

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
EASEMENTS AND PROTECTIVE
COVENANTS FOR
SHOALLY BROOK SUBDIVISION

These restrictive and protective covenants made this 30th day of September, 2004, by Tuley & Associates, Inc., herein referred to as "Developer."

WITNESSETH

Whereas, Developer is the owner of the real property described herein and desires to create a residential community in accordance with a uniform plat of development to preserve and maintain the property values, to maintain the natural beauty of the property, to guard against construction thereon of poorly designed or proportioned structures built of improper or unsuitable materials, to obtain harmonious architectural scheme and to create a livable environment for the benefit of future purchasers of the property; and

WHEREAS, Developer deems it desirable, to accomplish the said purpose, to create an ARCHITECTURAL CONTROL COMMITTEE to which should be delegated the powers of administration of some of the aforesaid functions;

NOW, THEREFORE, for and in consideration of the aforementioned considerations, and in further consideration of the mutual covenants, conditions, reservations, servitudes, and easements created herein for the benefit of the Developer, its successors and assigns, and the future owners of the property, the Developer hereby declares, creates, and imposes upon the herein-described property the following covenants, restrictions, easements, reservations, and servitudes, which are hereby declared to be covenants running with the land:

ARTICLE I
REAL PROPERTY SUBJECT TO THIS DECLARATION

The real property which shall be held, transferred, sold, conveyed, and occupied subject to these covenants consists of all that real property shown and described on the plat of the subdivision known as SHOALLY BROOK, and recorded on 7-8-04, 2004, in Office of the RMC for Spartanburg County, South Carolina, in Plat Book 156 at Page 390 (hereinafter referred to as "the property").

In the event of any conflict with the provisions hereof and any zoning ordinances or statutes or to subdivision laws or regulations that may be in effect on the date of the recording of these Covenants which would require a more stringent or strict standard, regulation, or use than required herein, then the terms, conditions, and requirements of such more stringent zoning or subdivision law, statute, or ordinance shall prevail.

DEE-2004-53519
Recorded 11 Pages on 10/12/2004 11:28:31 AM
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Stephen Ford, Register



**ARTICLE II
USES PROHIBITED AND PERMITTED IN RESIDENTIAL AREAS**

All lots designated on the above-described recorded plat shall be solely for single-family residential dwellings, and Developer imposes the following covenants and restrictions on use of the property:

- 1) No professional office, business, trade, or commercial activity of any kind shall be conducted in any building on any lot, or portion thereof.
- 2) No lot shall be used, and no building shall be erected, altered, placed, or permitted to remain on any lot, for any purpose other than the following:
 - a) Construction of one (1) single-family dwelling per lot.
 - b) Accessory buildings, including one private garage per lot, but garage apartments are prohibited.
 - c) Temporary building for uses incidental to construction work, which building shall be removed upon completion or abandonment of the construction work. Any structure under construction must be completed within one year from the date of the commencement of its construction.
 - d) No house trailer or mobile home shall be placed on any lot, either temporarily or permanently. There shall be no school buses, camper, recreation vehicle, or any other similar vehicle placed on any lot at any time for use as storage or as living quarters. No unlicensed vehicle or trailer is permitted to remain on any lot.
 - e) No signs or bulletin boards shall be permitted on any lot except when used in connection with the sale of said lot or when used by the building contractor during the period of construction of a building on a lot.
 - f) No animals, livestock, or poultry of any kind, other than domestic house-pets, shall be kept or maintained on the property, and no livestock, poultry, or house-pets shall be kept on any property for commercial purposes.

