

CROOKED CREEK

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Ford, Register

their respective heirs and assigns:

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

A. "Association" shall mean and refer to Crooked Creek Homeowners Association, Inc.

B. "Subdivision" shall mean and refer to all of the lots and property shown upon the Subdivision Plat referred to above, and upon any subsequent amendment to the Subdivision Plat and any subsequent plat of additional phases prepared for the Developer (excluding Phase/Section I), recorded in the Office of the Register of Deeds for Spartanburg County and referenced in any amendment or modification to this instrument.

C. "Common Properties" shall mean and refer to any such areas so designated on the Subdivision Plat and to other landscaped areas within Crooked Creek Subdivision, and shall include, but not be limited to, all street lights and other lighting, sprinkler systems, street signs, entrance signs, landscaping, water meters, parking areas, roads, walks, drives, malls, parks, open areas, walking trails, bikeways, and waterways located within such areas.

D. "Developer" shall mean and refer to RJF II Corporation.

E. "Lot" or "lot" shall mean and refer to any numbered parcel of land shown upon the Subdivision Plat prepared for the Developer, recorded in said Register's Office and referenced in this instrument or any amendment or modification thereto.

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

G. "Member" shall mean and refer to any Owner who is a member of the Association as provided in paragraph 37 hereof.

H. "Architectural Review Board" shall mean and refer to the Developer until such time as the Association is formed and a Board of Directors for the Association is appointed and the Developer assigns to such board the powers to serve as the Architectural Review Board.

2. **SINGLE FAMILY RESIDENTIAL USE.** No lot shall be used except for private, single family residential purposes. Only one single family residence may be erected on any residential lot in the Subdivision.

3. **SUBDIVISION OF LOTS.** Unless approved by the Architectural Review Board, there shall be no combination and/or subdivision of any lot or lots which produce any lot or lots smaller in area than any of the original lots as shown on the Subdivision Plat. If the Architectural Review Board is not in existence, then combinations and re-subdivisions, which do not create more lots than those shown on a recorded plat of the subdivision, which recorded plat contains a signature of at least one of the officers of the Developer or the Association, are permitted. In the event of the combination or the subdivision by the Association or by any Owner with permission of the Architectural Review Board of one or more lots, the easements created hereby and referenced on applicable plats prior to the transaction shall exist on the resulting lots. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, take any grains of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance.

4. **MINIMUM HEATED AREA.** No family dwelling unit may be constructed or maintained so as to have a ground floor heated living area (exclusive of uncovered porches, stoops, terraces, attached garages or carports) of less than two thousand (2000) square feet in the case of a one story or twelve hundred (1200) square feet on the ground level and eight hundred (800) square feet on the upper level in the case of a two story. If a home is built with more than two stories then the same minimum square footage will apply to the first and second story and the Architectural Review Board will have the discretion to set the minimum square footage for the third story. The Architectural Review Board may grant a waiver of this requirement upon application and for good cause shown. All homes must have a minimum of a double (two car), attached garage with side entry unless lot prevents.

5. **BUILDING SETBACK LINES.** No building or portion of a building, including stoops, verandas, steps and porches shall be located on a lot nearer the front property line of a lot than fifty feet (50'), nor nearer the side property lines of a lot than five feet (5'), nor nearer the rear property line of a lot than twenty feet (20'), which building setback lines are also referenced in the Subdivision Plat. Nonetheless, Developer reserves the right and privilege, upon showing of special, unique or unusual circumstances to give a waiver to any setback restrictions on a lot, but such waiver to any setback restrictions on a lot must be given in writing to be valid. Developer reserves the right to deny a waiver for any reason deemed appropriate in its sole discretion.

6. **APPROVAL OF BUILDING PLANS - SPECIAL CONDITIONS.**

A. No family dwelling unit, garage, carport, playhouse, fence, wall, swimming pool, or other structure shall be commenced, erected or maintained in the Subdivision nor shall any exterior addition to any existing structure or change or alteration therein, nor shall any landscaping or site work be done until a set of complete final plans and specifications thereof showing the nature, kind, shape, height, materials, basic exterior finishes and colors, location and floor plan thereof, and showing front elevation thereof, the name of the builder and/or landscaper

