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COUNTY OF COBB

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Jay C. Stephenson

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR HAMILTON TOWNSHIP SUBDIVISION

THIS DECLARATION, made this 10th day of October, 1995, by HAMILTON TOWNSHIP JOINT VENTURE, a Georgia joint venture (hereinafter referred to as "Developer"), as follows:

W I T N E S S E T H:

WHEREAS, Developer is the owner of the subdivision known as HAMILTON TOWNSHIP SUBDIVISION (the "Subdivision"), and being a subdivision of all those certain lots, tracts or parcels of land situated, lying and being in Land Lots 238 and 239 of the 20th District, 2nd Section, Cobb County, Georgia, and being more fully described in Exhibit "A" which is incorporated herein and made a part hereof by reference.

WHEREAS, Developer desires to provide for the preservation and enhancement of the property values in Hamilton Township Subdivision, and to this end desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which are for the benefit of the Property; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values in Hamilton Township Subdivision, to create an agency to which should be delegated and assigned the powers of owning, maintaining and administering the common area and improvements thereon, if any and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer may cause to be incorporated under the laws of the State of Georgia, the Hamilton Township Homeowners Association, Inc., a non-profit corporation, for the purpose of exercising the aforesaid functions.

NOW THEREFORE, Developer declares that the real property described above is and shall be held, transferred, sold, mortgaged, conveyed, leased, occupied and used subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I
DEFINITIONS

Section 1. "Architectural Control Committee" ("ACC") shall mean and refer to Developer, or such other individuals as Developer may appoint, until all lots in Hamilton Township Subdivision have been fully developed and permanent improvements constructed thereon and sold to permanent residents, or at such other time as the Developer in its sole discretion shall turn the appointment of ACC members over to the Association. When the Developer conveys ACC appointment rights to the Association, members of the ACC shall thereafter be elected by majority vote of the then Owners of the Lots and the owners of any association formed by them shall control the ACC and shall be solely removable for its costs.

Section 2. "Association" shall mean and refer to Hamilton Township Homeowners Association, Inc., its successors and assigns.

Section 3. "Board" shall mean and refer to the Board of Directors of the Association.

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SMITH, EUBANKS, SMITH & DARDEN, P.C.
Post Office Box 1186
Marietta, Georgia 30061

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Section 4. "Common Area" shall mean all real and personal property now or hereafter owned by the Association or the Developer which is provided for the common use and enjoyment of the Owners.

Section 5. "Common Expenses" shall mean and refer to the actual and estimated expenses of acquiring, operating, constructing and maintaining the Common Area, including any reasonable reserve, all as may be found to be necessary and appropriate initially by the Developer, and, in the event title to the Common Area is transferred over to the Association, then by the Board pursuant to the Declaration and the By-laws and Articles of Incorporation of the Association.

Section 6. "Declaration" shall mean the covenants, conditions, restrictions and easements and all other provisions herein set forth in this entire document, as may from time to time be amended.

Section 7. "Developer" shall mean and refer to Hamilton Township Joint Venture, a joint venture which originally is comprised of Elliott/Waldrep Properties, Inc.; Eugene C. Kelley Enterprises, Inc.; and Hamilton Township, L.P. or any successor in title or any successor in interest to Hamilton Township Joint Venture, provided it is stated in the instrument of conveyance that said successor in title or successor in interest is to be the Developer.

Section 8. "Lot" shall mean and refer to residential lots within the Property, as well as any future lots which are subject to the within covenants, conditions, restrictions and easements by the Developer in Hamilton Township Subdivision or any expansion thereof by Developer.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons, of the fee simple title to any lot which is part of the Property, but excluding those having such interest merely as security for the performance of an obligation, and further excluding the builder of any Structure on any Lot who holds such title solely for resale upon the completion of such Structure, and further excluding the Developer.

Section 10. "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

Section 11. "Property" shall mean and refer to that certain real property described in Exhibit "A" attached hereto and made a part hereof by reference, together with such additional property as may be later added to this Declaration.

Section 12. "Structure" shall mean and refer to:

(i) any thing or object the placement of which upon any Lot may affect the appearance of such Lot, including by way of illustration and not limitation, any residential home, any building or part thereof, garage, porch, gazebo, shed, workshop, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, recreational facility, tennis court, fence, curbing, paving, wall, tree, shrub, sign, signboard, mailbox, driveway, temporary or permanent living quarters or any other temporary or permanent improvement to such Lot; and

(ii) any excavation, grading, fill ditch, diversion dam or other thing, object or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any Lot.

