

**CONDITIONS, RESTRICTIONS, AND EASEMENTS****FOR****COBBS CREEK**

This Declaration of Covenants, Conditions, Restrictions and Easements is made this 20<sup>th</sup> day of January 2005, by Cobbs Creek, LLC, a South Carolina limited liability company, and its successors and assigns, "Declarant," as hereinafter defined, with respect to certain real property owned by Declarant, being known and referred to as Cobbs Creek, as more particularly described hereinafter, the "Developer."

WHEREAS, Declarant is the owner of certain real property with improvements thereon in Spartanburg County, South Carolina, which is more particularly described on Exhibit A, attached hereto made a part hereof, the "Development," as hereinafter defined; and

WHEREAS, Declarant desires to foster the attractiveness of the Development, to prevent future impairment thereof, to preserve, protect and enhance the values and amenities of the Development, and to provide for the maintenance and upkeep of all common areas in the Development.

NOW, THEREFORE, Declarant hereby declares that all of the real property described herein, and such additions thereto as may by hereafter made pursuant to Articles II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges, and liens set forth in this Declaration, which shall run with the real property and be binding on all parties having any right, title, or interest in the described property or any part thereof, and their respective heirs, successors and assigns, and shall inure to



the benefit of each owner thereof and their respective heirs, successors, and assigns.

## ARTICLE I

### Definitions

In addition to any other terms defined in this Declaration, the following terms shall have the following meanings when used herein:

1. "Association" means Cobbs Creek Homeowners' Association, Inc., a South Carolina non-profit corporation, its successors and assigns.
2. "Common Area" means all real property (including improvements and fixtures thereon or thereto), and other property, real property, or mixed, which from time to time may be designated by Declarant for the common use and enjoyment of the Owners or conveyed to the Association in fee simple; together with all rights-of-way, easements, appurtenant, improvements and hereditaments described in this Declaration or designated as Common Area on any recorded plats of the Development, including but not limited to landscape easements, utility easements, and those certain sewer and drainage easements and appurtenances as shown on that certain plat recorded in Plat Book 157 at Page 262 in the Office of the Register of Deeds for Spartanburg County, South Carolina ("Register of Deeds"), all of which shall be and are covenants running with the land at law.
3. "Declarant" means and refers to Cobbs Creek, LLC, a South Carolina limited liability company, and its successors and assigns in interest, and shall also mean and refer to any person, firm, or corporation hereafter vested, at any given time, with title to two or more undeveloped Lots for the purpose of causing residences and appurtenant buildings to be

constructed thereon, and any such successor in title to Cobbs Creek, LLC, shall be a Declarant during such period of time as such successor is vested with title to two or more such lots (whether undeveloped or developed by such successor but not conveyed from such successor), but no longer.

4. "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements, as the same may be amended, renewed or extended from time to time in the manner herein prescribed.

5. "Development" means Cobbs Creek, a single-family residential development proposed to be developed by the Declarant on one or more of the Properties.

6. "Lot" means any numbered plot of land and improvements thereon, with delineated boundary lines intended for single-family residential use, appearing on the Plats, and expressly excluding Common Areas and roads and streets shown on the Plats.

7. "Plat" or "Plats" means one or more plats of the Development recorded in the Office of the Register of Deeds, including but not limited to that certain plat entitled "Cobbs Creek Phase I" prepared by Sinclair & Associates, dated January 4, 2005, recorded in the Office of the Register of Deeds in Plat Book 157 at Page 262, and any plat of the Property constituting additional Properties (if they are annexed pursuant to Article II thereof) which may be recorded by Declarant in the Office of the Register of Deeds hereafter.

8. "Phase I Property: means that portion of the Property containing 40 acres, more or less, with Lots, Common Areas, streets and roads, all as more particularly shown on the Phase I Plat.

9. "Member" means every person or legal entity that holds membership in the Association.
10. "Mortgage" means any mortgage constituting a lien on a Lot.
11. "Mortgage" means the owner and holder of a Mortgage at the time such term is being applied.
12. "Owner" means the record owner, whether one or more persons or legal entities, of the fee simple title to any Lot, including Declarant if it owns any Lot, and contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
13. "Property" means the Phase I Property and such other additional real estate which may hereafter be made subject to this Declaration pursuant to Article II of this Declaration and brought within the jurisdiction of the Association as provided herein.

## **ARTICLE II**

### **Property Subject to This Declaration**

#### **And The Jurisdiction of**

#### **The Cobbs Creek Homeowners' Association, Inc.**

1. Phase I Property. The Phase I Property, as defined, are and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and shall be within the jurisdiction of the Association as set forth in this Declaration.
2. Additional Property. The Phase I Property is a portion of the real property containing 40 acres, more or less, set forth on that certain plat of real property entitled "Property of Cobbs Creek, LLC, prepared by Sinclair & Associates, dated January 4, 2005

recorded in Plat Book 157, at Page 262 , in the Office of the Register of Deeds (the "Base Tract"). The remaining portion of the Base Tract, exclusive of the Phase I Property, or any property adjoining the Property, Base Tract, or any property adjoining such additional property within a one (1) mile radius thereof ("Additional Properties"), or any part thereof, may be brought under and made subject to the terms and conditions of this Declaration and be made part of the Property and brought within and made subject to the jurisdiction of the Association in future stages of development, without the consent of Owners, the Association or its Members, provided that (a) such additions occur within six (6) years after the date of the filing of this Declaration..

