

BOOK 1744 PAGE 704 //

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**DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR  
HUDDERS CREEK SECTION II**

**THIS AMENDED AND RESTATED DECLARATION, made on the date hereinafter set forth by F&M Development Enterprises, Inc., a South Carolina Corporation having an office in Greenville County, South Carolina, hereinafter referred to as "Declarant."**

**WITNESSETH:**

**WHEREAS, Declarant is the owner of certain property in the County of Greenville, State of South Carolina, which is more particularly described as follows:**

All that certain piece, parcel or tract of land, situate, lying and being in the City of Simpsonville, County of Greenville, State of South Carolina, on the Northern side of Davenport Road as shown on a plat prepared by Fant Engineering & Surveying Co., Inc. dated January 23, 1989, being further shown on a more recent plat prepared by Site Design, Inc. and entitled "Hudders Creek Phase 2", dated October 30, 1997, and recorded in the RMC Office for Greenville County, South Carolina on recorded November 5, 1997, in Plat Book 35-W, at Page 77 and having the metes and bounds, courses and distances as upon said plat appear. For a more accurate and detailed description as to the metes and bounds, courses and distances, reference is invited to the heretofore referenced plat.

**ARTICLE I**

**DEFINITIONS**

**SECTION 1. "Association" shall mean and refer to Hudders Creek Homeowners Association, Inc., its successors and assigns.**

**SECTION 2. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. Common Area shall also mean such property which from time to time is deeded to the Association in fee simple by Declarant.**

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SECTION 3. "Declarant" shall mean and refer to F&M Development Enterprises, Inc., as well as its successors and assigns, if Declarant shall make an express conveyance of its rights as developer hereunder to such successor or assign.

SECTION 4. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Hudders Creek Section II as the same may be amended, renewed or extended from time to time in the manner herein provided.

SECTION 5. "Lot" shall mean and refer to any separately numbered plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Area.

SECTION 6. "Member" shall mean and refer to every person or entity who holds membership with voting rights in the Association.

SECTION 7. "Non-Member User" shall mean and refer to any person who is not a Member of the Association for the use of the Recreational Facilities as set out in the By-Laws of the Association.

SECTION 8. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 9. "Plat" shall mean those certain plats prepared by Site Design, Inc. and entitled "Hudders Creek Phase 2", dated October 30, 1997, recorded November 5, 1997, in Plat Book 35-W, at Page 77.

SECTION 10. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

SECTION 11. "Recreational Facilities" shall mean and refer to any clubhouse, swimming pool, playing fields, playgrounds and any other facilities designed for active recreational use, along with the parking areas on the Common Area and any additions thereto. The recitals contained herein are for illustration only, and nothing contained in this Section or in the Declaration shall obligate Declarant or the Association to construct specific recreational facilities.

ARTICLE II

PROPERTY RIGHTS

SECTION 1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any Recreational Facility situated upon the Common Area and to impose reasonable limits upon the number of guests who may use these facilities;
- (b) the right of the Association to suspend the voting rights and right to use of the Recreational Facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations;
- (c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by 2/3rds of each class of members and has been recorded;
- (d) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area;
- (e) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities thereon. No such mortgage of the Common Area shall be effective unless an instrument agreeing to such mortgage of Common Area is signed by 2/3rds of each class of members. Also, so long as there is Class B Membership, mortgage of any Common Area must also be approved by the U.S. Department of Veterans Affairs; and

- (f) the right to the Association to exchange portions of Common Area with the Declarant for substantially equal areas of the properties for the purpose of eliminating unintentional encroachments of improvements onto portions of the Common Areas or any other purpose or reason. As long as there is Class B Membership, no such exchange of portions of Common Area with the Declarant shall be effective unless an instrument agreeing to such exchange has been approved by the U.S. Department of Veterans Affairs.

SECTION 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the By-Laws, his rights of enjoyment of the Common Area to the members of his family, his tenants or contract purchasers who reside on the Lot of such Owner.

