, shall be parked on a lot or in the street right-of-way, except for loading and unloading. Further, no portion of a lot shall be used for the operation of any motorized vehicles such as motorcycles, mini-bikes, go-carts, four wheelers or similar vehicles.

18. PORTABLE OR METAL BUILDINGS PROHIBITED. Portable buildings, metal storage buildings or other similar off-site constructed storage buildings are prohibited to be placed or remain on any lot, provided, however, that a hobby-type building or other storage building approved in writing by the Developer is permissible.

19. SWINGSETS. Swingsets, sandboxes, gym sets and any such similar devices or structures primarily for children's use and enjoyment must be located behind the rear corners of the dwelling.

20. NO TEMPORARY RESIDENCES. No garage or hobby-type/storage building shall be used at any time as a residence, either temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

21. ANIMALS. No domestic fowl, cows, hogs, mules, wild animal or any other farm-type animal shall be kept on any lot at any time, provided, however, household pets, such as cats and dogs, may be kept on a lot, provided that the owner thereof shall be responsible for the control and conduct of such household pets so that they are not an annoyance, hindrance or nuisance to others. The owner shall abide by all laws and regulations relating to keeping pets.

22. TRASH RECEPTACLES. All receptacles for trash or garbage must be kept within a fenced or enclosed area and hidden from public view and the view from adjoining property.

23. CLOTHESLINES. All clotheslines and poles shall be installed on the rear portion of a lot away from the street.

24. SCREENING OF YARD EQUIPMENT. Lawn mowers or other lawn maintenance equipment shall be kept in a screened or an enclosed area so as to not be visible from any street or adjoining property.

25. TELEVISION ANTENNA AND SATELLITE DISHES. A standard roof-mounted or chimney-mounted television antenna is permissible, as well as the location of a satellite dish not exceeding eighteen (18") inches in diameter, but no other type of antenna, satellite dish or similar device for the transmission of signals of any kind shall be erected or allowed to remain on any lot without the express written permission of the Developer or its nominee.

26. COMPLETION OF IMPROVEMENTS. All houses and other structures related thereto must be completed within one (1) year after the commencement of construction, except where such completion is impossible due to strikes, fires, national emergency or other natural calamity.

27. COVENANT OF GOOD APPEARANCE AND REPAIR. Each lot owner shall maintain his lot and the exterior of all improvements in good appearance and repair in order to assure that no condition exists which would diminish the good appearance of the property. Every owner of a vacant or unimproved lot shall keep such lot free of debris and unsightly underbrush, weeds or other unsightly vegetation. In the event that an owner shall fail to maintain a lot in a good state of repair and appearance, the Developer and/or the Association, or their agents or employees, shall have the right to maintain same and charge the cost thereof to the owner, but no work shall be done without due and proper notice to the owner and an allowance of at least thirty (30) days to correct specified deficiencies. In the event the owner or owners of a

lot shall fail to pay such charges within thirty (30) days of billing, same may be collected in the same manner and under the same terms as Assessments set forth in Paragraph 38.I. THE DEVELOPER, THE ASSOCIATION OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, EMPLOYEES OR MEMBERS SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY ANY NON-NEGLIGENT ACT OR OMISSION IN THE INSPECTION, REPAIR OR MAINTENANCE OF ANY SITE, IMPROVEMENTS OR PORTION THEREOF.

28. SIGNS. No signboards or other signs of any kind shall be displayed on any lot except a single "For Sale" and a builder's sign, or a single "For Rent" sign. No sign shall be more than thirty inches (30") by thirty inches (30") in size, provided, however, the Developer shall have the right to use additional signs for development of the property. Any provisions herein expressly providing for identifying signs for the subdivision take precedence over this paragraph.

29. STREET LIGHTING. The street lighting installed by the Developer and its operational costs and maintenance may be transferred to the Homeowners' Association at any time.

30. MAINTENANCE OF STREET RIGHT-OF-WAY. The owner of a lot shall be responsible for the planting and maintaining of the area from the lot property line to the edge of the pavement or curb of the street or streets upon which said lot abuts.

31. FUEL TANKS. All fuel tanks or containers shall be buried underground, or enclosed in a structure, in a manner consistent with normal safety precautions and in accordance with the rules and regulations of appropriate governing bodies or agencies or the South Carolina Department of Health and Environmental Control, whichever the case may be. Any structure to be constructed for this purpose must be of acceptable appearance and approved by the Developer in accordance with its building approval procedure as above set forth.

32. FIREWORKS. Shooting of fireworks of any kind, and the storage thereof, are prohibited, unless carried out in conjunction with a supervised activity of the Developer or the Association.

33. ABOVE GROUND POOLS PROHIBITED. Above ground swimming pools shall not be constructed, placed or remain on any lot, provided, however, that this provision shall not be interpreted to exclude small, portable swimming pools designed for use by infants and children.

34. MAIL RECEPTACLES. All mailboxes or other mail receptacles and their supporting structure, including fixing the location and height thereof, shall conform to Developer's uniform requirements. After installation, each owner has the responsibility of keeping same in good repair and appearance.

35. TEMPORARY SALES OFFICE. The Developer shall have the right to place or erect temporary sales offices on any lot in the development for the purpose of marketing lots.

36. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.

A. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member

of the Association, provided that any such person or entity, who holds such interest merely as a security for the performance of an obligation, shall not be a member.

B. Voting Rights. The Association shall have two (2) classes of voting membership as follows:

Class A. Class A members shall be all those Owners defined in paragraph 1 with the exception of the Developer. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by paragraph 1. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. Class B members shall be the Developer and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either one of the following events, whichever occurs earlier:

(a) When the total votes outstanding in Class A membership equal to the total votes outstanding in Class B membership; or

(b) January 1, 2008.

37. PROPERTY RIGHTS IN THE COMMON PROPERTIES.

A. Title to Common Properties. The Developer may retain the legal title or other rights to the Common Properties until such time as it has completed improvements thereon and until such time as, in the sole discretion of the Developer, the Association is able to maintain the same, but, notwithstanding any provision herein, the Developer hereby covenants, for itself, its successors and assigns, that it shall convey all of its right, title and interest in the common properties to the Association not later than December 31, 2006.

B. Restrictions on Common Properties. The parcels of real property included as part of the Common Properties are to be maintained solely as landscaped and/or beautification areas, recreational areas, subdivision identification areas or for such other purposes or purposes deemed appropriate by the Developer. No other use or improvements are to be made to said real property without the express written permission of the Developer, and Developer expressly reserves easement rights upon these parcels for installation of underground utilities.

38. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Creation of Lien and Personal Obligation of Assessments. The Developer for each lot owned by it within Mill Brook hereby covenants and each owner of any lot by acceptance of a deed to a lot within Mill Brook, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

(1) Annual assessments or charges; and

(2) Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as

hereinafter provided. The annual and special assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the lot owners in Mill Brook and in particular shall be used for the payment of costs and expenses, including, but not limited to, the following:

(1) Expenses for the maintenance, upkeep and improvement of the Common Properties.

(2) Payment for services in connection with the maintenance, upkeep and improvements to the Common Properties, including utilities, taxes, water usage and other related reasonable and necessary expenses.

(3) Maintenance, upkeep, repair and/or replacement of the sprinkler systems within the Common Properties.

(4) For the payment of services for any street lighting undertaken and accepted by the Association.