The Additional Properties shall be made subject to this Declaration and the jurisdiction of the Association by filing one or more Amendments to this Declaration and associated Plats with respect to such Additional Property or Properties filed in the Office of the Register of Deeds, which shall extend the terms and conditions of this Declaration and the jurisdiction of the Association to such Additional Properties and thereby subject such additions to the benefit, agreements, restrictions, covenants and obligations set forth herein, including , but not limited to, assessments as determined in accordance herewith.

The obligation for Owners of Lots in any portion of the Additional Properties to pay the assessments described in Article V hereof shall commence upon the filing of the Amendment to this Declaration concerning such Additional Property. The Owners of such Lots shall have the same voting rights as the Owners of Lots in the Phase I Property, and such voting rights shall commence as of the date of the filing of the Amendments to this Declaration concerning such Additional Property.

**ARTICLE III****Property Rights**

1. Ownership of Common Areas. At such point in time as Declarant, in its sole discretion, deems appropriate, but in no event later than when Declarant ceases to own at least one lot shown on any Plat of the Property, as amended by the addition of Additional Property, Declarant shall convey the Common Areas shown on any Plat of the Property to the Association, unless otherwise conveyed in whole or in part as hereinafter provided. Notwithstanding the recordation of any Plat or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public unless the Declarant, or the Association after conveyance to the Association, shall choose to convey or dedicate all or a portion of the Common Areas or interests therein, including without limitation, easements, to a public body or governmental entity or agency or to a private, non-profit entity for purpose of creating a park or greenway. The Association shall not thereafter convey or mortgage any part of the Common Areas without the prior consent of those Owners owning at least sixty-seven (67%) of the Class A Lots.

2. Owners' Rights to Use and Enjoy the Common Areas. Each Owner shall have non-exclusive, non-severable easements and right to use and enjoy the Common Areas, which easement and right shall be appurtenant to and run with the title to each Lot and shall pass with the title thereto, subject to the following:

- (a) the right of the Association to promulgate and enforce reasonable rules and regulations governing the use of the Common Areas to insure the safety, enjoyment and rights of all Owners therein;
- (b) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Areas;
- (c) the right of the Association to suspend the voting rights with respect to such Lot in the Association and the right of the Association to suspend the right to use the Common Areas by an Owner for any period during which any assessment against the Owner's Lot remains unpaid; and further to suspend such right to use the Common Areas for a period not to exceed sixty (60) days for any infraction of this Declaration, the Association By-Laws, or its published rules and regulations; and
- (d) the right of the Declarant or the Association to grant utility, drainage, sewer, and such other easements of the types and for the purposes set forth in Article VII across the Common Areas or to make dedications or conveyances set forth in Section I above.

3. Owners' Easements for Ingress and Egress. Every Lot shall have as a part thereof a perpetual, non-exclusive right to use any cul-de-sac or roadway, if any, which may be constructed by the Declarant and conveyed to the Association as part of the Common Area for the purpose of providing access to and from each Lot, and said perpetual, non-exclusive right shall be an easement running with the land and pass with the title to each Lot. Culs-de-sac and roadways set forth as temporary easements on any Plats of the Property shall not be deemed to have granted perpetual, non-exclusive rights of use to Owners but shall be subject to removal upon opening of any road extensions adjacent thereto by Declarant.

4. Delegation of Use. Any Owner may delegate , in accordance with the By-Laws of the Association, such Owner's right of enjoyment to the Common Areas and facilities thereon to the members of such Owner's family, guests, tenants, or contract purchasers who reside permanently or temporarily in the residential dwelling on such Owner's Lot.

#### ARTICLE IV

##### The Association

1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership in the Association shall be appurtenant to , and may not be separated from, ownership of any Lot.

2. Voting Rights and Classes of Lots. The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person or legal entity owns an interest (other than leasehold or security interest) in any Lot, all such persons or legal entities shall be Members and the voting rights appurtenant to said 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 Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by the Declarant which have not been conveyed to purchasers who are not affiliated with Declarant. The Declarant shall be entitled to three (3) votes for each Class B Lot owned by it . The Class B Lots shall be converted to Class A Lots when the total votes outstanding in the Class A Lots equals the total votes



outstanding in the Class B Lots.

3. Availability of Documents. The Association shall maintain current copies of the Declaration, the By\_Laws, and rules and regulations, concerning the Development as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours, In addition, any Mortgagee may, at it own expense, have an audited statement prepared with respect to the finances of the Association.

4. Management Contracts. The Association is authorized and empowered to engage the services of any person, firm, or corporation to act as managing agent of the Development at a compensation to be established by the Board of Directors and to perform all of the powers and duties of the Association; provided , however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days' prior written notice to the manager without payment of a termination fee.

5. Maintenance. The Common Areas and certain features thereof that are deemed common amenities and facilities, being of benefit to all Lots, shall be maintained exclusively by the Association. Said common amenities may include , without limitation, entrance walls, signage, lighting , and landscaping, hardscaping and landscape furniture, swimming pool, clubhouse or cabana , parks and greenways, private roads, streets and sidewalks, common walks, signs, picnic areas, irrigation systems and storm water and drainage easements located within the

Common Areas. The Association shall also maintain all utilities and all storm and drainage easements and appurtenances, equipment and facilities related thereto located within the Common Area, together with common amenities not maintained by public entities or utilities. The Association shall not be responsible for the maintenance of any Lots or the improvements within the boundaries thereof. The Owner shall be responsible for the same.