- g) No noxious or offensive activity shall be carried on, nor shall anything be done which may be or become an annoyance or nuisance to other residents or owners of lots in the subdivision.
 - h) No tractor/trailer trucks will be permitted to remain parked upon the property or subdivision streets for a period of time to exceed five (5) consecutive days.
- 3) No building on any lot shall exceed two (2) stories in height.
 - 4) All buildings constructed on any lot shall have front and side building setback requirements that are consistent with the requirement mandated by the controlling Spartanburg County zoning or building authority.
 - 5) There shall be no more than one principal dwelling and its accessory building on each lot, and no more than one family shall occupy a dwelling on any lot.
 - 6) All residences constructed in the subdivision shall contain a minimum of one thousand (1,000) square feet of heated floor space on the first, or ground, floor, exclusive of porches, garages, or breeze-ways, provided, however, that a two-story dwelling shall contain a minimum of five hundred (500) square feet of heated floor space on the first, or ground, floor, with the same exclusions as stated previously herein.
 - 7) No lot shall be used or maintained as a dumping ground for rubbish. All trash, garbage, or waste shall be kept at all times in sanitary containers. All incinerators or other equipment that is used for the storage or disposal of waste material shall be kept in a clean and sanitary condition.
 - 8) All sewage disposals shall be by septic tank until municipal or rural sewage disposal systems are available and shall meet the approval of the local and state Board of Health, or such similar entity, and no septic tank or system shall be so situated as to contaminate any stream.
 - 9) No trailer, basement, shack, garage, barn or other outbuilding erected upon a lot shall, at any time, be used as a residence, either temporarily or permanently, nor shall any structure of a temporary character, nor any structure which is unfinished or incomplete, be used as a residence.
 - 10) No lot shall be used for repair work on automobiles or other vehicles, whether performed by the owner or otherwise.

- 11) The Developer reserves to itself, its successors or assigns, the right to re-plat any residential lot or lots within the property for the purpose of making such lot or lots suitable for use as a residential building site.
- 12) All driveways on each lot shall be of either asphalt or concrete construction, the thickness of which must be approved in writing by the ARCHITECTURAL CONTROL COMMITTEE. In the event that an owner of a lot elects to use a material for the driveway other than asphalt or concrete, such material must be approved in writing by the ARCHITECTURAL CONTROL COMMITTEE prior to the installation of the driveway material.
- 13) The construction and installation of fences on any lot must have prior written approval by the Architectural Control Committee. Any fence erected without such prior approval shall be removed by the committee at the lot owner's expense, and permission for such removal is granted to the committee by the owner thereof.
- 14) All yards and vacant lots shall be maintained and kept in a neat, clean, and orderly manner. If a dwelling is completed on a lot, the yard must be grassed and the grass must be cut at reasonable intervals. If the lot is vacant, the lot must be kept free of trash and debris.
- 15) No sign of any kind shall be displayed in public view on any lot except for a sign advertising the property for sale or rent or a sign normally used by a building contractor for advertising and identification during the construction and sale period. Such signs be no larger than three feet by three feet in area. No lot owner, other than the Developer, may erect a directional sign on the streets or right of way within the subdivision. Temporary garage sale or yard sale signs are permitted, but such signs must be removed no later than 5:00 p.m. on the day of the sale.
- 16) Any tower or satellite dish for purposes of transmitting or receiving radio or television signals or programs erected on a lot must be no more than thirty (30) feet in height from the ground.

ARTICLE III EASEMENTS

The Developer reserves and is given a perpetual, alienable, and releasable easement for the installation of utilities (including, but not limited to, water, electricity, telephone, cable TV, gas, and sewer) and drainage over, in, and under a five (5) foot strip

parallel to, and tangent with, all side lot lines of any interior lot and over, in, and under a five (5) foot strip parallel to and tangent with all lot lines that are on the exterior boundary of the subdivision and over, in, and under a five (5) foot strip parallel to and tangent with all rear lot lines of any lot, as well as in and to all existing easements for water, gas, drainage, electricity, cable TV, and sewer. The Developer further reserves to itself such easement rights as are specifically shown on the recorded subdivision plat. The Developer shall have the unrestricted and sole right and power to alienate, convey, and release the easements reserved under the terms of this paragraph. All such easements, including those designated on the plat, are and shall remain private easements. In the event that any lot shall be re-divided or re-platted, the side and rear lot line easements herein granted shall apply as originally platted and shall lie along the original lot lines existing at the time of the execution of these covenants. No lot owner, other than the Developer, shall grant a utility easement to any person or entity across owner's lot to any property that is contiguous to the subdivision property.

Easements for drainage of surface water that appear on the subdivision plat are hereby reserved. Each owner of a lot that is subject to a drainage easement shall keep swales planted with grass or other ground cover, free and unobstructed and in good condition. Owner shall permit the installation of culverts if such become necessary.