have been submitted to, and approved in writing, by the Architectural Review Board, its agents, successors or assigns, as to harmony of the exterior design and general quality in relation to the standards of the Subdivision, and as to location in relation to the surrounding structures and topography. Out buildings are prohibited, except that detached garages (which must be constructed in addition to, and not in lieu of, the attached garage required herein) and other permanent structures may be approved by the Architectural Review Board if they meet the following requirements: said structure must be made of the same exterior material as the residence; must be of the same color; the roof must be of the same pitch; the shingles must match the color of the shingles on the residence; and the structure must contain a minimum of three hundred twenty (320) square feet. One copy of the final plan and specifications will be retained if approved. The Architectural Review Board may waive the submission of any plans. If the Architectural Review Board fails to approve or disapprove such plans and specifications within thirty (30) days after receipt of written notice from the Owner that such plans and specifications have been submitted to it and approval requested, the Architectural Review Board shall be deemed to have approved said plans and specifications, provided, however, that said plans must in all other respects comply with all other requirements set forth in these Restrictions. Refusal to approve plans, specifications, builder, landscaper or location may be based upon any grounds, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Architectural Review Board, or its agent, shall be deemed sufficient.

B. Basic landscaping must be performed: including at a minimum, plants, shrubs and trees at time of initial build. All landscape plans or modifications must be approved by the Architectural Review Board prior to implementation.

C. All family dwellings must be constructed with 65% brick or rock on the entire exterior. No portion of any family dwelling may be built upon a slab. No family dwelling may be constructed or covered with 100% stucco. Stucco will be allowed on only 35% of the exterior of a family dwelling, but with none on the foundations. The roofs of all family dwellings must have a pitch of no less than 8/12's. No house or pre-constructed portion of any house may be moved into the subdivision.

D. The established grade or lot is not to be raised by any individual so as to adversely affect an adjacent property Owner(s). All major site work and grading shall be approved by the Architectural Review Board.

E. The front elevation of the dwelling house foundation must be a minimum of eight inches (8") above the finished grade of the front yard.

F. All garages shall be enclosed with a door or doors.

7. **PROHIBITED BUILDING MATERIALS.** Concrete blocks, cement bricks or concrete walls shall not be used in the construction of any building, garage or hobby-type/storage building unless the exterior of same is faced with brick, stone, stucco (subject to the limitations

on stucco set forth hereinabove) or some other material approved by the Architectural Review Board or its nominee. No asbestos shingles or asbestos siding shall be used for the exterior of any building or other structure.

8. **TRAILERS AND MOBILE HOMES PROHIBITED.** NO MANUFACTURED OR MODULAR HOME WILL BE ALLOWED WITHIN THE SUBDIVISION. Trailers, modular homes, and mobile homes, manufactured homes, including typical single, double, or triple wide mobile homes, are absolutely prohibited. Furthermore, no residence or building may be moved from another location and placed or allowed to remain on any lot.

9. **REQUIREMENTS FOR DRIVEWAYS.** It shall be the responsibility of each Owner to keep his driveway in a reasonable state of repair. Driveways will be hard surfaced with concrete or brick pavers unless the Architectural Review Board shall for good cause permit another finish. All temporary driveways (during construction) must be graveled to prevent mud on the Subdivision streets.

10. **DEVELOPER'S DISCLAIMER.** DEVELOPER (INCLUDING THE DEVELOPER IN ITS CAPACITY AS THE ARCHITECTURAL REVIEW BOARD), AND ITS SUCCESSORS AND ASSIGNS, ITS AGENTS, CONSULTANTS AND EMPLOYEES, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OR ANY REPRESENTATION CONCERNING SAME, AND NO WARRANTIES OF ANY KIND SHALL ARISE AS A RESULT OF ANY PLANS, SPECIFICATION, STANDARDS OR APPROVALS MADE OR APPROVED BY DEVELOPER, OR ITS NOMINEES, AND DEVELOPER SHALL NOT BE LIABLE TO ANY OWNER OR ANY OTHER PERSON ON ACCOUNT OF ANY CLAIM, LIABILITY, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY OR THREATENED AGAINST ANY OWNER OR SUCH OTHER PERSON ARISING OUT OF OR IN ANY WAY RELATED TO THE SUBJECT MATTER OF ANY REVIEW, ACCEPTANCE, INSPECTION, PERMISSION, CONSENT OR REQUIRED APPROVAL WHICH MUST BE OBTAINED FROM THE DEVELOPER, WHETHER GRANTED OR DENIED. FURTHERMORE, WHILE DEVELOPER IS NOT AWARE OF ANY LOTS CONTAINING FILL DIRT, DEVELOPER EXPRESSLY DISCLAIMS SUITABILITY OF A LOT FOR RESIDENTIAL CONSTRUCTION, AND ALL FUTURE OWNERS SHALL BE RESPONSIBLE FOR DETERMINING THE SUITABILITY OF A LOT FOR RESIDENTIAL CONSTRUCTION.