6. Working Capital Fund. The Association may establish a working capital fund equal to the aggregate of two months' annual assessments (as described in Article V hereof) for each Lot. If established, each Lot's share of said working capital fund shall be collected from the purchaser and transferred to the Association at the time of the closing of the initial sale of each Lot to a party other than Declarant. The working capital fund shall be maintained in a separate account for the use and benefit of the Association and shall be used to meet unforeseen expenditures, or to acquire furniture, equipment, or services deemed necessary or desirable by the Board of Directors of the Association. All sums paid unto the working capital fund are in addition to and not in lieu of regular assessments for common expenses.

7. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of all Common Areas, and all improvements thereon, which the Association is obligated to maintain. Such reserve fund shall be maintained from the annual assessment described in Article V of this Declaration.

## ARTICLE V

### Covenant for Assessments

1. Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and causes by this Declaration to

impose upon each such Lot, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association, annual assessments or charges and special assessments for working capital and reserve funds for capital improvements, permitted in this Declaration, and established, and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligations of the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

2. Purpose of Annual Assessment. The annual assessments levied by the Association shall be used as follows:

(a) To maintain in a good and attractive condition the landscaping, including, without limitation, the mowing of lawns, planting and maintenance of shrubs, flowers and other plants, and watering on and within the boundaries of the Common Areas;

(b) to maintain the parks and greenways in the Common Areas and sidewalks or other common walks, common signage and development statement pieces or entrance ways (including any walls erected at said entrance ways);

(c) to maintain any and all lighting, drainage pipes, inlets, basins, ditches, swales, berms, rip rap, and other facilities, equipment, and improvements installed upon, above, or under the Common Areas;

(d) to maintain all trails or paths, if any, in the Common Areas as a common amenity

in a reasonably passable condition , free from falling trees, undergrowth, and other obstructions;  
and to keep all dead, diseased or decaying trees, shrubs and bushes removed from areas and to  
replace such items with new trees , shrubs and bushes;

(e) to maintain all recreational and related facilities, if any (such as a swimming pool  
and clubhouse or cabana, playground equipment, and picnic tables) located within the Common  
Areas as a common amenity ; provided , that, the reference to said facilities herein shall not be  
construed to require said facilities to be constructed or installed in the Common Areas or  
elsewhere on the Properties;

(f) to maintain any improvements required by any County, State, or federal agency  
to be installed and maintained upon , under, or over the Common Areas;

(g) to keep all Common Areas clean and free from debris and to maintain same in a  
clean and orderly condition, and to maintain the landscaping therein, including any necessary  
removal and replacement of landscaping.

(h) to provide such security services as may be deemed reasonably necessary for the  
protection of the Common Areas, and any recreational and related facilities, if any, located within  
the Common Areas, from theft, vandalism, fire and damage from animals;

(i) to pay all ad valorem taxes levied against the Common Areas and any property  
owned by the Association;

(j) to pay the premiums on all insurance carried by the Association pursuant hereto or  
pursuant to the By-Laws;

(k) to pay all legal, accounting and other professional fees incurred by the Association  
in carrying out its duties as set forth herein or in the By-Laws;

(l) to maintain a reserve fund as provided in Article IV, Section 7, of this Declaration; and

(m) to maintain a contingency reserve equal to 10% of the sum of the amounts described in the above subsections (a) through (k) of this Section 2 in order to fund unanticipated expenses of the Association.

3. Maximum Annual Assessment. Until January 1 of the calendar year following the conveyance of the first Lot by Declarant to another Owner, the maximum annual assessment shall be Three Hundred Twenty Five and no/100ths (\$325.00) per lot.

(a) The maximum annual assessment established above may be increased, effective January 1 of each calendar year following the conveyance of the first Lot by Declarant to another Owner, without a vote of the membership of the Association by an amount not to exceed the greater of (1) five percent (5%) per year over the previous year; or (2) the percentage increase, if any, in the Consumer Price Index (published by the United States Department of Labor, Washington, DC) for all cities over the immediately preceding twelve (12) month period which ended on the previous October 31. If the annual assessment is not increased by the maximum amount permitted under the terms of this Section, the difference between any actual increase which is made and the maximum increase permitted for the next three year shall be computed and the assessment may be increased by that amount within the next three future years at the election of all members of the Board of Directors of the Association without a vote of the membership, in addition to the maximum increase permitted under the terms of the preceding sentence.

(b) From and after January 1 of the year immediately following the conveyance of the

first Lot to an Owner, said maximum annual assessment may be increase without limitation if such increase is approved by Members entitled to no less than sixty-seven (67%) of all of the votes (appurtenant to each class of Lots) to which all Members are entitled. Such voting may be represented in person or by proxy at a meeting duly called for such purpose.

(c) The Board of Directors may fix the annual assessments at amounts not in excess of the maximum. If the Board of Directors shall levy less than the maximum annual assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may by majority vote, levy a supplemental assessment. In no event shall the sum of the initial and supplemental assessments for that annual period exceed the applicable maximum annual assessment permitted under Subsection 3(a) of this Article.

4. Special Assessments for Capital Improvements. In addition to the annual and supplemental annual assessment authorized in Section 3 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, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto; provided, that any such assessment requires the same assent of the members as provided in Section 3(b) of this Article.

5. Assessment Rate. Both annual and special assessment must be fixed at an equal amount for all Lots. Notwithstanding the foregoing, so long as Declarant owns any Lots, Declarant shall pay twenty five (25%) of the otherwise applicable annual or special assessment for any such Lots until the completion of construction of a residential dwelling on such Lot.

Thereafter, the Declarant shall pay one hundred percent (100%) of such annual or special assessment until such Lot is sold to another Owner.

