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Recorded August 7, 2006

BOOK 359 PAGE 696

GEORGIA-Peach County

Clerk's Office Superior Court

Filed this 7th day of August, 2006

At 9:00 o'clock A.M. Recorded in Deed

Book 359 Page No. 696-714 This 7th

day of August, 2006

Shirley L. Ballou Clerk
Deputy

STATE OF GEORGIA
COUNTY OF HOUSTON

**DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR THE SUBDIVISION KNOWN AS
FALCON CREST**

THIS DECLARATION, made this the 18th day of July, 2006, by **Kelly and Sons Construction, LLC and H&H Land Development Corp.**, organized and existing under the laws of the State of Georgia having its principal offices and place of business in Peach County, Georgia, hereinafter referred to as the "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of the real property described in Article 1.2; and more particularly described in Exhibit "A" attached hereto.

WHEREAS, Declarant has deemed it desirable for the efficient preservation, protection and enhancement of the values of such real property, and that certain specific covenants, restrictions, rights, privileges and easements are necessary to each owner's enjoyment of their individual lot or lots into which such real property described in Article 1.2, hereof is to be subdivided by Declarant; and,

WHEREAS, Declarant desires to subject the real property described in Article 1.2, hereof to the covenants, restrictions, charges and liens hereinafter set forth.

NOW, THEREFORE, the said Declarant hereby declares that all of the real property described in Article 1.2(a), and such additions thereto as may hereafter be made pursuant to Article 1.2(b), hereof is and shall be held, transferred, sold, leased, occupied and conveyed subject to the covenants, conditions, restrictions, easements, charges, liens and provisions set forth herein, which shall run with the real property and be binding on all parties having any right, title or interest in and to said real property or any part or portions thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof and, where expressly provided herein shall benefit the Declarant.

GENERAL PROVISIONS

1.1 **Definitions.** The following words, when used in this Declaration, unless the context shall prohibit, shall have the following meanings:

- (a) *"The Property"* (or *"Properties"*) shall mean and refer to the real property (including improvements) described in Article 2 hereof, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article 3 hereof.
- (b) *"Declarant"* shall mean and refer to **Kelly and Sons Construction, LLC and H&H Land Development Corp.**, and its successors and assigns, and shall include any person or entity to which Declarant may assign the rights and privileges, duties, and obligations hereunder, which are and shall be assignable.
- (c) *"Owner"* shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any portion of the Properties, but excluding any person or entity whose interest in the Properties arises pursuant to a deed to secure debt, mortgage, or other similar instrument evidencing or securing indebtedness.
- (d) *"Lot"* and/or *"lots"* shall mean and refer to any lot, tract or parcel of land identified as a lot on a recorded subdivision plat covering any portion of the Properties.
- (e) *"Future Development Property"* shall mean and refer to other real property now owned or hereafter acquired by the Declarant contiguous to or in the immediate vicinity of the Properties.
- (f) *"Architectural Control Committee"* shall mean and refer to those persons appointed by the Declarant, or as hereinafter provided by the majority of the owners, in accordance with the provisions of Article II of this Declaration.
- (g) *"Subdivision Survey"* shall mean and refer to the map or plat of survey of the Properties delineating individual building lots or parcels which has been filed for record by the Declarant and recorded in Plat Book 25, Page 165, Peach County, Georgia. Said Subdivision Survey shall be designated as "FALCON CREST," and shall be approved by the applicable governmental authorities and agencies for Peach County, Georgia.

