

STATE OF SOUTH CAROLINA

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COUNTY OF SPARTANBURG

R.M.C.  
SPARTANBURG, S.C.

DECLARATION OF COVENANTS AND  
RESTRICTIONS OF COGGINS FARM

THIS DECLARATION is made this 22nd day of February, 1996, by CREEK PROPERTIES, INC., a South Carolina Corporation; hereafter called the "Developer".

WITNESSETH

WHEREAS, the Developer is the owner of real property described in Article II of this Declaration and desires to create thereon a residential community with common facilities, to provide for the preservation of the values and amenities of said community, and for the maintenance of common facilities, and, to this end, desires to subject the real property described in Article II, together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges, and liens, hereafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof; and

WHEREAS, the Developer deems it desirable to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and distributing the assessments and charges hereafter created, and is incorporating under the laws of the State of South Carolina, as a non-profit corporation, Coggins Farm Association, Inc., for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens (sometimes referred to as "Covenants and Restrictions") hereafter set forth.

ARTICLE I

DEFINITIONS

The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meaning:

(a) "Association" shall mean and refer to Coggins Farm Association, Inc.

(b) "The Properties" shall mean and refer to the Existing Property, as hereafter defined, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

(c) "Common Properties" shall mean and refer to those areas of land shown on any recorded subdivision plat of the Properties and intended to be devoted to the common use and enjoyment of the Owners of The Properties, and shall initially include street lights, street signs, entrance lights, signs and walls, landscaping and water meter at entrance, and landscaping in the cul-de-sacs of any streets. Additions may be made to the common properties at any time.

(d) "Lot" shall mean and refer to any numbered lot of land shown upon any subdivision plat of The Properties with the exception of Common Properties as hereafter defined.

(e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot situated upon The Properties, but not withstanding any applicable theory of mortgage law, shall not mean or refer to the mortgage unless and until such mortgage has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(f) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section I, hereof.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO

Section 1. Existing property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Spartanburg County, South Carolina, and is more particularly described as follows, and hereafter referred to as "Existing Property":

#### COGGINS FARM, PHASE I

All those parcels or lots of land located to the North of Clifton-Glendale Road, County of Spartanburg, State of South Carolina, known as lots nos. 1 through 23, inclusive, as shown on a plat of survey of Coggins Farm, by Neil R. Phillips, PLS, dated September 13, 1994, and recorded January 13, 1995, in Plat Book 128, page 34, in the R.M.C. Office for Spartanburg County.

Also, that certain 1.28-acre tract as shown upon plat of survey for Creek Properties, Inc. by William A. Blackwood, Jr., dated September 24, 1993, and recorded in Plat Book 122, page 583, in the R.M.C. Office for Spartanburg County.

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Additions in accordance with a General Plan of Development. The Developer, its heirs, successors and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of the Development, provided that such additions are in accord with a General Plan of Development prepared prior to the sale of any lot in that phase.

Such General Plan of Development shall show the proposed additions to the existing Property and contain: (1) a general indication of size and location of additional development stages and proposed land uses in each; (2) the approximate size and location of common properties proposed for each stage; (3) the general nature of proposed common facilities and improvements; and, (4) a statement that the proposed additions, if made, will become subject to assessment for their just share of Association expenses. Unless otherwise stated therein, such general plan shall not bind the Developer, its heirs, successors and assigns, to make the proposed additions or to adhere to the Plan in any subsequent development of the land shown thereon.

The additions authorized under this and the succeeding subsection, shall be made by filing of record by the Developer of a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property.

Such Supplementary Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify, or add to the Covenants established by this Declaration within the Existing property.

(b) Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration within the Existing Property except as hereinafter provided.

(c) Phase I Property Only Subject to these Covenants and Restrictions. It is expressly acknowledged by any Owner of a lot in the property described in Article II, Section I, that only the property described therein is at this time subject to these covenants and restrictions, and any other property owned by the Developer shall be subject to these Covenants and Restrictions only upon the Developer, at its option, subjecting same to these Covenants and Restrictions pursuant to the terms and provisions of this Article II.

### Article III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is record Owner of a 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.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all those Owners as defined in Section 1 with the exception of the Developer. Class A Members shall be entitled to one vote for each lot in which they hold the interest required for membership by Section 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 vote be cast with respect to any such lot.

Class B. Class B Member shall be the Developer and shall be entitled to 3 votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; provided, however, that the Class B membership shall be reinstated with all rights, privileges and responsibilities if, after conversion of the Class A membership as herein provided, additional lands are annexed to the Property by the Developer in the manner provided in Article II of this Declaration, or

(b) January 1, 2001.

Section 3: Owners of Multiple Lots. An Owner of multiple contiguous lots (other than Developer) developed with just one residence shall be deemed to be the Owner of one lot for purposes of voting and assessment or dues.

## ARTICLE IV

## PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members Easements of Enjoyment. Subject to the provisions of Section 3, every Member shall have a right and easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title to every lot.