6. Notice and Quorum for Any Action Authorized Under Article V, Sections 3 and 4.

Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 or 4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following date set for the preceding meeting.

7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Lot upon the filing of this Declaration (or the filing of an Amendment to this Declaration if relating to the Additional Properties) in the Office of the Register of Deeds for Spartanburg County, South Carolina. The first annual assessment shall be adjusted and prorated according to the number of months remaining in the annual accounting period for the Association. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its

issuance.

8. Effect of Nonpayment of Assessments: Remedies of the Association.

Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eight (8%) percent per annum. The Association may bring an action at law against the delinquent Owner or foreclosure the lien against the Lot in the same manner as the foreclosure of a mortgage, and interest, costs and reasonable attorney's fees of such action or foreclosure shall be added to the amount of the assessment due and owing. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Areas or by abandoning Owner's Lot.

9. Subordination of the Lien to Mortgages. The lien of the assessment provided for herein shall be subordinate to the lien of any mortgage on a Lot or any mortgage of Declarant. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot purchase to mortgage foreclosure, shall extinguish the lien of such assessments against such Lot as to payments which became due prior to such sale or transfer pursuant to mortgage foreclosure. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage as provided in this Declaration. No mortgages shall be required to collect assessments hereunder and a failure to pay assessments hereunder shall not constitute a default under any applicable mortgage on a Lot.



**ARTICLE VI****Architectural Control**

1. Committee. Until such time as the Class B membership expires, Declarant shall annually appoint the members of the Architectural Committee, which will be composed of at least three (3) members of the Board, the exact number of members of the Architectural Committee being designated by Declarant from time to time. Each member shall be generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within the Property. In the event of the death or resignation of any member of the Architectural Committee, Declarant, for so long as it has the authority to appoint the members of the Architectural Committee, and thereafter, the Board shall have full authority to designate and appoint a successor. Members of the Architectural Committee may be removed and replaced at any time with or without cause, and without prior notice, by Declarant, for so long as Declarant has the right to appoint the members thereof by the Board. Subsequent to the expiration of Class B membership (and earlier if Declarant specifically assigns this right to the Board), the Board shall designate the number of and appoint the members of the Architectural Committee on an annual basis. At any time declarant may elect not to designate the number of and/or appoint the members of the Architectural Committee and may assign this right to the Board.

2. Procedure. No Improvements (other than the Initial Improvements as described above) shall be erected, remodeled or placed on any Lot until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the Architectural Committee, as to:

(a) quality of workmanship and materials, adequacy of site dimensions and facing of main elevation with respect to nearby streets;

(b) conformity and harmony of the external design, color, type and appearance of exterior surfaces;

(c) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and Improvements situated thereon and drainage arrangement; and

(d) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Architectural Committee, or matters in which the Architectural Committee has been vested with the authority to render a final interpretation and decision.

Final plans and specifications (including a site plan showing the location of the contemplated Improvements on the Site) for all improvements proposed to be constructed on a Site shall be submitted to the Architectural Committee for approval or disapproval. The Architectural Committee is authorized to request the submission of samples of proposed construction materials. Any modification or change to the Architectural Committee-approved set of plans and specifications (specifically including , but without limitation , the above-described site plan) must again be submitted to the Architectural Committee for its inspection and approval. The Architectural Committee's approval or disapproval, as required herein, shall be in writing. Once the Architectural Committee has approved the plans and specifications for the proposed Improvements , the Construction of such

Improvements must be promptly commenced and diligently pursued to completion and if such construction is not commenced within the time set therefore by the Architectural Committee in the written approval (but in no event later than one (1) year after such approval), such approval shall be deemed rescinded and before construction of Improvement can thereafter be commenced on the Lot in question, the plans and specifications therefore must again be approved by the Architectural Committee pursuant to this Article. All mailboxes and mailbox supports shall be same type and color as specified by Declarant.

The Architectural Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and shall carry forward the spirit and intention of this Declaration. Architectural standards bulletins or other guidelines issued by the Architectural Committee shall be used by the Architectural Committee as a guide to assist the Architectural Committee in viewing any proposed plans, specifications and materials submitted to the Architectural Committee for approval. Current copies of the architectural standards bulletins shall be available to interest persons at the principal office of the Association for a reasonable cost. Although the Architectural Committee shall not have unbridled discretion with respect to taste, designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand).

3. Enforcement. In addition to the Declarant's and the Association's right to enforce the provisions of this Declaration as set forth in Section 10.1 of this Declaration, the Architectural Committee shall have the specific, nonexclusive right to enforce the provisions contained in this Article and/or in equity against the person or persons violating or attempting to

violate any such provisions contained herein. In the event that the Architectural Committee, Declarant or the Association resorts to litigation to determine the property of any constructed Improvement, to remove any unapproved Improvement or otherwise to remedy a violation of this Article, the Architectural Committee, Declarant, or the Association, as applicable, shall be entitled to recover court costs, attorneys' fees and expenses incurred in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the offending Owner's Lot.

4. Effect of Failure to Approve or Disapprove. If an Owner erects any improvements on a Lot and a suit to enjoin the erection of or require the removal of such Improvements is not brought by any person or entity having standing to sue within three (3) months from the commencement of construction of such Improvements, then this Article shall be deemed to have been fully satisfied.

If the Architectural Committee fails to approve or disapprove the design of any proposed Improvements with thirty (30) days after plans and specifications therefor have been submitted and received, approval will not be required, and the requirements of this Article shall be deemed to have been fully satisfied; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Architectural Committee if they contain erroneous data or present inadequate information upon which the Architectural Committee can arrive at a decision. Notwithstanding the foregoing, the Architectural Committee shall have no right or power, either by actions or failure to act, to waive or grant any variance relating to any mandatory requirements specified in the Declaration.