11. **GENERAL EASEMENTS.** The Developer reserves unto itself, its successors and assigns, the exclusive right to a perpetual, alienable, and assignable easement and right of way on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, cable television, security cable equipment, telephone equipment, gas, sewer, water, or other private or public convenience or utilities on, in, or over those areas as are shown or

described on the Subdivision Plat. Further, the Developer may cut drainage ways for surface water wherever and whenever such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety, and appearance. All utilities and services shall be placed underground and run from the property line or easement to the residence. In routing utilities and services from the easement to the front property line, no curb and gutter or pavement section may be cut or in any way damaged without prior approval of the Developer. Any damage done shall be repaired by the Owner, and Owner shall bear all cost and repair. No easement for utility or roadway purpose may be granted, constructed, used or operated within a strip of land two feet (2') from any property line without obtaining the prior written approval of the Developer.

The Developer further reserves unto itself, its successors and assigns, the exclusive right to a perpetual, alienable and assignable easement and right of way fifteen feet (15') wide along the entire back side of the entrance signs to the Subdivision. The Developer further reserves unto itself, its successors and assigns an exclusive right to a perpetual, alienable and assignable easement and right of way fifteen feet (15') wide along the back side (or edge) of the entire length of the subdivision walls, i.e. back 15 feet onto the adjacent lots, for the purpose of performing normal, usual and required maintenance of the sign and wall as well as maintaining, plants, shrubs and other greenery located on the property, along the length of the wall. This easement specifically affects Lots 61, 12, 13, 14, 15 and 16. In addition to all other easements created herein the Developer reserves unto itself, its successors and assigns, the exclusive right to a perpetual, alienable and assignable easement and right of way for a walking trail, which easement shall be fifteen feet (15') wide and shall cross the following lots 31, 30, 29, 28, 27, 26, 25, 24, 23, 21 and 48, as shown on the Subdivision Plat. Only the Developer shall be allowed to landscape any such easement areas described in this subparagraph until such time as the easement areas may be conveyed by the Developer to the Association.

12. **EROSION CONTROL.** The Developer shall have the right to protect from erosion the land designated as areas upon which residential building shall take place by planting trees, plants, and shrubs where and to the extent necessary, or by such mechanical means as providing drainage ways and/or dams or other means deemed expedient or necessary by the Developer to protect against said erosion.

13. **ANTENNAS.** No antenna for the reception or transmission of radio or television signals will be allowed in the Subdivision. No satellite dish larger than eighteen inches (18") in diameter may be placed on any lot, and any satellite dish eighteen inches (18") or less in diameter must be positioned on the rear of any house, away from the street.

14. **FENCING.** No chain link fences are allowed in the Subdivision, except that black or green vinyl coated chain link fencing will be allowed. Acceptable fencing materials are: wrought iron, vinyl, or salt treated wood. Notwithstanding the foregoing, all fencing facing any street must be of a decorative-style fencing material such as wrought iron (or similar material), decorative vinyl or salt-treated wood. All wood materials must be stained or sealed. No fence

shall exceed six feet (6') in height. Fencing shall be permitted on any lot from the rear corner of the residence erected thereon to the rear of the lot. No fencing of any kind shall be installed or allowed to remain on any lot, which shall interfere, damage or obstruct the installation or maintenance of any utility. On corner lots, no fence shall be erected any nearer than thirty (30') feet from any street. No portable fencing (including dog pens) shall be allowed. Once fencing materials have been approved by the Architectural Review Board, Owners must place four flags at the proposed fence corners and the Architectural Review Board must approve the site location before any installation begins. No fences shall be erected any closer than fifteen feet (15') from the fence constructed by the Developer along Old Furnace Road (applicable to Lots 61, 12, 13, 14, 15 & 16), so as not to obstruct the easement retained by the Developer in Paragraph 11, above. The Owner shall be fully liable for any and all damage to utility lines resulting from erection of a fence or other improvements, even if approval of the fence or other improvements has been properly obtained.