SECTION 3. LEASES OF LOTS. Any Lease Agreement between an Owner and a lessee for the lease of such Owner's residence on its Lot shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and By-Laws of the Association and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the Lease. All Leases of Lots shall be in writing. Other than the foregoing there is no restriction on the right of any Owner to lease his Lot.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Every Owner of a Lot which is subject to a lien for assessments shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

SECTION 2. The Association shall have three classes of voting membership:

Class A. Class A Members shall be all Owners other than the Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. 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 Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each lot it owns as shown on the Plat for Hudders Creek. 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) the date on which the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership;
- (b) on December 31, 2010; or
- (c) when Declarant elects by notice to Association in writing to terminate its Class B membership.

Class C. The Class C Member shall be residences of Hunters Woods Subdivision who have purchased a right to use the swimming pool and related facilities. They shall be designated as non-voting members. Their membership shall be limited and subject to an annual membership fee established for non-voting members by the Class A and Class B Members.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE AND ASSESSMENTS

SECTION 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay (a) to the Association: (i) annual assessments or charges; (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (b) to the appropriate governmental taxing authority: (i) a pro rata share of ad valorem taxes levied against the Common Area; and (ii) a pro rata share of assessments for public improvements to or for the benefit of the Common Area if the Association shall default in the payment of either or both for a period of six (6) months as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, 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 interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The

personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

SECTION 2. PURPOSE OF ASSESSMENTS.

- (a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area; the maintenance of water and sewer mains in and upon the Common Area; the maintenance of open spaces and streets which have not been accepted for dedication by a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of-way), drives and parking areas within the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws; the maintenance of lakes, ponds, retention areas or other bodies of water located within the Common Area; the maintenance of dams and areas surrounding such water; the maintenance of any "sign easement" areas located on any Lot, as shown on a recorded plat; the maintenance of entrance ways, landscaping and lighting of Common Area, road medians and islands and entrance ways, the lighting of streets (whether public or private); the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Area; the costs associated with duties of the Architectural Control Committee; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; and such other needs as may arise.

- (b) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.
- (c) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies of any assessment are paid to the Association by any Lot Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When a Lot Owner shall cease to be a member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Properties.

SECTION 3. MAXIMUM ANNUAL ASSESSMENT. Until December 31, 1998, the maximum annual assessment shall be Two Hundred Fifty and No/100ths (\$250.00) Dollars per Lot, and at Board's option, may be collected monthly, quarterly, semi-annually or annually.

- (a) The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year.
- (b) The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter may be increased without limit by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, subject to the provisions of Section 6 of this Article.

SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.

In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part the costs 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 shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article IV shall be sent to all Members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.



SECTION 6. RATE OF ANNUAL ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semiannual or annual basis.

SECTION 7. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES. The annual assessments provided for herein shall commence as to a Lot on the first day of the month following the conveyance of the Common Area. Provided however, notwithstanding anything herein to the contrary, Declarant shall have the option each year of either (1) paying one hundred (100%) percent of the aggregate sum of the Annual Assessment and Special Assessment levied against all Lots owned by Declarant during each calendar year (which annual assessment shall be prorated for the period of time during which calendar year the Declarant is Owner of said Lot) or (2) paying the greater amount of (a) twenty-five (25%) percent of the aggregate sum of the Annual Assessment and Special Assessment levied against all Lots owned by Declarant during each calendar year (which annual assessment shall be prorated for the period of time during which calendar year the Declarant is Owner of said Lot) or (b) such amount necessary to fund any difference between the Association's operating expenses and the Annual Assessments collected from Owners other than Declarant. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment and promptly thereafter the Board of Directors shall cause written Notice thereof to be sent to every Owner subject thereto. In the event the Board of Directors shall fail to fix the amount of annual assessments as described above, the assessment fixed for the immediately preceding year shall continue in effect until a new assessment amount is fixed. 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 assessments 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.

SECTION 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 twelve percent (12%) per annum or the highest rate allowed by law whichever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of South Carolina for the foreclosures of Mortgage, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for

the assessment provided for herein by non-use of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

SECTION 9. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner. This section shall not become applicable until Class B Membership ceases to exist.

SECTION 10. SUBORDINATION OF THE LIEN TO MORTGAGES. The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any such first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

SECTION 11. EXEMPT PROPERTY. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of South Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE V

## ARCHITECTURAL CONTROL

SECTION 1. IMPROVEMENTS. No building, fence, wall or other structure or planting or landscaping shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein including without limitation any plantings or landscape be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board (hereinafter referred to as the "Architectural Control Committee"). Provided that nothing herein contained shall be construed to permit interference with the development of the Properties by the Declarant so long as said development follows the general plan of development of the Properties previously approved by Greenville County and U.S. Department of Veterans Affairs.