1.2 Property Subject to Declaration:

- (a) The Properties. The real property covered by this Declaration is described in Exhibit "A", attached hereto and incorporated herein by reference. For purposes of this Declaration such real property is designated as *Falcon Crest, Phase 1*. All of The Properties and any right, title or interest held therein shall be owned, leased, sold and/or conveyed by Declarant, and any subsequent owner of all or any part thereof, subject to this Declaration and the covenants, restrictions and provisions set/forth herein.
- (b) Additions to Property Subject to Declaration. The Declarant shall have the right to add additional property to the scheme of this Declaration without notice to or the consent of the owners of the several lots comprising the Properties, which shall be accomplished by the filing for record in the Country where the land lies of a Supplementary Declaration or Amendment to this Declaration which shall extend the scheme of the covenants and of this Declaration to such additional property. The additional property to be so added shall be contiguous to "The Properties" as they are then comprised. PROVIDED HOWEVER, that the Supplementary Declaration or Amendment to this Declaration extending the scheme of this Declaration and the covenants and restrictions contained herein to the property which is so added may not alter or modify the Declaration as it applies to such additional property so as to materially and adversely affect the value of the existing Properties as then comprised. And, PROVIDED FURTHER, that the Supplementary Declaration or Amendment shall not operate so as to render the provisions of this Declaration as applied to such additional property less restrictive than as applied to The Properties prior to such Supplementary Declaration or Amendment. When this Declaration has been so amended by one or Supplementary Declaration(s), the term "The Properties" as used herein shall be deemed to include The Properties described herein together with such additional property as may be added thereby. The term "record title owners" as used herein shall thereafter be deemed to include the record title owners. The Properties described herein together with the record title owners of such additional property as may be added by such Supplementary Declaration(s) or Amendment(s). Each Supplementary Declaration adding properties shall include a geographical description of the property added and shall designate said additional property by a designation including Section and Phase so as to differentiate each respective area from other Sections and Phases then included within The Properties.

1.3 General Easements for Drainage and Utilities. Declarant hereby grants, creates, conveys and reserves unto itself and its successors and assigns easements for installation and maintenance of utilities and drainage facilities delineated in the Subdivision survey and over the rear ten (10) feet of each Lot within the Properties. Drainage flow shall not be obstructed, nor be diverted from, drainage or utility easements as designated above or on the aforesaid Subdivision Survey. Such easements shall be for the benefit of the Owners of each Lot and with respect to the Future Development Property the Declarant and its successors and assigns.

ARTICLE II

ARCHITECTURAL CONTROL COMMITTEE

2.1 Designation of Committee. The Subdivision shall have an Architectural Control Committee, which shall consist of three (3) members who shall be natural persons, and who shall be appointed by a majority of the record title owners of the total number of lots then subject to this Declaration voting in person or by proxy at a meeting duly called for such purpose, written notice which shall be given to all such owners at least thirty (30) days in advance and shall set forth the purpose of such meeting. PROVIDED, HOWEVER, until 31st day of December, 2008, the appointment of the members of the Architectural Control Committee must be approved by Declarant, and any and all members of such committee may be removed with or without cause by the majority vote of the owners in the same planner and upon written notice and/or by the Declarant. After such date, the owners shall have the exclusive right and power at any time and from time to time to create and fill vacancies on the Architectural Control Committee.

2.2 Initial Membership. Architectural Control Committee shall be composed of the following members, to-wit:

- (a) Diane Kelly, whose mailing address is P.O. Box 1889, Byron, Georgia 31008;
- (b) K. Scott Kelly, whose mailing address is P.O. Box 1889, Byron, Georgia 31008; and
- (c) Dustin Campbell, whose mailing address is P.O. Box 2161, Byron, Georgia 31008.

A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, until a successor is duly appointed by a majority vote of the owners the remaining members shall have the authority to designate a successor. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this Declaration. As of the date of recordation of the Declaration, all

privileges, powers, rights and authority of the Architectural Control Committee shall be vested in the aforementioned persons and exercised by them.

2.3 Function of Architectural Control Committee. No improvement, as that term is hereinafter defined, shall be erected, constructed, placed altered (by addition or deletion), maintained or permitted to remain on any portion of The Properties until plans and specifications as defined in §6.1.4 *infra*, in such form and detail as the Architectural Control Committee may deem necessary shall have been submitted to and approved in writing by such committee. The Architectural Control Committee shall have the power to employ professional consultants to assist it in discharging its duties. The decision of the Architectural Control Committee shall be final, conclusive, and binding upon the applicant.

2.4 Content of Plans and Specifications. The plans and specifications to be so submitted and approved shall include the following:

- (a) A topographical plat showing existing contour grades and showing the location of all improvements, structures, walks, sidewalks, patios, driveways, fences and walls. Existing and finished grades shall be shown at lot corners and at corners of proposed improvements. Lot drainage provisions shall be indicated as well as cut and fill details if any appreciable change in the lot contours is contemplated.
- (b) Exterior Elevations.
- (c) Exterior materials, colors, textures, and shapes.
- (d) Structural Design.
- (e) Landscaping plan, including walkways, fences and walls, elevation changes, watering systems vegetation and ground cover.
- (f) Parking and driveway plan.

