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Book 8076 page 126

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Norcross, GA 30071

Filed and recorded
Clerk Superior Court
Gwinnett County, GA
1992 Nov. 12 PM 3:19
Gary R. Yates, Clerk

DECLARATION OF PROTECTIVE COVENANTS

FOR

IVY STATION

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<u>Exhibit</u>	<u>Name</u>
"A"	Definition
"B"	Property Submitted
"C"	Additional Property Which May Unilaterally Be Submitted by Declarant
"D"	By-Laws of Ivy Station Community Association, Inc.

DECLARATION OF PROTECTIVE COVENANTS

FOR

IVY STATION

THIS DECLARATION is made on the date set forth below by **JOLLY**

DEVELOPMENT CORPORATION, INC., a Georgia corporation
("Declarant");

W I T N E S S E T H:

WHEREAS, Declarant is the owner of the real property described in Article II, Section 1, of this Declaration; and

WHEREAS, Declarant desires to subject the real property described in Article II, Section 1 to the provisions of this Declaration to create a residential community of single-family housing and to provide for the subjecting of other real property to the provisions of this Declaration;

NOW, THEREFORE, Declarant declares that the real property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon is subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall be for the benefit of all owners of the property subject to this Declaration.

THIS DECLARATION DOES NOT AND IS NOT INTENDED TO CREATE A CONDOMINIUM REGIME SUBJECT TO THE GEORGIA CONDOMINIUM ACT, O.C.G.A., SECTION 44-3-70, ET SEO.

ARTICLE I
DEFINITIONS

Unless the context shall prohibit, certain words used in this Declaration shall be defined as set forth in **Exhibit "A"**, attached and made a part of this Declaration.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION

Section 1. **Property Hereby Subjected to This Declaration.** The real property which is, by the recording of this Declaration, subject to the covenants and restrictions set forth in this Declaration is the real property described in Exhibit "B", attached and made a part of this Declaration.

Section 2. **Other Property.** Only the real property described in Section 1 of this Article II is made subject to this Declaration. However, by one or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, to subject other real property to this Declaration, as provided in Article IX.

ARTICLE III
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

Section 1. **Membership.** Every Person who is the record owner of a fee interest in any Lot that is subject to this Declaration shall automatically be a member in the Association. Membership shall not include persons who hold a security interest only and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By0Laws. Membership shall go along with and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the members's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

Section 2. **Voting.** Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an ownership interest in any Lot, the vote for such Lot shall be cast as those Owners decide and instruct the Secretary prior to any meeting. If the Secretary is not instructed, the Lot's vote shall be suspended in the event more than one Owner of a Lot attempts to cast it.

ARTICLE IV
ASSESSMENTS

Section 1. **Purposed of Assessment.** The assessments provided for herein shall be used for the general purposes of promoting the

recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. **Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot, by acceptance of a deed to the Lot, whether or not it shall be stated in the deed, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) specific assessments. All assessments, together with late charges, interest (not to exceed the maximum legal rate), costs, and reasonable attorney's fees actually incurred, shall be (a) a charge on the land and a continuing lien upon the Lot against which each assessment is made; and (b) the personal obligation of the Person who is the Owner of the Lot at the time the assessment becomes due. The grantee of each Owner shall be jointly and severally liable for the portion of an assessment as is due and payable at the time of transfer of the Unit. However, the liability of a grantee for the unpaid assessments of an Owner shall not apply to any first Mortgagee holder taking title through foreclosure proceedings.

The Association shall, within five (5) days after receiving a written request and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association certifying the status of assessments on a Lot shall be binding upon the Association as of the date of issuance.

Assessments shall be levied equally on all Lots and shall be paid in such manner and on such dates as are fixed by the Board of Directors. Upon ten (10) days' written notice, the Board may accelerate the annual assessment for delinquents. Unless the Board provides otherwise by resolution, the assessment shall be paid in quarterly installments.

Section 3. **Computation.** It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated common expenses of the Association during the coming fiscal year. The budget shall include a capital contribution establishing a reserve fund in accordance with a budget separately prepared.

The assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted common expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to

assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year. So long as the Declarant has the right unilaterally to annex additional property pursuant to Article IX on an annual basis, the Declarant may elect, but shall not be obligated, to reduce the assessment for any fiscal year by payment of a subsidy. However, any Declarant subsidy shall be conspicuously disclosed as a line item in the income portion of the common expense budget. If the Declarant elects to pay a subsidy the amount of the subsidy shown on the budget shall be an estimate only and the Declarant shall only be obligated to fund such subsidy to the extent of any actual operating deficit. The payment of a subsidy in one year shall under no circumstances obligate the Declarant to continue payment of a subsidy in future years.