ARTICLE I
ARCHITECTURAL CONTROL COMMITTEE

Section 1. Purpose, Powers and Duties of the Architectural Control Committee

(a) The purpose of the Architectural Control Committee is to assure that the installation, construction or alteration of any Structure on any Lot is in accordance with the standards determined by the Architectural Control Committee. To the extent necessary to carry out such purpose, the Architectural Control Committee shall have all of the powers and duties to do each and every thing necessary, suitable, convenient or proper for or in connection, with or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications for any installation, construction or alteration of any structure on any Lot.

(b) To preserve the architectural appearance of the neighborhood, no construction or placement of improvements of any nature whatsoever shall be commenced or maintained by any builder or Owner, or his or her family, tenants, visitors, guests, servants, and agents with respect to the exterior of any house or with respect to any other Structure to be placed upon a Lot, including without limitation the construction or installation of sidewalks, driveways, landscaping, decks, patios, swimming pools, tennis courts, exterior lighting, recreational equipment, greenhouses, playhouses, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made, unless and until the plans and specifications showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design, location, and appearance in relation to surrounding structures and topography by the Architectural Control Committee. The Architectural Control Committee shall have the sole discretion to determine whether the plans and specifications submitted for approval are acceptable and in compliance with the total scheme of the neighborhood. If same are not approved, or disapproved within thirty (30) days from date submitted, then same shall be approved by default.

(c) The members of the ACC shall determine how often it shall meet and how responsibilities will be delegated.

(d) PLANS AND SPECIFICATIONS ARE NOT APPROVED FOR ENGINEERING OR STRUCTURAL DESIGN OR QUALITY OF MATERIALS, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS NEITHER THE ARCHITECTURAL CONTROL COMMITTEE, NOR THE DEVELOPER, NOR THE BOARD, NOR THE ASSOCIATION, NOR THEIR DESIGNEE, ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS. NEITHER DEVELOPER, THE ARCHITECTURAL CONTROL COMMITTEE, THE ASSOCIATION, THE BOARD, OR THEIR DESIGNEE, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES AND AGENTS OF ANY OF THEM SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER OF PROPERTY OR LOT AFFECTED BY THESE RESTRICTIONS BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, OMISSION OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON OR OWNER WILL NOT BRING ANY ACTION OR SUIT AGAINST DEVELOPER, THE ARCHITECTURAL CONTROL COMMITTEE, THE ASSOCIATION, THE BOARD, OR THEIR DESIGNEE, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES AND AGENTS OF ANY OF THEM TO RECOVER ANY 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 JUDGMENT, NEGLIGENCE, OMISSION OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF 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 III
MEMBERSHIP AND VOTING RIGHTS OF THE ASSOCIATION

Section 1. Membership. Every owner of a Lot which is subject to this Declaration shall be a mandatory member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation, and further is not intended to include the builder of any Structure on any lot who holds title to such Lot solely for resale upon completion of the Structure. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to this Declaration and shall pass automatically to an Owner's successor-in-title to the lot.

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

Class A: Initially, the Class A members shall be all Owners with the exception of the Developer. The Class A 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 they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot. If multiple owners of a lot cannot unanimously decide how to cast their vote then no vote may be cast regarding the ownership by that particular Lot.

Class B: The Class B member shall be the Developer who shall be entitled to five (5) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events:

- (a) fifteen (15) years from the date of this Declaration; or;
- (b) when, in its discretion, the Developer so determines; or
- (c) upon the sale by Developer of all of the Lots, unless such sale is to a new Developer to which Developer's rights under this Declaration have been specifically assigned in writing.

Upon the termination of the Class B membership, the Developer shall be a Class A member entitled to one vote for each Lot which the Developer still owns.

Section 3. Election of Officers and Directors. So long as Developer is a Class B member, the Developer shall have the exclusive right to appoint the members of the Board of Directors of the Association and the officers of the Association.

ARTICLE IV
PROPERTY RIGHTS

Section 1. Member's Easement of Enjoyment. At the present time the Developer contemplates that it will provide a Common Area for recreational facilities. The Developer and/or the Association shall have the right, but shall not be required to dedicate property as Common Area or to add, modify, alter, exchange, delete or remove property as Common Area. In such event, subject to the provisions herein, every member of the Association shall have a right and easement of use and enjoyment in and to the Common Area from time to time designated for such purposes, which right and

seasement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

(a) the right of the Developer to adopt and rules and regulations governing the use of the Common Area;

(b) the right of the Developer to charge reasonable admission and other fees for the use of any recreational facility nor or hereafter located or constructed upon the Common Area and to impose reasonable limits on the number of guests who may use such recreational facilities.

(c) the right of the Developer to suspend an Owner's voting rights and rights to use any recreational facilities within the Common Area for any period during which any assessment of the Association against said Owner's Lot remains unpaid.

(d) the right of the Developer to borrow money for the purpose of improving the Common Area or any portion thereof, or constructing, repairing or improving any facilities located or to be located thereon, and to give as security a mortgage conveying all or any portion of the Common area.

