

Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

RR
3/14

[Space Above This Line For Recording Data]

After Recording Return to:
MOORE INGRAM JOHNSON & STEELE, LLP
Attn: Susan S. Stuart
192 Anderson Street
Marietta, Georgia 30060

CROSS REFERENCE: DEED BOOK 13578, PAGE 1693

**AMENDMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR LIBERTY SQUARE SUBDIVISION**

**STATE OF GEORGIA
COUNTY OF COBB**

THIS AMENDMENT, made and published this 4th day of November 2002, by W & H PROPERTIES, LLC, a Georgia limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, W & H Properties, LLC recorded that certain Declaration of Covenants, Conditions and Restrictions for Liberty Square Subdivision dated August 15, 2002, on August 19, 2001, in Deed Book 13578, Page 1693, Records of Cobb County, Georgia (hereinafter referred to as the "Declaration"); and

WHEREAS, pursuant to authority granted in Article IX of the Declaration, Declarant is the owner of at least 75% of the Lots in Liberty Square Subdivision and desires to amend the Declaration as set forth herein.

NOW, THEREFORE, for and in consideration of the premises, said Declaration is hereby amended as follows:

1.

Article VIII, Section 10 of the Declaration is hereby deleted and replaced with the following:

- (a) All construction shall be carried out in compliance with the laws, code,

rules, 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.

(c) 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.

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

(e) Any garages must have doors, and each garage door must be coordinated in design and color with the dwelling to which it is appurtenant. Both garages must be occupied by Owner's motor vehicles before a third vehicle is allowed to be parked in the driveway.

(f) Any construction on a Lot shall be at the risk of the Owner of such Lot and the Owner of such Lot 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.

(g) Any change in paint color to any structure must be approved by the Architectural Control Committee.

2.

Article IV of the Declaration shall be revised to include a Section 4 to read as follows:

Section 4. Joint Driveways. All Owners understand and agree that some Lots located on the Property will share a driveway. Any Owner of a Lot who shares a driveway hereby grants to the other Owner who shares the driveway, his successors and assigns a permanent easement across that portion of his Lot covered by the joint driveway. Any Owners who share a joint driveway agree to cooperate in the maintenance of the driveway.

3.

Article VI, Section 1 of the Declaration is hereby deleted and replaced with the following:

Section 1. Association's Responsibility. Except as otherwise provided for herein, the Association shall maintain and keep in good repair all portions of the Common Area and improvements thereon. The Association's responsibility with respect to the Common Area shall be deemed to include the maintenance, repair and replacement of (i) all roads, driveways,

walks, parking areas and buildings and other improvements situated within the Common Area; (ii) such utility lines, pipes, plumbing, wires, conduits and systems which are a part of the Common Area; (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Area; (iv) the privacy fence located around the Property; (v) the access alleys located on the Property; and (vi) all detention ponds located on the Property.

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

In addition to maintaining the Common Area, the Association shall be responsible for maintaining the landscaping on all Lots. Said maintenance responsibility includes mowing, weeding and edging of all yards and providing pine straw for all beds (as needed).

The renewal of any termite bond on the townhomes located on the Property shall be the responsibility of the Association.

4.

Except as otherwise specifically amended herein, said Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Developer has caused this amendment to be executed on the 4th day of ~~October~~, 2002.

*November
2002*

W & H PROPERTIES, LLC

William H. Harper, Jr. (SEAL)
By: *William H. Harper, Jr.*
Title: *member*

Signed, sealed and delivered in the presence of:

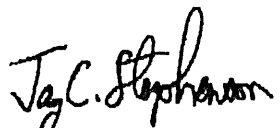
MS Babone
Unofficial Witness

Jeanine F. Harper
Notary Public

Deed Book 13626 Pg 793
Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

Notary Public, Cobb County, Georgia
My Commission Expires April 6, 2006





Jay C. Stephenson
Clerk of Superior Court Cobb Cty. Ga.