SECTION 2. PROCEDURES.

- (a) Any person desiring to make any improvement, alteration or change described in Section 1 above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Board of Directors of the Association or the Architectural Control Committee which shall evaluate such plans and specifications in light of the purpose of this Article.
- (b) Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specifications shall not be deemed a waiver of the Architectural Control Committee's right, in its discretion, to disapprove similar plans and specification on any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot. Approval of such plans and specifications relating to any Lot, however, shall

be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

- (c) Neither Declarant, nor any other member of the Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. FURTHER, NEITHER DECLARANT, NOR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE SHALL BE LIABLE IN DAMAGES TO ANYONE BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, MISFEASANCE, MALFEASANCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OF SPECIFICATIONS OR THE EXERCISE OF ANY OTHER POWER OR RIGHT OF THE ARCHITECTURAL CONTROL COMMITTEE PROVIDED FOR IN THIS DECLARATION. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS TO THE ARCHITECTURAL CONTROL COMMITTEE FOR APPROVAL AGREES, BY SUBMISSIONS OF SUCH PLAN AND SPECIFICATIONS, AND EVERY OWNER OF ANY LOT AGREES, THAT HE WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, ASSOCIATION, ITS BOARD MEMBERS OR OFFICERS, OR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE, TO RECOVER ANY SUCH DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

#### ARTICLE VI

##### EXTERIOR MAINTENANCE

The Association shall maintain the Common Area. Each Owner shall be responsible for the exterior maintenance of his or her dwelling and Lot, as follows: 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 Hudders Creek Section II, the Association shall provide such exterior maintenance as provided above. 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 Hudders Creek Section II shall be made by the Board of Directors of the Association, in its sole discretion. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed 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 added to and become a part of the assessment to which such Lot is subject.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner or the family, guests, lessees, or invitees of any Owner, and is not covered and paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot of such Owner.

#### ARTICLE VII

##### USE RESTRICTIONS

SECTION 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, except with the written approval of the Architectural Control Committee; provided, however, that nothing herein shall prevent Declarant or any builder of homes in Hudders Creek Section II approved by Declarant from using any Lot owned by Declarant or such builder of homes for the purpose of carrying on business related to the development, improvement and sale of property in Hudders Creek Section II; and provided, further that, to the extent allowed by applicable zoning laws, private offices may be maintained in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwellings.

SECTION 2. SETBACKS AND BUILDINGS LINES. Each dwelling which shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback lines approved for each lot in writing by the Architectural Control Committee before commencement of lot clearing preparatory to construction unless either a variance shall be granted by Declarant or Declarant shall amended the Plat. In no event shall any dwelling be erected and located upon any such Lot in a manner which violates the requirements and provisions of any applicable zoning ordinances and subdivision regulations.

SECTION 3. WALLS AND FENCES. No fence or wall shall be erected, placed, or altered on any Lot nearer to any street than said minimum building setback line unless the same be a retaining wall of masonry construction which does not in any event rise above the finished grade elevation of the earth embankment so retained, reinforced, or stabilized, except that this restriction shall not apply to fences or walls which have been approved by the Architectural Control Committee pursuant to Article V above. The exposed part of retaining walls shall be made of clay brick, natural stone, stucco, railroad ties, or veneered with brick or natural stone. Chain link fences are prohibited except when the Architectural Control Committee gives written approval.

SECTION 4. SUBDIVISION OF LOT. One or more Lots or parts thereof may be combined with adjacent Lots to form a single building Lot when approved, in writing, by Architectural Review Committee, and, in such event, the building line requirements provided herein shall apply to such Lots as re-subdivided or combined and side line easements as shown on the plat shall be moved to follow the new side line so that the easement would run along the newly established side line.