The Board shall deliver or mail a copy of the common expenses budget and notice of the amount of the assessment for each Lot to each Owner at least thirty (3) days prior to the beginning of the fiscal year. The budget and assessment shall become effective unless disapproved at a meeting by a Majority of the total Association vote and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX). There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Owners as provided in the By-Laws. The petition must be presented to the Board within ten (10) days of delivery of the notice of assessments.

Notwithstanding the above. In the event the proposed budget is disapproved or the Board fails to prepare and distribute the budget for any year then until such time as a budget is prepared and distributed, the budget in effect for the immediately preceding year shall continue for the current year.

Section 4. **Special Assessments.** In addition to the other assessments authorized herein, the Association may levy special assessments from time to time if approved by two-thirds (2/3) of the total Association vote and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX). Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 5. **Lien for Assessments.** All assessments levied against any Lot, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall be secured by a lien on the Lot in favor of the Association. The Association shall have the right but not the obligation to evidence the existence of the lien by filing a notice of lien in the Gwinnett County, Georgia records. The lien shall be superior to all other liens and

encumbrances on the Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first Mortgage or on any Mortgage to Declarant duly recorded in the Gwinnett County, Georgia records and all amounts advanced under the terms of and secured by the Mortgage.

All other Persons acquiring liens or encumbrances on any Lot after this Declaration has been recorded shall be deemed to consent that their liens or encumbrances shall be inferior to further liens for assessments, whether or not prior consent is specifically set forth in the instruments creating their liens or encumbrances.

Section 6. **Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessments or installments of assessment which are not paid when due shall be delinquent. Any assessment or installment delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine which shall not exceed fifteen (15%) percent of the quarterly assessment payment. The Association shall cause a notice of delinquency to be given to any Owner who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (3) days, a lien, shall attach and, in addition, the lien shall include the late charge, interest at twelve (12%) percent of the principal amount due, and all late charges from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. The existence of the lien may, but is not required to be, evidenced by the filing of a notice of lien in the Gwinnett County, Georgia records. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance vests in the Association or its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article 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 bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

No Owner may waive or otherwise exempt himself or herself from liability for assessments, by abandoning the Lot or in any other manner. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and no reduction of any assessment shall be claimed or allowed by reason of (a) any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration or the By-Laws, (b) for inconvenience or discomfort arising from the making of repairs or improvements which

are the responsibility of the Association, or (c) from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest and then to delinquent assessments.

Section 7. **Date of Commencement of Assessments.** Assessments shall commence as to a Lot on the first day of the month following the conveyance of the Lot to a Person other than the Declarant or to a builder or developer who purchases the Lot for the purpose of construction of a residence and resale of the Lot and residence. However, assessments shall commence on Lots containing occupied residences that are owned by Declarant or any builder or developer on the first day of the quarter following the occupancy of the residence located on the Lot. Assessments shall be due and payable in a manner and on a schedule that the Board of Directors provides. Lots which have not been conveyed as provided above shall not be subject to assessments. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year.

Section 8. **Specific Assessments.** The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Article XIII, Section 1 and the costs of maintenance performed by the Association which the Owner is responsible for under Article V, Sections 1 and 2 shall be specific assessments. The Board may also specifically assess Lots for the following Association expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association:

(a) Expenses of the Association which benefit less than all of the lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received.

(b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

ARTICLE V

MAINTENANCE; CONVEYANCE OF COMMON PROPERTY TO ASSOCIATION

Section 1. **Association's Responsibility.** The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements located on the Common Property. The Association shall maintain the entry features for the Community and shall maintain and pay the expenses for any water or electricity provided to the entry features. The Association shall also maintain all medians located in the Community; all property outside of Lots located within the Community which was originally maintained by Declarant; and any detention pond(s) located within the Community, including the trees and other vegetation which screen such detention pond(s).

In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether located within or without the Community, where the Board has determined that such maintenance would benefit all Owners.

In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, or invitees, and is not completely covered or paid for by insurance, then the Association may perform the maintenance, repair or replacement at the expense of the Owner, and all costs shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

The Association shall perform all maintenance in a manner consistent with the Community-Wide Standard.

Section 2. **Owner's Responsibility.** Except as provided in Section 1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements of the Lot shall be the sole responsibility of the Owner, who shall maintain the Lot in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board of Directors determine that a Lot is not maintained in a manner consistent with the Community-Wide Standard and this Declaration, except in an emergency situation, the Board of Directors, give the Owner written notice of the Association's intent to provide the necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall state the maintenance, repairs, or replacement deemed necessary. The Owner shall have thirty (30) days after receipt of the notice to complete the maintenance, repair, or replacement. In the event that the maintenance, repair, or replacement is not capable of completion within a thirty (30) day period, the Owner

shall begin the work and shall complete it within a reasonable time. If any Owner does not comply, the Association may provide the maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Lot.

Section 3. **Conveyance of Common Property by Declarant to Association.** The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall be Common Property to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section.