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

16. **NUISANCES AND OFFENSIVE ACTIVITIES.** No noxious or offensive activity shall be carried on upon any portion of the Subdivision, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Owner or guest thereof in any neighborhood area or in the Subdivision as a whole. It is the responsibility of each Owner to prevent any unclean, unsightly, or unkept conditions of buildings or grounds on the Owner's property which shall tend to substantially decrease the beauty of the neighborhood areas or the Subdivision as a whole. Should any unclean, unsightly, or unkept conditions or any noxious or offensive activity be carried on upon any portion of the Subdivision, the Association or its duly appointed agent shall be entitled to enter upon the property of the Owner and to cure such defect. Except as otherwise permitted herein, no plants, animals or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of other property in the Subdivision by the Owners or the guests thereof may be maintained.

17. **PARKING; PROHIBITED VEHICLES.** No private vehicle of any sort shall be parked permanently on any street or roadway within the Subdivision. Owners shall be required to furnish adequate parking for their own vehicles within the confines of their property. Only vehicles bearing current license plates shall be parked or stored within public view from the street. No trucks over one-half (1/2) ton, no trailers, no tractors, no commercial vehicles and no automobiles bearing advertisements, signs or placards are to be stored or parked on any street in the Subdivision, nor on any lot unless parked in the garage, except when such vehicles are making deliveries. No boats, boat trailers, recreational vehicles, camping trailers, or motor homes shall be parked on any lot, unless parked in a garage, nor on any street in the Subdivision.

The driving of motorcycles and mini-bikes on the streets of the Subdivision or on lots shall be prohibited except driving of such motorcycles and mini-bikes to and from the entrance and the home of the Owner by the most direct street route. Go carts, four wheelers, ATVs or similar vehicles are prohibited on the streets of the Subdivision at all times.

18. **PORTABLE OR METAL BUILDING PROHIBITED.** Portable buildings, metal storage buildings or other similar off-site constructed storage buildings are prohibited and may not be placed or remain on any lot, provided, however, that a hobby-type building or other storage building approved in writing by the Architectural Review Board is permissible, subject to the terms set forth hereinabove.

19. **SWING SETS.** Swing sets, sandboxes, gym sets and any such similar devices or structures primarily for children's use and enjoyment must be located on the rear portion of a lot.

20. **NO TEMPORARY STRUCTURES.** No structure of a temporary character shall be placed upon any portion of a lot or the Subdivision at any time; provided, however, that this prohibition shall not apply to shelters used by contractors during the construction of any family dwelling unit, or to shelters maintained by the Developer or the Association. It is to be clearly understood that temporary shelters, tents, recreational vehicles, etc. may not at any time be used as temporary or permanent residences or be permitted to remain on any portion of a lot or the Subdivision after completion of the construction thereof (except that recreational vehicles may be parked in a garage pursuant to paragraph 17, above).

21. **ANIMALS.** The raising, breeding, or keeping of livestock or poultry of any kind is prohibited, although, this is not intended to nor shall it preclude the keeping of dogs, cats, or other household pets. All household pets shall be on a leash at anytime they are off their premises. No livestock, poultry, or undomesticated animals shall be kept on any of the lots in the Subdivision. No more than a total of five (5) household pets may be maintained on any Lot.

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

23. **TRASH.** No trash, garbage, construction debris, or other unsightly or offensive material shall be placed upon any portion of the properties, except as is temporary and incidental to the bonafide improvement of said area of the properties.

24. **CLOTHESLINES.** Clotheslines are not allowed in the Subdivision.

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

26. **NO HUNTING OR DISCHARGING FIREARMS.** Hunting of all wild animals, fowl, and game is hereby prohibited within the Subdivision, and the discharge of firearms within the Subdivision for any purpose shall not be allowed.

27. **TREES.** No trees measuring six inches (6") or more in diameter, at a point one (1') foot above the ground level nor any flowering tree may be removed, nor may any major clearing of small trees be performed, without the approval of the Architectural Review Board. Excepted here from shall be damaged trees as determined by the Architectural Review Board or trees which must be removed because of an emergency or to prevent a potentially dangerous situation.