(e) the right of the Developer 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.

(f) the easements reserved in Article VII of this Declaration.

The rights specified in Article IV, Section 1, subparagraphs (a)(b)(c)(d) and (e) shall be transferred to the Association automatically at the same time control and membership appointment rights are transferred by the Developer to the Association as provided above. In the event the Association desires to exercise the powers enumerated in Article IV Section 1 (d) above, and as part of said exercise of power, the Association desires to grant as security for such loan a mortgage or deed to secure debt to any lender conveying all or any portion of the Common Area, the Association must first have the consent of two thirds of the Class A and Class B members before granting such security interest.

Section 2. Declaration of Use. Any Owner may delegate, in accordance with any Bylaws of the Association, his right of use and enjoyment in and to the Common Area and the improvements thereon to the members and his family, his tenants, guests and invitees, subject to such regulations and fees as may be established from time to time by the Association.

Section 3. No Partition. There shall be no judicial partition of the Property or any part thereof, nor shall any Person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the Property has been removed from the provisions of this Declaration.

Section 4. Use of Recreational Facilities by Non-Owners. For as long as Developer shall have the right to subject additional property to this Declaration, Developer shall have the right to grant to persons who are not Owners or members of the Association the right to use the Common Property and recreational facilities, if any, which have been constructed by Developer. The extent and duration of nonmember use and the fee to be charged therefor shall be determined solely by Developer. For so long as Developer owns the Common Area, nonmember user fees shall be paid to Developer.

Developer hereby expressly reserves unto itself, its successors and assigns, a non-exclusive, perpetual right, privilege

and easement with respect to the Common Area, the recreational facilities, if any, and the Subdivision for the benefit of Developer, its successors, assigns and the above referenced nonmember users, over, under, in and/or on the Subdivision, without obligation and without charge to the foregoing, for the purposes of taking all actions related to or connected with the granting of nonmember use and the use by such nonmembers as described above. Such right, privilege and easement shall include, without limitation, the right of access, ingress, use and egress for vehicular and pedestrian traffic over, under, on or in the Subdivision roads, parking areas and walkways.

Developer shall not be liable for and is hereby held harmless from any failure of any nonmember to pay a nonmember user fee to the Association where required to do so by this Section. In such case the Association's sole remedy shall be to suspend the use right of the nonmember who has not timely paid until all amounts are paid in full. Developer shall also not be liable for and is hereby held harmless from any personal injury or property damage caused by a nonmember entitled to use the Common Area and recreational facilities constructed by Developer.

ARTICLE V
COVENANT FOR MAINTENANCE
AND CAPITAL IMPROVEMENTS ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest thereon and costs of collection thereof in addition to being a lien against each Lot, as hereinafter provided including reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when assessment became due. The personal obligation for delinquent assessments shall not pass to said Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Developer or the Association shall be used exclusively for promoting the health, safety, pleasure and welfare of the Owners of the Lots and the costs and expenses incident to the operation of the Association, including without limitation the acquisition, maintenance, construction and repair of the Common Area and improvements thereof, the maintenance of services for the Common Area furnished by the Developer or the Association, the purchase of insurance by the Association or the Developer, the repair and replacement of improvements on the Common Area, payment of all taxes, insurance premiums and all costs and expenses incidental to the operation and administration of the Association and the Common Area, including utilities, the maintenance and upkeep of landscape easement areas as set forth in Article VI, and the establishment and maintenance of a reasonable reserve fund or funds.

Section 3. Computation of Annual Assessments. After the Common Area has been conveyed by the Developer to the Association by a deed duly recorded in the records of the Clerk of the Superior Court of Cobb County, Georgia, it shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses of operating the Association for the coming year, such budget to include a capital contribution or reserve account in accordance with the capital needs of the Association.

The budget and the proposed annual assessments to be levied against each Lot shall be delivered to each Owner no later than ten (10) days prior to such annual meeting. The budget and the annual

assessments shall become effective unless disapproved at the annual meeting by either (i) Developer, so long as there is a Class B member, or (ii) a vote of a majority of the Owners voting in person or by proxy at such meeting on the date when there is no longer a Class B member. In the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then until a budget has been determined as provided herein, the budget and annual assessments in effect for the then current year shall continue for the succeeding year. If any budget at any time proves inadequate for any reason, the Board may call a meeting of the Association for the approval of a special assessment.

The annual maximum assessment may not be increased by more than five percent (5%) from the previous year's assessment without the assent of at least two-thirds (2/3) of each class of members at a meeting called for that purpose with at least sixty percent (60%) of the Lot owners or their proxies present after adequate notice. If sixty percent (60%) do not attend, a second meeting may be called with the same notice, and the quorum may be reduced to thirty percent (30%). The Developer or the Board of Directors may be permitted to increase the maximum annual assessment without a vote of the members, but such an adjustment shall not exceed five percent (5%) of the previous year's maximum assessment.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, special assessments for Common Expenses, applicable to that year only, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members of each class voting in person or by proxy at a meeting duly called for such purpose, and so long as such assessment applies to the appropriate category therefor.