ARTICLE VI **USE RESTRICTIONS AND RULES**

Section 1. **General.** This article, beginning at Section 2, sets out certain use restrictions which must be complied with by all Owners and occupants of Lots. These use restrictions may only be amended in the manner provided in Article XIII, Section 4, regarding amendment of this Declaration. In addition, the Board may, from time to time, without consent of the Owners, adopt, modify, or delete rules and regulations applicable to the Community. These rules shall be distributed to all Owners prior to the date that they are to become effective and after distribution shall be binding upon all Owners and occupants of Lots until and unless overruled, cancelled, or modified in a regular or special meeting by a Majority of the total eligible Association vote and the consent of Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX).

Section 2. **Residential Use.** Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot or any part of the Community, including business uses ancillary to a primary residential use, except that the Owner or occupant residing in the residence on a Lot may conduct such ancillary business activities within the residence so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the residence; (b) the business activity does not involve persons coming onto the Community who do not reside in the Community or door-to-door solicitation of residents of the Community; (c) the business activity conforms to all zoning requirements for the Community; and (d) the business activity is consistent with the residential character of the Community and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Community,

as may be determined in the sole discretion of the Board of Directors. No temporary house, shack, tent, or trailer shall be erected on said property to be used for residential or church purposes. No lot shall be used for schools, kindergartens or churches.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an on-going basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) the activity is engaged in full or part-time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity. Notwithstanding the above, the use of a Lot by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this Section.

Section 3. **Occupancy of Lots.** Residences located on Lots may not be occupied by more than two (2) persons for each bedroom located in the residence. For purposes of this Section the work "occupancy" shall mean staying overnight in a Unit for more than thirty (30) days, consecutively or nonconsecutively, in any calendar year.

Section 4. **Signs.** No sign of any kind shall be erected by an Owner or occupant of a Lot within the Community without the prior written consent of the Architectural Control Committee. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs, and one (1) "For Sale" or "For Rent" sign consistent with the Community-Wide Standard may be erected upon a Lot. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage. No advertising, directional or vendor signs shall be permitted within the Community except as authorized by the Declarant under Article XIII, Section 14 of this Declaration.

Section 5. **Vehicles.** The term "vehicles," as used in this provision, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles. All vehicles shall be parked within garages, driveways or other paved parking areas located on a Lot. Parking in yards is prohibited. If the Lot includes a garage with exterior doors, the doors shall be kept closed at all times, except during times of entry and exit from the garage.

No vehicle may be left upon any portion of the Community, except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a

condition so that it cannot operate on public streets. After the five (5) day period, the inoperable vehicle shall be considered a nuisance and may be removed from the Community. No boat, recreational vehicle, motor home, mobile home, or towed vehicle shall be temporarily kept or stored in the Community for any period in excess of twelve (12) hours unless kept in a garage or other area designated by the Board; vehicles parked in violation of this provision shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal. No eighteen wheel trucks or the cabs of these trucks shall be parked, kept or stored within the Community, and if so parked, kept, or stored shall be considered a nuisance and may be removed from the Community.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

Section 6. **Leasing.** Lots may be leased for residential purposes only. All leases shall have a minimum term of six (6) months and a copy of all leases shall be given to the Board of Directors by the Owner of the Lot within thirty (30) days of entering into the lease. All leases shall require that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association and shall also obligate the tenant to comply with these documents.

Section 7. **Occupants Bound.** All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or design guidelines adopted pursuant to the Declaration which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants of Lots and guests and invitees of occupants of Owners. The Owner shall be responsible for insuring that the occupant, and the guests, invitees and licensees of the Owner or the occupant strictly comply with all provisions of the Declaration, By-Laws, and any rules and regulations adopted by the Board of Directors. Fines may be levied against Owners or occupants. If a fine is first levied against an occupant and is not paid timely, the fine may then be levied against the Owner.

Section 8. **Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. However, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or occupants or the owner of any property located adjacent to the Community may

be removed by the Board. In addition, the board by rule or regulation shall have the power to limit the number and types of pets which may be kept on a Lot. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside be on a leash held by a responsible person or otherwise confined in a manner acceptable to the Board. Without prejudice to the Board's right to remove any such household pets, the Board may prohibit a household pet that has caused damage or injury from being walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed and innoculated as required by law.

Section 9. **Nuisance.** It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause a Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will discharge foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no horn, whistle, siren, bell, amplifier or other sound device, except for devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law. However, any siren or device for security purposes shall contain a device which causes it to automatically shut off within fifteen (15) minutes.

Section 10. **Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities which might tend to cause disorderly, unsightly, or unkempt conditions, including without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, shall not be pursued or undertaken in any part of the Community.