2.5 Definition of "Improvement". Improvement shall mean and include all buildings and roofed structures, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, awnings, clothes lines and drying yards, antennae, driveways, ponds, lakes, swimming pools, tennis courts, signs, changes in any exterior color or shape, glazing or reglazing of exterior windows with mirrored or reflective glass, and any new exterior construction or other exterior improvement. It does not include garden shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances. It does include both original improvements and all later changes and improvements.

2.6 Basis of Approval. Approval of plans and specifications shall be based, among other things, on adequacy of sit dimensions, structural design, conformity and harmony of external design and of location with neighboring structures and sites, relation of finished grades and elevations to neighboring sites, and conformity to both the specific and general intent of the protective covenants. Unless specifically approved in writing by the Committee, the front elevation of any residence (doors, windows, brick-color and/or roof hip/gable) may not be copied or duplicated unless separated from and the same or substantially similar front elevation by at least three (3) lots.

2.7 Failure of the Committee to Act. If the Architectural control Committee fails to approve or to disapprove such plans and specifications or to reject them as being inadequate within thirty (30) days after submittal thereof, it shall be conclusively presumed that such committee has NOT approved such plans and specifications; provided, however, the Architectural Control Committee has no right or power, either by action or failure to act, to waive or grant any variances specifically reserved to Declarant. If plans and specifications are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance.

2.8 Limitation of Liability. Neither the Declarant, the Architectural Control Committee, nor any of the members of such committee, shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any owner of land affected by this Declaration by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or to disapprove any plans and specifications.

ARTICLE III

PROTECTIVE COVENANTS

3.1 Applicability of Covenants. The following provisions shall be applicable to any and all construction, improvement, alteration, or addition to The Properties.

3.2 Land Use and Building Type. No lot shall be used except for residential purposes. No residential structure shall be erected, altered, placed or permitted to remain on any lot other than one (1) single-family dwelling not to exceed two (2) stories in height, and a private two car garage, and one outbuilding no smaller than 10' x 15'. No dwelling shall be allowed unless it includes a private garage for not less than two (2) vehicles. In addition, all driveways and parking areas shall be constructed with concrete. Notwithstanding the provisions of Article II hereof and the authority and discretion therein granted to the Architectural Control Committee, no structures shall be erected, altered, placed or permitted to remain on any lot unless same comply with the following:

- (a) Foundation Elevation. The top of the foundation shall be a minimum of twelve inches (12") above ground level or grade at its lowest point or at such higher level as may be necessary to assure positive drainage away from the dwelling and. Lot.
- (b) Roofs. All roofs shall have a pitch of not less than 8/12, and only black-colored, architectural shingles shall be allowed.
- (c) Exterior Siding. The exterior of all dwellings shall be constructed of brick, stone or drivet from foundation to the plateline of the roof. The roof and exterior of all outbuildings must have shingles and exterior siding of the same type and color as the dwelling. All materials above plateline, in sables shall be stucco, stone, brick, cedar, decorative vinyl, or Hardy Board.
- (d) Fences. No chain-link fences shall be allowed. No other type fence or wall shall be allowed on any lot (a) in the front yard or any nearer to the street or road right-of-way line than ten (10) feet to the rear of the front of the residence (exclusive of open porches), (b) any nearer to side street right-of-way line than the minimum building setback line along such side street right-of-way line, and (c) having posts or support members visible from adjacent streets or lots. All fences shall be of treated wood, identical to existing fence in Falcon Crest. All color of stains must be approved by committee.

3.3 Minimum Dwelling Size. No dwelling shall be permitted on any lot in the Subdivision, unless prior written approval of the same is received from the Architectural control committee as herein otherwise provided and shall have not less than 2000 square feet of Living Space for dwellings of not more than one (1) story, and 2200 square feet of Living Space for dwellings of more than one (1) story. The ground floor area of a dwelling of more than one-story shall have not less than 1,600 square feet of Living Space.