Section 2. Title to Common Properties. The Developer may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion 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 its rights, title, and interest in the Common Properties to the Association not later than December 31, 2000.

Section 3. Extent of Members' Easement. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, as provided in its Articles and By-laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid; and for any period not to exceed six months for any infraction of its published rules and regulations, and

(b) The right of the Association to charge reasonable admission and fees for the use of the Common Properties, and

(c) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer or determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty days in advance of any action taken.

## ARTICLE V

## COVENANT FOR MAINTENANCE ASSESSMENT

Section 1. Creation of the lien and Personal Obligation of Assessments. The Developer for each lot owned by it within The Properties hereby covenants and each Owner of any Lot by acceptance of a deed thereof, 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; (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 costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which 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.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of The Properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the homes situated upon the Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

Section 3. Basis and Maximum of Annual Assessments. Until the year beginning January 1, 1997, the annual assessment shall be Fifty and No/100 Dollars per lot (as may be limited by Article III, Section 3, hereof). From and after January 1, 1997, the annual assessment may be increased by vote of the Members, as provided herein. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a less amount, for the year beginning January 1, 1997.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, 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 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 days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section 3 hereof, and for the periods therein specifies, the Association may change the maximum and basis of the assessments fixed by Section 3 hereof prospectively for any

written notice of which shall be sent to all members at least Thirty days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2, hereof.

Section 6. Quorum for Any Action Authorized Under Section 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be the Members present at a meeting duly called and convened pursuant to Section 4 and 5 hereof.

Section 7. Date of Commencement of Annual Assessments. 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, 1997, and on January 1 of each year thereafter. Prior to January 1, 1997, the Developer agrees to maintain the Common Properties in a reasonable state of repair and operation. The due date of any special assessments under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. 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 days in advance of the due date of any assessment, prepare a roster of 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 such assessment, a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-payment of Assessment: The Personal Obligation of the Owner; The Lien; Remedies of the Association. If the assessments are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien of the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The Personal Obligation of the then Owner to pay such assessments, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them. If the

assessment is not paid within thirty days after the delinquency date, the assessment shall bear interest from the date of delinquency at a rate to be established by the Board of Directors, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgement is obtained, such judgement shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the Court together with costs of the Action.

Section 10. Subordination of the lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall only apply to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability of any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11. Exempt Property. The following property subject to the Declaration shall be exempt from the assessments, charge and lien created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all common properties as defined in Article 1, Section 1 hereof; (c) all properties exempt from taxation by the laws of the State of South Carolina, upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to occupied dwelling use shall be exempt from said assessments, charges or liens.

## Article VI

### RESTRICTIONS

Section 1. No lot shall be used except for private, single-family residential purposes. No buildings shall be erected, altered, placed, or permitted to remain on any lot other than one (1) detached single family dwelling, not to exceed two and one half stories in height, a private garage, and, if approved in advance in writing, as provided in paragraph 7 below, a small hobby type building.

Section 2. No building, including stoops, verandas, steps, porches and roofs shall be located nearer the front building line or nearer the side street line of any lot than the building line shown on said plat nor nearer than fifteen feet to any side lot line.



Section 3. The Developer or any subsequent purchaser with the prior, written consent of the Developer 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 shown on said plat. In any such sale of a portion of a lot, the portions shall merge into and become part of the adjoining lots and the restrictions herein set forth shall apply to the lot and portion of a lot as though they were originally platted as one lot.

Section 4. No trade, business, noxious or offensive activity shall be carried on upon any lot or adjoining street nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or which tends to injure or damage the value of the neighborhood property. No Owner shall permit any unsanitary, offensive or unsightly condition to exist on any lot or adjoining street. No tractor, trailer, stripped down, partially wrecked, junked or unlicensed vehicle or sizeable part thereof shall be parked on any street or on any lot so as to be visible from the street. No truck, trailer, boat, camper, motor home or school bus shall be parked overnight or longer on any street or within the front set-back line of any lot, and any such item, receptacles for trash or garbage, clothes lines or poles, lawn mowers or debris shall be screened or so placed as not to be visible from any street.

Section 5. No tent, shack or barn, or other outbuilding located or erected on any lot may, at any time, be used as a residence, either temporarily, or permanently, nor shall any structure of a temporary character be used as a residence. No trailer or mobile home shall be permitted on any lot, except that a trailer may be used by a builder during construction.

Section 6. No dwelling shall be erected on any lot having less than two bathrooms or less than two thousand, two hundred square feet of heated floor space. The floor space required by this article shall not include basements, porches, verandas, breezeways or garages. No asbestos siding shall be used and no concrete blocks shall be used unless the exterior walls are faced with brick or covered with some other material approved by the Developer.

Section 7. No building, structure or other improvement shall be erected on any lot until the design, plans, specifications, grade and location have been approved in writing by the Developer, his heirs or assigns. If the Developer shall not be in existence, or if the design, plans, specifications, grade and location have not been approved or disapproved, within thirty days after submission, then such approval shall not be required, provided that the design, plans, specifications, grade, and location of the building, structure, or other improvement shall conform to and be in harmony with the existing structures in the development. Disapproval may

be based upon purely aesthetic reasons in the sole discretion of the Developer.