Developer hereby conveys to the owner of each lot in the subdivision a perpetual, non-exclusive easement for access, ingress and egress across the roads shown on the subdivision plat, together with the perpetual right of easement of enjoyment and use in the common areas shown on the subdivision plat.

ARTICLE IV ARCHITECTURAL COMMITTEE CONTROL

The ARCHITECTURAL CONTROL COMMITTEE is created for the purpose of insuring the development of the real property as an area with a pleasing aesthetic appearance so as to preserve the harmony and consistency of the external design with the appearance of the existing structures in the subdivision. NO IMPROVEMENTS OF ANY KIND, INCLUDING MODIFICATIONS TO EXISTING STRUCTURES, SHALL TAKE PLACE ON ANY LOT BEFORE BUILDING PLANS AND SPECIFICATIONS HAVE BEEN APPROVED IN WRITING BY THE ARCHITECTURAL CONTROL COMMITTEE.

The ARCHITECTURAL CONTROL COMMITTEE shall be composed of Timothy Aho and Nathan Aho., as an agents of Developer. In the event that either of the aforementioned persons is unable to perform his duties on the ARCHITECTURAL CONTROL COMMITTEE, the vacancy on the ARCHITECTURAL CONTROL COMMITTEE shall be filled by such person as is selected by Developer.

At such time as Developer has sold all of the lots in the subdivision, the ARCHITECTURAL CONTROL COMMITTEE shall be appointed by the prevailing homeowner's association and shall have the duties and responsibilities set forth herein.

The ARCHITECTURAL CONTROL COMMITTEE shall have absolute and exclusive privilege to refuse approval for any building plan, specification, material, design, grading, landscaping, or location of any structure which, in the opinion of the ARCHITECTURAL CONTROL COMMITTEE, is not suitable or desirable for any reason, whether it be aesthetic, that the plan does not comport with the future development plan of the subdivision, or that it does not meet the standard set forth herein. The ARCHITECTURAL CONTROL COMMITTEE shall take into consideration the suitability of the proposed materials, the quality of the proposed workmanship, harmony of the external design with the intended design of the committee or with existing structures. All construction activity must fully comply with all state, local, and federal regulations pertaining to such activity, for example, but not by way of limitation, construction permits, erosion control, environmental restrictions, and grading requirements. This paragraph shall also apply to the common areas.

In the event that the ARCHITECTURAL CONTROL COMMITTEE fails to approve or disapprove any matter within the scope of its authority within forty-five (45) days after its being submitted, prior approval by the ARCHITECTURAL CONTROL COMMITTEE shall be deemed to have been granted and no suit or claim against the party submitting the proposal shall thereafter be available to the ARCHITECTURAL CONTROL COMMITTEE or to any owner in the subdivision.

Applications for approval as required herein shall be made to the ARCHITECTURAL CONTROL COMMITTEE or to any member thereof. Each application for approval must bear a date of receipt and be initialed by a representative of the ARCHITECTURAL CONTROL COMMITTEE and the owner or his representative submitting the application, and the date of delivery of the plan to the ARCHITECTURAL CONTROL COMMITTEE shall be the date of the commencement of the forty-five day approval period.

In order to prevent duplication of buildings or improvements, the ARCHITECTURAL COMMITTEE is vested with full authority to approve or disapprove plans for the construction of any structure or improvement with its major features being so similar to an existing structure or improvement as to be construed as a practical duplication thereof.

Prior to commencement of construction of any addition or improvement to an existing dwelling or structure on a lot in the subdivision, the lot owner shall submit to the ARCHITECTURAL CONTROL COMMITTEE the plans and specifications, including elevations and plats, which shall contain and reveal all pertinent information necessary for the committee to act thereon. If the committee requests from the owner additional information, the forty-five days for approval shall be extended by the number days from

the date of the committee's request for the additional information and the date that the information is produced by the owner. The committee's approval or disapproval shall be in writing, addressed to the owner at the address given to the committee by the owner when the plans were submitted. If the committee's decision is not hand delivered, the date of delivery to the owner shall be the date on which the decision was placed in the US mail, postage paid, and addressed to the owner, or the date of the placing of the decision in an overnight-delivery collection receptacle.