28. **COMPLETION OF IMPROVEMENTS.** The exterior of all houses and other structures, site work and sufficient landscaping must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strike, fire, national emergency, or natural calamity. Houses and other dwelling structures may not be temporarily or permanently occupied until the exterior thereof has been completed; provided, however, that Owner shall not be required to complete the finish work on the interior of his house within one (1) year after construction has commenced if such interior finish work is performed in whole or part by such Owner. Any further improvements constructed after the initial completion of a house on a Lot must be completed within six months of commencement.

29. **COVENANT OF GOOD APPEARANCE AND REPAIR.** Each lot owner shall maintain his lot and the exterior of all improvements in good appearance and repair in order to assure that no condition exists which would diminish the good appearance of the Subdivision. Every owner of a vacant or unimproved lot shall keep such lot free of debris and unsightly underbrush, weeds or other unsightly vegetation. In the event that an Owner shall fail to maintain a lot in a good state of repair and appearance, the Developer and/or the Association, or their agents or employees, shall have the right to maintain same and charge the cost thereof to the Owner, but no work shall be done without due and proper notice to the Owner and an allowance of at least thirty (30) days to correct specified deficiencies. In the event the Owner or owners of a lot shall fail to pay such charges within thirty (30) days of billing, same may be collected in the same manner and under the same terms as Assessments set forth in Paragraph 39.I. THE DEVELOPER, THE ASSOCIATION OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, EMPLOYEES OR MEMBERS SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY ANY NON-NEGLIGENT ACT OR OMISSION IN THE INSPECTION, REPAIR OR MAINTENANCE OF ANY SITE IMPROVEMENTS OR PORTION THEREOF.

30. **SIGNS.** No signboards or other signs of any kind shall be displayed on any lot except a single "For Sale" and a builder's sign, or single "For Rent" sign. No sign shall be more than thirty inches (30") by thirty inches (30") in size, provided, however, the Developer shall

have the right to use additional signs for development of the Subdivision.

31. **STREET LIGHTING.** If street lighting is installed by the Developer, the cost and expense of operation shall be transferred to the Association at any time after one (1) year from date hereof.

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

33. **FUEL TANKS.** All fuel tanks or containers shall be buried underground, or enclosed in a structure, in a manner consistent with normal safety precautions and in accordance with the rules and regulations of appropriate governing bodies or agencies or the South Carolina Department of Health and Environmental Control, whichever the case may be. Any structure to be constructed for this purpose must be of acceptable appearance and approved in writing by the Architectural Review Board.

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

35. **MAIL RECEPTACLES.** All mailboxes must be uniform. The Developer will make arrangements for the design, and construction of the approved mailbox. All mailboxes must then be purchased from the individual or company whom the Developer designates.

36. **POOLS.** No above ground swimming pools shall be permitted. In ground swimming pools are acceptable provided they are located on the rear portion of the lot, staying within all other guidelines and set back requirements herein stated. All pools must be enclosed with a fence that is in compliance with the other provisions set forth herein. The design and location of any in-ground pool must be approved by the Architectural Review Board in writing prior to the commencement of construction. Owners and builders should refer to septic tank layout before installing a pool to ensure sufficient room for original drain field or replacement drain field should original drain field fail.

37. **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

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

B. **Voting Rights.** The Association shall have two (2) classes of voting

membership as follows:

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

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

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

(b) December 31, 2008.

38. **PROPERTY RIGHTS IN THE COMMON PROPERTIES.**

A. **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 sole discretion of the Developer, the Association is able to maintain the same.

B. **Restrictions on Common Areas.** The parcels of real property included as part of the Common Properties are to be maintained solely as landscaped and/or beautification areas, walking trails, parks, for identification signs for Crooked Creek Subdivision, or for such other uses as the Developer may desire. No other use or improvements are to be made to said real property without the express written permission of the Developer, and Developer expressly reserves easement rights upon these parcels for installation of underground utilities. Upon such time as the Developer conveys the Common Properties to the Association, the Association may promulgate such rules and regulations regarding the terms and conditions of use of the Common Properties as it deems appropriate and may, in accordance with its bylaws, suspend the rights and easement of use, access and enjoyment to such Common Properties.

