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BOOK **10105** PAGE **17**

DECLARATION OF PROTECTIVE COVENANTS
FOR
ENNFIELD SUBDIVISION

ZION, TARLETON & SISKIN, P.C.

Attorneys at Law
Lavista Office Park
2191 Northlake Parkway
Suite 2, Building 11
Tucker, Georgia 30084
(404) 270-3800

036165

Georgia, Gwinnett County

This is to certify that this is a true and correct copy
of the instrument as same appears on record in Deed Book 10105
Page 17-73, Gwinnett County, Georgia records.

Given under my official signature and seal of the
Superior Court this 6 day of April, 19 94

Deputy Clerk, Gwinnett Superior Court

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Table of Exhibits

<u>Exhibit</u>	<u>Name</u>
"A"	Definitions
"B"	Property Submitted
"C"	Additional Submitted Which May Unilaterally Be Submitted By Declarant
"D"	By-Laws of Ennfield Homeowners Association, Inc.

DECLARATION OF PROTECTIVE COVENANTS

FOR

ENNFIELD SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by
JOLLY DEVELOPMENT CORPORATION, INC., a Georgia corporation
(hereinafter sometimes called “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 hereof 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 hereby declares that the real property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon, is hereby 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 INTNDED TO CREATE A CONDOMINIUM REGIME SUBJECT TO THE GOERGIA 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 hereto and by reference 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 hereafter set forth in this Declaration is the real property described in Exhibit "B", attached hereto and made a part of this Declaration.

Section 2. Other Property Only the real property described in Section 1 of this Article II is hereby 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 hereinafter provided

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 of 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 (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 By-Laws. 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' 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. Purpose 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 become 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 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 expense budget and notice of the amount of the assessment for each lot each Owner at least thirty (30) 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 land records of the county where the Community is located. The lien shall be superior to all other liens and encumbrances on such 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 land records of the county where the Community is located 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 such liens or encumbrances.

Section 6. Effect of Nonpayment of Assessment: 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 (30) 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 land records of the county where the Community is located. In the event that the assessment remains unpaid after sixty (60) days, the Association may, as the Board shall determine, institute suite 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 date 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 date 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 as 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 benefited according to the benefit received.

(b) Expenses of the Association which benefit all Lots, but which do no 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 OF 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, fences, and improvements situated on the Common Property. The Association shall maintain the entry features for the Community and shall maintain and pay the expenses for any water, electricity, or other utility service 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, including but not limited to, open space; and any detention pond(s) located within the Community, including the trees and other vegetation which screen such detention pond(s).

The entrances to the Community from the Pittard Road and Davenport Road will have a four (4') foot high berm along Pittard Road and Davenport Road, which shall be landscaped with shrubs and trees and will include a split rail fence. The Association shall be responsible for the maintenance of the berm, landscaping and fence.

All "eye brow cul de sacs" in the Community will have a ten (10') foot diameter landscaped median, and the Association will be responsible for maintaining the median(s).

The Community will have street lights, and the Association will be responsible for paying the expenses, including utility bills, for operating the street lights, unless and until such expense is assumed by the City of Duluth, Georgia, or Gwinnett County, Georgia.

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

The Association shall be responsible for paying all expenses related to the organization, incorporation and operation of the Association; including attorney's fees, fees and expenses of incorporation, and organizational and operational costs of the Association, and all documentation related thereto.

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 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 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) such activity is engaged in full or part-time; (ii) such 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 word “occupancy” shall mean staying overnight in a Unit for more than thirty (30) days, consecutively or nonconsecutively, in any calendar year.

Section 4. Sign. 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 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, such doors shall be kept closed at all times, except during times of ingress and egress 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 such 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 or Owners. The Owner shall be

responsible for the 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 may be 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 inoculated 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 such 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 such 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, which might tend to cause disorderly, unsightly, or unkempt conditions, 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 and no such device 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 sewer line or septic field constructed or to be constructed on the Lot.

Section 13. Drainage. There shall be a ten (10) foot wide common drainage easement in side yard between all houses. There shall be a ten (10) foot wide drainage easement on the rear of every lot. 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 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.

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 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, with the prior written approval of the Architectural Control Committee, 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 (1) 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 lines 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 residences 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.

Section 31. Garages. All dwellings shall have two-car attached garages.

Section 32. Front Yard Grass. All grassed areas in the front yard shall be sodded.

Section 33. Square Footage. The minimum heated floor area per dwelling unit shall be 1,400 square feet. Each home shall have at least three (3) bedrooms.

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 the entry features, 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 coverage 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 subsections (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 benefited 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 the 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 non-renewal 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 judgement, 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 non-renewal 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 reasonable 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 arising 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.

(f) 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 this 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 deposited to the benefit of the Association.

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 begin within the required period and shall be diligently and continuously pursued until their completion. Alternatively, the Owner may decide 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) shall otherwise agree, the Association shall restore or replace such improvements so 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 Office of the Clerk of the Superior Court of the country in which the property is annexed, a Supplementary Declaration describing the property being annexed. Any annexation shall be effective upon the filing for record of such 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 nor shall such rights 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 Office of the Clerk of the Superior Court of the county in which the property to be annexed is located, 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 owned 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 sites 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, 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 or 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 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) stop 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 hard warranting a variance.

(b) The architectural standards and the 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 or met: (a) all homes will be constructed with a two (2) car attached garage; (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; and (c) sidewalks will be constructed on certain lots designated by either the City of Duluth, Georgia, Gwinnett County, Georgia, or by the Declarant, as required by the City of Duluth, Georgia, and/or Gwinnett County, Georgia. Construction of such sidewalks will be required prior to the issuance of a Certificate of Occupancy.