Section 5. Notice 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 above shall be sent to all Owners and the Developer, if the Developer is still a Class B member, not less than ten (10) days nor more than thirty (30) days in advance of the meeting.

Section 6. Rate of Assessment. Annual and special assessments must be fixed at a uniform rate for all Lots within the special categories set forth hereinabove.

Section 7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on January 1 of each year as to all Lots upon which there exist occupied residences, including residences which are being leased and all unoccupied or unimproved Lots which are owned by parties other than Developer or builders of speculative homes. At the time of closing into a purchaser of a completed residence, there shall be paid the sum of Three Hundred Sixty and no/100 Dollars (\$360.00) as the initial assessment for the calendar year in which said residence is purchased. This sum shall be prorated as of the date of closing over the entire calendar year during which the closing occurs. The due dates shall be established by the Developer until there is no longer a Class B member and then by the Board. 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 assessment on a specified Lot shall be binding upon the Association as of the date of its issuance. If the Association fails to respond to any such request within ten (10) days after receipt of such request, any lien then outstanding shall be deemed to have been extinguished.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments which are not paid when due shall

be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at an interest rate of twelve percent (12%) per annum, but in no event more than the maximum legal rate. In such case, the Association may accelerate, at its option, the entire unpaid balance of the assessments and may bring an action at law against the Owner personally obligated to pay the same, or file, record and foreclose the lien against such Owner's Lot, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Developer and the Association, or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of liens against real property. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the power to purchase any lot at any sale and convey the same for the purpose of protecting its lien. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, abandonment of his Lot or by renunciation of membership in the Association. An Owner may give to the Association, nevertheless, subject to acceptance thereof by the Association, a deed in lieu of action on lien.

Section 9. Subordination of the Lien to First Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage, first purchase money security deed or security deed representing a first lien on said property. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 10. Exempt Property. The following property subject to this Declaration shall be exempted from the assessment, charges and liens created herein: (a) all properties to extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) any Common Area which may be added to the development; (c) all properties exempted from taxation by state or local governments upon the terms and to the extent of such legal exemption. Notwithstanding any provisions herein, no land or improvements devoted to dwelling use shall be exempt from said assessments, charges or liens except such property owned by the Developer, or builders of any Structures on any Lot who hold such title solely for resale upon the completion of such Structure, provided such Structure at all times remains unoccupied. Should the Developer construct a model home or office on a Lot, said Lot shall continue to be exempt from such charges and shall not be considered to be "occupied." Accordingly, neither the Developer nor any such speculative builder as defined herein shall be required to pay any such assessment, charge or lien as provided herein on any Lot owned by them, unless the Structure has been completed and is being leased to a third party tenant.

Section 11. Budget Deficits During Developer Control. For so long as the Developer has the authority to appoint the directors and officers of the Association, Developer may (a) advance funds to the Association or to third parties sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year; or (b) cause the Association to borrow such amount from a commercial lending institution at the then-prevailing rates for such a loan in the local community area of the Property. The Developer shall have

the right to repayment by the Association at such time as sufficient funds are so available from the collected assessments of the Lot Owners.

ARTICLE VI MAINTENANCE

Section 1. Association's Responsibility. Except as otherwise provided for herein, the Association shall maintain and keep in good repair the entrance of the Subdivision over which a Landscape Easement has been established and which Landscape Easement Area may be deeded by the Developer to the Association as Common Area. The Association's responsibility with respect to the Landscape Easement shall be deemed to include the maintenance, repair and replacement of (i) all walls, and fences situated within the Easement Area, (ii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Easement Area; and (iii) such other general landscaping in the Easement Area which the Association in its sole discretion decides to undertake.

ARTICLE VII EASEMENTS

Section 1. Utility Easements. There is hereby created in favor of the Association an easement upon, across, over, through and under all of the Common Area, if any, and five (5) feet along all Lot boundary lines for ingress, egress, installation service lines and systems, including but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems. An easement is further granted to the Association, its officers, agents, employees and any management company retained by the Association to enter in or to cross over the Common Area and the Lots, to inspect and to perform the duties of maintenance and repair of the Common Area, if any, and the Lots, as provided herein. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines or other utilities may be installed or relocated on the Property except as initially programmed and approved by the Developer or thereafter approved by Developer or the Board. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by a separate recordable document, Developer or the Association shall have the right to grant such easement on the Common Area, if any, without conflicting with the terms hereof.