SECTION 5. TERRACES; EAVES AND DETACHED GARAGES. For the purpose of determining compliance or noncompliance with the foregoing building line requirements, terraces, stoops, eaves, wing-walls, and steps extending beyond the outside wall of a structure shall not be considered as a part of the structure. No side yard shall be required for any detached garage or accessory outbuilding which has been approved, in writing, by the Architectural Control Committee; provided, all such detached structures must be to the rear of the main dwelling and must not encroach upon the Lot of an adjacent Owner.

SECTION 6. BUILDING REQUIREMENTS. The heated living areas of the main structure, exclusive of open porches, porte cocheres, garages, carports and breezeways, shall be not less than 1,700 square feet for single level structures and 1,800 square feet for two level structures. Provided Declarant received U.S. Department of Veterans Affairs approval Declarant reserves the right to decrease the foregoing minimum square footage requirement with respect to all or a portion of the additional land annexed to

the Properties in accordance with Article X, Section 5, Subsection (b) by recording an instrument which sets forth the decreased minimum square footage requirement in the RMC Office, Greenville County, prior to or contemporaneous with the annexation of such additional land or portion thereof by Declarant. Increases in the minimum square footage requirement shall not require U.S. Department of Veterans Affairs approval.

SECTION 7. OBSTRUCTIONS TO VIEW AT INTERSECTIONS.

No part of any structure nor the lower branches of trees of other vegetation shall be permitted to obstruct the view at street intersections.

SECTION 8. DELIVERY RECEPTACLES AND PROPERTY IDENTIFICATION MARKERS. The Architectural Control 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 property identification markers.

SECTION 9. USE OF OUTBUILDINGS AND SIMILAR STRUCTURES.

No structure of temporary nature (unless approved in writing by the Architectural Control Committee) shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence, either temporarily or permanently: provided, this Section shall not be construed to prevent the Declarant and those engaged in construction from using sheds or other temporary structures during construction.

SECTION 10. COMPLETION OF CONSTRUCTION.

The Association shall have the right to take appropriate legal action, whether at law or in equity, to compel the immediate completion of any residence not completed within one (1) year from the date of commencement of construction.

SECTION 11. LIVESTOCK.

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other small household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions.

SECTION 12. OFFENSIVE ACTIVITIES.

No noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the owners of other Lots in Hudders Creek Section II.

SECTION 13. 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 and/or houses during the development and construction period, provided such signs are approved by the Architectural Control Committee. Also, the provisions of this Article shall not apply to notices posted in connection with judicial or foreclosure sales conducted with respect to a first mortgages.

SECTION 14. AESTHETICS, NATURE GROWTH, SCREENING, UNDERGROUND UTILITY SERVICE. 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 approval, in writing, of the Architectural Control Committee. Clotheslines, garbage cans and equipment, shall be screened to conceal them from view of neighboring Lots and streets. All residential utility service and lines to residences shall be underground.

SECTION 15. ANTENNAE. No radio or television transmission or reception towers or antennae shall be erected on any structure or within the property without the prior written approval of the Architectural Control Committee.

SECTION 16. TRAILERS, TRUCKS, SCHOOL BUSES, BOATS, BOAT TRAILERS. No house trailers or mobile homes, school buses, trucks or commercial vehicles over one (1) ton capacity, boats or boat trailers, motor homes, motorcycles, campers, and vans or vehicles on blocks shall be kept, stored or parked overnight either on any street or on any Lot, except within enclosed garages or screened from the streets and adjoining lots. In addition no vehicle of any kind may be kept, stored or parked on any non-paved area of a Lot or adjacent 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. The foregoing will not be interpreted or construed or applied to prevent the temporary nonrecurrent parking of any vehicle boat or trailer for a period not to exceed 48 hours upon any Lot. EXCEPTIONS: Boats and motor homes may be stored on personal lots with the approval of the Architectural Control Committee.

SECTION 17. GARBAGE AND REFUSE DISPOSAL. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers designed for that purpose. All incinerators or other equipment for the storage or disposal of such waste material shall be kept in a clean and sanitary condition. If such litter or other materials is found on any Lot, the same will be removed by the Lot Owner of such Lot, at the Lot Owner's expense, upon written request of the Association.



SECTION 18. CHANGING ELEVATIONS. No Lot Owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots, unless approved in writing by the Architectural Control Committee.

SECTION 19. SEWAGE SYSTEM. Sewage disposal shall be through municipal system or type approved by appropriate State and local agencies.

