

STATE OF SOUTH CAROLINA  
 COUNTY OF SPARTANBURG

DECLARATION OF COVENANTS  
 CONDITIONS AND RESTRICTIONS  
 FOR MOSTELLER SUBDIVISION  
 AS SHOWN ON SURVEY ENTITLED  
 MOSTELLER SUBDIVISION AND  
 RECORDED IN THE RMC OFFICE FOR  
 SPARTANBURG COUNTY, S.C., IN  
 PLAT BOOK 154, PAGE 904 DATED  
 OCTOBER 9, 2003

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



THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, made this 14  
 Day of March, 2005 by Clarence V. Gibbs hereinafter referred to Declarant.

WITNESSETH:

WHEREAS, Declarant is the Managing Partner of Hammett Road, LLC owner of that tract of land in the  
 County of Spartanburg, State of South Carolina, which property is more particularly described as follows:

SEE ATTACHED EXHIBIT A

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold  
 and conveyed subject to the following easements, restrictive covenants and conditions, which are hereby  
 imposed against the property described above for the purpose of protecting the value and desirability of said  
 property and to accomplish the systematic, uniform and harmonious development of said property into a  
 subdivision; that the covenants, conditions and restrictions hereinafter set forth shall run with the real property  
 described above and be binding upon all parties having any right, title to interest in the described property or  
 any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof until  
 January 1, 2015 at which time said covenants, conditions and restrictions shall automatically extended fro  
 successive periods of ten (10) years each unless, by vote of two-thirds of the then owners of the lots into which  
 the property described above shall have been developed, the within covenants, conditions and restrictions are  
 changed or amended, in whole or part. In the event such vote shall take place the vote shall be cast by the legal  
 titleholder of each individual lot, provided further, for each lot, there shall be only one vote in the event legal  
 title thereto is held jointly or otherwise.

If the undersigned, its successors or assigns, or any owner of any lot, their heirs or assigns, should violate or  
 attempt to violate any of the covenants, conditions and restrictions herein contained, it shall be lawful for any  
 person or persons owning any of the real estate described above to prosecute any proceeding at

law or in equity against the person or persons violating or attempting to violate same, to either prevent his or them for so doing, or to recover damages for such violations, or, in the event of the failure to secure the necessary approval as set forth in Article IV hereof, to require the removal of any non-approved building or improvement, as appropriate.

Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**DEVELOPER'S DISCLAIMER.** Clarence V. Gibbs, Developer, (including the Developer in its capacity as the Architectural Committee), and his heirs and assigns, his agents, consultants and employees, hereby disclaim any and all warranties, express or implied, of good workmanship, design, habitability, quality, fitness for any particular purpose of merchantability or any representation concerning same, and no warranties of any kind shall arise as a result of any plans, specification, standards or approvals made of approved by Developer, or its nominees, and Developer shall not be liable to any owner or any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against any owner or such other person arising out of or in any way related to the subject matter of any review, acceptance, inspection, permission, consent or required approval which must be obtained from the Developer, whether granted or denied. Furthermore, while Developer is not aware of any lots contained fill dirt, Developer expressly disclaims suitability of a lot for residential construction, and all future owners shall be responsible for determining the suitability of a lot for residential construction.

#### ARTICLE I - GENERAL

- (1) All lots shall be used exclusively for residential purposes. Single family dwellings only.
- (2) No tent, shack, garage, barn, storage building or other out-building shall be erected upon any lot without approval from the architectural committee and, if approved, it shall not be used as a residence either temporarily or permanently. No house trailer, modular home, manufactured home or mobile home shall be placed on any lot either temporarily or permanently. Any boat, camping trailer, recreational vehicle, utility trailer and/or similar equipment used for the personal enjoyment of a resident of a lot shall at all times be stored in a garage or approved outbuilding (Article III Section III) out of public view.
- (3) No obnoxious or offensive activity shall be permitted anywhere on the property nor shall anything be done which may become an annoyance, nuisance or menace to the neighborhood. No lot of any part thereof shall be used for any business, commercial or public purpose and no commercial vehicle shall be parked in the subdivision, temporarily, or permanently.
- (4) No animals shall be kept, maintained or quartered on any lot or tract in the subdivision. No more than two (2) mature household pets may be kept at any single family residence building so long as said animals do not constitute a nuisance or menace to the neighborhood. Portable fence kennels are not allowed. Permanent kennels must be approved prior to construction (Article IV).
- (5) Tall shrubbery or hedges shall be trimmed to reasonable limits where traffic hazards may be created. It is the responsibility of each lot owner to prevent any unclean, unsightly or unkempt conditions of building or grounds, on the owner's property which shall tend to substantially decrease the aesthetic impact of the neighborhood. This shall include regular mowing of any lot where construction has not begun.
- (6) No inoperable motor vehicle, wrecked vehicle or sizeable part thereof, or motor vehicle not currently licensed shall be kept on any lot or street except in a fully enclosed building, out of sight.
- (7) No transfer tractor, transfer trailer, tractor trailer combinations or any vehicle with 6 wheels or more shall be allowed in the subdivision at any time except for loading or unloading.