Section 2. Easement for Developer. Developer hereby reserves for itself, its successors and assigns, the following easements and rights-of-way in, on, over, under and through any part of the Property owned by Developer and the Common Area, if any, for so long as Developer owns any Lot primarily for the purpose of sale:

(a) For the erection, installation, construction and maintenance of wires, lines and conduits, and necessary or proper attachments in connection with the transmission of electricity, gas, water, telephone, community antenna, television cables and other utilities;

(b) For the construction of improvements on the Lots;

(c) For the installation, construction and maintenance of storm-water drains, public and private sewers, and for any other public or quasi-public utility facility;

(d) For the use of the Common Area, if any, and any sales offices, model units and parking spaces in connection with its efforts to market Lots;

(e) For the maintenance of such other facilities and equipment as in the sole discretion of Developer may be reasonably required, convenient or incidental to the completion, improvement and sale of Lots.

Section 3. Easements for Association. There shall be a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including any management company retained by the Association, to enter upon the Common Area, if any, and the Lots to perform their respective duties.

ARTICLE VIII GENERAL COVENANTS AND RESTRICTIONS

The following covenants and restrictions shall apply to all Lots and to all Structures erected or placed thereon:

Section 1. Residential Use. All Lots shall be restricted exclusively to single-family residential use. No business or business activity shall be carried on or upon any Lot at any time except with the prior written approval of the Association or the Developer. Provided, however, that nothing herein shall be construed to prohibit or prevent the Developer or any builder of residences in Hamilton Township Subdivision from using any Lot owned by Developer or such builder for the purpose of carrying on business related to the development, improvement and sale of Lots and/or new homes in Hamilton Township Subdivision. The leasing of any Lot for residential purposes shall not be considered a business or business activity.

Section 2. Common Area. The Common Area, if any, shall be used by the Owners and their agents, servants, tenants, family members, invitees and licensees for such other purposes as may be authorized by the Association. The Developer shall also have the right of use of the Common Area for sales, marketing and development purposes so long as the Developer owns any Lot for the purpose of resale or until such time as the Developer conveys title to such Common Area to the Association.

Section 3. Debris. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of an Owner's Lot so as to render the same unsanitary, unsightly or offensive. No nuisance shall be permitted to exist upon any portion of the Property.

Section 4. Erosion Control. No activity which may create erosion or siltation problems shall be undertaken on any Lot except for the initial construction of residences and development of the Property.

Section 5. Signs.

(a) No signs whatsoever shall be installed, altered or maintained on any Lot, or on any portion of a Structure visible from the exterior thereof, except:

- (i) such signs as may be required by legal proceedings;
- (ii) not more than one "For Sale" or "For Rent" sign, provided, however, that in no event shall any such sign be larger than six (6) square feet in area;
- (iii) directional signs for vehicular or pedestrian safety;
- (iv) entry signs used to identify subdivision, marketing signs used to advertise subdivision by Developer and in conjunction therewith brochure holders.

(b) Following the consummation of the sale of any Lot, the sign located thereon shall be removed immediately.

Section 6. Fences. The Developer and the Architectural Control Committee shall have the right to approve all fences to be located on any Lot.

Section 7. Recreational Vehicles, Trailers, etc.. Any Owner desiring to park on any Lot any recreational vehicles, trailers, campers, trucks (except pickups and vans), travel buses or any such equipment must first receive written approval from the Developer or the Architectural Control Committee of the type of such vehicle or equipment, the location where such vehicle or equipment will be parked or stored and the period of time such vehicle or equipment will be located on any Lot. No inoperative vehicle shall be parked on any lot for any period of time in excess of fourteen (14) days. No owners or occupants of any Lot shall repair or restore any vehicle of any kind upon any Lot, except for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

Section 8. Recreational Equipment. No recreational and playground equipment shall be placed or installed on any Lot which is visible from the street abutting such Lot, except with the prior approval of the Developer or the Architectural Control Committee. ★

Section 9. Accessory Structures. The Developer and the Architectural Control Committee shall have the right to approve or reject any detached accessory structure which an Owner seeks to place on a Lot to be used for a playhouse, a swimming pool, tennis court, a tool shed, a mailbox, a dog house or a garage. Such accessory structures must have the approval of the Developer or the Architectural Control Committee as to their dimensions, including height, and location, and shall conform in exterior design and quality to the dwelling on that same Lot. With the exception of a garage that is attached to a dwelling, an accessory structure placed on a Lot shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot, unless specific approval for a different location is obtained from the Developer or the Architectural Control Committee. Such accessory structures shall also be located with such side and rear setback lines as may be required hereby or by applicable zoning law. Any such accessory structure must be approved, in advance, in writing by the Architectural Control Committee or the Developer. ★

Section 10. Improvements on Lots. All construction of and Structure, including dwellings, accessory structures and all other improvements on any Lot in the Property shall be undertaken and completed in accordance with the following conditions:

(a) All construction shall be carried out in compliance with the laws, code, rule, regulations, and orders of all applicable governmental agencies and authorities.