5. Right of Inspection. The Architectural Committee shall have the right, at its

election, to enter upon any of the Lots during (and after) preparation, construction, erection, or installation of any Improvements to determine that such work is being performed in conformity with the approved plans and specifications.

6. Limitation of Liability. Neither the Architectural Committee, the members thereof, nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any owner by reason of mistake of judgment, negligence or nonfeasance (except where occasioned by gross negligence or intentional conduct) arising out of services performed pursuant to this Declaration.

7. Compensation. No member of the Architectural Committee shall be entitled to compensation arising out of services performed pursuant to this Article. The Association shall reimburse members of the Architectural Committee for reasonable out-of-pocket expenses incurred by such members in the performance of their duties as members of the Architectural Committee.

#### **ARTICLE VII EXTERIOR MAINTENANCE**

The Association shall maintain the Common Area. Each owner shall be responsible for the maintenance of his or her dwelling and Lot. Maintenance of such dwelling and Lot shall include, without limitation, painting, replacement and care of roofs, gutters, downspouts, exterior building surfaces, lawn, trees, shrubs, driveways, walks and other exterior improvements. In the event that the owner neglects or fails to maintain his or her Lot and/or the exterior of his or her dwelling in a manner consistent with other Lots and dwellings in Cobbs Creek Subdivision, the Association may, but is not obligated to provide such exterior maintenance as provided above at

the Owner's sole cost and expense. Provided, however, that the Association shall first give written notice to the owner of the specific items of exterior maintenance or repair the Association intends to perform and the owner shall have twenty (20) days from the date of mailing of said notice within which to perform such exterior maintenance himself or herself. The determination as to whether an owner has neglected or failed to maintain his or her Lot and/or dwelling in a manner consistent with other Lots and dwellings in Cobbs Creek Subdivision shall be made by the Board, in its sole discretion. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the association the right and easement to unobstructed vehicular and pedestrian access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article.

In the event the Association performs such exterior maintenance, repair or replacement, the cost of such maintenance, replacement or repairs shall be assessed to the Owner as a Special Individual Assessment and shall become a lien against the Lot of such Owner.

## ARTICLE VIII

### Easements Reserved By Declarant

Lots and the Common Areas shall be subject to those easements and rights-of-way, if any, as shown on the recorded Plats of the Property.

In addition thereto and in lieu thereof, Declarant reserves the following perpetual easements:

(a) a ten-foot easement along each side and rear Lot line of each Lot (i) for the erection, installation, construction, repair, replacement, and maintenance of wires, lines, conduits, pipes,

and poles, appurtenances, appliances, equipment and the like in connection with the transmission and distribution of electricity, telephone, cable television, and other utilities; and (ii) for the erection, installation, construction, and maintenance of storm water drainage facilities, land drains, pumping and lift stations, open drainage ditches, public and private sewers, pipelines for supplying natural gas, water and the like utilities and wires, lines, conduits, pipes, appurtenances, appliances, equipment and the like in connection therewith, and for any other public or quasi-public facility, service or function;

(b) a five-foot easement along Lot lines adjacent to streets for the installation of driveways, curbing, and curb cuts for driveways.

(c) the right and easement to erect permanent walls on the Common Areas for the purpose of providing screening, privacy, decoration, retainage and topographical stability in connection with the overall plan and development of the Properties and the Lots located thereon;

(d) a temporary easement for the benefit of Declarant over the Common Areas for the purpose of temporarily storing construction materials or parking vehicles and equipment in connection with the construction of improvements on the Common Areas or on adjacent or contiguous property owned by Declarant;

(e) an easement for the purpose of maintenance of landscaping over the Common Areas in such amount, manner and maintenance as the Declarant, in its sole discretion shall determine; and

(f) an easement for the installation and maintenance of utilities ( including transformers and service facilities) and other commonly beneficial amenities including, without limitation, mailboxes, trash containers and area lighting over the Properties and Common Areas.

(g) temporary cul-de-sac easements as shown on any Plat of the Property.

Each Owner, by acceptance of a deed to a Lot, and the Association by its acceptance of a deed to the Common Areas, acknowledge and agree to the forgoing reservation of easements and the right of Declarant to transfer such easement to the Association or to public or private utility companies as Declarant may choose.

The easements reserved by the Declarant include the right to cut or remove without replacement any trees, bushes or shrubbery, make any grading of the soil, or take any similar action required by a utility for acceptance of a transfer or reasonably necessary to provide economical utility installation and maintenance of the overall appearance of the Development.

Within any of the forgoing easements, no structure, planting or other material shall be placed or permitted to remain which may change the direction of flow of water through drainage channels in the easements, for their intended purposes.

The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of such Lot, except for those improvements for which a public authority or utility company is responsible.

2. Encroachments. Each Owner of a Lot with an exterior wall, roof or eave, including overhangs, fence, concrete or asphalt walk or patio, which encroaches on the Common Area and/or an unimproved portion of a Lot of another Lot Owner and which encroachment exists solely by virtue of original construction by the Declarant or with Declarant's express approval, shall have an easement over that portion of the Common Area or adjacent Lot affected by the encroaching wall, roof, eave, fence, walk or patio for the purpose of using said portion of the Common Area or adjacent Lot for the encroaching Owner's own benefit and for the purpose of



maintaining the encroaching structure in good condition and repair. In the case of a wall, roof, eave or fence encroachment, it shall be the responsibility of the Owner thereof to maintain the encroaching wall, roof, eave or fence in good condition and repair. If any such encroaching wall, roof, eave, fence, patio or walkway shall be destroyed or removed, it shall not be replaced or rebuilt so as to encroach upon the adjacent Lot or Common Area.