(5) For the payment of expenses related to the upkeep, maintenance and replacement of signs identifying the subdivision, containing street names or other safety signs, if any.

(6) For any other purpose, cost or expense reasonably related to the performance of any duty or responsibility of the Association as determined by the Board of Directors of said Association in accordance with the Bylaws or these restrictions.

C. Basis and Maximum of Annual Assessments. There will be no annual assessments until the year beginning January 1, 2004. For the year beginning January 1, 2004, the annual assessment shall be Eighty-Five & No/100 (\$85.00) Dollars per Lot. Beginning January 1, 2004, the annual assessment may be adjusted by vote of the Members as herein provided. The Board of Directors of the Association may, after consideration of current maintenance cost and future needs of the Association, fix the actual assessment for any year at a lesser amount. Lots owned by the Developer and licensed residential builders shall be exempt from annual assessments until such time as the lot is conveyed or the dwelling on the lot is occupied or one (1) year has elapsed from the date the Developer deeded the lot, whichever shall first occur. Such exemption shall not affect the Developer's or builder's voting rights in the Association. Any partial year's assessments shall be prorated and paid within thirty (30) days of billing date.

D. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the

necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

E. Change in Basis and Maximum of Annual Assessments. Subject to the limitations in paragraph 38.C. above, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by paragraph 38.C. hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

F. Quorum for Any Action Authorized Under Paragraphs 38.D. and 38.E. The quorum required for any action respecting assessments authorized by paragraphs 38.D. and 38.E. hereof shall be the Members present at a meeting duly called and convened pursuant to paragraphs 38.D. and 38.E. hereof.

G. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on January 1 of each year. The annual assessments provided for herein shall begin and become due and payable January 1, 2004, and on January 1 of each year thereafter. Prior to January 1, 2004, the Developer agrees to maintain the Common Properties in a good state of repair and operation. The due date of any special assessment under paragraph 38.D. hereof shall be fixed in the resolution authorizing such assessment.

H. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of any special assessment and at least thirty (30) days in advance of the due date of any assessment prepare a roster on the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

I. Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid on the date when due (being the date specified in paragraph 38.G. above), then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, become a continuing lien on the property, which shall bind such property in the hands of the then Owner, his heirs, devisees, Personal Representatives, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation for the statutory period, but such personal obligation shall not pass to his successors in title unless expressly assumed by them. Such successors in title do, however, take the title subject to any outstanding lien for assessments.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the delinquency date at the rate of one and one-half (1.5%) percent per month (ANNUAL PERCENTAGE RATE - 18%) from the delinquency date. The Association may bring an action at law against the Owner personally obligated to pay the same or an action to foreclose the lien against the property, and there shall be added to the amount of such assessment, the interest thereon as above provided, plus a reasonable attorney's fee and the costs of the action.

J. Lien of Assessments is Subordinate to Recorded Mortgages. The lien of assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed upon a lot subject to the assessment. The sale or transfer of a lot shall not affect the assessment lien, provided, however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter coming due or from the lien thereof.

39. ENFORCEMENT BY HOMEOWNERS ASSOCIATION. Except for approvals and rights expressly reserved herein unto the Developer or its nominee, the Association shall have standing to enforce the within restrictions, covenants and obligations in the same manner and to the same extent as does the Developer or any other owner. The powers and authorities herein granted to the said Association shall be in addition to such other and further rights, duties and obligations which may be set forth in the Bylaws of the Association adopted in accordance with the terms hereof.

40. DELEGATION OF DEVELOPER'S RIGHTS. All rights reserved unto the Developer herein remain exclusively with the Developer, its successors and assigns, provided, however, Developer may assign and/or delegate all or any part of such reserved rights to the Association.

41. TERM OF ENFORCEMENT AND AMENDMENTS. These covenants, conditions, easements and restrictions shall be binding upon the Developer, its successors and assigns, and upon all future owners, their respective heirs, successors and assigns, and all parties claiming under them, until December 31, 2027, at which time the terms hereof shall be automatically extended for successive periods of ten (10) years thereafter, unless the then Owners owning at least two-thirds (2/3) of the Lots in Mill Brook agree in writing to terminate or change same. The terms and conditions of this instrument may be amended, supplemented or changed only upon written agreement of the Owners then owning at least two-thirds (2/3) of the Lots in Mill Brook, provided, however, the Developer, its successors and assigns, reserves the unilateral right to waive, modify, supplement or change in writing, any of the terms hereof with respect to the application thereof to any lot or lots.

42. EFFECT OF COVENANTS AND ENFORCEMENT.

A. Effect of Provisions of These Covenants. Each owner, tenant and guest, their successors, heirs and assigns, and all others who take an interest in land or realty within Mill Brook do promise, covenant and undertake to comply with each provision of these Covenants, which provisions:

(1) shall be considered and deemed to be incorporated in each deed or other instrument by which any right, title or interest in any lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;

(2) shall, by virtue of acceptance of any right, title or interest in any lot by an owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such owner to, with and for the benefit of the Developer, the Association and all other owners, their respective heirs, successors and assigns;

(3) shall be deemed a real covenant by the Developer for itself, its successors and assigns and also an equitable servitude, running in each case, both as to burdens and benefits with and upon the title to each lot;

(4) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to each lot, which lien, with respect to any such lot shall be deemed a lien in favor of the Association.

B. Who May Enforce. The benefits and burdens of these covenants run with the land at law and in equity, and the Developer and the Association, their respective successors and assigns, and any owner, his heirs, successors, legal representatives, Personal Representatives and assigns shall have the right to proceed against any party in violation of these covenants and to compel a compliance to the terms hereof and to prevent the violation or breach in any event.

C. Against Whom May the Covenants be Enforced. The obligation and benefits prescribed by this instrument shall run with the property and shall be enforceable against any owner, his heirs, successors and assigns, or any other person whose activities bear a relation to the property, including guests and tenants when the aforesaid persons or entities engage in activities (including omissions and failures to act) which constitute violations or attempts to violate contravene or circumvent the terms hereof.

D. Enforcement Remedies. In addition to other enforcement rights mentioned herein, in the event that any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land use is in violation of these covenants, the Developer, its successors and assigns, the Association or any owner may institute appropriate legal proceedings or actions at law or in equity, including, but not limited to, actions: (1) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (2) to restrain, correct or abate such violation, or breach of these covenants; (3) to prevent the occupancy of any dwelling or land; (4) to prevent any act, conduct, business or use which is in breach of these covenants; or (5) to compel any affirmative act which, pursuant to these covenants, "shall" be performed. Any action in equity hereunder for the enforcement hereof shall not be barred on the grounds that there may also exist an adequate remedy at law. The prevailing party in any action to enforce these restrictions shall also be entitled to reasonable attorney fees against the other party.

43. MISCELLANEOUS.

A. No Waiver. Failure to enforce any provision or provisions of this instrument for any period of time by the Developer, the Associa-

tion or any owner shall not be deemed a waiver or estoppel of the right to enforce same at any time thereafter.

B. Captions. The captions and headings in this instrument are for convenience only and shall not be considered as controlling in construing the provisions hereof.

C. Board Authorization. All actions of the Association shall be authorized actions if approved by the Board of Directors of the Association in accordance with its Bylaws, unless the terms of this instrument provide otherwise.