ARTICLE V WAIVER OF SETBACK, LOCATION, AND SIZE OF IMPROVEMENTS

The ARCHITECTURAL CONTROL COMMITTEE is authorized to waive compliance with, approve, or ratify in the construction or alteration of any building or structure upon the real property, or the use or failure to use any of the requirements set forth herein if, in the opinion of all of the members of the ARCHITECTURAL CONTROL COMMITTEE, the same shall be necessary to prevent undue hardship because of special circumstances attendant to the property involved. The waiver, approval, or ratification by the ARCHITECTURAL CONTROL COMMITTEE shall be binding upon all persons, and the powers of waiver herein conferred upon the ARCHITECTURAL CONTROL COMMITTEE shall be construed liberally so as to affect any matters or things included with the terms and conditions of these covenants.

ARTICLE VI AMENDMENTS AND MODIFICATION

The terms, provisions, and restrictions set forth herein may be amended upon the written approval by two-thirds of the number of owners of lots in the subdivision. If an owner owns more than one lot, that particular owner shall cast one vote for each lot owned. Any amendment to the terms, provisions, covenants, or restrictions of this Declaration shall become effective only upon the recording in the RMC for Spartanburg County, South Carolina, of an instrument which (a) sets forth the amendment; (b) states that the approval of two thirds of the owners has been given and obtained; and (c) is signed and acknowledged by each owner consenting to the modification or amendment

No lot owner may impose additional covenants, restrictions, or conditions upon any property in the subdivision without prior approval of the ARCHITECTURAL CONTROL COMMITTEE.

ARTICLE VII TERM AND ENFORCABILITY

If any owner shall Violate any of these covenants without prior approval obtained

in the manner set forth herein, it shall be lawful for any owner of any real property in the subdivision to prosecute any proceeding, at law or in equity, against the offending owner to prevent the owner from continuing the violation or to recover damages for such violation. The invalidation of any one or more of these covenants by an order of a court of proper jurisdiction shall not affect the enforceability of the other provisions herein.

If any of the covenants contained herein are contrary to the requirements, policies, or recommendations of HUD, the VA, or any other recognized institution, agency, public or private, granting or insuring loans, and shall render any lot in the subdivision unacceptable for any such loan, then the Developer shall have the authority to amend, alter, or annul any covenants as may be necessary to make any of the property acceptable and eligible for such loan.

These covenants shall be deemed to be covenants running with the land and shall remain in full force and effect for a period of twenty-five (25) years from the date of recording of these covenants and restrictions, and these covenants shall be automatically extended for successive periods of ten (10) years unless a written agreement executed by a majority of the then lot owners amending, modifying, or canceling these restrictions is recorded.

ARTICLE VIII HOMEOWNERS' ASSOCIATION AND PROPERTY RIGHTS OF OWNERS

Every owner shall be a member of the SHOALLY BROOK HOMEOWNER'S ASSOCIATION (hereinafter "the Association"), which membership 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 charge reasonable fees for the maintenance of the entrance to the subdivision and of the common areas; and
- (b) The right of the Association to suspend voting rights of an owner for any period not to exceed 60 (sixty) days for any infraction of its published rules or regulations.

The Association shall be formed when the Developer has sold seventy percent (70%) of the lots within the development. Commencing January 1 of the year following the date on which 70% of the lots have been sold by the Developer, the Association shall begin collection of necessary assessments from each owner. Each owner, by acceptance of a deed for any lot within the subdivision, whether or not it is expressed in the deed thereto, hereby covenants and agrees to pay to the Association (1) annual assessment charges, and (2) special assessment charges for capital improvements, such assessments to be established and collected as herein provided. The annual and special assessments,

together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien on the lot against which each such assessment is made. Each assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by such successors.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents, as well as the esthetics, of the subdivision. The Association shall use the funds accumulated by the annual assessment for maintenance of the common areas, to include, but not be limited to, installation and maintenance of lighting, construction of signs, maintenance of the retention pond, fencing, roads, road signs, and any other component parts of the common areas, and taxes or assessments against the common area.

The amount of the assessments shall be determined by the Association. Assessments are due and payable on June 1 of each year, and the amount of the annual assessment shall be set each year by the Association. The annual assessment shall be prorated according to the days remaining in the calendar year following the date of purchase of the lot.