Section 11. **Antennas.** No exterior antennas, aerials, satellite dishes, or other apparatus for transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Architectural Control Committee. No such apparatus shall be approved by the Architectural Control Committee if it is visible from any street

within the Community or from a street providing access to or running along the boundary of the Community. No Citizens Band (CB) towers shall be erected on any lot.

Section 12. **Tree Removal.** No trees shall be removed without the express consent of the Architectural Control Committee, except for (a) diseased or dead trees; (b) trees needing to be removed to promote the growth of other trees or for safety reasons; and (c) trees within ten (10) feet of the residence, driveway, walkways and septic field constructed or to be constructed on the Lot.

Section 13. **Drainage.** There shall be a five (5) foot wide common drainage easement in side yard between all houses. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or occupant of a Lot may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 14. **Sight Distance at Intersections.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 15. **Clotheslines, Garbage Cans, Woodpiles, Basketball Equipment, Etc.** All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be concealed from view of neighboring Lots and Common Property and the street on which the Lot (on which the item is located) fronts. All construction debris, rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Basketball hoops and goals shall not be attached to the exterior portion of any house, garage or other building structure constructed on a lot or placed on any other portion of the Lot except as provided below. Notwithstanding the above, free standing basketball poles, goals and backboards may be erected immediately adjacent to the driveway on a Lot provided that they are set back at least twenty-five (25') feet from the front of the Lot, the poles are metal and painted black and the goal and backboard are manufactured and not home-made.

Section 16. **Subdivision of Lot.** No Lot shall be subdivided nor more than one house erected on any single lot, or its boundary lines changed except with the prior written approval of the Architectural Control Committee or its designee. Declarant,

however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be violation of the applicable subdivision and zoning regulations.

Section 17. **Firearms.** The use of firearms on the Common Property or outside of residence in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

Section 18. **Fences.** No fence or fencing-type barrier of any kind shall be placed, erected, allowed, or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Architectural Control Committee. The Architectural Control Committee may issue guidelines detailing acceptable fence styles or specifications.

Section 19. **Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

Section 20. **Air Conditioning Units.** Except as may be permitted by the Architectural Control Committee, no window air conditioning units may be installed.

Section 21. **Lighting.** Except for seasonal Christmas decorative lights, all exterior lights must be approved by the Architectural Control Committee.

Section 22. **Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Control Committee.

Section 23. **Energy Conservation Equipment.** No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, and approved by the Architectural Control Committee.

Section 24. **Above Ground Swimming Pools.** Except as may be permitted by the Architectural Control Committee, above ground swimming pools shall not be erected.

Section 25. **Standard Mailboxes.** All residences in the Community shall have standard mailboxes conforming to postal regulations and the guidelines for such mailboxes adopted by the Architectural Control Committee.

Section 26. **Lakes and Water Bodies.** All lakes, ponds, and bodies of water within the Community, if any, shall be for drainage or aesthetic purposes only. No other use of lakes or water bodies, including, without limitation, fishing, swimming, boating, playing, or use of personal flotation devices, shall be permitted. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of bodies of water within the Community.

Section 27. **Abandoned Personal Property.** Personal property is strictly prohibited from being stored, kept, or allowed to remain for a period of more than twenty-four (24) hours upon any portion of the Common Property. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property in violation of this Section, then the Board may remove and either discard or store the personal property in a location which the Board may determine. If personal property is removed in accordance with this Section, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

Section 28. **Concrete Block.** There shall be no exposed concrete block.

Section 29. **Foundations.** Foundations are to be constructed of masonry material approved by the Architectural Control Committee.

Section 30. **Storage Sheds/Metal Buildings.** No storage shed or metal building may be placed on any lot without the approval of the Architectural Control Committee.

ARTICLE VII

INSURANCE AND CASUALTY LOSSES

Section 1. **Insurance on Common Property.** The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and other property, if any, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

The Board is authorized to contract with or otherwise arrange to obtain the required insurance coverage through the Declarant and to reimburse Declarant for the cost, and Declarant shall be authorized, but not obligated, to purchase the required insurance coverage for the benefit of the Association and the Owners. The cover shall include the Association as a named insured. The Declarant and Association shall agree upon the terms and conditions applicable to reimbursement by the Association for costs incurred by Declarant in obtaining the required coverage. Notwithstanding anything contained in this Declaration to the contrary, the Board shall not be required to comply with the provisions of sub-sections (a) through (b) below if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the deductible amount shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefitted parties, except as otherwise provided above and shall be governed by the provisions set forth below:

(a) All policies shall be written with a company authorized to do business in Georgia.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in any settlement negotiations.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by the Board of Directors. In conducting such reviews the Board may engage an expert whom in its sole discretion it deems fit.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) that no policy may be cancelled, invalidated, or suspended on account of any one or more individual Owners;

(iv) that no policy may be cancelled, subjected to nonrenewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be cancelled, subjected to nonrenewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be determined in the directors' best business judgment, and, if available, shall at least equal three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled, subjected to nonrenewal or substantially modified without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain construction code endorsements and flood insurance, if and to

the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

Section 2. **Individual Insurance.** Each Owner shall carry all-risk casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. If reasonably available, the casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner.