D. Gender, Tense, Number and Applicability of Definitions. When necessary for proper construction, the masculine form of any word used herein shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

E. Savings Clause. If any provisions or provisions of this instrument are found to be ineffective or unenforceable for any reason in the final judgment of any court having jurisdiction of the subject matter hereof, the remaining provisions hereof shall remain fully enforceable and binding upon the owners, their respective heirs, successors or assigns.

F. Interpretation. In the event of any inconsistency between the within Covenants, the Bylaws or other regulations of the Association, the Covenants shall control.

24th IN WITNESS WHEREOF, the undersigned has set its hand and seal this day of June, 2002.

Mill Creek Developers, LLC

By:

M. Todd Sill
M. Todd Sill, Manager/Member

Pamela J. Smith
Angela M. Jones

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

ACKNOWLEDGEMENT

I, Pamela J. Smith, a Notary Public of the County and State aforesaid, certify that the within-named Developer personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal this 24th day of June, 2002.

Pamela J. Smith
Notary Public for South Carolina
My Commission Expires: 8/24/10

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS
AND EASEMENTS OF MILL
BROOK AND AGREEMENT TO
BIND MYSELF, MY HEIRS AND
ASSIGNS

The undersigned acknowledges that they have received a copy of the Declaration of Protective Covenants, Conditions, Restrictions, and Easements of Mill Brook consisting of twelve pages plus a two page table of contents. I agree to be bound by all the terms and conditions contained therein. I further agree that same shall be binding on all lots I own in Mill Brook. I further agree and understand that these will be effective against my heirs and assigns as if they were filed when I bought the said lot(s).

I hereby certify that I am still the owner of record for the lot(s) listed below.

The above was acknowledged and agreed this 28 Day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are

4

James W. Covington
James W. Covington

Jane W. Covington
Jane W. Covington

Clary Oslesky
Clary Oslesky

Personally appeared before me JAMES W. & JANE W. COVINGTON and acknowledge this 28 Day of April, 2003 the Execution of the Forgoing Document.

Clary Oslesky
Notary SC
My commission expires: 4-24-05

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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The above was acknowledged and agreed this 25 Day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are

6

Action Building Co Inc of the
 Upstate

By [Signature]
 Its: President

[Signature]

[Signature]

Personally appeared before me JAMES JONES and acknowledge
 this 25 Day of April, 2003 the Execution of the Forgoing Document.

[Signature]

Notary SC
 My commission expires: 4-24-05

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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I hereby certify that I am still the owner of record for the lot(s) listed below.

The above was acknowledged and agreed this 18 Day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are

10

South Chase, Inc

By: Dave Henjes
 Its: President

M. Todd Sell

Diane J. Sell

Personally appeared before me DOUG HEWES and acknowledge
 this 18 Day of April, 2003 the Execution of the Forgoing Document.

Diane J. Sell
 Notary SC
 My commission expires: May 21, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS
AND EASEMENTS OF MILL
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The above was acknowledged and agreed this 29th day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are

11

Hagerman Builders, Inc

By: Larry J. Hagerman
Its: President

Kandi Baker

Clary Olesley

Personally appeared before me LARRY J. HAGERMAN and acknowledge this 29 Day of April, 2003 the Execution of the Forgoing Document.

Clary Olesley
Notary SC
My commission expires: 4-24-05

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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I certify that this agreement and acknowledgment applies to all lots I own which are

12

Sill Real Estate and Construction, Inc

By: M. Todd Sill

Its: PRESIDENT

Dary Henja

Diane F. Sill

Personally appeared before me M. TODD SILL and acknowledge this 18 Day of April 2003 the Execution of the Forgoing Document.

Diane F. Sill

Notary SC

My commission expires: May 21, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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The above was acknowledged and agreed this 25 Day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are

13

Action Building Co Inc of the
 Upstate

By: [Signature]
 Its: President

[Signature]

[Signature]

Personally appeared before me this 25 Day of APRIL, 2003 the Execution of the Forgoing Document. JAMES JONES and acknowledge

[Signature]
 Notary SC
 My commission expires: 4-24-05

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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I certify that this agreement and acknowledgment applies to all lots I own which are

14

South Chase, Inc

By: Doug Henjes

Its: President

M. Todd Sell

Diane F. Sice

Personally appeared before me, DOUG HENJES and acknowledge this 18 Day of April, 2003 the Execution of the Forgoing Document.

Diane F. Sice

Notary SC

My commission expires: May 21, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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The above was acknowledged and agreed this 18 Day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are

15

Sill Real Estate and Construction, Inc

By: M. Todd Sill

Its: PRESIDENT

Doug Hansen

Diane F. Sill

Personally appeared before me M. TODD SILL and acknowledge
 this 18 Day of April, 2003 the Execution of the Forgoing Document.

Diane F. Sill

Notary SC

My commission expires: May 21, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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The above was acknowledged and agreed this 29 Day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are

16

Futtrell Builders, Inc

By: [Signature]
 Its: President

[Signature: Randi Balma]

[Signature: Clary Oglesby]

Personally appeared before me STEPHEN R. FUTTRELL and acknowledge this 29 Day of April, 2003 the Execution of the Forgoing Document.

[Signature: Clary Oglesby]
 Notary SC
 My commission expires: 4-24-05

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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The above was acknowledged and agreed this 29 Day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are

17

Futtrell Builders, Inc

By: [Signature]

Its: President

[Signature]

[Signature]

Personally appeared before me SEP 11 N B. FUTURE EL and acknowledge this 29 Day of April, 2003 the Execution of the Forgoing Document.

[Signature]

Notary SC

My commission expires: 4-24-05

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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I hereby certify that I am still the owner of record for the lot(s) listed below.

The above was acknowledged and agreed this 18 Day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are

18

Sill Real Estate and Construction, Inc

By: M. T. ODD SILL

Its: PRESIDENT

Darry Henjes

Diane J. Sill

Personally appeared before me this 18 Day of April M. T. ODD SILL and acknowledge 2003 the Execution of the Forgoing Document.

Diane J. Sill

Notary SC

My commission expires: May 21, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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I hereby certify that I am still the owner of record for the lot(s) listed below.

The above was acknowledged and agreed this 23 Day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are

19

[Signature]
 Don ~~Rodgers~~ Rodgers

[Signature]
 Lisa ~~Rodgers~~ Rodgers

[Signature]
 Heidi Balmer

[Signature]
 Clary Oglesby

Personally appeared before me
 this 23 Day of April, 2003

DON RODGERS & LISA RODGERS and acknowledge
 the Execution of the Forgoing Document.

[Signature]
 Notary SC
 My commission expires: 4-24-05

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
PROTECTIVE COVENANTS,
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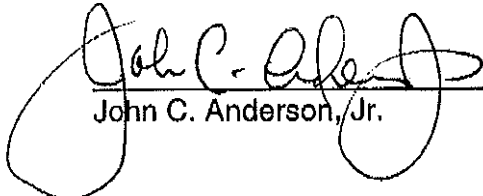
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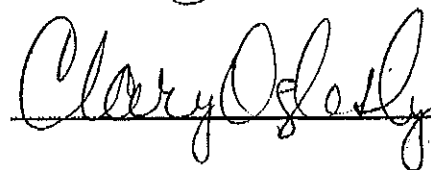
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I certify that this agreement and acknowledgment applies to all lots I own which are

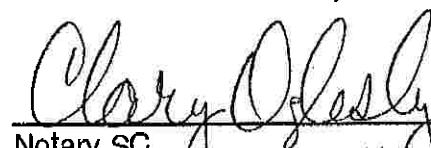
20


John C. Anderson, Jr.