RR
19
/40

Top portion for recording purposes

After Recording Return to:
MOORE INGRAM JOHNSON & STEELE, LLP
Attn: Susan S. Stuart
192 Anderson Street
Marietta, Georgia 30060

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
LIBERTY SQUARE SUBDIVISION**

**STATE OF GEORGIA
COUNTY OF COBB**

THIS DECLARATION, made this 15th day of August, 2002, by W & H Properties, LLC (hereinafter referred to as "Developer").

WITNESSETH

WHEREAS, Developer is the owner of the subdivision known as Liberty Square Subdivision, said subdivision being more particularly described on Exhibit "A" attached hereto and made a part hereof by reference; and

WHEREAS, Developer desires to provide for the preservation and enhancement of the property values in Liberty Square Subdivision, and for the maintenance of property and improvements thereon, 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 Liberty Square 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 and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer will cause to be incorporated under the laws of the State of Georgia the Liberty Square HOA, 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" shall mean and refer to W & H Properties, LLC, or such other entity or individual as Developer may appoint, until all Lots in Liberty Square Subdivision have been fully developed and permanent improvements constructed thereon and sold to permanent residents or until Developer relinquishes its right to appoint the Architectural Control Committee by written instrument. At such time as all Lots are fully developed and permanent improvements constructed thereon and sold to permanent residents, if not before, the then current Developer shall relinquish its right to appoint the Architectural Control Committee and said Committee shall be appointed by the Board.

Section 2. "Association" shall mean and refer to Liberty Square HOA, Inc., its successors and assigns.

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

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

Section 5. "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate 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 W & H Properties, LLC, a Georgia limited liability company, or any successor in title or any successor in interest to W & H Properties, LLC to all or any portion of the Property then subject to this Declaration, provided in the instrument of conveyance to any such successor in title or interest it is stated that the rights of Developer are conveyed therewith or if in any subsequent recorded instrument the then current Developer conveys Developer's rights to such successor-in-title.

Section 8. "Lot" shall mean and refer to residential lots, as well as any future lots subject to the within covenants, conditions, restrictions and easements by the Developer in Liberty Square 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.

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 on the plat hereinabove referenced.

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

(a) 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 building or part thereof, garage, porch, gazebo, shed, greenhouse or bathhouse, coop or cage, covered or uncovered patio, swimming pool, tennis court, fence, curbing, paving, wall, tree, shrub, sign, signboard, mailbox, driveway, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such Lot;

(b) 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; and

(c) any change in grade at any point on a Lot of more than six (6) inches, whether or not subsection (b) of this Section 12 applies to such change.

ARTICLE II 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 owner, his family, tenants, visitors, guests, servants, and agents with respect to the exterior of any house or with respect to any other portion of any Lot or other parcel of land, including without limitation, the construction or installation of sidewalks, driveways, decks, patios, swimming pools, tennis courts, 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.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS

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. 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 classes of voting membership:

Class A: Every person who is an Owner, with the exception of the Developer, shall be a Class A member and shall be entitled to one vote for each Lot owned. When more than one Person is a Class A member by virtue of an ownership interest in the same Lot, 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. In the event of disagreement among such persons and in an attempt by two or more of them to cast the vote of such Lot, such persons shall not be recognized and the vote of such Lot shall not be counted. The membership of Class A members shall automatically terminate upon the member's sale of his Lot. However, no termination of Class A membership shall affect such member's obligation to pay assessments, as hereinafter provided for, due and payable for any period prior to the date of such termination, and there will be no refund for assessments paid for periods falling after the date of such termination.

Class B: The Developer shall be the sole Class B member. Class B membership shall be a full voting membership, and during its existence the Class B member shall be entitled to vote on all matters and in all events. The Class B member shall be entitled to three (3) votes for each Lot owned by it. The Class B membership shall cease and shall be converted to Class A membership at such time as the first of the following events occurs:

- (a) the termination of seven (7) years from the date of recording of this Declaration; or
- (b) the date as of which three fourths (3/4) of the Lots which may be developed on the Property shall have been conveyed, by the Developer to any individual Owner or Owners for residential occupancy; or
- (c) the surrender by the Developer of the authority to appoint and remove members of the Board of the Association by written instrument executed and recorded by the Developer; provided, however, that so long as any mortgagee of Developer holds a security interest in any portion of the Property as security for a development loan to Developer, the Class B member membership shall not terminate without the prior written consent of such mortgagee. If at the time of termination of the Class B membership Developer still owns any Lots, then as to each Lot owned by Developer, Developer shall be deemed to be a Class A member.