3.4 Building Location. No building shall be located on any lot nearer to the front line or nearer to the side street line than the minimum building setback line shown on the aforementioned recorded plat of survey. No building or structure or any part thereof shall be erected or maintained nearer the side or rear boundary lines of any lot nearer than ten feet (10') for the dwelling and ten porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot. All utility easements and all other easements must be followed.

3.5 Subdivision of Lots: Use as Access. None of the lots shall at any time be divided into as many as two (2) building sites and no building site shall be less than the area of the smallest lot platted in the block of which the building site is a part. A single lot together with contiguous portion or portions of one or more lots in the same block may be used for one building site, and no building or structure or any part thereof shall be erected or maintained nearer the side boundary lines or such integral unit than 10 feet. NO LOT, OR ANY PORTION THEREOF, MAY BE USED AS A ROAD, STREET OR IN ANY MANNER FOR THE PURPOSE OF PROVIDING ACCESS TO OTHER PROPERTY WITHOUT THE PRIOR WRITTEN APPROVAL OF DECLARANT.

3.6 Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Drainage flow shall not be obstructed, nor be diverted from, drainage or utility easements as designated above or on the aforesaid recorded plat of survey.

3.7 Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be, or may become an annoyance or nuisance to the neighborhood.

3.8 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently, unless approved by the Architectural Control Committee.

3.9 Signs. No sign of any kind shall be displayed to the public view on any lot except the professional sign of a licensed real estate broker or agency advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period.

3.10 Vehicle Storage. No motor homes, campers, camper-trailers, boats, boat trailers or other recreational vehicles, and no trucks exceeding 3/4-ton shall be kept or stored on any part of any of said lots except (i) within an enclosed garage or (ii) at a location on the lot which shall be so placed and screened, and kept, so as not to be visible from any street or lot within the subdivision or adjacent to the subdivision. Any fencing or screen for such vehicles shall require the prior approval of the Architectural Control Committee.

3.11 Headwalls and Driveways. Any other provision contained herein notwithstanding, any headwall placed on any of said lots shall be constructed of common brick and all driveways shall be constructed and made of concrete. All of said lots shall have said driveways and the same shall be a minimum width of twelve (12) feet and shall run from the paving of the road to the minimum building set-back line for the respective lots. All Driveways shall have a minimum of 8 feet of stamped concrete, brick pavers or cobblestone.

3.12 Mailboxes. Mailboxes for all houses constructed on any of the within described lots shall be uniform and shall be constructed in conformity with plans and specifications furnished by the Architectural Control Committee hereinafter named. No mailbox shall be placed on any lot until approved by the said Committee. Mailboxes must be of the same exteriority finish of the home, brick, stucco or stone.

3.13 Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells tanks, tunnels, mineral excavations or shafts be permitted upon any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

3.14 Livestock and Poultry and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose. However, no animals shall be kept on any lot in such manner as creates a nuisance or disturbance to the other lot owners, or violates any law, ordinance or regulation of the State of Georgia, Peach County or other applicable regulatory or governmental agency.

3.15 Garbage and Refuse Disposal. No lot shall be used or maintained as dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators and other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Every outdoor receptacle for ashes, trash, rubbish or garbage shall be installed at a location on the lot which shall be so placed and screened, and kept, so as not to be visible from any street within the subdivision or adjacent to the subdivision, at any time, except at the times when refuse collections are being made. Any fencing or screening required for said receptacle shall be approved by the Architectural Control Committee.

3.16 Sewage Disposal. No individual sewage-disposal system shall be permitted on any lot unless such system is designated, located and constructed in accordance with the requirements, standards and recommendations of the Georgia Department of Public Health. Approval of such systems as installed shall be obtained from such authority.

3.17 Sight and Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property line and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

3.18 Landscaping. The builder, contractor, or owner of each residential lot shall as a minimum plant ornamental trees, plants and shrubs as follows: At least two (2) trees in the front yard having a minimum diameter of at least 2 inches at a point two feet from ground level, and two (2) 10-gallon, six (6) 7-gallon, four (4) 5-gallon, six (6) 3-gallon, and six (6) 2-gallon plants or shrubs. Additionally, the front yard and side yards (to the rear corner of the dwelling) of each lot shall be sodded and equipped with an underground, automatic irrigation system.