Kandi Balmer


Clary Olesky

Personally appeared before me, JOHN ANDERSON JR. and acknowledge this 23 Day of APRIL, 2003 the Execution of the Forgoing Document.


Notary SC
My commission expires: 4-24-05

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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I hereby certify that I am still the owner of record for the lot(s) listed below.

The above was acknowledged and agreed this 18 Day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are
22 E 21st St

Hatley Construction Co., Inc

By: Wayne D. Hatley
Its: Pres.

W. Todd Hill

Clary Olesky

Personally appeared before me WAYNE D. HATLEY and acknowledge
this 22 Day of April, 2003 the Execution of the Forgoing Document.

Clary Olesky
Notary SC
My commission expires: 4-24-05

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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The above was acknowledged and agreed this 25 Day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are

23

Action Building Co Inc of the
 Upstate

By: [Signature]

Its: President

[Signature]

[Signature]

Personally appeared before me JAMES JONES and acknowledge
 this 25 Day of April, 2003 the Execution of the Forgoing Document.

[Signature]
 Notary SC
 My commission expires: 4-24-05

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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The above was acknowledged and agreed this 29th Day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are

24

Hagerman Builders, Inc

By: Larry J. Hagerman
 Its: President

Randi Baumer

Clarey O'Leary

Personally appeared before me
 this 29 Day of April, 2003

LARRY J. HAGERMAN and acknowledge
 the Execution of the Forgoing Document.

Clarey O'Leary

Notary SC

My commission expires: 4-24-05

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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The above was acknowledged and agreed this 18 Day of April, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are

25

Sill Real Estate and Construction, Inc

By: *[Signature]*

Its: PRESIDENT

[Signature]

[Signature]

Personally appeared before me AL. TODD SILL and acknowledge this 18 Day of April, 2003 the Execution of the Forgoing Document.

[Signature]

Notary SC
 My commission expires: May 21, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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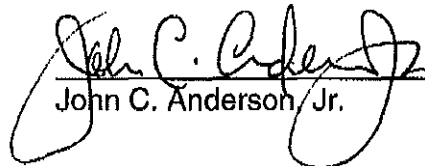
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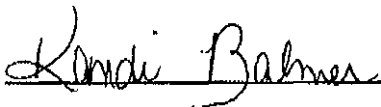
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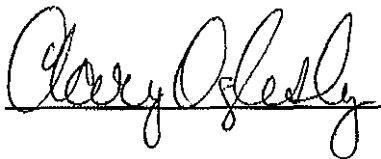
The above was acknowledged and agreed this 23 Day of APRIL, 2003.

I certify that this agreement and acknowledgment applies to all lots I own which are


26


 John C. Anderson, Jr.


 Kandi Balmer


 Clary Olesky

Personally appeared before me JOHN C. ANDERSON JR. and acknowledge this 23 Day of April, 2003 the Execution of the Forgoing Document.


 Notary SC
 My commission expires: 4-24-05

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT OF
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27

Sill Real Estate and Construction, Inc

By: M. Todd Sill

Its: PRESIDENT

Davey Henjes

Diane J. Sill

Personally appeared before me M. TODD SILL and acknowledge
 this 18 Day of April 2003 the Execution of the Forgoing Document.

Diane J. Sill

Notary SC

My commission expires: Nov 21, 2011

DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF
MILL BROOK - PHASE 2

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS
OF MILL BROOK - PHASE 2

THIS DECLARATION is made this 22nd day of November, 2004, by Mill Creek Developers, LLC, a South Carolina limited liability company (hereinafter "Developer").

W-I-T-N-E-S-S-E-T-H:

WHEREAS, Developer is the owner of certain lots of land in Spartanburg County, South Carolina, located on the south side of Old Georgia Road, and more particularly shown and described upon a plat entitled Mill Brook Subdivision prepared for Mill Creek Developers by Neil R. Phillips, RLS, dated May 24, 2002, and recorded in Plat Book 152, page 544, ROD Office of Spartanburg County, and

WHEREAS, Developer has now developed Phase 2 of Mill Brook contiguous with the above-described property, such Phase 2 being shown on a plat of Mill Brook Subdivision - Phase 2 by Neil R. Phillips & Co. Surveyors dated October 5, 2004 and recorded in Plat Book 157, page 3, ROD Office of Spartanburg County, and

WHEREAS, Developer subjected the property first described above to a Declaration of Protective Covenants, Conditions, Restrictions and Easements of Mill Brook, recorded May 8, 2003, in Deed Book 77-W, page 530, said ROD Office, and the Developer does now desire to subject Phase 2 of Mill Brook to this Declaration of Protective Covenants, Conditions, Restrictions and Easements, and

WHEREAS, Mill Brook Subdivision is a residential community, and the Developer desires to provide for the preservation of values and amenities of said community and for the maintenance of common facilities and, to these ends, desires to subject all of the lots and property in Mill Brook to the within Protective Covenants, Conditions, Restrictions, Easements, charges and liens (herein referred to as Covenants and/or Restrictions) for the benefit of each and every owner in Mill Brook, and

WHEREAS, Developer deems it desirable to create an agency to which should be delegated and assigned the powers of maintaining and administering common facilities and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereafter created, and is incorporating under the laws of the State of South Carolina, as a non-profit corporation, Mill Brook Homeowners Association, Inc., for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the mutual benefits and advantages to the Developer and to future property owners of lots shown on the above plat, Developer does hereby impose upon Mill Brook the following covenants, conditions, restrictions, easements, charges and liens, which shall bind the Developer, its successors and assigns, and all future owners of said lots, their respective heirs and assigns:

1. DEFINITIONS. The following words when used herein (unless the context shall require a different meaning) shall have the following meanings:

A. "Association" shall mean and refer to Mill Brook Homeowners Association, Inc.

B. "Mill Brook" shall mean and refer to all of the lots and property shown upon plat of "Mill Brook" referred to above and upon any subsequent plat of "Mill Brook" prepared for the Developer and recorded in the ROD Office of Spartanburg County.

C. "Common Properties" shall mean and refer to any and all properties or property rights, such as easements or other rights, which may be conveyed by the Developer or other grantors to the Association, which property and rights shall be held, managed and maintained by the Association in accordance with its rules, regulations, Bylaws and the within Covenants.

D. "Developer" shall mean and refer to Mill Creek Developers, LLC.

E. "Lot" or "lot" shall mean and refer to any numbered parcel of land shown upon a plat of Mill Brook prepared for the Developer and recorded in the ROD Office of Spartanburg County.

F. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot situated within Mill Brook, but notwithstanding any applicable theory of mortgage law, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding or deed in lieu of foreclosure.

G. "Member" shall mean and refer to any Owner who is a member of the Association as provided in paragraph 36 hereof.

2. SINGLE FAMILY RESIDENTIAL USE. No lot shall be used except for private, single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling, not to exceed 2½ stories in height and, if approved in advance in writing by Developer, a private detached garage or a hobby-type/storage building.