(b) Concrete block or cinder block shall not be used as a building material for the exposed exterior surface of any dwelling or accessory structure constructed or placed on any Lot without the prior approval of the Developer or the Architectural Control Committee.

(c) All mailboxes shall be approved as to appearance and quality and located by the Developer at a location deemed suitable by the Developer or by the Architectural Control Committee. Mailboxes shall be maintained by the Lot owners. Any replacement mailboxes shall be the responsibility of the Lot owners and shall be first approved by the Architectural Control Committee or the Developer.

(d) Without the approval of the Developer or the Architectural Control Committee, no lumber, bricks, stones, cinder blocks, scaffolding, mechanical devices, or any other materials or devices used for building purposes shall be stored on any Lot except for purposes of construction of a dwelling or accessory structure on such Lot nor shall any such building materials or devices be stored on any Lot for longer than the length of time reasonably necessary for the construction in which such materials or devices are to be used.


(e) No exposed above-ground tanks for the storage of fuel or water or any other substance shall be located any Lot other than apparatus relating to solar energy or other type of energy source, the location, type and design of which must first be approved by the Architectural Control Committee or the Developer.

(f) Adequate off-street parking shall be provided for each Lot. No motor vehicles may be parked on a regular basis on the streets within the Property without special approval of the Architectural Control Committee or the Developer.

(g) The design, location and color scheme of all garages shall be subject to prior approval of the Architectural Control Committee or the Developer.

(h) Any construction on a Lot shall be at the risk of the Owner of such Lot which Owner shall be responsible for any damage to any curbing or street resulting from construction on such Lot; repairs of such damage must be made within thirty (30) days after completion of such construction at the sole expense of the Owner. The Association or the Developer shall have the right to make any necessary repairs if the Owner fails to do so within thirty days of receipt of written demand from the Association and Developer, and the reasonable cost thereof shall be reimbursed by the Owner.

(i) The enclosed, heated living area (exclusive of garages, carports, porches, terraces, bulk-storage and basement) shall contain not less than two thousand (2,000) square feet for two-story dwellings and not less than eighteen hundred (1,800) square feet for one story dwellings. No dwelling shall be constructed exceeding three stories in height, including basement, on any Lot.

 (j) Any television, cable, citizens band, satellite, computer or radio receiving equipment located on the exterior of any Structure shall not be permitted, unless expressly approved in writing by the Architectural Control Committee or the Developer.

(k) All landscaping and gardens which are visible from the street or adjacent Lots shall have the prior approval of the Architectural Control Committee or the Developer.

Section 11. Animals. No animals, including birds, insects, reptiles, may be kept on any Lot unless kept thereon solely as household pets, but only in a reasonable number, and not for commercial purposes. No animal shall be allowed to become a nuisance or roam free or endanger the health of other Lot Owners or make unreasonable noises, emit foul or obnoxious odors or constitute an unreasonable interference with the rights of other Lot Owners to enjoy the peaceful possession of their property.

Section 12. Accessory Structures Installed by Developer. Entry signs, fences, walls and landscaping installed by Developer on the Property shall be and are hereby dedicated to the use and benefit of all owners, and shall not be removed or altered without the consent of the Developer as long as there is a Class B member, and subsequently thereto, without a two-thirds (2/3) consent of the Association Class A members.

Section 13. Miscellaneous Fixtures. The Architectural Control Committee and the Developer shall have the right to approve all awnings, shades or window boxes which are to be attached to or hung or used on the exterior of, any window or door of any house; and all railings, fences, walls. No Owner shall be allowed to attach or construct any foil or other reflective materials for use on any windows or sunscreens, blinds, shades or for any other purpose, nor shall any window mounted heating, air-conditioning or fan units be permitted without the prior consent of the Architectural Control Committee or the Developer. Outside clotheslines or other outside facilities for drying or airing

clothes are specifically prohibited and shall not be erected, placed or maintained upon any lot or parcel of land, nor shall any clothing, rugs or other items be hung on any railing, fence, hedge or wall.

Section 14. Tree Removal. No trees shall be removed without the express consent of the Architectural Control Committee or the Developer, except for diseased or dead trees or trees which need to be removed to promote the growth of other trees or to comply with the landscape plan approved by the Architectural Control Committee or Developer.

Section 15. Exterior Lighting. The Architectural Control Committee or the Developer shall have the right to approve all exterior lighting, including the design, type, location and coverage area.

Section 16. Sight Distance at Intersections. All property located at street intersections shall be so landscaped as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain at any corner where this would create a traffic or sight problem.