39. **COVENANT FOR MAINTENANCE ASSESSMENTS.**

A **Creation of Lien and Personal Obligation of Assessments.** Each Owner of any lot by acceptance of a deed to a lot within Crooked Creek Subdivision, 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 Developer and/or the Association (as the case may be):

(1) Annual assessments or charges to be set and adjusted from time to time by the Developer and/or the Association as hereinafter provided; and

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

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

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

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

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

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

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

(6) For any other purpose, cost or expenses reasonably related to the performance of any duty or responsibility of the Association as determined by the Board of Directors of said Association in accordance with the By-Laws and these Restrictions.

C. **Basis and Maximum of Annual Assessments.** For the year beginning January 1, 2005, the annual assessment shall be \$500.00 per Lot. Beginning January 1, 2006 and for future years, the annual assessment may be adjusted by vote of the Members as herein provided, and, if not adjusted in such manner, shall remain the same as the preceding year. The Board of Directors of the Association may, after consideration of current maintenance cost and

future needs of the Association, fix the actual assessment for any year at a lesser amount. The prorated portion of the annual assessment shall be paid by any purchaser of a Lot from the Developer for that portion of the calendar year remaining at the time of the closing. Lots owned by the Developer shall be exempt from annual assessments, and from the special assessments described in Paragraph 39.D., below, until such time as a dwelling shall have been constructed thereon. Such exemption shall not affect the Developer's voting rights in the Association. No other person shall be exempt from Assessments. All Owners shall be responsible for paying assessments (whether annual or special), regardless whether such Owner is a builder or resident and regardless whether such Owner constructs a home or maintains a vacant lot.

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

E. **Change in Basis and Maximum of Annual Assessments.** Subject to the limitations in Paragraph 39.C. above, and the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Paragraph 39.C. hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

F. **Quorum for Any Legal Action Authorized Under Paragraphs 39.D. and 39.E.** The quorum required for any action respecting assessments authorized by Paragraph 39.D. and 39.E. hereof shall be the Members present at a meeting duly called and convened pursuant to Paragraphs 39.D and 39.E. hereof.

G. **Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein for each Lot shall begin and become due and payable upon the initial sale of any Lot by the Developer, and on January 1 of each year thereafter. The due date of any special assessment under Paragraph 39.D. hereof shall be fixed in the resolution authorizing such assessment.

H. **Duties of the Board of Directors.** The Board of Directors of the Association shall fix the date of any special assessment and at least thirty (30) days in advance of the due date of any assessment prepare a roster 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 said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

I. **Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of Association.** If the assessments are not paid on the date when due (being the date specified in Paragraph 39.G. above), then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, become a continuing lien on the property, which shall bind such property in the hands of the then Owner, his heirs, devisees, Personal Representatives, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation for the statutory period, but such personal obligation shall not pass to his successors in title unless expressly assumed by them. Such successors in title do, however, take the title subject to any outstanding lien for assessments.

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

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

40. **ENFORCEMENT BY HOMEOWNERS ASSOCIATION.** Except for approvals and rights expressly reserved herein unto the Developer or its nominee, the Association shall have standing to enforce the within restrictions, covenants and obligations in the same manner and to the same extent as does the Developer or any other Owner. The powers and authorities herein granted to the said Association shall be in addition to such other and further rights, duties and obligations which may be set forth in the By-Laws of the Association.

41. **DELEGATION OF DEVELOPER'S RIGHTS.** All rights reserved unto the Developer herein remain exclusively with the Developer, its successors and assigns, provided,

however, Developer may assign and/or delegate all or any part of such reserved rights to the Association.

42. **TERM OF ENFORCEMENT AND AMENDMENTS.** These covenants, conditions, easements and restrictions shall be binding upon the Developer, its successors and assigns, and upon all future Owners, their respective heirs, successors and assigns, and all parties claiming under them, until December 31, 2025, at which time the terms hereof shall be automatically extended for successive periods of ten (10) years thereafter, unless the then Owners owning at least two-thirds (2/3) of the Lots in Crooked Creek Subdivision agree in writing to terminate or change same at any time after December 31, 2025. The terms and conditions of this instrument may be amended or changed only upon written agreement of the then Owners owning at least two-thirds (2/3) of the Lots in Crooked Creek Subdivision. Notwithstanding anything herein to the contrary, the Developer, its successors and assigns, reserves the right to waive, modify or change in writing, any of terms hereof with respect to the application thereof to a lot based upon special, unique or unusual circumstances, but no such waiver modification or change shall substantially affect the overall plan of development.

