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Fannin Co. Clerk of Superior Court
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After recording return to:

**RESTRICTIVE COVENANTS, ROAD EASEMENT AND MAINTENANCE
AGREEMENT FOR KELLY'S POINT ON THE TOCCOA SUBDIVISION**

These restrictive covenants for KELLY'S POINT ON THE TOCCOA SUBDIVISION is made and entered this 12th day of December, 2006, by the undersigned RANDALL KUCERA and JANET KUCERA, hereinafter referred to as "Declarants".

WITNESSETH:

WHEREAS, Declarants are the fee simple owners of all that tract or parcel of land lying and being in Fannin County, Georgia, and being more particularly described below with any additional property added hereto by amendment, hereinafter referred to as the "Submitted Property," said property being more fully described as follows:

All that tract or parcel of land lying and being in the 8 District, 2 Section of Fannin County, Georgia and being parts of Land Lot No.'s 101 and 80, more particularly described as follows: Lots 2A, 2AA, 3A, 3AA, 4A, and 4AA according to that certain plat of survey by Dugger P. Kiker, G.R.L.S. 1551 dated December 15, 1987 recorded in Plat Book 19, Page 35, Fannin County Records, said plat of survey being incorporated herein by reference thereto for a more complete description of the above described property. **PLAT HANGER D-398 PAGES 6 & 7**

Subject to all easements, restrictions, and rights of way as set forth on plat of survey recorded at Plat Book 19, Page 35, Fannin County records.

Also conveyed is an easement 30 feet in width for ingress and egress along those two certain existing roadways leading from the public road forming the western boundary of Tract 1 as shown on the above-referenced Plat in an easterly direction across Tracts 1, 2, 3, 4, 5, 4A, 3A, 2A, and 1A, not exceeding 15 feet from the center of said road, and is further subject to utility easement along the South side of that existing roadway known as the ridge road.

Tract 3A is subject to an easement for ingress and egress on the western boundary for use as a road for a total of 30 feet in width, the centerline of said roadway forms the western boundary of said Tract 3A and extends from the southwestern corner of Tract 1 A in a northerly direction to the northwesterly corner of Tract 4A.

Being the same property conveyed unto Randal P. Kucera and wife Janet Kucera by deed from Four Corner Properties, LLC recorded on September 27, 2002 in Deed Book 466, Page 416 in the Office of the Clerk of Superior Court, Fannin County, Georgia.

WHEREAS, Declarants desire to enhance the value and provide for the uniform development of the Subdivision;

NOW, THEREFORE, the Declarant hereby declares that the Submitted Property shall be held, conveyed, encumbered, used, occupied and improved subject to the following covenants and restrictions, which are in furtherance of a plan for subdivision, improvement and sale of real property and every part thereof. The covenants, restrictions and easements set forth herein shall run with the land and shall be binding on all parties

having or acquiring and rights, title or interest therein or thereto, and shall, subject to the limitations herein provided, inure to the benefit of each "Owner" (as hereinafter defined), his/her/their heirs, successors and assigns. The Declarant hereby also declares that the Submitted Property shall held, conveyed, encumbered, used, occupied, and improved subject to previously recorded covenants and made part of these covenants.

I. LAND USE AND BUILDING TYPE. No lot will be used for any other purpose than for residential use. No building will be erected, altered, placed or permitted on any lot other than one (1) detached family dwelling. No duplexes, condominium or multi-unit building shall be located on any of said lots. No building shall be erected on any lot that will be used as a school, church, kindergarten or business of any type, or no business activity shall be carried on upon any lot at any time.

II. TEMPORARY STRUCTURES. No structure of a temporary character, such as a basement, trailer, lean-to, shack, garage, barn or other outbuilding will be used on any lot at any time as a residence, either temporarily or permanently.

III. MOBILE OR MANUFACTURED HOME. No mobile home or manufactured home of any type will be used or located on any lot at anytime as a residence either temporarily or permanently.

IV. ARCHITECTURAL CONTROL. Concrete block construction is prohibited on any lot except that concrete blocks may be used in the foundations and chimneys of houses erected on said lots and must be either stuccoed, rocked or bricked. The exterior of all structures to be constructed on any of said lots shall be completed within six (6) months from date that construction begins. No dwelling constructed on the above-referenced property shall contain less than 650 square feet of heated area (on the main floors), excluding porches, docks, garages and basements. All external surfaces shall be covered in log or other wood siding material, and coloration shall be of a standard neutral or earth tone color. Roofing materials must be factory painted metal, slate, cedar shakes or architectural shingles. Any outbuilding shall have matching siding to the dwelling located on the lot, in order to better blend with the surrounding buildings.

Except during construction of permanent improvements thereon, no Owner shall excavate or extract earth from any lot for any business or commercial purpose or otherwise. No elevation changes shall be permitted which materially affect surface grade of surrounding lots.

No structure shall draw power from a temporary pole except for a temporary pole necessary for the construction of a permanent home. Power shall be hooked up permanently.