Section 8. All garages shall be enclosed by doors, and such doors shall not directly face any street on which the lot abuts. The Developer may grant a waiver or variance of this provision, but only in cases where compliance would present an undue burden due to the configuration or terrain of the lot.

Section 9. No signboard shall be displayed on any lot except a single "For Sale" and a Builders sign, or a single "For Rent" sign. No sign shall be more than two by three feet in size, provided, however, the Developer shall have the right to use additional signs for development of the property.

Section 10. No domestic fowls or livestock shall be kept upon any lot. The Developer may grant a waiver or variance to this provision.

Section 11. All sewage shall be disposed of through septic tank systems approved by the South Carolina Department of Health and Environmental Control, until or unless public sewer is made available.

Section 12. All lots shall be subject to all easements as shown on said plat, and, in addition, the Developer reserves to itself, its successors and assigns, an easement for drainage and utility installation and maintenance, including cable television, on the rear ten feet of each lot, and five feet on each side of each lot line.

Section 13. After a dwelling has been constructed, the Owner of the lot shall be responsible for planting and maintaining the property to the edge of the curb on each street on which the lot abuts.

Section 14. All utility service lines, including cable television, from existing streets, poles or rights-of-ways shall be installed underground to any dwelling or other structure on any lot.

Section 15. No fencing shall be erected until the design, height, materials and location have been approved in writing by the Developer or such person as may be designated by the Developer. No fence exceeding three feet in height shall be erected nearer than the front building set-back lines as shown on said plat. No lot Owner or successor in title shall be entitled to assert the defense of estoppel as to any fence which does not meet the requirements of this paragraph. No fence shall be erected which interferes with, damages, or obstructs the installation, maintenance or repair of underground utility lines. The lot Owner shall be fully liable for any and all damages to utility lines resulting from erection of a

other improvements, even though approval of the fence or other improvements has been properly obtained.

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Section 16. In the event of a minor, unintentional violation of any of these restrictions which does not impair the general plan of development, the Developer reserves the right to change, amend or release any of the restrictions set forth in this Article as the same may apply to an individual lot, with the consent of the Owner of such lot.

Section 17. On all corner lots, the building set-back lines are inter-changeable so that the one the house faces will be considered the front.

Section 18. A sprinkler system shall be installed and operational in the front yard of each lot.

Section 19. All driveways shall be hard surfaced and shall be maintained by the Owner of the lot in a good state of repair. Where driveways from a lot intersect the public street, the existing concrete curbing is not to be cut. If an asphalt driveway is to be used, and there is a sidewalk in the path of the driveway, then concrete must be used from the curb to the back side of the sidewalk. The sidewalk shall not be cut unless approved in writing by the Developer.

Section 20. In the event that substantial construction of a residence on a lot is not commenced by the Owner thereof, excluding the Developer, within one year from the date of purchase and closing of said lot from the Developer, the Developer reserves the right of first option to re-purchase the lot at a price equal to ninety percent of the purchase price paid to the Developer for the lot. If the Developer exercised this option, title to the lot in the reconveyance shall be free and clear of liens and encumbrances. If the Developer does not exercise this option by written notice to the Owner within thirty days after the expiration of the one year period, the Owner may alienate the lot free and clear of this option. If the Developer exercises this option, closing of title shall be within thirty days of the date of notice to the Owner. The option reserved herein to the Developer shall not render a bona fide mortgage lien invalid and is specifically subordinate to any bona fide mortgage lien. The Developer may grant a waiver or variance to this provision.

Section 21. All houses and other structures related thereto must be completed within one year after the commencement of construction, except where such completion is impossible due to strikes, fires, national emergency, or natural calamities.

## ARTICLE VII

## GENERAL PROVISIONS

Section 1. Duration. The Covenants and Restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term ending December 31, 2021, after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the then-Owners of two thirds of the lots has been recorded, agreeing to change said Covenants and Restrictions in whole or in part.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these Covenants and Restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any Covenant or Restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any Covenant or Restriction shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these Covenants and Restrictions by judgement or Court order shall in no wise affect any other provision which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have signed and sealed or caused this instrument to be signed and sealed by their duly authorized officers or agents as of the year and date hereinabove mentioned.

CREEK PROPERTIES, INC.

Lynn L. Liscione  
Cindy Pawlowski

BY John E. Boyard (SEAL)

STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named CREEK PROPERTIES, INC. by its duly authorized agent, sign, seal and as its act and deed deliver the within Declaration of Covenants and Restrictions of Coggins Farm, and that (s) he with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this 21  
day of MARCH, 1996.

Lynn S. Ciccione

Deirda Lee Purcubo

Notary Public for South Carolina

My Commission expires: MY COMMISSION EXPIRES DECEMBER 9, 2004