ARTICLE IV PROPERTY RIGHTS

Section 1. Member's Easement of Enjoyment. 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, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following:

- (a) the right of the Association to charge a reasonable admission and other fees for the use of any recreational facility situated upon the Common Area.
- (b) the right of the Association to suspend the voting rights and right to use of the Common Area by an Owner or his designee for any period during which any assessment against his Lot remains unpaid, and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.
- (c) the right of the Association 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, upon the assent of two-thirds of the Class A members

and the Class B member, if any, to give as security a mortgage conveying all or any portion of the Common area.

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility, or to a third party, for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members, agreeing to such dedication or transfer, has been recorded.

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

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-laws, his right or use and enjoyment in and to the Common Area and the improvements thereon to the members of 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.

ARTICLE V
COVENANT FOR MAINTENANCE AND
CAPITAL IMPROVEMENT 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, (2) special assessments for capital improvements and (3) initiation fees, such assessments to be established and collected as hereinafter provided. The annual and special assessments, and initiation fees, together with interest thereon and costs of collection thereof, as hereinafter provided, including reasonable attorney's fees, shall be a charge and a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, 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 fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by 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 maintenance and repair of the Common Area and improvements thereon, the maintenance of services furnished by the Association, the purchase of insurance by the Association, 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 establishment and maintenance of a reasonable reserve fund or funds.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment for all Lots with single-family residences constructed thereon shall be Sixteen Hundred Dollars (\$1,600.00) per Lot (\$400.00 payable quarterly) and Twelve Hundred Dollars (\$1,200.00) for all Lots with townhomes constructed thereon (Lots 1-49 on the recorded plat of the Property) (\$300.00 payable quarterly).

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Rate of Assessment. Both annual and special assessments may vary depending on whether a given Lot has a single-family residence or a townhome constructed thereon and may be collected quarterly or as provided by the Board of Directors.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each Lot on the date that such Lot is conveyed to an Owner. Anything contained herein to the contrary notwithstanding, Developer shall not be responsible for assessments on Lots not containing an occupied residence. Developer shall, however, fund any deficit which may exist between assessments and the annual budget or pay the annual assessment and any special assessments due for as long as there is a Class B member of the Association. Developer's obligation hereunder shall constitute a lien against all real property owned by Developer and subject to this Declaration. 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, not to exceed Ten Dollars (\$10.00), furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a specified Lot is 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. All such requests shall be sent to the Association in the same manner as provided for notices in Section 6 hereof.

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 the rate of eighteen percent (18%) per annum. In such case, the Association may accelerate, at its option, the entire unpaid balance of the assessment 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, 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 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 Lien to First Mortgages. 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 assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Area; and (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 as otherwise set forth herein.

Section 11. Effect of Delinquency on Class A Members. Notwithstanding all of the foregoing rights of the Association, the Association shall have the further right to prohibit a delinquent Class A member, such delinquency being as herein defined, from using in any manner the Common Area.

Section 12. Initiation Fees. There shall be owed to the Association a nonrefundable initiation fee paid at each closing of a Lot. The initiation fee shall be Two Hundred Dollars (\$200.00) per Lot for all Lots. Each Owner understands that the initiation fee as set forth herein shall be paid to the Association at the initial closing of the Lot and at each subsequent closing of that Lot so that the Association receives an initiation fee each time a Lot is sold.

ARTICLE VI MAINTENANCE

Section 1. Association's Responsibility. Except as otherwise provided for herein, the Association shall maintain and keep in good repair all portions of the Common Area and improvements thereon. The Association's responsibility with respect to the Common Area shall be deemed to include the maintenance, repair and replacement of (i) all roads, driveways, walks, parking areas and buildings and other improvements situated within the Common Area, (ii) such utility lines, pipes, plumbing, wires, conduits and systems which are a part of the Common Area, (iii) all lawns, trees, shrubs, hedges, grass and other landscaping situated within or upon the Common Area, (iv) the privacy fence located around the Property (v) the access alleys located on the Property and (vi) all detention ponds located on the Property.