Homeowners shall be responsible for the acts of their employees, sub contractors, suppliers and other persons or parties involved in construction or alteration of a home site. In this regard, homeowner shall be responsible for ensuring:

- a. That the construction site is kept clean and free of debris and waster.
- b. That stockpiles of unused materials are kept in a neat and orderly fashion.
- c. That a free standing, enclosed toilet (Port-a-Pot) be installed on the lot prior to beginning construction of the primary residence and removed as soon as residence is completed.

V. NUISANCES. No noxious or offensive activity will be carried on upon any lot, nor shall anything be done thereof which may be or become an annoyance or nuisance to the neighborhood. No nuisance or offensive, noisy or illegal trade, calling or transaction will be done, carried on, suffered or permitted upon any lot, nor will any lot be used for any illegal purposes. Each lot will be kept and maintained completely free of any junk (including old vehicles and discarded appliances), trash and garbage. No noxious or offensive activity, which emits an offensive odor, shall be suffered or permitted upon any lot.

VI. RESTRICTIONS ON MOTORIZED OR INOPERABLE VEHICLES. The use of trail bikes, motorcycles, three-wheelers, dune buggies or any similar type vehicle shall be used in such a manner as to create no disturbance to any other person on said property and shall not be used in any manner which will constitute an offensive activity or obnoxious or offensive noise.

No inoperative cars, motorcycles, trucks, or other types of vehicles shall not be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours, provided, however, that this provision shall not apply to any such vehicles being kept in an enclosed garage. There shall be no major repair performed on any motor vehicle on or adjacent to any Lots in the subdivision. All vehicles shall have current license plates.

VII. EASEMENTS. Easements for the installation and maintenance of utilities, including electric power lines, are hereby reserved, whereby a power line with all essential clearing, may be installed along the roads and road right of ways which traverse any lots in the property encumbered by these protective covenants.

VIII. COMPLIANCE WITH GOVERNMENTAL REGULATIONS. Any and all building and construction on any of the lots which are the subject of these protective covenants shall be done consistent with, in all respects, any and all Federal, State and County governmental laws, rules, regulations and ordinances regulating said building and construction, including the installation of a septic tank and water supply.

IX. ANIMALS. 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 purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions. Large and/or potentially vicious breeds of dogs are specifically excluded, and may not be raised, bred or kept on any lot.

X. CLOTHESLINES. No garments, laundry, rugs or other articles may be aired or dried on any lot.

XI. GARBAGE AND TRASH. No trash, garbage or other waste material or refuse shall be placed or stored on any lot except in covered sanitary containers. All such sanitary containers must be stored in each home, or within an enclosure designed therefore, which must be at least five (5) feet from any lot line.

XII. OUTDOOR LIGHTING. All outdoor lighting shall be so shaded and directed such that the light therefrom is directed to fall only on the same premises where light sources are located.

XIII. SIGNS. No sign of any kind shall be displayed to the public view on any lot except such signs as comply with the provisions hereof. Builders may display such signs as are normally utilized to advertise the property during the construction and sales period. After an Owner closes his/her/their purchase on any lot in the subdivision, the only signs permitted on his/her/their lot will be: (a) a professionally prepared signed for identification purposes (not more than one square foot in area); and (b) a single sign to rent or sell said lot of a type used by real estate agents or brokers in the area, with the usual wording, such sign to be no more than four square feet in size. In the event any such sign is unsatisfactory, the sign will be removed. These limitations shall apply to signs of all types, including banners, signs on cloth, paper, cardboard or other materials.

This declaration and the restrictions contained herein shall run with and bind the submitted property for a period of twenty (20) years from and after the date when this declaration is filed for record with the Clerk of Superior Court for Fannin County, after which time this declaration and the restrictions shall be automatically renewed for successive periods of ten (10) years; provided, however, that after the end of the said twenty (20) year period and during any ten (10) year renewal period (but only during such renewal period), this declaration and the restrictions contained herein may be terminated by an instrument executed by 2/3 of the lot owners and recorded in the Office of the Clerk of Superior Court for Fannin County, Georgia, or in such other place of recording as may be appropriate at the time of the execution of such instrument.

ROAD MAINTENANCE ASSESSMENTS

All purchasers of lots within Kelly's Point on the Toccoa Subdivision, hereinafter referred to as "Subdivision", by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, are deemed to covenant and agree to pay to an association or group of lot owners formed for the purpose of administering said funds, (1) annual assessments or charges for regular road maintenance within the Subdivision (including all roads shown on the above described survey); and (2) special assessments for emergency repairs to said roads within the Subdivision, these assessments to be established as follows:

1. For annual assessments for regular road maintenance: Each new owner shall pay a yearly fee for use for regular road maintenance (to begin at \$200.00 per year per lot owned to be prorated for the remainder of the year at the closing of the initial sale of the lots). The annual assessment shall be paid directly to the Homeowner's Association, or, in the event the Association is not yet activated, to the Developer to be held in accordance with the above provisions, on or before January 1 of the year of the assessment. Any amount not paid by January 10 will incur a 10% late charge and will become a lien on the property at the interest rate of prime plus 3% as published in the Wall Street Journal, prime recomputed on a quarterly basis (for the upcoming three (3) months).