In addition to the annual assessment, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement in the subdivision, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes from each class of members of the Association voting in person or by proxy at a meeting duly called by the Association.

Written notice of any meeting called for the purpose of levying a special assessment shall be sent to all members not less than thirty (30) days prior to the date of the meeting of the Association. At the first such meeting called, the presence of the members or of proxies entitled to cast sixty (60%) percent of all of 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 at the subsequent meeting, a quorum shall be one half (1/2) of the required number for a quorum that was required at the first meeting.

Both annual and special assessments must be fixed at a uniform rate for all lots. Special assessments may be collected on a monthly basis if so designated by the Association. The Association shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance for each annual assessment period. Written notice of the annual assessment shall be sent to each owner subject thereto. The due date shall be established by the Association.

Any assessment not paid within thirty (30) days after the date on which it is due

shall bear interest from the due date at the legal rate assessed against court judgments in Spartanburg County. The Association may bring legal action against the owner personally obligated to pay the same or may foreclose the lien against the lot. No owner may waive or escape from liability for payment of the assessments by abandonment of his lot.

ARTICLE IX GENERAL PROVISIONS

The owner of each lot shall send written notice to the Association of the conveyance of the lot to owner. Owner shall include in the notice owner's mailing address for receipt by owner of notices from the Association and a current phone number at which owner may be reached. Owner shall be responsible for giving the Association notice of any change in owner's address or phone number, and delivery by the Association of notices to owner at the last address given by owner to the Association shall constitute actual and complete notice to said owner.

Additional residential property may be annexed to the subdivision property. Developer retains the right to use any lot or lots owned by Developer as a street or streets for access to the annexed property so as to make the annexed property a part of this subdivision. All properties annexed to the subdivision shall be subject to these covenants and restrictions and shall be annexed only at the absolute sole discretion of the Developer.

The Association shall maintain all common areas in the subdivision.

In witness whereof the undersigned has caused this EASEMENTS AND PROTECTIVE COVENANTS FOR SHOALLY BROOK SUBDIVISION to be executed this date and year above-written.

Tuley & Associates, Inc.

By: _____

Title: _____

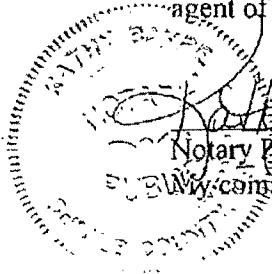
Witness _____

Witness _____

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledge before the undersigned Notary Public
by ~~D. B. B. County~~ ^{Joseph Tuley} in his capacity as the duly appointed and authorized
agent of Tuley & Associates, Inc., this 30th day of September, 2004.



Joseph Tuley
Notary Public for the State of SC
My commission expires My Commission Expires September 13, 2008

STATE OF SOUTH CAROLINA) EASEMENTS AND PROTECTIVE
) COVENANTS FOR
 COUNTY OF SPARTANBURG) SHOALLY BROOK SUBDIVISION

These restrictive and protective covenants made this 30th day of September, 2004, by Tuley & Associates, Inc., herein referred to as "Developer."

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WHEREAS, Developer deems it desirable, to accomplish the said purpose, to create an ARCHITECTURAL CONTROL COMMITTEE to which should be delegated the powers of administration of some of the aforesaid functions;

NOW, THEREFORE, for and in consideration of the aforementioned considerations, and in further consideration of the mutual covenants, conditions, reservations, servitudes, and easements created herein for the benefit of the Developer, its successors and assigns, and the future owners of the property, the Developer hereby declares, creates, and imposes upon the herein-described property the following covenants, restrictions, easements, reservations, and servitudes, which are hereby declared to be covenants running with the land:

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In the event of any conflict with the provisions hereof and any zoning ordinances or statutes or to subdivision laws or regulations that may be in effect on the date of the recording of these Covenants which would require a more stringent or strict standard, regulation, or use than required herein, then the terms, conditions, and requirements of such more stringent zoning or subdivision law, statute, or ordinance shall prevail.