3.19 Diligence. The residence to be constructed on each lot in the subdivision shall be complete in a good workmanlike manner, and shall be completed within nine (9) months after the beginning of the framing for such construction. No improvements which have been partially or totally destroyed by fire or other catastrophe shall be allowed to remain on any lot in the subdivision for more than three (3) months after such destruction or damage.

3.20 Variances. Subject to the provisions of this Declaration limiting the right to amend or vary the terms and conditions hereof, the restrictions set out in this Instrument may be altered, varied or waived on an individual lot basis upon compliance with the following regulations and procedures, to-wit:

- (a) Any owner of any lot in said section desirous of securing a waiver or variance of said restriction shall request the same in writing and shall deliver said petition to any member of the Architectural Control Committee hereinbefore named;
- (b) If the Architectural Control Committee, in the exercise of its sole discretion, approves of said variance, it shall notify the petitioner of the same in writing;
- (c) The written approval of any requested alteration or variance by the Architectural Control Committee shall constitute absolute waiver of and shall otherwise void the restrictions contained in this paragraph relative to the subject lot;
- (d) The waiver of the restrictions contained in this paragraph on any petitioned lot shall not constitute a waiver of said restriction on any other lot; and
- (e) Unless the written approval as outlined herein is secured, the restrictions contained in this paragraph shall be binding and of full force and effect. Provided, further that if the Architectural Control Committee fails to notify the petitioning landowner of its approval within thirty (30) days of its receipt of the request, said request shall be deemed to have been denied.

MAINTENANCE

4.1 **Duty of Maintenance.** Owners and occupants (including Lessees) of any part of The Properties shall jointly and severally have the duty and responsibility, at their sole cost and expense, to be that of the Properties so owned or occupied, including buildings, improvements and grounds in connection therewith, in a well maintained, safe, clean, and attractive condition at all times. Such maintenance includes, but is not limited to the following:

- (a) Prompt removal of all litter, trash, refuse, non-permitted vehicles and wastes;
- (b) Lawn mowing;
- (c) Tree and shrub pruning;
- (d) Keeping lawn and garden areas alive, free of weeds, and attractive;
- (e) Watering;
- (f) Keeping parking areas, driveways, and roads in good repair;
- (g) Complying with all government health and police requirements;
- (h) Repainting of improvements; and
- (i) Repair of exterior damages to improvements.

4.2 **Enforcement.** If, in the opinion of the Architectural Control Committee, any such owner or occupant has failed in any of the foregoing duties or responsibilities, then the Committee may give such person written notice of such failures and such person must, within ten (10) days after receiving such notice, perform the maintenance duty or responsibility required. Should any such person fail to fulfill this duty and responsibility within such period, then the Committee, acting through its authorized agent or agents, shall have the right and power (but not the obligation) to enter onto the premises and perform such maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The owners and occupants (including lessees) of the lot or lots on which such work is performed shall be jointly and severally liable for the cost of the maintenance duties and responsibilities performed by the Committee, and shall promptly reimburse the Committee for such cost. If such owner or occupant shall fail to reimburse the Committee within thirty (30) days after the receipt of a statement for such work from the Committee, then said indebtedness shall be a debt of all of said persons jointly and severally, and shall constitute a lien against the lot or lots on which said maintenance was performed.

ASSESSMENTS

5.1 Covenant for Assessments. The Declarant for each Lot owned by it within the Subdivision, hereby covenants, and each subsequent Owner of such Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant to pay to the Architectural Control Committee the following general and special assessments, to-wit:

5.1.1 General Assessment. Each Owner shall be assessed a proportionate share of the actual costs incurred for maintenance, repair, replacement and operation of the following (including without limitation thereto the cost of utilities, third-party contracts for maintenance, repair or replacement): (i) Subdivision entrances and planted buffers including, but without limitation thereto, shrubbery, signage, fences, gates, walls, buildings, improvements, equipment, irrigation systems, security lights, and other similar improvements enhancing the entrances to the Subdivision which are not maintained by any governmental authority or agency, including, but without limitation thereto, areas set aside by the Declarant for common usage and maintenance by Falcon Crest subdivision; (ii) the walking trails within the Properties over which each Owner has an access easement pursuant to Article 1.3(b) *supra*; (iii) streets, sidewalks and pedestrian walking/jogging areas located within the rights-of-way of the public streets within the Subdivision to the extent that same are not maintained by any governmental authority or agency; and, (iv) property taxes and assessments imposed by any governmental authority with respect to the foregoing.