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

In addition to maintaining the Common Area, the Association shall be responsible for maintaining the landscaping on all Lots. Said maintenance responsibility includes mowing, weeding and edging of all yards and providing pine straw for all beds (as needed).

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all maintenance of the Lot and all Structures, parking areas, fencing, landscaping not conducted by the Association, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with this Declaration. In the event that the Board of Directors of the Association determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot. The remedies provided in the Section shall be in addition to, and not in lieu of, other remedies provided in this Declaration for a violation of the Declaration.

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 for ingress, egress, installation, replacement, repair and maintenance of all utility and 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 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 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 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 to proper attachments in connection with the transmission of electricity, gas, water, telephone, community antennae, 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 and any sales office, 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 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. The use of a portion of a dwelling as an office by an Owner shall not be considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic. The use of a dwelling or a portion thereof for business meetings, entertainment, or the enjoyment or business of the Owner's employees, trustees, agents, clients, or customers shall not be considered to be a violation of this covenant if such use does not create regular customer, client or employee traffic. Nothing herein shall be construed to prohibit or prevent Developer or any builder of residences on the Property from using any Lot owned by Developer or such builder for the purpose of carrying on business related to the development and sale of Lots and/or new homes on Lots.

Section 2. Common Area. The Common Area 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.

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; and

(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. No chain link or cyclone fences may be placed on the Property. All fences must be approved by the Architectural Control Committee as set forth in Article II herein.

Section 7. Recreational Vehicles, Trailers, etc. No recreational vehicles, trailers, campers, trucks (except pickups and vans), travel buses or any such equipment shall be parked 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 or parcel of land shall repair or restore any vehicle of any kind upon any lot or upon any parcel of land, except for emergency repairs, and then only to the extent necessary to enable the movement thereon 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 without prior written approval of the Architectural Control Committee.

Section 9. Accessory Structures. A detached accessory structure may be placed on a Lot to be used for a playhouse or tool shed. Such accessory structures shall not exceed ten (10) feet in height, shall conform in exterior design and quality to the dwelling on the same Lot, and shall be located only behind the dwelling as such dwelling fronts on the street abutting such Lot. Such accessory structures shall also be located with such side and rear setback lines as may be required hereby or by applicable zoning law. There shall be no outside lighting except as may be approved by the Architectural Control Committee. Any accessory structure must be approved, in advance, in writing by the Architectural Control Committee.

Section 10. Improvement of Lots. All construction of dwellings, accessory structures and all other improvements in Liberty Square Subdivision shall be undertaken and completed in accordance with the following conditions:

(a) All construction shall be carried out in compliance with the laws, code, rules, 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.

(c) Only one mailbox shall be located on any Lot, which mailbox shall be selected by Declarant and shall be placed and maintained to complement the dwelling to which it is appurtenant to the extent such mailbox is permitted to be located and maintained by the United States Postal Service, its successors and assigns. Any deviation from the standard mailbox and supporting structure must be approved by the Architectural Control Committee.

(d) 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 on any Lot other than apparatus relating to solar energy, the location and design of which must first be approved by the Architectural Control Committee.

(f) Any garages must have doors, and each garage door must be coordinated in design and color with the dwelling to which it is appurtenant. Both garages must be occupied by Owner's motor vehicles before a third vehicle is allowed to be parked in the driveway.

(g) Any construction on a Lot shall be at the risk of the Owner of such Lot and the Owner of such Lot 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.

(h) Any change in paint color to any structure must be approved by the Architectural Control Committee.

Section 11. Animals. No animals, including birds, insects and reptiles, may be kept on any Lot unless kept thereon solely as household pets and not for commercial purposes. No animal shall be allowed to become a nuisance. No animals shall be boarded outside of the dwelling structure.

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 a two-third (2/3) vote of the Association Class A members.