- (8) It is the responsibility of each lot owner and all persons or entities employed by such person to assist in the construction of any building or improvement on said lot to control the discharge of surface water or sediment from such lot onto or upon any other part of the subdivision. This will include the creation of swells on property lines to carry surface water to natural drainage areas and silt fencing to the satisfactions of Spartanburg County.
- (9) Any damage(s) to any street, curb or gutter which occurs as a result of construction activity relating to any lot shall be promptly repaired to Spartanburg County specifications at the expense of the owner of said lot.
- (10) All tools, lawn mowers or equipment of any kind must be contained within a fenced or enclosed area and hidden from public view when not in use. This shall also apply to any trash receptacles.
- (11) No house or portion of another house shall be moved into this subdivision. All homes must be site built (Article IV).
- (12) No signs shall be permitted on any lots except that a single sign offering the property for sale (not to exceed two by three feet in size) may be placed on any lot, except that Clarence V. Gibbs has the right to use those signs which are necessary for the development of the subdivision. Signs at either side of the entrance to the subdivision (including the common areas) are prohibited, except that a single open house sign (not to exceed two by three feet in size) will be allowed ONLY the day of an open house and a single yard sale sign (not to exceed two by three feet in size) will be allowed ONLY the day of a community yard sale (which must be approved by the Homeowners Association). See Paragraph 18 below.
- (13) All residences shall have a uniform mailbox, determined by Declarant, which is to be provided by each lot owner. All boxes and posts must be painted and maintained in a good state of repair at all times by the resident.
- (14) The property within this subdivision is hereby declared to be a wildlife sanctuary and all hunting or shooting, is hereby prohibited.
- (15) The owner of each lot shall cause written notice to be delivered to the Homeowners Association within 14 days of the conveyance of any lot by him advising the Homeowners Association the new owners name and address.
- (16) No satellite or television dish (not to exceed 18") shall be constructed or placed on any lot except where screening and location (at the rear portion of resident building clearly away from street view) have been approved by Architectural Committee.
- (17) No above ground pool shall be constructed or placed on any lot in the subdivision. All pools must be enclosed with a fence that is in compliance with Article III, Paragraph 4.
- (18) Yard sales will be allowed by the approval of the Homeowners Association. (Not to exceed four (4) community yard sales per year).
- (19) No portion of a lot or street within the subdivision shall be used for the operation of any non-licensed motorized vehicle such as motorcycles, mini-bikes, go-carts, four wheelers or similar vehicles.
- (20) Swing sets, sandboxes, gym sets and any such similar devices or structures primarily for children's use and enjoyment must be located on the rear portion of a lot.
- (21) No street parking shall be allowed on a regular basis for any vehicle. Also, no buses, trucks or trailers other than pickup trucks shall be parked on a lot or in the street right of way, except for loading or unloading. See Paragraph 7 above.
- (22) Should any structure be damaged in whole or in part, by fire or other acts of God, reconstruction is to be completed or debris must be removed within six (6) months.

## ARTICLE II: EASEMENTS

- (1) In addition to other easements as are shown on the recorded subdivision plat, a five-foot easement and a ten foot easement is reserved over and across all side and rear lot lines, respectively, for drainage, utility, cable television, water, power, and telephone installation and maintenance; provided that when more than one lot shall be used as a site for only one residence, the aforesaid five-foot easement and ten-foot easement shall apply only with respect to the exterior lines of such consolidated lot. Declarant specifically reserve the right to grant specific easements to any entity or organization, public or private, to provide any of the utility services listed herein at any time following the date hereof until any specific lot shall be conveyed by Declarant. The right is reserved to authorize the cable television, telegraph, and electrical street lights on any of the streets and easements shown on the recorded subdivision plat. An easement for the installations and maintenance of utilities and drainage facilities is reserved over said streets and easements.