Section 3. **Damage and Destruction - Insured by Association.**

(a) **In General.** Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims covered under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) **Repair and Reconstruction.** The Board of Directors must proceed to repair or reconstruct any damage or destruction to the Common Property on behalf of the Association unless within sixty (60) days after the casualty, it obtains the agreement of at least seventy-five (75%) percent of the total Association vote and the Declarant (so long as the Declarant has an option unilaterally to subject additional property to the Declaration as provided in Article IX) to not repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is not sufficient to cover the cost of repair or reconstruction, the Board of Directors shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be retained by and for the benefit of the Association in an Association account.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

Section 4. Damage and Destruction - Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner within seventy-five (75) days after the damage or destruction. However, where repairs cannot be completed within seventy-five (75) days, they shall be begin within the required period and shall be diligently and continuously pursued until their completion. Alternatively, the owner may decided to destroy and remove all improvements on the Lot within seventy-five (75) days after such damage or destruction.

ARTICLE VIII **CONDEMNATION**

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after the taking, Owners holding at least seventy-five (75%) percent of the total Association vote other than Declarant and the Declarant (so long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article IX) otherwise agree, the Association shall restore or replace the improvements taken on the remaining land included in the Common Property to the extent lands are available. The provisions of Article VII, Section 3, above, applicable to Common Property improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

ARTICLE IX
ANNEXATION OF ADDITIONAL PROPERTY

Section 1. **Unilateral Annexation by Declarant.**

(a) As the owner or, if not the owner, with the consent of the owner, Declarant shall have the unilateral right, privilege, and option from time to time at any time until five (5) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C", attached and made a part of this Declaration, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Gwinnett County, Georgia records, a Supplementary Declaration describing the property being annexed. Any annexation shall be effective upon the filing for record of a Supplementary Declaration unless a different effective date is provided in the Supplementary Declaration. As long as covenants applicable to the real property previously subjected to this declaration are not changed and as long as rights of then Owners are not adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any annexed real property.

(b) The rights reserved to Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained in the Declaration upon the additional land. These rights shall not in any manner limit or restrict the use of the additional land by Declarant or any subsequent owner, whether the use is consistent with the covenants and restrictions of this Declaration or not.

Section 2. **Other Annexation.** Subject to the consent of the owner and the consent of the Declarant (so long as the Declarant has an option to subject additional property to this Declaration as provided above) upon the affirmative vote, or written consent, or any combination thereof, of Owners holding a majority of the total Association vote, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Gwinnett County, Georgia, Records, a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided in the Supplementary Declaration.

Section 3. **Withdrawal of Property.** Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the Community pursuant to

this Article, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Community then owner by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community desired to be effective by the Declarant.

ARTICLE X

ARCHITECTURAL STANDARDS

Section 1. **Architectural Control Committee.** The Developer reserves the right to approve building plans and site plans of houses to be constructed in this Subdivision. No exterior construction, addition, erection, or alteration shall be made upon any part of the Community unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by an Architectural Control Committee. However, no approval shall be required for any construction, alteration or addition made by the Declarant. Until one hundred (100%) percent of the Community has been developed and conveyed to purchasers in the normal course of development and sale, the Declarant shall have the right to appoint all members of the Architectural Control Committee. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. After the Declarant's right to appoint has expired, the Board of Directors shall appoint the members of the Architectural Control Committee, or may adopt a resolution making the Board of Directors the Architectural Control Committee. The Board may employ for the Architectural Control Committee architects, engineers, or other Persons necessary to enable the Committee to perform its review. The Architectural Control Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, who shall have full authority to act on behalf of the committee for all matters delegated. Written design guidelines and procedures may be adopted for the review, and may include a review fee in an amount not less than Twenty-Five (\$25.00) Dollars.

Section 2. **Approval and Enforcement.** If the Architectural Control Committee does not approve or disapprove plans and specifications within forty-five (45) days after the required plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, an Owner, on behalf of himself and his successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement of and insurance on any change, modification, addition, or alteration. The Architectural Control Committee shall be the only judge of the plans with regard to the requirement of this Article and may withhold approval for any reason, including purely aesthetic

considerations. The Architectural Control Committee shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. If an Owner does not comply with this Section, the board may record in the appropriate land records a notice of violation naming the violating Owner in addition to any other available remedies.

Section 3. **Disclaimer.** The Architectural Control Committee and the board of Directors do not warrant or represent, that their decisions under this Article constitute, and their decisions shall not be interpreted as constituting an approval as to compliance with any building code, regulation or ordinance, or any other code, regulation, ordinance or law, nor that their decisions under this Article reflect upon the structural integrity of any proposed alteration or improvement.