5.1.2 Special Assessment for Street Lighting. If the costs for street lighting within the Subdivision cannot be billed directly to each Owner by the electrical service provider, then each lot own shall be assessed a prorate portion of the actual cost incurred by the Declarant in payment for utility services for the lighting of the public streets and ways in the Subdivision. Each owner shall pay a proportionate share of the actual cost of such street lighting as determined by the ratio of the number of developed Lots owned by such Owner and the total number of developed Lots within the Properties. "Developed Lot" for the purposes of this provision shall mean those lots, tracts or parcels which have been subdivided by the Declarant and delineated on a Subdivision Survey duly recorded in the office of the Clerk of Superior Court of the County where the land is located, and approved by the applicable zoning, engineering and health officials having jurisdiction thereof.

5.1.3 Maintenance Assessment. The costs incurred by the Declarant or Architectural Control Committee in the performance of maintenance of an Owner's Lot or Lots pursuant to Article IV *supra*.

5.2 Purpose of General Assessments. The assessments levied and collected by the Architectural Control Committee pursuant to Article 5.1 of this Article shall be held, invested and disbursed by the Architectural Control Committee for the uses and purposes described in Article 5.1 above or such further purposes promoting the comfort, health, safety and welfare of the Owners of Lots in the Properties as may be determined by the Architectural Control Committee.

5.3 Management and Investment of Funds. The assessments shall be collected by the Architectural Control Committee and maintained in one or more certificates of deposit, money market account, or other interest-bearing deposit in a banking institution whose deposits are insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation, and disbursed by the Committee when needed to pay the costs and expenses contemplated hereby. The Committee shall have the right to hold such funds and disburse same from a common depository account or accounts maintained jointly with the Architectural Control Committees for Falcon Crest Subdivision. The Architectural Control Committee shall provide an accounting of the receipt and disbursement of the funds upon the reasoning request of a Lot Owner, but shall not be required to furnish such information more than once during each calendar year.

5.4 Assessment Procedure. For each calendar year commencing 2006, the Architectural Control Committee shall estimate and prepare a budget for the ensuing calendar year for the total of all expenses which may reasonably be expected to be incurred for any and all purposes for which assessments may be made pursuant to this Article. The total amount required to meet such budget shall be divided by the number of Developed Lots (as defined in Article 5.1.2 above), and the quotient so determined shall be the assessment for each Lot ("Lot Assessment Amount") for the ensuing calendar year. Written notice of the amount of the assessment shall be given to each Owner, who shall be responsible for the payment of an amount equivalent to the Lot Assessment Amount multiplied by the number of Lots owned by such Owner on the first calendar day of the calendar year for which such assessment is due. PROVIDED, HOWEVER, the Assessment Amount so determined shall not exceed \$110.00 per Lot for the calendar years 2007 and 2008.

5.4.1 Owners Right to Dispute Assessment. The Owners of a majority of the Developed Lots within the Properties (ownership being determined as of the first calendar day of the calendar year for which such assessment is made, each such Owner being hereafter referred to as a "Record Owner") may, at any time within thirty (30) days of the date the notice of assessment is given by the Architectural Control Committee, notify the Committee that they dispute the amount of such assessment. Upon receipt of such notice of the Owners' dispute as to the amount of the assessment, the Committee shall call a meeting of all the Owners mailing written notice to each Record Owner by United States First Class Mail, addressed to each Record Owner at the mailing address of such Owner's residence if maintained within the Properties, or if no residence is then maintained by the Owner within the Properties, at the mailing address of such Owner

according to the record of the Tax Commissioner of the County in which the Properties are located. Notice of such called meeting shall be held not later than thirty (30) days following the date of mailing of such notice. At the meeting the Architectural Control Committee or its representative shall present to the Owners present the bases on which the proposed, disputed assessment was made, and the Record Owners present at such meeting shall vote to approve or disapprove of the assessment. A majority vote of the Record Owners present and voting shall be sufficient to approve the proposed assessment, but the vote of at least 75% of the Record Owners present and voting shall be required to disapprove thereof. If the assessment is approved, then it shall be binding and enforceable against each Owner. If the assessment is disapproved, the parties shall resolve the issue in the manner set forth in the following paragraph.