42. **EFFECT OF COVENANTS AND ENFORCEMENT.**

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

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

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

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

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

B. **Who May Enforce.** The benefits and burdens of these covenants run with

the land at law and in equity, and the Developer and the Association, their respective successors and assigns, and any Owner, his heirs, successors, legal representatives, Personal Representatives and assigns shall have the right to proceed against any party in violation of these covenants and to compel compliance with the terms and to prevent the violation or breach of the Covenants in any event.

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

D. **Enforcement Remedies.** In addition to other enforcement rights mentioned herein, in the event that any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land use is in violation of these covenants, the Developer, its successors and assigns, the Association or any Owner may institute appropriate legal proceedings or actions at law or in equity, including, but not limited to, actions: (1) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (2) to restrain, correct or abate such violation, or breach of these covenants; (3) to prevent the occupancy of any dwelling or land; (4) to prevent any act, conduct, business or use which is in breach of these covenants; (5) to compel any affirmative act which, pursuant to these covenants, "shall", be performed; and (6) to seek appropriate damages. Any action in equity hereunder for the enforcement hereof shall not be barred on the grounds that there may also exist an adequate remedy at law. The prevailing party in any action to enforce these restrictions shall also be entitled to reasonable attorney fees against the other party. In the alternative, the Developer or the Association may notify the offending Owner of the violation, and, if such violation is not ceased or corrected within 30 days, the Developer or the Association may assess such Owner a fine of \$100 per month until the violation has ceased or been corrected.

43. **MISCELLANEOUS.**

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

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

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

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

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

IN WITNESS WHEREOF, the undersigned have set their hands and seals this the 29 day of July, 2005.

RJF II CORPORATION

Carla M. Jones
Jan W. [Signature]

By: J. Robert Flynn II, Pres.

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

ACKNOWLEDGMENT

I, a Notary Public for the State of South Carolina, do hereby certify that the Developer herein, by J. Robert Flynn II, its President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to and subscribed before me
this 29 day of July, 2005

Jan W. [Signature] (SEAL)
Notary Public for South Carolina
My Commission expires: 12/18/05

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG) AMENDMENT TO PROTECTIVE COVENANTS
 FOR CROOKED CREEK, PHASE II & III

WHEREAS, RJF II CORPORATION, hereinafter referred to as "Developer," is the owner of all those certain pieces, parcels or lots of land located in Spartanburg County, South Carolina, and shown on a plat entitled "Crooked Creek, Phase II & III" prepared by Gramling Brothers Surveying, Inc. dated November 15, 2004 and recorded July 7, 2005 in Plat Book 158 at Page 266 in the Register of Deeds for Spartanburg County, South Carolina (hereinafter sometimes referred to as the "Subdivision Plat"), less certain lots previously conveyed, and

WHEREAS, a Declaration of Protective Covenants, Conditions, Restrictions and Easements of Crooked Creek Subdivision, Phases II and III was recorded on August 3, 2005 in Deed Book 83-Q, page 810, Register of Deeds for Spartanburg County, South Carolina (the "Restrictions"); and

WHEREAS, Section 42 of the Restrictions provides, in part, that "Notwithstanding anything herein to the contrary, the Developer, its successors and assigns, reserves the right to waive, modify or change in writing, any of terms hereof with respect to the application thereof to a lot based upon special, unique or unusual circumstances, but no such waiver modification or change shall substantially affect the overall plan of development."; and

WHEREAS, the Developer desires to make certain amendments to the Restrictions as set forth herein, affecting Lots 61, 12, 13, 14, 15 and 16 of the Subdivision;

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, Developer hereby amends the Restrictions as follows:

1. Section 11 of the Restrictions shall be amended to provide as follows:

11. **GENERAL EASEMENTS.** The Developer reserves unto itself, its successors and assigns, the exclusive right to a perpetual, alienable, and assignable easement and right of way on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, cable television, security cable equipment, telephone equipment, gas, sewer, water, or other private or public convenience or utilities on, in, or over those areas as are shown or described on the Subdivision Plat. Further, the Developer may cut drainage ways for surface water wherever and whenever such action may appear to the Developer to be necessary in order

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 Office of Register of Deeds, Spartanburg, S.C.
 Stephen Ford, Register



to maintain reasonable standards of health, safety, and appearance. All utilities and services shall be placed underground and run from the property line or easement to the residence. In routing utilities and services from the easement to the front property line, no curb and gutter or pavement section may be cut or in any way damaged without prior approval of the Developer. Any damage done shall be repaired by the Owner, and Owner shall bear all cost and repair. No easement for utility or roadway purpose may be granted, constructed, used or operated within a strip of land two feet (2') from any property line without obtaining the prior written approval of the Developer.