SECTION 20. WATER SYSTEM. Water shall be supplied through municipal system or type approved by appropriate State and local agencies.

SECTION 21. UTILITY FACILITIES. Declarant reserves the right to approve the necessary construction, installation and maintenance of utility facilities, including but not limited to water, telephone and sewage systems, within this proposed area, which may be in variance with these restrictions.

SECTION 22. MODEL HOMES. Declarant, as well as any builder of homes in Hudders Creek Section II, shall have the right to construct and maintain model homes on any of the Lots. "Model Homes" shall be defined as those homes used for the purpose of inducing the sale of other homes within the Properties.

SECTION 23. DRIVEWAYS AND ENTRANCE TO GARAGE. All driveways and entrances to garages shall be concrete or other substance approved in writing by Declarant or by the Architectural Control Committee and of a uniform quality.

SECTION 24. WAIVER OF SETBACKS, BUILDING LINES AND BUILDING REQUIREMENTS. The Architectural Control Committee may, for good cause, waive violations of the setbacks and building lines provided for in Section 2 of this Article VII and the building requirements provided for in Section 6 of this Article VII. Such waiver shall be in writing and recorded in the Greenville County RMC Office. A document executed by the Architectural Control Committee shall be, when recorded, conclusive evidence that the requirements of Sections 2 and 6 of this Article VII have been complied with. The Architectural Control Committee may also handle violations of setback and boundary line by amending the Plat. Nothing contained herein shall be deemed to allow the Architectural Control Committee to waive violations which must be waived by an appropriate governmental authority.

## ARTICLE VIII

## EASEMENTS

SECTION 1. UTILITIES. Easements for installation and maintenance of utilities (including cable television service) and drainage facilities are reserved as indicated on recorded plats. Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. An easement is hereby established for the benefit of Greenville County (and any other person or firm providing services to the Properties under agreement with or at the direction of the Association) over all Common Area as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage. The Association shall have the power and authority to grant and establish upon, over and across the Common Area such additional easements as are necessary or desirable for the providing of service or utilities to the Common Area or Lots.

SECTION 2. SIGN EASEMENTS. Easements for the maintenance of subdivision signs and landscaping and lighting surrounding same are reserved as indicated on recorded plats. Declarant hereby grants, gives and conveys to the Association a perpetual, non-exclusive easement over any portions of Lots designated as "sign easements" or "landscape easements" on the plats, to maintain, repair and replace the subdivision signs which may be located thereon, as well as the lighting fixtures and any landscaping thereon. The costs of all such maintenance, repair and replacement shall be part of the common expenses of the Association, payable by the Owners as set out in Article IV hereof. In addition to the easement granted above as to the portion of Lots designated "sign easements", or "landscaping easements" Declarant hereby gives, grants and conveys to the Association the right of ingress, egress and regress over other portions of such Lots as shall be reasonably necessary to effectuate the purposes stated above. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or a part of the Properties.

ARTICLE IX

RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

SECTION 1. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS.

"Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

SECTION 2. OBLIGATION OF ASSOCIATION TO INSTITUTIONAL LENDERS. So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

- (a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by April 15th of each calendar year.
- (b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions or the Articles of Incorporation or By-Laws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self management by the Association.
- (c) To receive notice of any condemnation or casualty loss affecting the Common Areas or any portion thereof.
- (d) to be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
- (e) To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Areas, other than those specific rights vested in the Association under Article II hereof.

- (f) To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing.

**SECTION 3. REQUIREMENTS OF INSTITUTIONAL LENDER.**

Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by CERTIFIED MAIL at the address shown in the Articles of Incorporation identifying the Lot or Lots upon which any such Institutional Lender holds any first lien or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

**ARTICLE X**

**GENERAL PROVISIONS**

**SECTION 1. ENFORCEMENT.** The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration, the Articles of Incorporation or By-Laws of the Association. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

**SECTION 2. SEVERABILITY.** Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

**SECTION 3. AMENDMENT.** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless during the last year of such initial or then current renewal term the Owners of seventy-five percent (75%) of the Lots agree in writing to terminate this Declaration at the end of such term. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than seventy-five (75%) percent of the Lot Owners, and thereafter by an instrument signed by not less than

sixty-five (65%) percent of the Lot Owners. Any amendment must be properly recorded.