## ARTICLE VIII

### General Covenants

#### Uses Permitted and Restricted

1. Residential Use of Property. All Lots shall be used for single-family residential purposes only, and no business or business activity shall be carried on or upon any Lot at any time; provided, however, that nothing herein shall prevent Declarant from using any Lot owned by Declarant for the purpose of carrying on business related to the development, improvement and sale of Lots in the Development.

2. Setbacks and Building Lines. Each structure, including without limitation, residential dwellings, garages, whether attached or detached, utility buildings, and any other permitted structures, erected on any Lot shall be situated on such Lot in accordance with the building and setback lines as shown on the recorded Plats of the Development. In no event shall any dwelling, garage, utility building or other permitted structure be constructed and located upon any Lot nearer to any Lot line than ten (10%) percent of the width of the Lot measured at the front wall of the structure.

3. Re-Cutting Lots; Combining Lots. No Lot may be re-cut so that it faces a street other

than as shown on the pertinent Plat of the Property . Lots or portions thereof may be combined with adjacent Lots to form a larger Lot than shown on a plat. Easements and rights-of-way reserved in Article VII shall then apply to the new exterior Lot lines.

4. Dwelling Floor Space. Each Lot shall contain no more than one residential dwelling containing the minimum floor space as follows:

- |                                     |                  |
|-------------------------------------|------------------|
| (a) One-Story Dwelling              | 1500 square feet |
| (b) One and One-Half Story Dwelling | 1500 square feet |
| (c ) Two-Story Dwelling             | 1500 square feet |

No dwelling on any Lot shall have more than two stories as measured from grade and above. In calculating the minimum floor space, only the heated area of the dwelling shall be included. Any area comprising porches, garages, breezeways, porte-cocheres, unfinished attics and unfinished basements shall be excluded.

5. Garages. No garage erected on any Lot shall be more that two stories in height. All garages shall be attached to residential dwellings.

6. Detached Structures. No detached outbuilding or other structure shall be erected on any Lot that is more that two stories in height. All detached structures must be to the rear of the main dwelling and must be constructed within the building setback lines for the Lot. Any detached structure to be erected, constructed, or placed upon any Lot must be approved in writing by the Architectural Committee.

7. Building and Zoning Codes. All structures must comply with all applicable building and zoning codes.

8. Swimming Pools. No above ground swimming pools may be erected or constructed on any Lot . Any swimming pool must be located to the rear of any dwelling on the Lot and have at least a four foot security fence around its immediate apron perimeter that remains locked at all times except when in use by the Owner, in addition to any other fencing that may be permitted by this Declaration.

9. Obstructions to View at Intersections and a Driveway Entrances to Streets. Vegetation shall not be permitted by any Owner to obstruct the view at street intersections or a driveway entrances to streets.

10. Delivery Receptacles and Property Identification Markers. The Architectural Committee shall have the right to approve the location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similarly delivered materials, and of name signs for such receptacles, as well as Lot identification markers.

11. Use of Outbuildings and Similar Structures. No structure of a temporary or permanent nature, unless approved in writing by the Architectural Committee, shall be erected or allowed to remain on any Lot. In no event shall any trailer, camper, shack, tent, garage, utility building, shed, greenhouse, barn or other structure of a similar nature be used as a residence , either temporarily or permanently; provided , however, that this Section shall not be construed to prevent the Declarant from using sheds or other temporary on Lots during construction.

12. Animals, Pets, Livestock. No animals, livestock, poultry, or other fowl of any kind shall be raised, bred or kept on any Lot, except that a reasonable number of dogs, cats, or other small household pets may be kept; provided, however, that they are not kept, bred, or maintained

for any commercial purposes. Any household pets must not constitute a nuisance or cause unsanitary conditions. Any such pets shall be securely fenced upon the Owner's Lot so as to prevent them from trespassing upon other Lots in the Development. All applicable local laws or regulations, including leash laws, shall be observed.

13. Offensive Activities. No noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon or any substance, thing, or material be kept thereon which is or may cause any noise or foul or obnoxious odors or become an annoyance or nuisance to the Owners of other Lots or that will or might disturb the peace, quiet, comfort, or serenity of other Owners.

14. Signs. No advertising signs or billboard shall be erected on any Lot. This restriction shall not apply to signs used to identify and advertise the subdivision as a whole, nor to signs for selling Lots during the initial construction of residences on Lots; provided that such signs are approved by the Architectural Committee. In addition, the provisions of this Section shall not apply to anyone who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale of a Lot or a transferee pursuant to any proceeding in lieu of foreclosure so long as such signs are approved by the Architectural Committee.

15. Maintenance. Each Owner shall keep and maintain the Owner's Lot and any improvements and landscaping thereon in good condition and repair, including, without limitation (a) repairing and painting (or other appropriate external care) of all structural improvements; (b) seeding, watering and mowing of all lawns; (c) pruning and trimming of all trees, hedges and shrubbery so that the same do not obstruct the view of pedestrians and motorists of street traffic. The Architectural Committee shall have the power and responsibility

of enforcing this Section.

16. Antennae, Satellite Dishes and Disks. No antennae, satellite dishes or disks, ham radio antennae, or antenna towers for receiving or transmitting radio, television, or other electronic transmission shall be permitted to be placed or used upon any Lot, except for small television receiving disks, not exceeding eighteen (18) inches in diameter, attached to or ground mounted immediately adjacent to the rear or side of the residential dwelling or attached garage on a Lot.