Section 17. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Architectural Control Committee or the Developer. The Developer expressly reserves the right to replat any Lot(s) or other property in the Subdivision, including the addition, alteration or deletion of any area designated on any recorded plat as Common Area for the Subdivision. Any such division, boundary line change or replatting shall not be in violation of the applicable subdivision or zoning regulations.

ARTICLE IX GENERAL PROVISIONS

Section 1. Enforcement.

(a) The Association, the Architectural Control Committee, the Developer or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easement, liens and charges now or hereafter imposed by the provisions of this Declaration. 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.

(b) The Architectural Control Committee and the Developer shall have the right of abatement in all cases where an Owner of a Lot shall fail to take reasonable steps to remedy a violation or breach of any restriction contained in this Declaration within twenty (20) days after mailing of written notice of such violation or breach. The right of abatement means the right of the Architectural Control Committee or the Developer, through its agents and employees, to enter at all reasonable times upon any Lot, or such action or actions specified in the notice to the Owner, to abate, extinguish, remove or repair such violation or breach, all without being deemed to have committed a trespass or wrongful act by reason of such entry and such actions. ★

Section 2. Severability. If any provisions of the Declaration, or any paragraph, subparagraph, article, section, sentence, clause, phrase, word or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration and the application of any such provision, paragraph, subparagraph, article, section, sentence, clause, phrase or word in any other circumstances shall not be affected thereby and the remainder of this Declaration shall be construed as if such invalid part was never included therein.

Section 3. Headings. The headings of articles and sections in this Declaration are for convenience of reference only and shall not in any way limit or define the content or substance of such articles.

Section 4. Duration. The covenants and restrictions of this Declaration shall run with and bind the land for a period of twenty (20) years from the date this Declaration is recorded, at the end of which period such covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless at least two-thirds (2/3) of the Owners at the time of the expiration of the initial period, or of any extension period, shall sign an instrument in which said covenants and restrictions are modified in whole or in part, which instrument is filed of record in the appropriate county.

Section 5. Rights and Obligations. Each grantee of the Developer and Owners, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits, privileges of every character hereby imposed shall be deemed and taken to the covenants running with the land and shall bind any person having at any time any interest or estate in the Property or any portion thereof, and shall inure to the benefit of such grantee in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance or contract for conveyance.

Section 6. Notices. Notices provided for in this Declaration shall be in writing and shall be addressed to any Owner at his or her Lot or at such other address as hereinafter provided. Notices to the Association or Board shall be in writing and shall be addressed to the President of the Association at his/her address or at such different address or addresses as reflect their proper address. Any Owner may designate a different address for notices to him by giving written notice to the Association. Notices addressed as above shall be deemed delivered upon mailing by United States registered or certified mail or when delivered in person.

Section 7. Amendment. This Declaration may be amended at any time and from time to time by the Developer unilaterally in the following instances:

(i) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith;

(ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration;

(iii) if such amendment is required to obtain the approval of this Declaration by an institutional lender, such as a bond, savings and loan association or life insurance company, or by a governmental lender or purchaser of mortgage loans, such as the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration, or

(iv) if such amendment is necessary to enable any governmental agency, such as the Veterans Administration, or reputable private insurance company to insure mortgage loans on the lots subject to this Declaration, provided such amendment would not include the right to replat Lots or the Common Area unless limited to changes specifically required by a reviewing agency to meet its requirements.

(v) if such amendment is deemed necessary by the Developer to enable Developer to take necessary and reasonable corrective action for the development of the Property or to further clarify the rights, responsibilities and terms of this Declaration.

Any such amendments made unilaterally by Developer shall not materially adversely affect the title to any Owner's Lot unless such Lot Owner shall consent thereto in writing. Further, so long as Developer has the right unilaterally to subject additional property to this Declaration as provided herein, Developer may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

Further, this Declaration may also be amended at any time and from time to time by an agreement signed by at least two thirds (sixty-six and 2/3 (66.67%) percent of the Owners of the Lots; provided, however such amendment by the Owners shall not be effective unless also signed by the Developer, if Developer is the owner of any real property then subject to this Declaration or if Developer still retains the right to subject additional property by annexation to this Declaration. No amendment to the provisions of this Declaration shall alter, modify, change or rescind any right, title, interest or privilege herein granted or accorded to the holder of any mortgage encumbering any Lot or the Common Area affected thereby until the instrument evidencing such change has been filed of record. Every purchaser or grantee of any interest in any real property made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that this Declaration may be amended as provided in this Section.

Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein. No provision of this Declaration which reserves or grants special rights to the Developer shall be amended without the prior written consent of the Developer so long as the Developer owns any property primarily for development and/or sale in the Subdivision or subject to annexation by the Developer to the Subdivision.

Any lawsuit challenging any aspect of an amendment to this Declaration must be filed in the Superior Court of Cobb County, Georgia within one (1) year of the date of recordation of such amendment in the Cobb County, Georgia Superior Court deed records.