Section 4. **No Waiver.** The approval of the Architectural Control Committee of any proposals, plans and specifications, or drawings, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or other matters later submitted for approval or consent.

Section 5. **Variances.**

(a) The Architectural Control Committee may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) prevent the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

(b) The architectural standards and their enforcement may vary from one term of the Architectural Control Committee or Board of Directors to another term of the Committee or Board. These variances shall not constitute a waiver by the Committee or the Board of the right to adopt and enforce architectural standards under this Article. No decision by the Committee or Board shall constitute a binding precedent with respect to subsequent decisions of the Committee or Board. However, nothing in this Article shall

permit the Committee or the board to enforce retroactively its architectural standards against a Lot Owner whose architectural change has been approved under the architectural standards of a previous Committee or Board.

Section 6. **Special Requirements.** Plans and specifications will not be approved unless the following requirements are met: (a) All homes will be constructed with a two (2) car garage; and (b) the siting of any home on any Lot shall be not less than twenty (20') feet from the front property lot line unless approved otherwise by the Architectural Control Committee.

ARTICLE XI **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. **Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number) (therefore becoming an "eligible holder") will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of Mortgage holders.

Section 2. **Approval of Action.** So long as required by the Federal Home Loan Mortgage Corporation (The Mortgage Corporation) and so long as the U. S. Department of Housing and Urban Development ("HUD") is insuring or the Veterans Administration ("VA") is

guaranteeing any Mortgage in the Community, the following provisions apply in addition to and not in lieu of the foregoing. Unless two-thirds (2/3) of the first Mortgagees or Owners other than the Declarant, give their consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Property shall not be deemed a transfer within the meaning of this subsection) other than personal property of the Association;

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner;

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Property (The issuance and amendment of architectural standards, procedures, rules, and regulations or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this subsection.);

(d) fail to maintain insurance, as required by this Declaration; or

(e) use hazard insurance proceeds for any Common Property losses for other than the repair, replacement, or reconstruction of such property.

Nothing contained in this Section 2 shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration for any of the acts set out in this Section 2.

First Mortgagees may, jointly or singularly, pay taxes or other charges which are in default and which may or have become a charge against the Common Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. **No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 4. **Notice to Association.** Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 5. **Amendments by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 6. **VA/HUD Approval.** As long as the Declarant has an option unilaterally to subject property to this Declaration as provided in Article IX, the following actions shall require the prior approval of the VA so long as the VA is guaranteeing any Mortgage in the Community, and HUD so long as HUD is insuring any Mortgage in the Community: annexation of additional property to the Community, except for annexation by Declarant in accordance with Article IX, Section 1 hereof, pursuant to a previously approved plan of annexation; dedication of Common Property to any public entity; and material amendment of the Declaration, By-Laws or Articles of Incorporation.

Section 7. **Applicability of this Article.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

Section 8. **Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

ARTICLE XII **EASEMENTS**

Section 1. **Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and adjacent portion of the Common Property or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered (in accordance with the terms of this Declaration). The easement shall be five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. However, an easement for encroachment shall not exist if the willful conduct by an Owner, tenant, or the Association caused the encroachment.

Section 2. Easements for Use and Enjoyment.

(a) Every Owner of a Lot shall have a right and easement of entry and exit, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

(i) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Lot Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions of the Common Property at certain designated times by an Owner, his family, tenants, guests, and invitees;

(ii) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against his Lot which is hereby provided for remains unpaid; and, for a reasonable period of time for a violation of the Declaration, By-Laws, or rules and regulations;

(iii) the right of the Association to borrow money for the purpose of improving the Common Property, or for construction, repairing, or improving any facilities located or to be located on the Common Property, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property. However, the Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights in the Mortgage by the holder of the Mortgage in the event of a default shall not cancel or terminate any rights, easements or privileges reserved or established in this Declaration for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community.) No mortgage conveying all or a portion of the Common Property shall be effective unless an instrument agreeing to the Mortgage has been approved by owners holding at least two-thirds (2/3) of the total vote of the Association; and

(iv) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to any conditions agreed on by the members of the Association. No dedication or transfer of the Common Property shall be effective unless an instrument agreeing to the dedication or transfer has been

approved by Owners holding at least two-thirds (2/3) of the total Association vote and by the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX).

b) Any Lot Owner may delegate his right of use and enjoyment in and to the Common Property to the members of his family, his tenants and guests. An Owner shall be deemed to have made a delegation of all these rights to the occupants of the Owner's Lot, if leased.

Section 3. **Easements for Utilities.** There is reserved to the Declarant and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining (a) all utilities serving the Community or portion of the Common Property, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water run-off and storm drainage system, and (c) any other services such as, but not limited to, a master television antenna system, cable television system, or security system which may be installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, to do or to authorize the installation of, repairing, replacing, and maintaining of the wires, conduits, cables and other equipment related to the providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or Board, as applicable, shall have the right to grant such easement.