3. SUBDIVISION OF LOTS. Developer or any subsequent owner of a lot, with the prior written consent of Developer or its nominee, may sell and convey a portion of any lot to the owner of an adjoining lot, provided that any such sale of a portion of a lot does not result in the creation of another lot or a greater number of lots than that shown on said plat and does not violate any other provisions hereof. No lot may be subdivided to create an additional lot. In any such sale of a portion of a lot, the portion shall merge into and become part of the adjoining lot, and the terms and conditions herein shall apply to the lot and portion of a lot as though they were originally platted as one lot. After Developer has conveyed all the lots, adjoining owners may adjust their boundary lines without additional approval provided that under no circumstances shall a new lot be created by such adjustment.

4. MINIMUM HEATED AREA. Each dwelling shall have at least two (2) full bathrooms and no less than seventeen hundred (1700') square feet of heated floor area, and the plan must include an attached garage unless

waived in writing by the Developer. The floor area required by this paragraph shall not include basements, porches, verandas, breezeways, terraces, garages, carports or hobby-type/storage buildings.

5. BUILDING SETBACK LINES. All parts of the dwelling structure, including stoops, verandas, steps and porches shall be located behind all front, rear and side property setback lines as shown on the plat for such lot referred to in the deed of such lot from the Developer. Nonetheless, Developer reserves the right and privilege to give a waiver to any setback restrictions on a lot, but such waiver must be given in writing to be valid. Developer reserves the right to deny a waiver for any reason deemed appropriate in its sole discretion.

6. SEWER EASEMENTS. Certain lots are subject to an easement and right-of-way for sanitary sewer purposes as shown on the plat referred to in such deed and described in the recorded easements or upon plat or plats referred to in such easement agreements. Ownership of such lots is subject to the rights of the Spartanburg Sanitary Sewer District. Any portion of a lot subject to a sewer easement is for the installation, maintenance and repair of the sanitary sewer line and/or manhole, and no lot owner shall build permanent above-ground improvements upon said easement or do any other act or deed which would interfere with or interrupt the use of the easement for sanitary sewer line purposes.

7. APPROVAL OF BUILDING PLANS - SPECIAL CONDITIONS - TREE CUTTING.

A. No building or structure, whether it be the dwelling, garage, hobby-type building or driveway shall be erected, placed or altered on any lot until the building plans, elevations, location, specifications and driveway have been approved in writing by Developer or its nominee. If such shall not be approved or disapproved within thirty (30) days after being submitted, then such approval shall not be required, provided, however, the design and location of the proposed construction shall conform to the specific building requirements stated herein and otherwise be in harmony with the existing structures in the subdivision. Any proposed hobby-type/storage building must be built as a permanent structure and be designed in harmony with the main dwelling. Disapproval of plans, elevations, location or specifications may be based purely upon aesthetic reasons in the sole discretion of the Developer or its nominee.

B. The completion of improvements upon a lot shall include the landscaping of the yard, including the grassing or sodding of the yard and the planting of shrubs and/or decorative plants or bushes along the front elevation of the dwelling.

C. No trees having a diameter three (3") inches or greater approximately eighteen (18") inches above ground level shall be cut without approval from the Developer or its nominee.

8. PROHIBITED BUILDING MATERIALS - ROOFING MATERIALS. Concrete blocks or cement bricks shall not be used in the construction of any building, garage or hobby-type/storage building unless the exterior of same is faced with brick, stone, stucco or some other material approved by Developer or its nominee. No asbestos shingles or asbestos siding shall be used for the exterior of any dwelling or other structure. Roofing shingles must be architectural style shingles, and no three (3) tab shingles are permitted.

9. TRAILERS AND MOBILE HOMES PROHIBITED. Trailers, mobile homes, including typical double-wide mobile homes, manufactured homes and other factory or pre-built homes are absolutely prohibited. Furthermore, no residence or building may be moved from another location and placed or allowed to remain on any lot.

10. REQUIREMENTS FOR DRIVEWAYS. All driveways shall be constructed of either asphalt paving or concrete and shall be maintained by the owner of a lot in a good state of repair and suitable appearance. Where driveways from a lot intersect with the public street, said driveway will abut the existing "rolled" curb, thereby keeping the "rolled" curb in tact and undamaged. If during construction or otherwise, the curb or pavement adjacent to a construction site is broken, removed or otherwise damaged, the owner of the lot upon which such construction or work is being done shall bear the cost of replacing or repairing such damage to the satisfaction of the Developer.

11. DEVELOPER'S DISCLAIMER. DEVELOPER, AND ITS SUCCESSORS AND ASSIGNS, ITS AGENTS, CONSULTANTS AND EMPLOYEES, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OR ANY REPRESENTATION CONCERNING SAME, AND NO WARRANTIES OF ANY KIND SHALL ARISE AS A RESULT OF ANY PLANS, SPECIFICATIONS, STANDARDS OR APPROVALS MADE OR APPROVED BY DEVELOPER, OR ITS NOMINEES, AND DEVELOPER SHALL NOT BE LIABLE TO ANY OWNER OR ANY OTHER PERSON ON ACCOUNT OF ANY CLAIM, LIABILITY, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY OR THREATENED AGAINST ANY OWNER OR SUCH OTHER PERSON ARISING OUT OF OR IN ANY WAY RELATED TO THE SUBJECT MATTER OF ANY REVIEW, ACCEPTANCE, INSPECTION, PERMISSION, CONSENT OR REQUIRED APPROVAL WHICH MUST BE OBTAINED FROM THE DEVELOPER, WHETHER GRANTED OR DENIED.

12. GENERAL EASEMENTS. Developer reserves an easement seven and one-half (7-1/2') feet inside the front, side and rear lot lines of each lot for the installation, maintenance and repair of utilities, sewer lines, and/or storm drainage facilities. Furthermore, certain lots shall be subject to an additional easement for drainage purposes as will be shown upon a duly recorded plat of Mill Brook. All utility service lines, including cable television, telephone, gas, electric or other utility, from existing streets shall be installed underground to any dwelling or other structure located upon a lot. Each lot is conveyed by Developer subject to all easements affecting such lot as shown on the recorded plat or plats of Mill Brook Phase 2 and as may be referred to in the deed of conveyance.

13. SEWAGE. All sewage shall be disposed of through the sanitary sewer collection lines located within the subdivision and owned by the Spartanburg Sanitary Sewer District, and all connections to such lines shall be made only with the written approval of the Spartanburg Sanitary Sewer District in accordance with its rules and regulations.

14. FENCING. All fencing must be approved in advance in writing by the Developer, although Developer will generally approve chain link or other wire or metal type fences so long as they are not visible from the street and are coated black or dark green. The height, location and construction specifications must be submitted for approval, and the Developer reserves the right to disapprove fencing for purely aesthetic reasons.

15. BUSINESS ACTIVITIES PROHIBITED. No commercial operations, business operations, manufacture or production shall be permitted upon any lot. The selling, showing or marketing from a lot of any kind of goods, products or apparel is expressly prohibited. The provisions of

this item shall not be construed to prohibit the making of handcrafted items for occasional off premises sale.

16. NUISANCES AND OFFENSIVE ACTIVITIES. No nuisance or other noxious, offensive, unsightly or unsanitary activity or condition shall be conducted or allowed to exist on any lot or the adjoining street or streets.