SECTION 4. FEDERAL LENDING REQUIREMENTS. Notwithstanding Article X, Section 3 above, Declarant may (at Declarant's option) amend and modify this Declaration without obtaining the consent or approval of the Owners if such amendment or modification is necessary to cause this Declaration to comply with the requirements of the Federal Housing Administration, the Veterans Administration, Fannie Mae or other similar agency.

Any such amendment must be with the consent and approval of such agency and must be properly recorded.

SECTION 5. ANNEXATION.

- (a) Additional residential property and Common Area may be annexed to the Properties only with the consent of two-thirds (2/3) of each class of Members.
- (b) Notwithstanding the above, additional land within the area described in the metes and bounds description attached hereto as Schedule "A" and incorporated herein by reference, (hereinafter referred to as "Additional Land") including, but not limited to, residential property and Common Area may be annexed by the Declarant without the consent of Members within seven (7) years of the date of this instrument. Provided, however, that should Declarant elect to improve and develop all or part of the Additional Land, Declarant shall have the right to impose covenants and restrictions which are the same as or similar to or not substantially different to those contained herein on all or part of the Additional Land. Notwithstanding anything contained herein which might otherwise be interpreted to produce a contrary result, this Declaration does not create any charge, lien or other encumbrance or restriction on any part of the Additional Land, or affect in any way the title thereto or any part thereof, nor does this Declaration create an obligation upon Declarant to improve and develop all of any portion of the Additional Land.

**SECTION 6. AMPLIFICATION.** The provisions of this Declaration are amplified by the Articles and By-Laws; but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles and By-Laws on the other be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration control anything in the Articles or By-Laws to the contrary.

**SECTION 7. TOTAL OR PARTIAL DESTRUCTION OF IMPROVEMENTS.** In the event of a total or partial destruction of any improvements on the Common Area, and if available proceeds of insurance carried pursuant to this Declaration are sufficient to cover 85% of the repair or reconstruction, the Common Area shall be promptly repaired and rebuilt unless within 120 days from the date of such destruction, 75% or more of the owners entitled to vote at a duly called meeting, determine that such reconstruction shall not take place. If the insurance proceeds are less than 85% of the cost of reconstruction, reconstruction may nevertheless take place if, within 120 days from the date of destruction, the Owners of 75% of the Lots elect to rebuild.

**SECTION 8. FHA/VA APPROVAL.** As long as there is Class B Membership, the following actions require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions, Restrictions and Easements.

IN WITNESS WHEREOF, the undersigned, has caused these presents to be executed in its corporate name by its officers thereunto duly authorized and its corporate seal properly attested to be hereto affixed on this the 13th day of FEBRUARY, 1998.

Executed and declared in the presence of:

F&M DEVELOPMENT ENTERPRISES, INC.

[Signature]  
Witness

BY: [Signature]  
ITS: President

[Signature]  
Witness

ATTEST: [Signature]  
ITS: Sec. Treas.

(CORPORATE SEAL)

Executed and declared  
in the presence of:

THE BREDMAN GROUP, INC.

BY: [Signature]  
ITS: President

[Signature]  
Witness

ATTEST: Mary E. Rost  
ITS: Vice President

(CORPORATE SEAL)

[Signature]  
Witness

Executed and declared  
in the presence of:

Ralph G. Jordak  
Ralph G. Jordak

Dalene Weather  
Witness

Alice M. Jordak  
Alice M. Jordak

[Signature]  
Witness

STATE OF SOUTH CAROLINA )  
                                  ) PROBATE FOR  
                                  ) F&M DEVELOPMENT ENTERPRISES, INC.  
COUNTY OF GREENVILLE )

Personally appeared before me the undersigned witness, who says on oath that (s)he saw the within named Corporation, by its duly authorized President and Sec./Treas., sign, seal and deliver the within written instrument and that (s)he with the other witness, witnessed the execution thereof.

[Signature]

Sworn to before me this  
13th day of FEBRUARY, 1998.