17. Basketball Goals. No basketball hoops or goals, whether free-standing, removable or attached to mounts shall be placed in or on any street, road, right-of-way, side walk, front yard, driveway, easement, or attached to the front or side of residences or garages. Basketball goals or hoops may be placed on a Lot only to the rear of residences or garages.

18. Motorized Vehicles. No commercial, recreational, or disabled vehicles, boats, jet skis, boat trailers, motorcycles, motor homes, trucks, buses, vehicles on blocks or any like equipment or mobile or stationary trailers of any kind shall be kept, stored or parked overnight either on any street or on any Lot, except within a fully enclosed garage or behind the residence or garage, screened from view from any street adjacent to a Lot. Notwithstanding the foregoing, passenger automobiles may be parked in driveways, if the number of vehicles owned by Owner exceeds the capacity of the garage. All motor vehicles must be equipped with functioning mufflers to maintain the lowest possible noise level when operated. The foregoing shall not be interpreted or applied to prevent the temporary, non-recurrent parking of any vehicle, boat, trailer or motor home for a period not to exceed forty-eight (48) hours on the street or upon any Lot.

19. Construction Debris, Garbage and Refuse Disposal. No Lot shall be used or

maintained as a dumping ground for rubbish, trash, garbage, or other waste. All construction debris and litter shall be maintained in a manner that prevents any hazardous condition and/or distribution to any other Lot. All construction debris and litter shall be removed within fifteen (15) days of construction completion. No other garbage and refuse shall be kept or allowed to accumulate on any Lot except in sanitary containers designed for that purpose.

20. Changing Elevations. No Owner shall excavate or extract earth for any business or commercial purpose from any Lot. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots, unless approved in writing by the Architectural Committee.

21. Tanks. Fuel Oil and gas tanks may not be installed on any Lot. Small fuel containers for lawn mowers and the like implements may be kept on Lots.

22. Clotheslines and Garbage Cans. Clotheslines and garbage cans and equipment shall be screened to conceal them from view of adjacent Lots and streets. No garbage incinerators shall be permitted on any Lot.

23. Firearms and Weapon Discharge. Any firearm or weapon discharge or release, other than for defense or protection or one's life or property, is strictly prohibited on any and all Property in the Development. Firearms and weapons shall include, without limitation, rifle, gun, pistol, shotgun, black powder gun, pellet or BB gun, bow and arrow, crossbow and arrow, and any other weapon from which any bullet, shot, or projectile may be discharged or released.

24. Model Homes. Declarant shall have the right to construct and maintain model homes on any of the Lots.

25. Driveways and Entrances to Garages. All driveways and entrances to garages shall be

concrete or a substance approved in writing by the Architectural Committee and of a uniform quality.

26. Off-Street Parking. Provisions must be made by each Owner of a Lot for the parking of at least two automobiles belonging to occupants and guests off the adjacent streets and in garages on Lots. The parking of guest or occupant vehicles on streets for long or repeated periods of time during the day or night or both, except for occasional, non-regular social gatherings and functions, shall not be permitted. No vehicles shall be permitted to be parked on Lots except in garages or on driveways.

27. Aesthetics, Natural Growth, Screening. Trees which have a diameter in excess of six (6") inches measured two (2') feet above ground level, and distinctive flora, shall not be intentionally destroyed or removed except with the prior written approval of the Architectural Committee.

28. Wild Bird Sanctuary. The Properties are declared to be a wild bird sanctuary. No wild bird of any type shall be killed or harmed above, upon or within the boundaries of the Properties.

## ARTICLE IX

### General Provisions

1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all or any provisions of this Declaration including, without limitation, all restrictions conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration as amended. Failure of the Association or any Owner to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter

and such failure shall not be deemed acquiescence in any breach of this Declaration. Each Owner shall have all appropriate remedies at law or in equity to enforce the provisions of this Declaration and the By-Laws of the Association and any duly authorized rules and regulations governing the Development against the Association.

2. Severability. Invalidation of any of the terms and conditions or provisions of this Declaration by final judgment or a court of competent jurisdiction shall not affect any other provisions which shall remain in full force and effect.

3. Amendment. This Declaration may be amended prior to January 1, 2009, only by an instrument signed by the Owners of not less than ninety (90%) percent of the Lots and by the Declarant, so long as the Declarant owns any Lots. After January 1, 2009, this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five (75%) percent of the Lots.

4. Duration. This Declaration and its covenants and restrictions shall run with and bind the land until January 1, 2020, after which time they shall be automatically extended for successive periods of ten (10) years.



IN WITNESS WHEREOF, Declarant, by and through its authorized representative, has caused this instrument to be executed the day and year first above written.

Witness:

Michelle Dummer  
Bullock

Cobbs Creek, LLC

By: Paul L. Kaut  
Title member

By: Paul B. Briel  
Title Member

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

PROBATE

Personally appeared before me the undersigned witness, who says on oath that (s)he saw the within named officer of Cobbs Creek, LLC, a South Carolina limited liability company, sign, seal and, as the act and deed of said limited liability company, deliver the within written Declaration of Covenants, Conditions, Restrictions, and Easements for Cobbs Creek, LLC, and (s)he with the other witness, witnessed the execution thereof.