Section 8. Annexation of Additional Property. As long as there is a Class B member, the Developer shall have the right to annex additional adjacent property as part of the Hamilton Township Subdivision development, subject to the terms and conditions of this Declaration.

Section 9. Withdrawal of Property. Developer reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing a portion of the Property then owned by Developer or the Association from the coverage of this Declaration, to the extent originally included in error or a result of any changes whatsoever in Developer's plans for the Subdivision.

IN WITNESS THEREOF, HAMILTON TOWNSHIP JOINT VENTURE has caused this Declaration to be executed in its name and by its duly authorized officers and its seal affixed on the day and year first above written.

DEVELOPER:

HAMILTON TOWNSHIP JOINT VENTURE

By: ELLIOTT/WALDREY
INC.

BY: [Signature]
Its President

By: EUGENE C. KELLEY
ENTERPRISES, INC.

BY: Eugene C. Kelley
Its President

By: HAMILTON TOWNSHIP LIMITED
PARTNERSHIP

BY: Eugene C. Kelley
Its General Partner

Signed, sealed and delivered
in the presence of:

Paula H. Heels
Witness

Hansell L. Smith
Notary Public

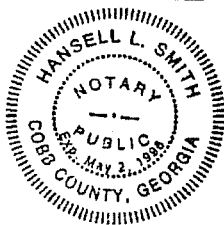


EXHIBIT "A"

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All that tract or parcel of land lying and being in Land Lots 238 and 239 of the 20th District, 2nd Section, Cobb County, Georgia, being 106.406 acres as per plat of survey prepared for Hamilton Township, dated August 22, 1994 and prepared by Rodenberger & Associates, Inc. and being more particularly described as follows:

Beginning at a bent nail at the base of a one inch open top iron pin located at the common intersection of Land Lots 218, 219, 238 and 239, 20th District, 2nd Section, Cobb County, Georgia, and running thence North 89 degrees 08 minutes 43 seconds East along the northern land lot line of Land Lot 239, said district and section, for a distance of 1464.80 feet to an iron pin and corner; running thence South 00 degrees 26 minutes 34 seconds West for a distance of 1251.26 feet to an iron pin; running thence South 00 degrees 21 minutes 22 seconds West for a distance of 374.72 feet to a one half inch rebar and corner; running thence North 88 degrees 57 minutes 03 seconds East for a distance of 824.26 feet to 1/2 inch rebar and corner; running thence South 01 degrees 03 minutes 05 seconds East for a distance of 140.00 feet to a 1/2 inch rebar; running thence South 12 degrees 19 minutes 52 seconds West for a distance of 876.21 feet to a 1/2 inch rebar and corner located on the southern land lot line of Land Lot 239, said district and section; running thence South 89 degrees 22 minutes 17 seconds West along the southern land lot line of Land Lot 239 for a distance of 1345.66 feet to a one inch open top pipe; running thence South 89 degrees 20 minutes 45 seconds West along the southern land lot line of Land Lots 239 and 238 for a distance of 789.77 feet to an iron pin and corner located on the easterly side of the right of way of Hamilton Road (having a 60 foot right of way); running thence northwesterly in a counterclockwise direction along an arc, along the easterly side of the right of way of Hamilton Road and following the curvature thereof, said arc having a radius of 1571.98 feet (said arc being subtended by a chord bearing North 24 degrees 58 minutes 40 seconds West for a chord distance of 27.29 feet) for an arc distance of 27.29 feet to a point; running thence northwesterly in a counterclockwise direction along an arc, along the northeasterly side of the right of way of Hamilton Road and following the curvature thereof, said arc having a radius of 1571.98 feet (said arc being subtended by a chord bearing North 27 degrees 03 minutes 47 seconds West for a chord distance of 87.14 feet) for an arc distance of 87.15 feet to a point; running thence North 28 degrees 39 minutes 05 seconds West along the northeasterly side of the right of way of Hamilton Road for a distance of 386.48 feet to an iron pin and corner; running thence North 61 degrees 42 minutes 59 seconds East for a distance of 305.92 feet to a 2 inch open top pipe and corner located on the western land lot line of Land Lot 239, said district and section; running thence North 00 degrees 45 minutes 40 seconds East along the western land lot line of Land Lot 239 for a distance of 713.85 feet to an iron pin; running thence North 00 degrees 15 minutes 20 seconds East along

EXHIBIT "A"

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the western land lot line of Land Lot 239 for a distance of 817.02 feet to a point; running thence North 00 degrees 38 minutes 14 seconds West along the western land lot line of Land Lot 239 for a distance of 281.72 feet to an iron pin; running thence North 00 degrees 02 minutes 48 seconds East along the western land lot line of Land Lot 239 for a distance of 209.80 feet to an iron pin at the point of beginning.