Section 4. **Easement for Entry.** In addition to the right of the Board to exercise self-help as provided in Article XIII, Section 2, the Board shall have the right, but shall not the obligation, to enter upon any property within the Community for emergency, security, and safety reasons. This right may be exercised by the manager, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. The Board has the right to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard if an Owner or occupant does not cure the condition after request by the Board.

Section 5. **Easement for Maintenance.** Declarant expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Article V. This maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect the

property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 6. **Easement for Undisturbed Buffer.** The rear thirty (30') feet of each Lot along the perimeter of the subdivision which are Lots 1, 4-37, 40-43, and 49, shall be a permanent thirty (30') foot undisturbed buffer. No homeowner may construct anything in said buffer. However, said buffer may be maintained by each homeowner as a greenbelt with grass and shrubs. In no event may any tree growing in said buffer be removed without the prior approval of the Architectural Control Committee, unless delay in removing a tree which is dead or decaying will cause an immediate danger to person or property.

Section 7. **Easement for Fence.** Declarant reserves a 10-foot easement to construct and maintain a fence along the followings Lots: 1, 4, 5, 6, 7, 8, 9, 40, 42, 43, and 49. Any fence constructed by the Declarant or the Association on these Lots shall be maintained by the Association.

ARTICLE XIII **GENERAL PROVISIONS**

Section 1. **Enforcement.** Each Owner and every occupant of a Lot shall comply strictly with this Declaration, the By-Laws, the rules and regulations, as they may be lawfully amended or modified from time to time, and with any deed restrictions. The Board of Directors may impose fines or other sanctions, which shall be collected as provided for the collection of assessments. Failure to comply with this Declaration, the By-Laws or the rules and regulations shall be grounds for an action for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or by an aggrieved Owner in a proper case. Failure by the Association or any Owner to enforce any of the foregoing provisions shall in not be a waiver of the right to enforce these provisions in the future.

Section 2. **Self-Help.** In addition to any other remedies, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the By-Laws, or the rules and regulations. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for the collection of assessments.

Section 3. **Duration.** The covenants and restrictions of this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association or any

Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of ten (10) years, unless the extension is disapproved by the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the total Association vote. A written instrument reflecting disapproval must be recorded within the year immediately preceding the beginning of a ten (10) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Section.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (b) if an 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 an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if an **amendment is necessary to enable any governmental agency or reputable private** insurance company to insure Mortgage loans on the lots subject to this Declaration. However, any such amendment shall not adversely affect the title to any Owner's Lot unless the Lot Owner consents to the amendment in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article IX, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the total Association vote and the consent of the Declarant (so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified in the

amendment. No provision of this Declaration which reserves or grants special rights to the Declarant shall be amended without the Declarant's prior written consent so long as the Declarant owns any property in the Community, or subject to annexation to the Community, primarily for development and/or sale.

Section 5. **Security.** The Association may but shall not be required to, provide measures or take action which directly or indirectly improve safety on the Community. However, each Owner, for themselves and their tenants, guests, licensees, and invitees acknowledge and agree that the Association is not a provider of security and shall have no duty to provide security for the Community. It shall be the responsibility of each Owner to protect his or her person and property, and all responsibility to provide security shall lie solely with each Unit Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Section 6. **Dispute Resolution.** Any Owner or occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or occupant files any lawsuit against the Association, the Board, any director, or the property manager. The Owner or occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the board a reasonable opportunity to address the Owner's or occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

Section 7. **Partition.** The Common Property shall remain undivided, and no Lot Owner or any other Person shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Community.

Section 8. **Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neutre and feminine.

Section 9. **Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or

held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

Section 10. **Captions.** The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

Section 11. **Preparer.** This Declaration was prepared by Zion, Tarleton & Siskin, P.C., 220 Church Street, Decatur, Georgia 30030.

Section 12. **Perpetuities.** If any of the covenants conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 13. **Indemnification.** In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed by Georgia law, the Association shall indemnify every person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such person is or was serving as a director or officer of the Association against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

Section 14. **Construction and Sale Period.** Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, rules and regulations, design guidelines, and any amendments, so long as there is development and construction related to the initial sale of the Lots,, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's

development, construction, and sales activities related to property described on Exhibit "B" and Exhibit "C" to this Declaration, including, but without limitation the following:

(a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community;

(b) the right to tie into any portion of the Community with driveways, parking areas and walkways;

(c) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community;

(d) the right to carry on sales and promotional activities in the Community; and

(e) the right to construct and operate business offices, signs, construction trailers, residences, model residences, and sales offices. Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices and may also use recreational facilities available for use by the Community as a sales office without charge.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent so long as the Declarant owns any property in the Community, or subject to annexation to the Community, primarily for development and/or sale.