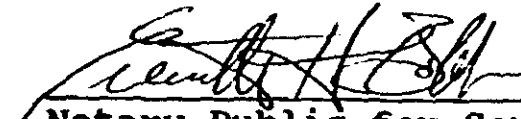
[Signature]  
Notary Public for South Carolina  
My Commission Expires: February 25, 1998

STATE OF SOUTH CAROLINA )  
 ) PROBATE FOR  
 ) THE BREDMAN GROUP, INC.  
COUNTY OF GREENVILLE )

Personally appeared before me the undersigned witness, who says on oath that (s)he saw the within named Corporation, by its duly authorized President and Vice President, sign, seal and deliver the within written instrument and that (s)he with the other witness, witnessed the execution thereof.

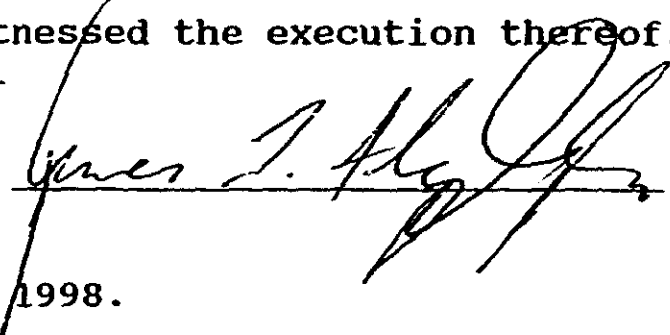
  
\_\_\_\_\_

Sworn to before me this  
17th day of February, 1998.


  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 01/16/2002

STATE OF SOUTH CAROLINA )  
 ) PROBATE FOR  
 ) RALPH G. JORDAK AND ALICE M. JORDAK  
COUNTY OF GREENVILLE )

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw RALPH JORDAK AND ALICE JORDAK sign, seal, and as their free acts and deeds deliver the within instrument for the uses and purposes therein stated, and that (s)he with the other witnesses subscribed above witnessed the execution thereof.

  
\_\_\_\_\_

Sworn to before me this  
13th day of February, 1998.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: ~~February 25, 1998~~



SCHEDULE A

All that certain piece, parcel or lot of land, situate and being in Greenville County, State of South Carolina, known and designated as a twenty foot wide private drive:

BEGINNING at a point which forms the northwestern corner of Lot #726 of Crestwood Subdivision, Section IV, the northeastern edge of Yellowwood Drive and the southwestern edge of property now or formerly belonging to Sammy Goldsmith; thence running N. 24-19 E. 1001.5 feet to a point on the southwestern edge of Lot #20 of Foxwood Subdivision; thence turning N. 50-00-04 W. 20 feet to an iron pin at the northeastern edge of property now or formerly belonging to Emanuel Jackson, Jr.; thence turning S. 24-19 W. 1001.2 feet to a point formed by the approximate center of Yellowwood Drive and the southeastern edge of property belonging now or formerly to Emanuel Jackson, Jr.; thence turning S. 48-17-49 E. 20 feet to the POINT OF BEGINNING.

This being the same property conveyed unto F & M Development Enterprises, Inc. by Deed from Williams Enterprises dated February 20, 1989 and recorded in the R.M.C. Office for Greenville County, South Carolina on March 13, 1989 in Deed Book 1355 at Page 778.

SCHEDULE B

BOOK 1744 PAGE 729

All that certain piece, parcel or tract of land, situate, lying and being in the City of Simpsonville, County of Greenville, State of South Carolina, on the northern side of Davenport Road as shown on a plat prepared by Fant Engineering & Surveying Co., Inc. dated January 23, 1989, and revised by Site Design, Inc. and entitled "Hudders Creek Phase 2", dated October 30, 1997, recorded in the R.M.C. Office for Greenville County, South Carolina on November 5, 1997, in Plat Book 35-W, at Page 77. Reference to which is hereby craved for the metes and bounds thereof.

This being the same property conveyed unto F & M Development Enterprises, Inc. by Deed from Builders and Developers, Inc. dated February 20, 1989 and recorded in the R.M.C. Office for Greenville County, South Carolina on March 13, 1989 in Deed Book 1355 at Page 774.

FILED FOR RECORD IN GREENVILLE  
COUNTY SC R.O.D. OFFICE AT 02:06 PM  
02/18/98 RECORDED IN DEED  
BOOK 1744 PAGE 0704  
DOC # 98012218

*Judy A. Day*