Sworn to before me this  
20<sup>th</sup> day of JANUARY 2005

Bullock

Notary Public for the State South Carolina  
My Commission Expires: 2-24-07

Michelle Dummer  
Witness Signature

(SEAL)



STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR COBB'S CREEK, PHASE 3

WHEREAS, Cobb's Creek, LLC is the owner of all lots located in the Cobb's Creek Phase 3, which are more fully shown on a Plat of Cobb's Creek, Phase 3, prepared by Thornton Land Surveying, Inc., dated October 12, 2009 and recorded in the Register of Deeds Office for Spartanburg County, SC in Plat Book 164 at Page 646 (the "Property"); and

WHEREAS, the Property is a new phase in the development of Cobb's Creek, and Cobb's Creek, LLC wishes to submit Phase 3 and all lots located in the Property to the Covenants, Conditions and Restrictions governing Cobb's Creek, Phase I, as recorded in Deed Book 82-E at Page 470, in the Register of Deeds Office for Spartanburg County, SC, as amended by Amendment to Conditions, Restrictions and Easements recorded in Deed Book 82-H at page 193 in the Register of Deeds Office for Spartanburg County, SC.

NOW, THEREFORE, in consideration of the sum of \$1.00 and the benefit to be derived by being a part of the Cobb's Creek, Cobb's Creek, LLC does hereby declare that the Property shown as Phase 3 on the Plat recorded in the Register of Deeds Office for Spartanburg County, SC in Plat book 164 at Page 646 shall henceforth be held, sold and conveyed subject to the Declaration of Covenants Conditions and Restrictions for Cobb's Creek, Phase I as recorded in Deed Book 82-E at Page 470 in the Register of Deeds Office for Spartanburg County, SC, Amendment to Conditions, Restrictions and Easements recorded in Deed Book 82-H at page 193 in the Register of Deeds Office for Spartanburg County, SC.

THIS Declaration of Covenants, Conditions and Restrictions for the Cobb's Creek, Phase 3 shall be binding upon and innure to the benefit of all subsequent purchasers of the Property.

IN WITNESS WHEREOF, Cobb's Creek, LLC has hereunto set its hand and seal this 9<sup>th</sup> day of December, 2009.

SIGNED, sealed and delivered  
in the presence of:

Deanne H. White  
Deanne H. White

**COBB'S CREEK, LLC**

By: [Signature]  
Its: Managing Member

DEE-2009-51461  
Recorded 2 Pages on 12/17/2009 2:35 48 PM  
Recording Fee: \$10.00 Documentary Stamps: \$0.00  
Office of Register of Deeds, Spartanburg, S.C.  
Stephen Ford, Register



00295E- PG 287

\*\*\*\*\*

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of December, 2009 by  
the within named Declarant(s) as and for its act and deed.

*Sharon L. White* (SEAL)  
Notary Public for the State of SC  
My Commission Expires: 7-24-2019

STATE OF SOUTH CAROLINA

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR COBB'S CREEK, PHASE 4

COUNTY OF SPARTANBURG

WHEREAS, Cobb's Creek, LLC was, or is the owner of all the lots on Cobb's Creek Phase 4, which is more recently shown on a plat of the same, recorded in Plat Book 167, page 47, Register of Deeds Office for Spartanburg County, and

WHEREAS, the Developer wishes to establish the same Restrictive Covenants as Previously imposed upon Phase 1, with certain relevant changes as are hereinafter delineated,

NOW THEREFORE, Cobb's Creek, LLC., in consideration of mutual benefits to all of the Lot owners of Phase 4, Cobb's Creek Subdivision, does hereby declare and impose upon said lots, the same Covenants, Conditions and Restrictions as previously imposed upon Phases 1, 2 and 3, which are recorded in Deed Book 82-E, Page 470, Deed Book 82-H, Page 193 and Deed Book 95-E, Page 286, ROD Office for Spartanburg County, with the following Amendments:

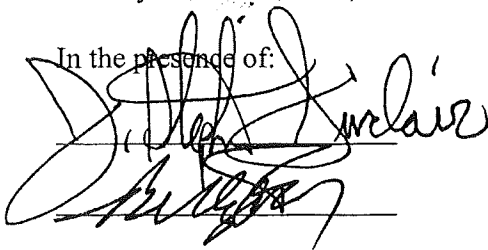
Homeowner's dues on Lots in Phase 4 shall not be due, nor accrue, until Developer's Builder sells a lot, or rents the same, at which time Dues will accrue.

Article VI .of the aforementioned Conditions, Restrictions and Easements are amended to reduce the minimum number of members required to serve on the committee, to not less than two.

The Restrictive Covenants, Conditions and Restrictions shall be binding upon each Lot Owner in the aforementioned Subdivision for a Period of Twenty (20) Years from date and will be automatically extended for successive periods of ten (10) years unless a majority of the then owners agree to cancel or modify the same in whole or in part.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals, this 19<sup>th</sup> Day of July, 2013,

In the presence of:



COBB'S CREEK, LLC

By Billy L. Pante  
Its President

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of July, 2013 by the within named Declarant as and for it's act and deed.

  
Notary Public for South Carolina

my comm exp. 1-3-17



IN WITNESS WHEREOF, the undersigned Lot owners in Cobb's Creek, Phase 4 Subdivision, has hereunto signed their hands and seals this 19 day of July, 2013.

Bobby D. Amaker  
Camille Bonen

135  
Owner Lot No, [Signature]

136  
Owner Lot No. [Signature]

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of July, 2013 by him/her, a declarant, as and for his/her act and deed.

[Signature] (SEAL)  
Notary Public for South Carolina  
My Commission expires Feb. 27, 2023

DEED 104 SP6623