2. By a majority vote of all lot owners, special assessments for emergency repairs or upgrades to said road shall be established, with each lot owner responsible for a pro-rata share of said approved emergency assessment (one share per lot owned).

The annual and special assessments, together with interest and costs of collection, including reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property or lot against which each such assessment is made. Each such assessment, together with interest, costs of collection, and reasonable attorney fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for such delinquent assessments shall also pass to his/her/their successors in title, provided a claim of lien has been recorded in the public records of Fannin County giving notice to all persons that a claim of lien upon the lot is being asserted, prior to the conveyance of title to the lot. Said claim of lien shall state the description of the residence, the name of the record owner thereof, the amount due and the date when due, and the lien shall continue in effect until all sums secured by the lien have been fully paid. Such claims of lien shall be signed and verified by (1) an officer of the Homeowner's Association (if such association is established) or (2) by a representative of a majority of the lot owners in the Subdivision. Upon full payment, the party making the payment shall be entitled to a recordable satisfaction of lien, said satisfaction being executed by either (1) by the record individual filing the lien, (2) an officer of the Homeowner's Association (if such association is established), or (3) by signatures indicating a majority of all lot owners. Liens for assessments may be foreclosed by suit brought in the name of the Homeowner's Association in like manner as a foreclosure of a mortgage on real property. During the period of ownership of any lots by Declarants, no assessments or fees shall apply to Declarants and/or their lands.

RESERVATION BY DECLARANT OF ROAD EASEMENT

The Declarants hereby reserve unto themselves, their successors and assigns, all necessary licenses, rights, privileges and easements over, upon, under and across all property, including, but not limited to, (1) the right to use the said property for rights-of-way and easements to erect, install, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, pipes and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, cable, television, sewer, water or other public conveniences or subdivision utilities, (2) the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance, (3) the right to locate thereon wells and pumping stations; (4) the right and easement of ingress and egress for purposes of development and construction, and (5) such other rights as may be

reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of the Subdivision; provided, however, that said reservation and right shall not be considered an obligation of the Declarants to provide or maintain any such utility, development or service. Declarants also reserve the right to connect

with and make use of the utility lines, wires, pipes, conduits, cable, television, sewers and drainage and other utility lines, which may from time to time be in or along the streets and roads within the property. Finally, the Declarant reserves the right to establish and continue to use any sales offices, signs or parking spaces located on the property in its effort to market the development. The easements and rights-of way herein reserved shall continue in existence in favor of the Declarants until conveyance of all lots in the Subdivision has occurred and Declarants have filed a written document extinguishing the easement with the Clerk of the Superior Court for Fannin County.

ROAD EASEMENT FOR THE SUBDIVISION

It is the express intent of Declarants to grant an easement along the road system within the boundaries of the aforementioned survey for ingress and egress to each purchaser, his/her/their heirs and assigns of lots or property within the Subdivision. It is the express intent of Declarants to reserve for Declarants, their heirs and assigns, and easement for ingress and egress along same roads. The easement is granted notwithstanding any error or omission in any individual conveyance to a purchaser of a lot or property by the Declarants, which might fail to expressly grant or reserve such an easement.

For so long as Declarants retain ownership of one or more lots in said subdivision, Declarants shall have the right, in their sole discretion and judgment, to modify, amend or alter in any manner this instrument to provide for the general health and welfare of the owners of lots in said subdivision.

The Declarants will notify owners when only one lot is left to sell so that owners can be planning to take over the ownership by forming a Homeowner's Association to control the roads and all other common areas, including any checking and savings accounts and this agreement. When the Declarants execute a contract to sell the final lot, the Declarants will notify owners of the planned closing date for the last lot. On that closing date, the owners agree to take over ownership and assume control of the roads and all other common areas including the checking and savings accounts and this agreement and hold the Declarants harmless from the date forward.

A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

Each owner, by his, her, their acceptance of a deed or other conveyance of a lot, acknowledges for himself/herself/themselves, his/her/their heirs, legal representatives, successors and assigns, that he/she/they be bound by the provisions of this declaration, including, but not limited to, the easement provisions for all homeowners provided in this document.

This declaration shall be binding upon the undersigned, their heirs, administrators, successors and assigns. Said declaration shall run with the title to the property described above and any subsequent property that is added hereto by amendment.

IN WITNESS WHEREOF, the Declarants have hereunto set their hands and seal as of the day and year first above written.

Signed, sealed and delivered in the presence of:

[Signature]

Witness

[Signature]

RANDALL KUCERA, Declarant

[Signature]

Notary Public

[Signature]

JANET KUCERA, Declarant