5.4.2 Dispute Resolution. If the assessment proposed by the Architectural Control Committee is disapproved, the Lot Assessment Amount for the ensuing calendar year shall be determined by the following process: The Architectural Control Committee and the Record Owners (by majority vote of the Record Owners present and voting) shall each select a representative, and the two (2) representatives so chosen shall then select a third representative. The three (3) representatives so chosen (hereinafter referred to as the "Arbitration Committee") shall then agree upon a reasonable process for determining the amount of the assessment for the ensuing calendar year, and shall employ such process to prepare a budget for the ensuing calendar year for the total of all expenses which may reasonably be expected to be incurred for any and all purposes for which assessments may be made pursuant to this Article. The total amount required to meet such budget, plus any costs and expenses reasonably incurred by the Arbitration Committee in arriving at such budget (including the reasonable fees of accountants, consultants and other professionals consulted by the Arbitration Committee) shall be divided by the number of Developed Lots (see Article 5.1.2 above), and the quotient so determined shall be the Lot Assessment Amount for the ensuing calendar year. The amount determined by the Arbitration Committee shall be binding upon the Architectural Control Committee, the Owners, the Declarant, and their respective successors and assigns.

5.5 Due Date of Assessments. The Lot Assessment Amount for each calendar year shall be payable on December 1 of the preceding calendar year. Assessments shall be prorated from the date on which the dwelling located on the lot is first occupied by an Owner or tenant of such Owner. Any assessment, or portion thereof, not paid when due shall be delinquent. If the same is not paid within five (5) days after the due date, then a late charge equal to ten percent (10%) of the amount thereof or \$25.00, whichever is greater, shall also be due and payable to the Association. Any assessment or portion thereof not paid when due shall bear interest from the date of delinquency until paid at the maximum legal rate applicable to judgments in the State of Georgia.

5.6 Creation of the Lien and Owner's Personal Obligation for Assessments.

Each Owner of any Lot, by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay the assessments which shall be fixed, established and collected from time to time as herein provided. Such assessments, together with such interest thereon, late payment charge, and costs of collection thereof as herein provided, shall be a charge on and a continuing lien upon the Lot against which each such assessment is made. Such lien shall be perfected by filing of record in the office of the clerk of Superior Court of the County in which the Lot is located a claim of lien at any time after the assessment, or portion thereof, becomes delinquent. The claim of lien shall be substantially in the same manner and form as is applicable to claims of lien for labor, materials or services provided in the improvement of real property under Title 44 of the Official Code of Georgia. Such a claim of lien shall also secure all assessments, or portions thereof, which come due thereafter until the claim of lien is cancelled of record. Also, each Owner shall be personally liable for the portion of any assessment coming due while he is the Owner of a Lot, and his grantee shall be jointly and severally liable for such any assessment imposed but unpaid at the time of a conveyance, but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefore. Provided, however, any person who becomes the Owner of a Lot as purchaser at a judicial or foreclosure sale conducted with respect to an Institutional Mortgage, or pursuant to any proceeding in lieu of the foreclosure of such mortgage, shall be liable only for assessments coming due after the date such person so acquires title to the Lot.

5.7 Remedies for Nonpayment of Assessments. The Declarant or Architectural Control Committee may suspend any voting rights of the Owner during the period in which any assessment payable by such Owner, or portion thereof, remains unpaid and may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against such Owner's Lot, in which event late charges, interest, costs and attorney's fees in an amount equal to the greater of \$500.00 or fifteen percent (15%) of the past due amount plus interest due thereon, may be added to the amount of such assessment or portion thereof which is past due. All payments on account shall be applied first to late charges, then interest, then attorney's fees, and then to the assessment lien first due. Each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Declarant and/or Architectural Control Committee the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien against his Lot in the same manner as other liens for the improvement of real property. Any legal action brought by the Declarant or Architectural Control Committee to enforce such lien against such Lot shall be commenced within one (1) year from the time the assessment became due. Failure to bring such an action within such time shall cause the lien to be extinguished as to such assessment, or portion thereof, more than one (1) year past due, but shall not bar an action against the Owner(s) obligated to pay the same in accordance with the provisions hereof. The Declarant or Architectural Control Committee shall have the power to bid in the Lot at any judicial or foreclosure sale and to acquire, hold lease, encumber and convey the same. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his Lot.