17. PARKING OF CARS, BOATS AND RECREATIONAL VEHICLES. No camping trailer, boat, boat trailer or other similar recreational vehicle or other device or equipment shall be permitted to be parked on the front portion of any lot. No inoperable motor vehicle, wrecked vehicle or motor vehicle not currently licensed shall be parked in the street right-of-way or be kept on any lot in the subdivision unless stored in an enclosed garage. Also, no buses, trucks or trailers other than pick-up trucks not to exceed three-quarter (3/4) ton in size, shall be parked on a lot or in the street right-of-way, except for loading and unloading. Further, no portion of a lot shall be used for the operation of any motorized vehicles such as motorcycles, mini-bikes, go-carts, four wheelers or similar vehicles. The street right-of-way shall not be regularly used for parking of vehicles but may be used for guest parking or other temporary or incidental parking of vehicles. Under no circumstances shall vehicles be parked in such a manner as to block traffic, particularly emergency vehicles.

18. PORTABLE OR METAL BUILDINGS PROHIBITED. Portable buildings, metal storage buildings or other similar off-site constructed storage buildings are prohibited to be placed or remain on any lot, provided, however, that a hobby-type building or other storage building approved in writing by the Developer is permissible.

19. SWINGSETS. Swingsets, sandboxes, gym sets and any such similar devices or structures primarily for children's use and enjoyment must be located behind the rear corners of the dwelling.

20. NO TEMPORARY RESIDENCES. No garage or hobby-type/storage building shall be used at any time as a residence, either temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

21. ANIMALS. No domestic fowl, cows, hogs, mules, wild animal or any other farm-type animal shall be kept on any lot at any time, provided, however, household pets, such as cats and dogs, may be kept on a lot, provided that the owner thereof shall be responsible for the control and conduct of such household pets so that they are not an annoyance, hindrance or nuisance to others. The owner shall abide by all laws and regulations relating to keeping pets.

22. TRASH RECEPTACLES. All receptacles for trash or garbage must be kept within a fenced or enclosed area and hidden from public view and the view from adjoining property.

23. CLOTHESLINES. All clotheslines and poles shall be installed on the rear portion of a lot away from the street.

24. SCREENING OF YARD EQUIPMENT. Lawn mowers or other lawn maintenance equipment shall be kept in a screened or an enclosed area so as to not be visible from any street or adjoining property.

25. TELEVISION ANTENNA AND SATELLITE DISHES. A standard roof-mounted or chimney-mounted television antenna is permissible, as well as the location of a satellite dish not exceeding eighteen (18") inches in diameter, but no other type of antenna, satellite dish or similar device for the transmission of signals of any kind shall be erected or allowed to remain on any lot without the express written permission of the Developer or its nominee.

26. COMPLETION OF IMPROVEMENTS. All houses and other structures related thereto must be completed within one (1) year after the commencement of construction, except where such completion is impossible due to strikes, fires, national emergency or other natural calamity.

27. COVENANT OF GOOD APPEARANCE AND REPAIR. Each lot owner shall maintain his lot and the exterior of all improvements in good appearance and repair in order to assure that no condition exists which would diminish the good appearance of the property. Every owner of a vacant or unimproved lot shall keep such lot free of debris and unsightly underbrush, weeds or other unsightly vegetation. In the event that an owner shall fail to maintain a lot in a good state of repair and appearance, the Developer and/or the Association, or their agents or employees, shall have the right to maintain same and charge the cost thereof to the owner, but no work shall be done without due and proper notice to the owner and an allowance of at least thirty (30) days to correct specified deficiencies. In the event the owner or owners of a lot shall fail to pay such charges within thirty (30) days of billing, same may be collected in the same manner and under the same terms as Assessments set forth in Paragraph 38.I. THE DEVELOPER, THE ASSOCIATION OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, EMPLOYEES OR MEMBERS SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY ANY NON-NEGLIGENT ACT OR OMISSION IN THE INSPECTION, REPAIR OR MAINTENANCE OF ANY SITE, IMPROVEMENTS OR PORTION THEREOF.

28. SIGNS. No signboards or other signs of any kind shall be displayed on any lot except a single "For Sale" and a builder's sign, or a single "For Rent" sign. No sign shall be more than thirty inches (30") by thirty inches (30") in size, provided, however, the Developer shall have the right to use additional signs for development of the property. Any provisions herein expressly providing for identifying signs for the subdivision take precedence over this paragraph.

29. STREET LIGHTING. The street lighting installed by the Developer and its operational costs and maintenance may be transferred to the Homeowners' Association at any time.

30. MAINTENANCE OF STREET RIGHT-OF-WAY. The owner of a lot shall be responsible for the planting and maintaining of the area from the lot property line to the edge of the pavement or curb of the street or streets upon which said lot abuts.

31. FUEL TANKS. All fuel tanks or containers shall be buried underground, or enclosed in a structure, in a manner consistent with normal safety precautions and in accordance with the rules and regulations of appropriate governing bodies or agencies or the South Carolina Department of Health and Environmental Control, whichever the case may be. Any structure to be constructed for this purpose must be of acceptable appearance and approved by the Developer in accordance with its building approval procedure as above set forth.

32. FIREWORKS. Shooting of fireworks of any kind, and the storage thereof, are prohibited, unless carried out in conjunction with a supervised activity of the Developer or the Association.

33. ABOVE GROUND POOLS PROHIBITED. Above ground swimming pools shall not be constructed, placed or remain on any lot, provided, however, that this provision shall not be interpreted to exclude small, portable swimming pools designed for use by infants and children.

34. MAIL RECEPTACLES. All mailboxes or other mail receptacles and their supporting structure, including fixing the location and height thereof, shall conform to Developer's uniform requirements. After installation, each owner has the responsibility of keeping same in good repair and appearance.

35. TEMPORARY SALES OFFICE. The Developer shall have the right to place or erect temporary sales offices on any lot in the development for the purpose of marketing lots.

36. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION.

A. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity, who holds such interest merely as a security for the performance of an obligation, shall not be a member.

B. Voting Rights. The Association shall have two (2) classes of voting membership as follows:

Class A. Class A members shall be all those Owners defined in paragraph 1 with the exception of the Developer. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by paragraph 1. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. Class B members shall be the Developer and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either one of the following events, whichever occurs earlier:

(a) When the total votes outstanding in Class A membership equal to the total votes outstanding in Class B membership; or

(b) January 1, 2010.

37. PROPERTY RIGHTS IN THE COMMON PROPERTIES.

A. Title to Common Properties. The Developer may retain the legal title or other rights to the Common Properties until such time as it has completed improvements thereon and until such time as, in the sole discretion of the Developer, the Association is able to maintain the same, but, notwithstanding any provision herein, the Developer hereby covenants, for itself, its successors and assigns, that it shall convey all of its right, title and interest in the common properties to the Association not later than December 31, 2010.

B. Restrictions on Common Properties. The parcels of real property included as part of the Common Properties are to be maintained solely as landscaped and/or beautification areas, recreational areas, subdivision identification areas or for such other purposes or purposes deemed appropriate by the Developer. No other use or improvements are to be made to said real property without the express written permission of the Developer, and Developer expressly reserves easement rights upon these parcels for installation of underground utilities.

38. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Creation of Lien and Personal Obligation of Assessments. The Developer for each lot owned by it within Mill Brook hereby covenants and each owner of any lot by acceptance of a deed to a lot within Mill Brook, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

- (1) Annual assessments or charges; and
- (2) Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety and welfare of the lot owners in Mill Brook and in particular shall be used for the payment of costs and expenses, including, but not limited to, the following:

- (1) Expenses for the maintenance, upkeep and improvement of the Common Properties.
- (2) Payment for services in connection with the maintenance, upkeep and improvements to the Common Properties, including utilities, taxes, water usage and other related reasonable and necessary expenses.
- (3) Maintenance, upkeep, repair and/or replacement of the sprinkler systems within the Common Properties.
- (4) For the payment of services for any street lighting undertaken and accepted by the Association.
- (5) For the payment of expenses related to the upkeep, maintenance and replacement of signs identifying the subdivision, containing street names or other safety signs, if any.
- (6) For any other purpose, cost or expense reasonably related to the performance of any duty or responsibility of the Association as determined by the Board of Directors of said Association in accordance with the Bylaws or these restrictions.

C. Basis and Maximum of Annual Assessments. There will be no annual assessments until the year beginning January 1, 2005. For the year beginning January 1, 2005, the annual assessment shall be One Hundred Fifty & No/100 (\$150.00) Dollars per Lot. Beginning January 1, 2006, the annual assessment may be adjusted by vote of the Members as herein provided. The Board of Directors of the Association may, after consideration of current maintenance cost and future needs of the Association, fix the actual assessment for any year at a lesser amount. Lots owned by the Developer and licensed residential builders shall be exempt from annual assessments until such time as the lot is conveyed or the dwelling on the lot is occupied or one (1) year has elapsed from the date the Developer deeded the lot, whichever shall first occur. Such exemption shall not affect the Developer's or builder's voting rights in the Association. Any partial year's assessments shall be prorated and paid within thirty (30) days of billing date.

D. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

E. Change in Basis and Maximum of Annual Assessments. Subject to the limitations in paragraph 38.C. above, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by paragraph 38.C. hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

F. Quorum for Any Action Authorized Under Paragraphs 38.D. and 38.E. The quorum required for any action respecting assessments authorized by paragraphs 38.D. and 38.E. hereof shall be the Members present at a meeting duly called and convened pursuant to paragraphs 38.D. and 38.E. hereof.

G. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on January 1 of each year. The annual assessments provided for herein shall begin and become due and payable January 1, 2005, and on January 1 of each year thereafter. Prior to January 1, 2005, the Developer agrees to maintain the Common Properties in a good state of repair and operation. The due date of any special assessment under paragraph 38.D. hereof shall be fixed in the resolution authorizing such assessment.

H. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of any special assessment and at least thirty (30) days in advance of the due date of any assessment prepare a roster on the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open

to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

I. Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid on the date when due (being the date specified in paragraph 38.G. above), then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, become a continuing lien on the property, which shall bind such property in the hands of the then Owner, his heirs, devisees, Personal Representatives, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation for the statutory period, but such personal obligation shall not pass to his successors in title unless expressly assumed by them. Such successors in title do, however, take the title subject to any outstanding lien for assessments.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the delinquency date at the rate of one and one-half (1.5%) percent per month (ANNUAL PERCENTAGE RATE - 18%) from the delinquency date. The Association may bring an action at law against the Owner personally obligated to pay the same or an action to foreclose the lien against the property, and there shall be added to the amount of such assessment, the interest thereon as above provided, plus a reasonable attorney's fee and the costs of the action.

J. Lien of Assessments is Subordinate to Recorded Mortgages. The lien of assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed upon a lot subject to the assessment. The sale or transfer of a lot shall not affect the assessment lien, provided, however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter coming due or from the lien thereof.

39. ENFORCEMENT BY HOMEOWNERS ASSOCIATION. Except for approvals and rights expressly reserved herein unto the Developer or its nominee, the Association shall have standing to enforce the within restrictions, covenants and obligations in the same manner and to the same extent as does the Developer or any other owner. The powers and authorities herein granted to the said Association shall be in addition to such other and further rights, duties and obligations which may be set forth in the Bylaws of the Association adopted in accordance with the terms hereof.

40. DELEGATION OF DEVELOPER'S RIGHTS. All rights reserved unto the Developer herein remain exclusively with the Developer, its successors and assigns, provided, however, Developer may assign and/or delegate all or any part of such reserved rights to the Association.

41. TERM OF ENFORCEMENT AND AMENDMENTS. These covenants, conditions, easements and restrictions shall, be binding upon the

Developer, its successors and assigns, and upon all future owners, their respective heirs, successors and assigns, and all parties claiming under them, until December 31, 2027, at which time the terms hereof shall be automatically extended for successive periods of ten (10) years thereafter, unless the then Owners owning at least two-thirds (2/3) of the Lots in Mill Brook agree in writing to terminate or change same. The terms and conditions of this instrument may be amended, supplemented or changed only upon written agreement of the Owners then owning at least two-thirds (2/3) of the Lots in Mill Brook, provided, however, the Developer, its successors and assigns, reserves the unilateral right to waive, modify, supplement or change in writing, any of the terms hereof with respect to the application thereof to any lot or lots.

42. EFFECT OF COVENANTS AND ENFORCEMENT.

A. Effect of Provisions of These Covenants. Each owner, tenant and guest, their successors, heirs and assigns, and all others who take an interest in land or realty within Mill Brook do promise, covenant and undertake to comply with each provision of these Covenants, which provisions:

(1) shall be considered and deemed to be incorporated in each deed or other instrument by which any right, title or interest in any lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;

(2) shall, by virtue of acceptance of any right, title or interest in any lot by an owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such owner to, with and for the benefit of the Developer, the Association and all other owners, their respective heirs, successors and assigns;

(3) shall be deemed a real covenant by the Developer for itself, its successors and assigns and also an equitable servitude, running in each case, both as to burdens and benefits with and upon the title to each lot;

(4) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to each lot, which lien, with respect to any such lot shall be deemed a lien in favor of the Association.

B. Who May Enforce. The benefits and burdens of these covenants run with the land at law and in equity, and the Developer and the Association, their respective successors and assigns, and any owner, his heirs, successors, legal representatives, Personal Representatives and assigns shall have the right to proceed against any party in violation of these covenants and to compel a compliance to the terms hereof and to prevent the violation or breach in any event.

C. Against Whom May the Covenants be Enforced. The obligation and benefits prescribed by this instrument shall run with the property and shall be enforceable against any owner, his heirs, successors and assigns, or any other person whose activities bear a relation to the property, including guests and tenants when the aforesaid persons or entities engage in activities (including omissions and failures to act) which constitute violations or attempts to violate contravene or circumvent the terms hereof.

D. Enforcement Remedies. In addition to other enforcement rights mentioned herein, in the event that any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land use is in violation of these covenants, the Developer, its successors and assigns, the Association or any owner may institute appropriate legal proceedings or actions at law or in equity, including, but not limited to, actions: (1) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (2) to restrain, correct or abate such violation, or breach of these covenants; (3) to prevent the occupancy of any dwelling or land; (4) to prevent any act, conduct, business or use which is in breach of these covenants; or (5) to compel any affirmative act which, pursuant to these covenants, "shall" be performed. Any action in equity hereunder for the enforcement hereof shall not be barred on the grounds that there may also exist an adequate remedy at law. The prevailing party in any action to enforce these restrictions shall also be entitled to reasonable attorney fees against the other party.