ARTICLE III: SET BACK, LOCATION AND SITE  
OF IMPROVEMENTS AND OF BUILDING PLOTS.

- (1) Nothing herein contained shall be construed to prohibit the use of more than one lot or portions of one and more lots as a single residential building site, provided that said lot would otherwise meet the requirement as to size, setback line and directional facing of said building as determined by the Declarant.
- (2) No building shall be erected on any lot nearer to the front lot line or nearer to the side street line than the building set back line shown on the recorded plat. Any such building shall face toward the front line of the lot except that buildings to be constructed on corner lots shall face in the directions designated by the architectural committee. No building shall be located nearer to any interior side lot line than 10 feet. Setback lines stated in restrictions supersede all setback lines on plat.
- (3) No detached building, other than the one intended to be used as a residence, shall be erected without approval as provided in Article IV and, if approved, shall be placed no nearer to any lot line than 10 feet. Setback lines stated in restrictions supersede all setback lines on plat.
- (4) No wall, fence or hedge shall be erected across or along the front of any lot. Fencing allowed in rear yards (from the rear corner of the resident building to the rear lot line) shall not exceed six feet in height. Black chain link, black ornamental iron, black wrought iron, brick, rock, or stone, white or black vinyl and wood fencing will be approved. Wood fencing will be shadow box style painted flat black on all sides and maintained regularly. All fencing must be installed by a professional installer. No portable fencing, including dog pens, shall be allowed. Fencing on any corner lot must be specifically approved.
- (5) The total area of all driveways shall be paved by plant mix concrete. All temporary driveways (during construction) must have gravel to prevent mud on the subdivision streets. The owner/builder will be responsible for removing any mud on subdivision streets place by them or their subcontractors, suppliers, etc.
- (6) No lot shall be recut so as to face in any direction other than is shown on the recorded plat nor shall it be recut so as to make any building site smaller than is provided for herein. Clarence V. Gibbs reserves the right to amend this provision at his discretion.

- (7) Each residence erected on above mentioned lots shall contain a minimum of 2000 square feet of heated floor space, plus a minimum of 400 square feet of attached enclosed garage (side entry). In the event that a residence will have a basement used as a garage, that residence shall be required to have a minimum of 2300 square feet of heated space above the basement level. The front elevation of any resident building must be a minimum of 12 inches above the finished grade of the front yard. Any approved outbuilding will require the same approved construction material and roof pitch of the resident building. Each roof system shall have a minimum of 9/12 pitch using architectural shingles. Brick, stone and hardi-board are welcomed. Only 35% of the total exterior of any residence or approved outbuildings shall be composed of vinyl siding and will be the builder's responsibility to be in compliance with the maximum 35% guideline.
- (8) The final plat for Mosteller is referred to in Exhibit "A". Each lot will be deeded from the above referenced plat. It is the responsibility of each lot owner/builders to verify property lines and all lot pins before any grading has begun in order to be in compliance with setback lines and alleviate encroachments.
- (9) Clarence V. Gibbs may waive any minimum set back line or alter any property line as deemed necessary for the development of the subdivision.