Section 13. Miscellaneous Fixtures. To provide a neat, attractive and harmonious appearance throughout the neighborhood, no awnings, shades or window boxes shall be attached to, or hung or used on the exterior of, any window or door of any house; and no railings, fences, walls, antennae or satellite dishes shall be installed or constructed upon any lot or parcel of land without the prior written consent of the Architectural Control Committee. Further, no foil or other reflective material shall be used 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. 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. Antennae. No television antenna, radio receiver, satellite dish or other similar device shall be attached to or installed on any portion of the Property, unless said antenna, radio receiver, satellite dish or other device is one meter or less in diameter and is installed at the rear of the residence, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot which may unreasonably interfere with the reception of television or radio signals within the Subdivision; provided, however, that the Association shall not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio or other similar systems within the Subdivision, and should cable television services be unavailable and adequate television reception not be otherwise available, then an Owner may make written application to the Architectural Control Committee for permission to install a television antenna. The location of the placement of a satellite dish that is one meter or less in diameter shall be subject to the approval, **in writing**, of the Architectural Control Committee except that said committee must allow a placement at a location on an Owner's Lot where reception can reasonably be obtained.

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, easements, liens and charges nor 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 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 the mailing of written notice of such violation or breach. The right of abatement means the right of the Architectural Control Committee, through its agents and employees, to enter at all reasonable times upon any Lot or Structure as to which a violation or breach exists, and to take 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 provision 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 and sections.

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 be 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 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 which presently is:

William H. Harper, Jr.
W & H Properties, LLC
701 Whitlock Avenue
Suite K-46
Marietta, GA 30064

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. Annexation. Additional residential property and Common Area may be annexed to the Property subject to this Declaration with the consent of two-thirds (2/3) of each class of members.

Section 8. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Developer:

(a) 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,

(b) 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,

(c) If such amendment is required to obtain the approval of this Declaration by an institutional lender, such as a bank, 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

(d) If such amendment is necessary to enable any governmental agency, such as the Veterans Administration, the Federal Housing Administration or a reputable private insurance company to insure mortgage loans on the Lots subject to this Declaration. Further,

this Declaration may be amended at any time and from time to time by an agreement signed by at least seventy-five (75%) percent of the Owners of Lots; provided, however, such amendment by the Owners shall not be effective unless also signed by Developer, if Developer is the owner of any real property then subject 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 unless such holder shall consent in writing thereto. Any such amendment shall not become effective 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.

(e) Notwithstanding the foregoing, or any other provision of this Declaration, for so long as there is a Class B member, the following matters shall require the approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration.

Section 9. Fines. The Board of Directors may impose fines or other sanctions, for violations of this Declaration, said fines to be collected as provided herein for the collection of assessments.

Section 10. The Board shall have the right to record in the appropriate land records a notice of violation of this Declaration, Bylaws or any rules, regulations, use restrictions, or design guidelines promulgated by the Association and to assess the cost of recording and removing such notice against the foregoing.

Section 11. Commercial Lot. Each Owner understands that the property located to the east of Liberty Square Subdivision is not owned by Developer and is zoned for commercial uses.

Section 12. Garbage Pickup. Owners of Lots located adjacent to the concrete access alleys as same are shown on the recorded plat of the Property hereby acknowledge that all trash should be placed on the access alley at the rear of the Lot and not on the public drive for pickup.

IN WITNESS WHEREOF, W & H Properties, LLC 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.

Signed, Sealed and Delivered in the presence of:

"Developer"
W & H Properties, LLC

Louise McDerffie

Witness

William H. Harper, Jr. _____ [Seal]
By: William H. Harper, Jr.
Title: Member

[Signature]

Notary Public MY COMMISSION EXPIRES MAY 7, 2004.
[Notary Seal]



Exhibit "A"
Legal Description of Property

All that tract or parcel of land lying and being in Land Lots 7 and 8 of the 20th District, 2nd Section of Cobb County, Georgia as per final plat of **Liberty Square Subdivision**, prepared by Krewson Vickrey Engineers & Land Surveyors, Edward G. Vickrey, Georgia Registered Land Surveyor No. 2563, dated May 8, 2002, recorded in **Plat Book 206, Pages 10 through 11**, Records of Cobb County, Georgia. Said plat is incorporated herein for a more complete delineation of said property.