43. MISCELLANEOUS.

A. No Waiver. Failure to enforce any provision or provisions of this instrument for any period of time by the Developer, the Association or any owner shall not be deemed a waiver or estoppel of the right to enforce same at any time thereafter.

B. Captions. The captions and headings in this instrument are for convenience only and shall not be considered as controlling in construing the provisions hereof.

C. Board Authorization. All actions of the Association shall be authorized actions if approved by the Board of Directors of the Association in accordance with its Bylaws, unless the terms of this instrument provide otherwise.

D. Gender, Tense, Number and Applicability of Definitions. When necessary for proper construction, the masculine form of any word used herein shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

E. Savings Clause. If any provisions or provisions of this instrument are found to be ineffective or unenforceable for any reason in the final judgment of any court having jurisdiction of the subject matter hereof, the remaining provisions hereof shall remain fully enforceable and binding upon the owners, their respective heirs, successors or assigns.

F. Interpretation. In the event of any inconsistency between the within Covenants, the Bylaws or other regulations of the Association, the Covenants shall control.

22nd / IN WITNESS WHEREOF, the undersigned has set its hand and seal this day of November, 2004.

Mill Creek Developers, LLC

By:

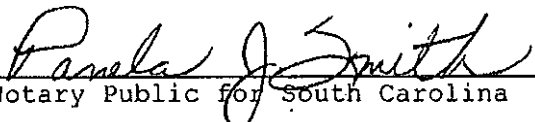
M. Todd Sill, Manager/Member

Handwritten signatures of Pamela J. Smith and another individual.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

ACKNOWLEDGEMENT

I, Pamela J. Smith, a Notary Public of the County and State aforesaid, certify that the within-named Developer personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal this 22nd day of November, 2004.


Notary Public for South Carolina

My Commission Expires: 8/24/10

NOTARY PUBLIC
STATE OF SOUTH CAROLINA
PAMELA J. SMITH
855-222-1111
www.pamela-smith.com

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STATE OF SOUTH CAROLINA)	DECLARATION OF PROTECTIVE
)	COVENANTS, CONDITIONS,
COUNTY OF SPARTANBURG)	RESTRICTIONS AND EASEMENTS
		OF MILL BROOK - PHASE 3

WHEREAS, the undersigned Developer is the owner of certain lots of land in Spartanburg County, South Carolina, located on the south side of Old Georgia Road, and more particularly shown and described upon plats as follows:

- a. Plat entitled Phase No. 1, Mill Brook Subdivision, prepared by Neil R. Phillips & Company, Inc., dated May 24, 2002, and filed in Plat Book 152, Page 544,
- b. Plat entitled Mill Brook Subdivision, Phase 2, prepared by Neil R. Phillips & Company, Inc., dated Oct. 5, 2004, and filed in Plat Book 157, Page 79, and

WHEREAS, Developer has now developed Phase 3 of Mill Brook contiguous with the above Phase 2 property, such Phase 3 being shown on a plat entitled Phase No. 3, Mill Brook Subdivision, prepared by Neil R. Phillips & Company, Inc., dated July 5, 2006, and filed in Plat Book 163, Page 429, Register of Deeds for Spartanburg County, and

WHEREAS, Developer has subjected Phase 1 properties to protective covenants filed in Deed Book 77-W, Page 530, and Phase 2 properties to protective covenants filed in Deed Book 81-S, Page 716, and now desires to subject Phase 3 of Mill Brook to protective covenants, as detailed below, and

WHEREAS, Mill Brook Subdivision is a residential community, and the Developer desires to provide for the preservation of values and amenities of said community and for the maintenance of common facilities and, to these ends, desires to subject all of the lots and property in Mill Brook to the above said Protective Covenants, Conditions, Restrictions, Easements, charges and liens (herein referred to as Covenants and/or Restrictions) for the benefit of each and every owner in Mill Brook, and

WHEREAS, Developer deems it desirable to create an agency to which should be delegated and assigned the powers of maintaining and administering common facilities and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereinafter created, and is incorporating under the laws of the State of South Carolina, as a non-profit corporation, Mill Brook Homeowners Association, Inc., for the purpose of exercising the functions aforesaid, and

WHEREAS, pursuant to Paragraph 41 of said Protective Covenants filed in Deed Book 77-W, Page 530, and in Deed Book 81-S, Page 716, Developer reserved the unilateral right to waive, modify, supplement or change in writing, any of the terms thereof with respect to the application thereof to any lot or lots.

DEE-2008-56229
Recorded 3 Pages on 12/10/2008 12:00:40 PM
Recording Fee: \$1 00 Documentary Stamps: \$0 00
Office of Register of Deeds - Spartanburg, S.C.
Stephen Ford, Register



NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the mutual benefits and advantages to the Developer and to future property owners of lots shown on the above described plat of Phase 3, and pursuant to Paragraph 41 of said Protective Covenants filed in Deed Book 77-W, Page 530, and in Deed Book 81-S, Page 716,

the undersigned Developer does hereby supplement the Protective Covenants filed in Deed Book 81-S, Page 530, Register of Deeds For Spartanburg County, as follows:

1. The following property is hereby added to and is subject to the Protective Covenants filed in Deed Book 81-S, Page 716:

MILL BROOK, PHASE 3

All those parcels or lots of land located to the south of Old Georgia Road, shown and designated as Lots Nos. 59 through 106, inclusive, all as shown on plat entitled Phase No. 3, Mill Brook Subdivision, prepared by Neil R. Phillips & Company, Inc., dated July 5, 2006, and filed in Plat Book 163, Page 429, Register of Deeds for Spartanburg County.

2. Applicable as to Phase 3 property owners only, Paragraph 36, sub-paragraph B, Voting Rights, Class B shall be worded as follows:

Class B. Class B members shall be the Developer and shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either one of the following events, whichever occurs earlier:

(a) When the total votes outstanding in Class A membership equal to the total votes outstanding in Class B membership; or

(b) January 1, 2023.

3. Applicable as to Phase 3 property owners only, Paragraph 38, sub-paragraph C, Basis and Maximum of Annual Assessments, the first three sentences shall be replaced to read as follows:

There will be no annual assessments until the year beginning January 1, 2009. For the year beginning January 1, 2009, the annual assessment shall be One Hundred Sixty & No/100 (\$160.00) Dollars per Lot. Beginning January 1, 2010, the annual assessment may be adjusted by vote of the Members as herein provided.

4. Applicable as to Phase 3 property owners only, Paragraph 38, sub-paragraph G, Date of Commencement of Annual Assessments; Due Dates, the year shall be changed from 2005 to 2009.

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5. Other than as hereby amended for the owners of Phase 3 lots, all of said Covenants shall remain in full force and effect under the terms and conditions as so stated therein.

IN WITNESS WHEREOF, the undersigned has set its hand and seal this December 9, 2008.

Signed, Sealed and Delivered
in the Presence of:

[Signature]
[Signature]

MILL CREEK DEVELOPERS, LLC

By: [Signature] (SEAL)
M. Todd Sill, Manager/Member

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named Mill Creek Developers, LLC, by its Manager/Member, M. Todd Sill, sign, seal and as its act and deed deliver the within written Declaration of Protective Covenants, Conditions, Restrictions and Easements of Mill Brook - Phase 3 and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me
this December 9, 2008.

[Signature] (SEAL)
Notary Public for South Carolina
My Comm. expires 1-12-11

[Signature]