#### ARTICLE IV: APPROVAL OF PLANS AND CONSTRUCTION ARCHITECTURAL COMMITTEE

- (1) The Architectural Committee shall be composed of Clarence V. Gibbs and/or his assigns. For the purpose of these restrictions the term Declarant and Architectural Committee may be used interchangeably. In all matters, a majority vote shall govern.
- (2) No improvements shall be erected, placed, altered or changed on any lot in this subdivision until and unless the building plans, specifications and plot plan showing the proposed type of construction, exterior design, location of residence, walks, drives and fences have been approved in writing by the Architectural Committee as to conformity and harmony of external design and consistency of plan with existing residences on other lots in the subdivision and as to the location of the structure with respect to topography and finished ground elevation.
- (3) The Architectural Committee shall have the right to refuse to approve any plans, specifications and/or plot plans, taking into consideration the suitability of the proposed building or other improvement, the materials or which it is to be built, whether or not it is in harmony with the surroundings and the effect it will have on other residences already constructed. The approval or disapproval shall be at the sole discretion of Clarence V. Gibbs, his successors or assigns.
- (4) Prior to the commencement of any construction, each owner shall submit to the Architectural Committee, in duplicate, plans and drawings, which shall contain at a minimum:
  - (a) front, rear and side elevations;
  - (b) floor plan;
  - (c) the area of heated floor space;
  - (d) exterior building material to include manufacturer, color and texture;
  - (e) exterior trim color;
  - (f) roofing material and color;
  - (g) site plan;
  - (h) estimated completion dates of all construction and improvement;
  - (i) special treatment required to alleviate problems anticipated due to changes in topography

The documents and other information required to be submitted shall be delivered or mailed to Clarence V. Gibbs, 11841 Asheville Highway, Inman, SC 29349. One complete set shall be retained by the Architectural Committee and the second complete set shall be returned to the applicant, with the Architectural Committee's approval or disapproval clearly noted thereon.

- (5) The Architectural Committee is authorized to approve or ratify the construction or alteration of any building violations regarding the Set Back, Location and Size of Improvements if, in the opinion of the Architectural Committee, such shall be necessary to prevent undue hardship.
- (6) All construction by any owner shall be performed by a licensed contractor or licensed builder.
- (7) Once construction is commenced, each owner shall be responsible for insuring that such work proceeds at an orderly and timely pace, with no work stoppage in excess of 14 consecutive days, acts of God excepted.
- (8) After the foundation for new construction has begun on any lot in the subdivision, the owner shall have the work carried on continuously by a licensed builder without unnecessary delay, and shall have 12 months from the time the foundation has begun to complete the residence, driveway, landscape the yard and plant shrubbery.
- (9) The Declarant expressly reserves the right to assign any of the duties, powers, functions and approval authority set forth herein to any assignee at Declarant's sole discretion.
- (10) The completion of improvements upon a lot shall include the professional landscaping of the yard, including the grassing or sodding of the yard, the planting of shrubs and/or decorative plants and trees along the front elevation of the resident building. In all cases the front yard must be sodded.

#### ARTICLE V: ASSOCIATION OF OWNERS

- (1) On or before January 1, 2006, all owners including the Declarant shall organize Mosteller Homeowners Association, Inc. to be chartered as a non-profit corporation, in accordance with the laws of the State of South Carolina. Every person who is a record owner of a fee or undivided fee interest in any lot which is subject to these covenants shall be a member of the Association. There shall be only one class of membership and such members shall be entitled to one 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 the owners determine, but in no event shall more than one vote be cast with respect to any lot, and, further, no fractional vote shall be cast with respect to any lot. Each property owner, except the Declarant, shall pay \$200.00 for year 2006 for dues to defray costs for expenses for lighting, maintenance, etc. For future years see Paragraph 3 below.
- (2) The affairs of the Association shall be controlled by a Board of Directors, duly elected by members.
- (3) The Homeowner's Association shall be entitled to collect dues, on an annual basis, with annual adjustments, if necessary, assessed against each lot in an amount to be determined by the Board of Directors. These dues shall be administered by the officers of the Association and used for the payment of necessary expenses for the operation of the Homeowner's Association and for the maintenance of any vacant and untended lot or unkempt improved lot and for the payment of any common utility expenses and for the maintenance of any property deeded to the Homeowner's Association.
- (4) In the event the Homeowners Association's Board of Directors and Officers shall deem it necessary to expend any sum of money for the maintenance and upkeep of any improved and unimproved lot, the Board shall be empowered to levy a special assessment applicable to that lot, but only in an amount equal to any sum or sums which had to be expended for that purpose. If any such special assessment or annual dues payment, is no paid within thirty (30) days of its due date, the amount due shall bear interest from the date of delinquency at the rate of eighteen (18%) percent interest.