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USES PROHIBITED AND PERMITTED IN RESIDENTIAL AREAS

All lots designated on the above-described recorded plat shall be solely for single-family residential dwellings, and Developer imposes the following covenants and restrictions on use of the property:

- 1) No professional office, business, trade, or commercial activity of any kind shall be conducted in any building on any lot, or portion thereof.
- 2) No lot shall be used, and no building shall be erected, altered, placed, or permitted to remain on any lot, for any purpose other than the following:
 - a) Construction of one (1) single-family dwelling per lot.
 - b) Accessory buildings, including one private garage per lot, but garage apartments are prohibited.
 - c) Temporary building for uses incidental to construction work, which building shall be removed upon completion or abandonment of the construction work. Any structure under construction must be completed within one year from the date of the commencement of its construction.
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 - e) No signs or bulletin boards shall be permitted on any lot except when used in connection with the sale of said lot or when used by the building contractor during the period of construction of a building on a lot.
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 - h) No tractor/trailer trucks will be permitted to remain parked upon the property or subdivision streets for a period of time to exceed five (5) consecutive days.
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Developer hereby conveys to the owner of each lot in the subdivision a perpetual, non-exclusive easement for access, ingress and egress across the roads shown on the subdivision plat, together with the perpetual right of easement of enjoyment and use in the common areas shown on the subdivision plat.

ARTICLE IV ARCHITECTURAL COMMITTEE CONTROL

The ARCHITECTURAL CONTROL COMMITTEE is created for the purpose of insuring the development of the real property as an area with a pleasing aesthetic appearance so as to preserve the harmony and consistency of the external design with the appearance of the existing structures in the subdivision. NO IMPROVEMENTS OF ANY KIND, INCLUDING MODIFICATIONS TO EXISTING STRUCTURES, SHALL TAKE PLACE ON ANY LOT BEFORE BUILDING PLANS AND SPECIFICATIONS HAVE BEEN APPROVED IN WRITING BY THE ARCHITECTURAL CONTROL COMMITTEE.

The ARCHITECTURAL CONTROL COMMITTEE shall be composed of Timothy Aho and Nathan Aho., as agents of Developer. In the event that either of the aforementioned persons is unable to perform his duties on the ARCHITECTURAL CONTROL COMMITTEE, the vacancy on the ARCHITECTURAL CONTROL COMMITTEE shall be filled by such person as is selected by Developer.

At such time as Developer has sold all of the lots in the subdivision, the ARCHITECTURAL CONTROL COMMITTEE shall be appointed by the prevailing homeowner's association and shall have the duties and responsibilities set forth herein.

The ARCHITECTURAL CONTROL COMMITTEE shall have absolute and exclusive privilege to refuse approval for any building plan, specification, material, design, grading, landscaping, or location of any structure which, in the opinion of the ARCHITECTURAL CONTROL COMMITTEE, is not suitable or desirable for any reason, whether it be aesthetic, that the plan does not comport with the future development plan of the subdivision, or that it does not meet the standard set forth herein. The ARCHITECTURAL CONTROL COMMITTEE shall take into consideration the suitability of the proposed materials, the quality of the proposed workmanship, harmony of the external design with the intended design of the committee or with existing structures. All construction activity must fully comply with all state, local, and federal regulations pertaining to such activity, for example, but not by way of limitation, construction permits, erosion control, environmental restrictions, and grading requirements. This paragraph shall also apply to the common areas.

In the event that the ARCHITECTURAL CONTROL COMMITTEE fails to approve or disapprove any matter within the scope of its authority within forty-five (45) days after its being submitted, prior approval by the ARCHITECTURAL CONTROL COMMITTEE shall be deemed to have been granted and no suit or claim against the party submitting the proposal shall thereafter be available to the ARCHITECTURAL CONTROL COMMITTEE or to any owner in the subdivision.

Applications for approval as required herein shall be made to the ARCHITECTURAL CONTROL COMMITTEE or to any member thereof. Each application for approval must bear a date of receipt and be initialed by a representative of the ARCHITECTURAL CONTROL COMMITTEE and the owner or his representative submitting the application, and the date of delivery of the plan to the ARCHITECTURAL CONTROL COMMITTEE shall be the date of the commencement of the forty-five day approval period.