The Developer further reserves unto itself, its successors and assigns, the exclusive right to a perpetual, alienable and assignable easement and right of way fifteen feet (15') wide along the entire back side of the entrance signs to the Subdivision. **The Developer further reserves unto itself, its successors and assigns an exclusive right to a perpetual, alienable and assignable easement and right of way twenty-five feet (25') wide along the back side (or edge) of the entire length of the subdivision walls, i.e. back 25 feet onto the adjacent lots, for the purpose of performing normal, usual and required maintenance of the sign and wall as well as maintaining, plants, shrubs and other greenery located on the property, along the length of the wall. This easement specifically affects Lots 61, 12, 13, 14, 15 and 16. Provided, however, the owners of Lots 61, 12, 13, 14, 15 and 16 may construct and maintain drain fields for their respective septic tanks within the area of the aforesaid 25' easement, provided the owners shall not damage any of the landscaping within this easement.** In addition to all other easements created herein the Developer reserves unto itself, its successors and assigns, the exclusive right to a perpetual, alienable and assignable easement and right of way for a walking trail, which easement shall be fifteen feet (15') wide and shall cross the following lots 31, 30, 29, 28, 27, 26, 25, 24, 23, 21 and 48, as shown on the Subdivision Plat. Only the Developer shall be allowed to landscape any such easement areas described in this subparagraph until such time as the easement areas may be conveyed by the Developer to the Association.

2. The Restrictions shall in all other respects remain in full force and effect, except as modified hereinabove.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this 11th day of May, 2006.

IN THE PRESENCE OF:

B. R. English
Lee Rogers

RJF II CORPORATION

By: J. Robert Hughes
Its: President

The undersigned owners of Lots 61, 12, 13, 14, 15 and 16 join in this Amendment for the purpose of expressing their consent to the terms hereof.

IN THE PRESENCE OF:

① B. D. Anglin &
J. Robert Howard
 ② B. D. Anglin &
Lee Rogers
B. D. Anglin &
Lee Rogers
B. D. Anglin &
Lee Rogers
B. D. Anglin &
J. Robert Howard
B. D. Anglin &
J. Robert Howard
B. D. Anglin &
J. Robert Howard

Lot 61 Owner's name: RJF II Corp

By: J. Robert Howard, Pres.
 Its: President

Lot 12 Owner's name: RJF II Corp

By: J. Robert Howard, Pres.
 Its: President

Lot 13 Owner's name: RJF II Corp

By: J. Robert Howard, Pres.
 Its: Pres.

Lot 14 Owner's name: Futrell Builders, Inc.

By: J. R. Futrell
 Its: President

Lot 15 Owner's name: S&S Builders LLC
Vice President

By: Bill S
 Its: Vice President

Lot 16 Owner's name: Todd Parrish Inc.

By: Ken Parrish
 Its: V. Pres.

DEED 85 -- W PG 075

STATE OF SOUTH CAROLINA)
COUNTY OF)

PROBATE

PERSONALLY appeared before. me, R. D. Anglin II, and
made oath that he saw the within-name Grantors sign,
seal and as his/her act and deed, deliver the within-written
amendment for the uses and purposes therein mentioned and
that he with J. Robert Flynn II witnessed the execution
thereof.

SWORN to before this 11th
day of May, 2006
Law H. Hamilton (L. S.)
Notary Public for South Carolina
My Commission Expires: 9-10-2013

R. D. Anglin II

DEED 85 -- WPG 076

STATE OF SOUTH CAROLINA)
COUNTY OF)

PROBATE

PERSONALLY appeared before me, Rd Anglin II, and
made oath that he saw the within-name Grants sign,
seal and as his/her act and deed, deliver the within-written
Amendment for the uses and purposes therein mentioned and
that he with LCC Rogers witnessed the execution
thereof.

SWORN to before this 11th
day of May, 2006
Jana N Hamilton (L. S.)
Notary Public for South Carolina
My Commission Expires: 9-10-2013

B. H. Anglin II