- (5) The Declarant may delegate and transfer to the Homeowners Association any rights, duties, and powers which Declarant has expressly reserved unto himself in these Covenants and Restrictions.
- (6) If any dues or assessments are not paid when due, then such dues or assessments shall become delinquent and shall (together with interest thereon at the rate of Eighteen (18%) percent per annum from the date and the cost of collections as hereinafter provided) become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made. The amount of any such dues or assessments, together with reasonable attorney fees as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment became due. In the case of co-ownership, all such co-owners shall be jointly and severally liable for the entire amount of the dues or assessments.  
If the assessment or dues are not paid within thirty (30) days after the due date, the Homeowners Association may bring an action at law against the owner or owners personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessments or dues, all attorney fees and costs of collection and in the event a judgment is obtained, such judgment shall include prejudgment interest as hereinabove provided together with reasonable attorney fees as may be fixed by the court together with the costs of the action.
- (7) The lien of the assessments or dues provided for herein shall be a lien placed upon the properties subject to assessments or dues. Sale or transfer of the property shall not relieve such property from liability for any assessments or dues thereafter becoming due, nor from the lien or any such subsequent assessments or dues.
- (8) Special assessments for capital improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the approval of two-thirds (2/3) of the votes of each owner who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.
- (9) Quorum for any action. The quorum required for any action respecting assessments shall be the lot owners present at a meeting duly called and convened.
- (10) Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of any special assessment and at least thirty (30) days in advance of the due date of any assessment prepare a roster of the properties and assessments applicable thereto which shall be kept in the Office of the Association and shall be open to inspection by any lot owner. Written notice of the assessment shall thereupon be sent to every lot owner subject thereto. The Association shall upon demand at any time furnish to any lot owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.
- (11) Term and election of Board of Directors: The Board of Directors shall be elected for a period of one (1) year. Election of each officer will require a 2/3 vote of each lot owner who is voting in person or by proxy.
- (12) Enforcement by Homeowners Association. Except for approvals and rights expressly reserved herein unto the Developer or its nominee, the Mosteller Homeowners Association, Inc., shall have standing to enforce the within restrictions, covenants and obligations in the same manner and to the same extent as does the Developer or any other owner. The powers and authorities herein granted to the said

Association shall be in addition to such other and further rights, duties and obligations which may be set forth in the By-Laws of the Association adopted in accordance with the terms hereof.

- (13) Board Authorization. All actions of the Association shall be authorized actions if approved by the Board of Directors of the Association in accordance with its By-Laws, unless the terms of this instrument provide otherwise. Any change in the authorities given to the Board of Directors will require the approval of 2/3 votes of each lot owners who are voting in person or by proxy at an association meeting that has given thirty (30) days notice to said meeting describing in detail to the lot owner any proposed change concerning any future authority granted to the Board of Directors. In the event the Association has cited a lot owner for any violation of these covenants and restrictions the Association will be authorized to impose fines as they deem appropriate and will be subject to the same lien arrangement as discussed in Article V, Paragraph 7, if said fines are not paid on a timely basis as determined by the Association.
- (14) Clarence V. Gibbs reserves the right to alter or amend subdivision lot lines as they relate to common areas prior to transferring said common areas to Homeowners Association.

IN WITNESS WHEREOF, the undersigned have set his hand and seals this 14<sup>th</sup> day of March, 2005.

Nancy C. Spangone  
Cynthia M. Hogan

Clarence V. Gibbs  
 Clarence V. Gibbs

STATE OF SOUTH CAROLINA    )  
   )  
 COUNTY OF SPARTANBURG    )

ACKNOWLEDGEMENT

I Cynthia M. Hogan a Notary Public, do hereby certify that Clarence V. Gibbs

Personally appeared before me this 14, March, 2005.

Cynthia M. Hogan  
 Notary Public for South Carolina  
 My commission expires: 2-10-10

EXHIBIT A

All those certain pieces, parcels or lots of land, lying and being in the County of Spartanburg, State of South Carolina, being shown and designated as Lot Nos. 1 through 38, containing 30.860 acres in the aggregate on a survey prepared for MOSTELLER, by Souther Land Surveying, dated July 2, 2003, recorded October 9, 2003, in Plat Book 154 at Page 904, RMC Office for Spartanburg County, South Carolina.

This is a portion of the property conveyed to Hammett Road, LLC by deed of Clarence V. Gibbs, dated August 22, 2003, recorded in Deed Book 78N, page 336, aforesaid records.

Tax parcel No.: 5-07-00-046.06