Section 15. **Contracts Executed During Declarant Control.** All contracts or leases executed by or on behalf of the Association during the period in which the Declarant has the right to appoint the Directors and officers of the Association under the By-Laws shall contain a termination clause permitting the Association to terminate the contract or lease at any time, without cause and without penalty, upon not more than ninety (90) days' written notice.

Section 16. **Books and Records.**

(a) Inspection by Members and Mortgagees. This Declaration, the By-Laws, copies of rules and regulations, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available

for inspection and copying by any member of the Association or by his duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

(b) **Rules for Inspection.** The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents.

(c) **Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association.

Section 17. **Financial Review.** A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's reviewed financial statement at the annual meeting, by a Majority of the Association vote present, or represented by proxy, the Owners may require that the accounts of the Association be audited as a common expense by a public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of an audited financial statement within ninety (90) days of the date of the request.

Section 18. **Notice of Sale or Lease.** In the event an Owner sells or leases his or her Lot, the Owner shall give to the Association, in writing, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require.

Section 19. **Agreements.** Subject to the prior approval of Declarant (so long as the Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and

others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 20. **Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate the right or privilege.

Section 21. **Variances.** Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the By-Laws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

IN WITNESS WHEREOF, the undersigned, being the duly appointed officers of Declarant herein, have executed this instrument and affixed the corporate seal this 12th day of November, 1992.

JOLLY DEVELOPMENT CORPORATION,
INC.

BY: _____/s/_____

ATTEST: _____/s/_____

Signed, sealed and delivered
in the presence of:

_____/s/_____
Notary Public

FIRST MODIFICATION OF THE DECLARATION
OF PROTECTIVE COVENANTS FOR IVY STATION

Modification of Declaration
of
Protective Covenants for Ivy
Station, dated November 12,
1992,
recorded in Deed Book 8076,
Page
126, in the Office of the
Clerk of
the Superior Court of
Gwinnett
County, Georgia.

THIS FIRST MODIFICATION OF DECLARATION OF PROTECTIVE COVENANTS FOR IVY STATION, entered into this 29th day of April, 1993, by JOLLY DEVELOPMENT CORPORATION, INC., a Georgia corporation (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant declared, published and recorded the Declaration of protective Covenants for Ivy Station (hereinafter referred to as "The Covenants") on November 12, 1992, and being filed and recorded on November 12, 1992 at 3:19 P.M., in Deed Book 8076, Page 126, in the office of the Clerk of the Superior Court of Gwinnett County, Georgia; and

WHEREAS, the City of Duluth Planning and Development Department has required that certain modifications be made to Article XII, entitled "Easements", Section 6 of The Covenants; and

WHEREAS, the provisions of Article XIII, entitled "General Provisions", Section 4 of The Covenants, authorize Declarant to unilaterally modify The Covenants when so required by applicable governmental rule.

NOW, THEREFORE, in consideration of the mutual benefits to be gained by all owners of the property subject to The Covenants, and

for other good and valuable considerations, the Declarant, for itself, and its successors and assigns, hereby publish and declare the following:

1.

Article XII, entitled "Easements", Section 6 of The Covenants, as follows, is hereby deleted in toto to be effective this date:

"Section 6. **Easement for Undisturbed Buffer.** The rear thirty (30') feet of each Lot along the perimeter of the subdivision which are Lots 1, 4-37, 40-43, and 49, shall be a permanent thirty (30') foot undisturbed buffer. No homeowner may construct anything in said buffer. However, said buffer may be maintained by each homeowner as a greenbelt with grass and shrubs. In no event may any tree growing in said buffer be removed without the prior approval of the Architectural Control Committee, unless delay in removing a tree which is dead or decaying will cause an immediate danger to person or property."

The following Article XII, entitled "Easements", Section 6 of The Covenants, is hereby added to The Covenants in full replacement and substitution for the said Article XII, entitled "Easements", Section 6 of The Covenants, which was deleted above, said substitution to be effective this date:

"Section 6. **Easement for Undisturbed Buffer.** The rear thirty (30') feet of each Lot along the perimeter of the subdivision which are Lots 1, 4-37, 40-43, and 49, shall be a permanent thirty (30') foot undisturbed buffer. No homeowner may construct anything in said buffer. No homeowner may disturb, change, alter, remove or replace anything in said undisturbed buffer, or do any other act or thing to the said buffer without first obtaining the prior consent of the City of Duluth, Georgia Department of Planning and Development."

2.

The terms, provisions and conditions of the within
Modification supersede and take precedence over any conflicting
provisions contained in The Covenants.

NOTARY PUBLIC, FULTON COUNTY, GEORGIA
MY COMMISSION EXPIRES OCTOBER 1, 1996.

1061Z