5.8 Exemptions. The assessments provided for herein shall not be applicable to any sale of a lot, tract or parcel of the Subdivision made by a mortgagee who has financed the acquisition of, or improvements to, the subject Lot(s), whether such sale is made by the mortgagee in exercise of its rights under the foreclosure provisions of its security deed or is made by the mortgagee who has acquired the property as a result of such exercise of its foreclosure rights in order to dispose of the property subsequent to foreclosure.

ARTICLE VI

MISCELLANEOUS PROVISIONS

6.1 Duration. This Declaration and the covenants, restrictions and provisions set out herein shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Committee and every owner of any part of The Properties, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded, and continuing through and including the 1st day of August, 2006, after which time said covenants shall be automatically extended for successive periods of five (5) years unless a change (the word "change" including additions, deletions, or modifications thereto, in whole or in part) is approved by a majority of the owners of the total number of lots then subject to this Declaration voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all such owners at least thirty (30) days in advance and shall be effective until one (1) year following the vote referred to above, nor shall any such change be effective prior to the recording of a certified copy of such resolution on the Deed Records of Peach County, Georgia.

6.2 Amendments. This Declaration may be amended during the first twenty (20) year period by an instrument adopting such amendment signed by the record title owners of at-least ninety percent (90%) of all of the lots comprising the Properties, and thereafter by an instrument signed by the record title owners of at least seventy-five percent (75%) of all of the lots comprising the Properties.

6.3 Meeting Notice. Whenever this Declaration provides for a meeting of the record title owners of the lots or parcels comprising the Properties, such meeting may be called for the specified purpose on the request of the record title owners of not less than twenty percent (20%) of the lot or lots then comprising the Properties subject to this declaration. "Notice" for the purposes of this Declaration shall be deemed to have been given when deposited with the United States Postal Service for mailing by First Class Mail, Registered or Certified, with adequate postage thereon to assure delivery, addressed to the owner entitled to receive such notices at such owner's mailing address as reflected on the most recent tax digest published by Peach County, Georgia, unless such owner has given written notice to the Agricultural Control Committee of a different address, in which even such notice shall be sent to the owner at the address so designated. The

receipt of the Postal Service for such mailing will be deemed sufficient proof of mailing, and such Notice shall be deemed to have been delivered on the third (3rd) business day following its mailing.

6.4 Enforcement. The Declarant and/or the Architectural Control Committee shall have the right (but not the duty) to enforce any of the covenants and restrictions set out in any Declaration hereafter filed by Declarant or any subsequent owner. Enforcement of the covenants and restrictions shall be by any proceeding at law or in equity against any persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land, to enforce any lien created by these covenants and failure by the Declarant, the Committee, or any owner to enforce any such covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter.

6.5 Severability of Provisions. If any paragraph, section, sentence, clause or phrase of the Declaration shall be or become illegal, null, or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null, or void, the remaining paragraphs, sections, sentences, clauses, or phrases would have been and are imposed irrespective of the fact that anyone or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null, or void.

6.6 Titles. The titles, headings, and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration of any part thereof.

[This section intentionally left blank.]

IN WITNESS WHEREOF, the undersigned Declarant has set its hand and affixed its seal to these presents as, of the day and year first written above.

Kelly & Sons Construction, LLC

By: [Signature]
Kelly Scott Kelly, Managing Member

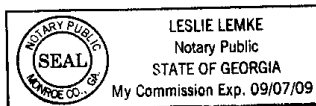
H&H Land Development Corp.

By: [Signature]
Bobby A. Holcomb, Sr., President

Signed, sealed and delivered
in the presence of:

[Signature]
Unofficial Witness

[Signature]
Notary Public



BOOK 359 PAGE 714
Exhibit A

All that tract or parcel of land situate, lying and being in Land Lot 148 of the Sixth Land District of Peach County, Georgia, being known and designated as Lots 1 through 30 of Section 1 of Falcon Crest Subdivision, as more particularly shown on a plat of survey dated May 10, 2006, by Story Clarke & Associates of record in Plat Book 25, Page 165, Clerk's Office, Peach Superior Court.