In order to prevent duplication of buildings or improvements, the ARCHITECTURAL COMMITTEE is vested with full authority to approve or disapprove plans for the construction of any structure or improvement with its major features being so similar to an existing structure or improvement as to be construed as a practical duplication thereof.

Prior to commencement of construction of any addition or improvement to an existing dwelling or structure on a lot in the subdivision, the lot owner shall submit to the ARCHITECTURAL CONTROL COMMITTEE the plans and specifications, including elevations and plats, which shall contain and reveal all pertinent information necessary for the committee to act thereon. If the committee requests from the owner additional information, the forty-five days for approval shall be extended by the number days from

the date of the committee's request for the additional information and the date that the information is produced by the owner. The committee's approval or disapproval shall be in writing, addressed to the owner at the address given to the committee by the owner when the plans were submitted. If the committee's decision is not hand delivered, the date of delivery to the owner shall be the date on which the decision was placed in the US mail, postage paid, and addressed to the owner, or the date of the placing of the decision in an overnight-delivery collection receptacle.

ARTICLE V WAIVER OF SETBACK, LOCATION, AND SIZE OF IMPROVEMENTS

The ARCHITECTURAL CONTROL COMMITTEE is authorized to waive compliance with, approve, or ratify in the construction or alteration of any building or structure upon the real property, or the use or failure to use any of the requirements set forth herein if, in the opinion of all of the members of the ARCHITECTURAL CONTROL COMMITTEE, the same shall be necessary to prevent undue hardship because of special circumstances attendant to the property involved. The waiver, approval, or ratification by the ARCHITECTURAL CONTROL COMMITTEE shall be binding upon all persons, and the powers of waiver herein conferred upon the ARCHITECTURAL CONTROL COMMITTEE shall be construed liberally so as to affect any matters or things included with the terms and conditions of these covenants.

ARTICLE VI AMENDMENTS AND MODIFICATION

The terms, provisions, and restrictions set forth herein may be amended upon the written approval by two-thirds of the number of owners of lots in the subdivision. If an owner owns more than one lot, that particular owner shall cast one vote for each lot owned. Any amendment to the terms, provisions, covenants, or restrictions of this Declaration shall become effective only upon the recording in the RMC for Spartanburg County, South Carolina, of an instrument which (a) sets forth the amendment; (b) states that the approval of two thirds of the owners has been given and obtained; and (c) is signed and acknowledged by each owner consenting to the modification or amendment

No lot owner may impose additional covenants, restrictions, or conditions upon any property in the subdivision without prior approval of the ARCHITECTURAL CONTROL COMMITTEE.

ARTICLE VII TERM AND ENFORCABILITY

If any owner shall violate any of these covenants without prior approval obtained

in the manner set forth herein, it shall be lawful for any owner of any real property in the subdivision to prosecute any proceeding, at law or in equity, against the offending owner to prevent the owner from continuing the violation or to recover damages for such violation. The invalidation of any one or more of these covenants by an order of a court of proper jurisdiction shall not affect the enforceability of the other provisions herein.

If any of the covenants contained herein are contrary to the requirements, policies, or recommendations of HUD, the VA, or any other recognized institution, agency, public or private, granting or insuring loans, and shall render any lot in the subdivision unacceptable for any such loan, then the Developer shall have the authority to amend, alter, or annul any covenants as may be necessary to make any of the property acceptable and eligible for such loan.

These covenants shall be deemed to be covenants running with the land and shall remain in full force and effect for a period of twenty-five (25) years from the date of recording of these covenants and restrictions, and these covenants shall be automatically extended for successive periods often (10) years unless a written agreement executed by a majority of the then lot owners amending, modifying, or canceling these restrictions is recorded.

ARTICLE VIII HOMEOWNERS' ASSOCIATION AND PROPERTY RIGHTS OF OWNERS

Every owner shall be a member of the SHOALLY BROOK HOMEOWNER'S ASSOCIATION (hereinafter "the Association"), which membership 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 charge reasonable fees for the maintenance of the entrance to the subdivision and of the common areas; and
- (b) The right of the Association to suspend voting rights of an owner for any period not to exceed 60 (sixty) days for any infraction of its published rules or regulations.

The Association shall be formed when the Developer has sold seventy percent (70%) of the lots within the development. Commencing January 1 of the year following the date on which 70% of the lots have been sold by the Developer, the Association shall begin collection of necessary assessments from each owner. Each owner, by acceptance of a deed for any lot within the subdivision, whether or not it is expressed in the deed thereto, hereby covenants and agrees to pay to the Association (1) annual assessment charges, and (2) special assessment charges for capital improvements, such assessments to be established and collected as herein provided. The annual and special assessments,

together with interest, costs, and reasonable attorney's fees, shall be a charge and a continuing lien on the lot against which each such assessment is made. Each assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of the lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by such successors.

The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents, as well as the esthetics, of the subdivision. The Association shall use the funds accumulated by the annual assessment for maintenance of the common areas, to include, but not be limited to, installation and maintenance of lighting, construction of signs, maintenance of the retention pond, fencing, roads, road signs, and any other component parts of the common areas, and taxes or assessments against the common area.

The amount of the assessments shall be determined by the Association. Assessments are due and payable on June 1 of each year, and the amount of the annual assessment shall be set each year by the Association. The annual assessment shall be prorated according to the days remaining in the calendar year following the date of purchase of the lot.

In addition to the annual assessment, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement in the subdivision, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes from each class of members of the Association voting in person or by proxy at a meeting duly called by the Association.

Written notice of any meeting called for the purpose of levying a special assessment shall be sent to all members not less than thirty (30) days prior to the date of the meeting of the Association. At the first such meeting called, the presence of the members or of proxies entitled to cast sixty (60%) percent of all of 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 at the subsequent meeting, a quorum shall be one half (1/2) of the required number for a quorum that was required at the first meeting.

Both annual and special assessments must be fixed at a uniform rate for all lots. Special assessments may be collected on a monthly basis if so designated by the Association. The Association shall fix the amount of the annual assessment against each lot at least thirty (30) days in advance for each annual assessment period. Written notice of the annual assessment shall be sent to each owner subject thereto. The due date shall be established by the Association.

Any assessment not paid within thirty (30) days after the date on which it is due

shall bear interest from the due date at the legal rate assessed against court judgments in Spartanburg County. The Association may bring legal action against the owner personally obligated to pay the same or may foreclose the lien against the lot. No owner may waive or escape from liability for payment of the assessments by abandonment of his lot.

ARTICLE IX GENERAL PROVISIONS

The owner of each lot shall send written notice to the Association of the conveyance of the lot to owner. Owner shall include in the notice owner's mailing address for receipt by owner of notices from the Association and a current phone number at which owner may be reached. Owner shall be responsible for giving the Association notice of any change in owner's address or phone number, and delivery by the Association of notices to owner at the last address given by owner to the Association shall constitute actual and complete notice to said owner.

Additional residential property may be annexed to the subdivision property. Developer retains the right to use any lot or lots owned by Developer as a street or streets for access to the annexed property so as to make the annexed property a part of this subdivision. All properties annexed to the subdivision shall be subject to these covenants and restrictions and shall be annexed only at the absolute sole discretion of the Developer.

The Association shall maintain all common areas in the subdivision.

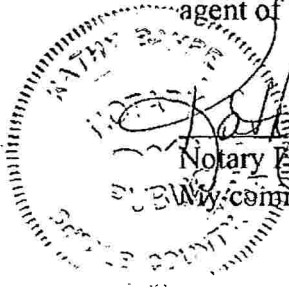
In witness whereof the undersigned has caused this EASEMENTS AND PROTECTIVE COVENANTS FOR SHOALLY BROOK SUBDIVISION to be executed this date and year above-written.

<p><u>Carroll Y. Baw</u> Witness</p> <p><u>Johny Baker</u> Witness</p>	<p>Tuley & Associates, Inc.</p> <p>By: <u>[Signature]</u></p> <p>Title: <u>Vice President</u></p>
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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

ACKNOWLEDGEMENT

The foregoing instrument was acknowledge before the undersigned Notary Public
by ~~Debra L. Combs~~ in his capacity as the duly appointed and authorized
agent of Tuley & Associates, Inc., this 30th day of September, 2004.



[Signature]
Notary Public for the State of SA
My commission expires My Commission Expires September 13, 2003