ARTICLE XI **MORTGAGE 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 Lot of any obligation under the Declaration or By-Laws of the Association which 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 singly, 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 subsequent 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 an infraction 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 such 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 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 such 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 such 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, as master televisions 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 authorized the installation of, repairing, replacing, and maintaining of the wires, conduits, cables and other equipment related to the providing of 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 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 the 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 Natural Buffer and Screening Fence. The rear fifteen (15') feet of each lot along the most eastern boundary of Block B of the Community, including Lots 15 through 23, Block B, inclusive, shall be a "natural buffer", and will include a six (6') foot screening fence. No homeowner may construct anything in said buffer. No homeowner may disturb, change, alter, remove or replace anything in said buffer, or do any other act or thing to the said natural buffer without first obtaining the prior consent of the applicable city, county, or municipal planning, development or like department.

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 rule 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, in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing provisions shall not be 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 herein 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 thereby 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 such 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 which shall be 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 such 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 such 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 any such Lot Owner shall consent thereto 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 approval 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 actions 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 by the person requesting the hearing.

Section 7. Partition. The Common Property shall remain undivided, and no Lot Owner nor 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 neuter 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., Lavista Office Park, 2191 Northlake Parkway, Suite 2, Building 11, Tucker, Georgia 30084.

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 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, if 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 building 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 use restrictions, 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 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

- Table of Exhibits -

<u>Exhibit</u>	<u>Name</u>
"A"	Definitions
"B"	Property Submitted
"C"	Additional Submitted Which May Unilaterally Be Submitted By Declarant
"D"	By-Laws of Ennfield Homeowners Association, Inc.

EXHIBIT "A"

DEFINITIONS

The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

(a) "Association" shall mean ENNFIELD HOMEOWNERS ASSOCIATION, INC., a nonprofit Georgia corporation, its successors and assigns.

(b) "Board of Directors" or "Board" shall mean the appointed or elected body of the Association, as applicable, having its normal meaning under Georgia corporate law.

(c) "By-Laws" shall refer to the By-Laws of ENNFIELD HOMEOWNERS ASSOCIATION, INC., attached to this Declaration as Exhibit "D" and incorporated herein by this reference.

(d) "Common Property" shall mean any and all real and personal property and easements and other interests, together with the facilities and improvements located on the Property, now or in the future owned by the Association for the common use and enjoyment of the Owners.

(e) "Community" shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and (i) such additions thereto as may be made by Declarant by Supplementary Declaration of all or any portion of the real property described in Exhibit "C"; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration of other real property.

(f) "Community-Wide standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

(g) "Declarant" shall mean and refer to JOLLY DEVELOPMENT CORPORATION, INC., a Georgia corporation, and its successors-in-title and assigns, provided any successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "B", or in Exhibit "C". In addition, in the deed of transfer to any successor-in-title or assign, the successor-in-title or assign shall be designated as the "Declarant" under this Declaration by the grantor and the grantor shall be the "Declarant" under this Declaration at the time of the

transfer. Upon the designation of a successor Declarant, all rights of the former Declarant in and to such status as “Declarant” shall cease, it being understood that as to all of the property described subjected to this Declaration, there shall be only one (1) “Declarant” hereunder at any one point in time.

(h) “Lot” shall mean any plot of land within the Community, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded or to be recorded in the land records of the county where the Community is located.

(i) “Majority” means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(j) “Mortgage” means any mortgage, deed to secure debt, and any and all other similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

(k) “Mortgagee” shall mean the holder of a Mortgage.

(l) “Owner” shall mean and refer to the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

(m) “Person” means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

(n) “Supplementary Declaration” means an amendment or supplement to this Declaration or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or both.

EXHIBIT "B"

All that tract or parcel of land lying and being in Land Lots 265 and 292 of the 6th District of Gwinnett County, Georgia, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, begin at a flat iron found at the intersection formed by the common land lot lines of Land Lots 292, 293, 264 and 265, said District and County; thence running southeasterly along the land lot line common to Land Lots 264 and 265, said District and County, South 30 degrees 16 minutes 37 seconds East, a distance of 1,112.51 feet to a one and one-quarter open top found at the TRUE POINT OF BEGINNING; from the TRUE POINT OF BEGINNING, as thus established, thence running South 30 degrees 56 minutes 43 seconds East, a distance of 804.53 feet to a point on the westerly right of way line of Davenport Road a/k/a Church of God Road (80 foot right of way); thence running southeasterly along the westerly right of way line of Davenport Road a/k/a Church of God Road, the following courses and distances:

Along an arc of a curve having an arc distance of 85.99 feet (said arc being subtended by a chord bearing South 07 degrees 46 minutes 13 seconds East, a chord distance of 85.92 feet), and having a radius of 596.07 feet to a point;

South 16 degrees 29 minutes 48 seconds East, a distance of 65.74 feet to a point;

South 19 degrees 00 minutes 08 seconds East, a distance of 59.05 feet to a point;

South 19 degrees 42 minutes 54 seconds East, a distance of 50.74 feet to a point;

South 21 degrees 33 minutes 50 seconds East, a distance of 106.92 feet to a point;

along an arc of a curve having an arc distance of 117.90 feet (said arc being subtended by a chord bearing South 17 degrees 36 minutes 45 seconds East, a chord distance of 117.80 feet), and having a radius of 854.75 feet to a point located on the centerline of a creek, which point is hereby established as Traverse Point "A";

thence running from Traverse Point "A" the following courses and distances:

South 63 degrees 42 minutes 50 seconds West, a distance of 10.11 feet to a point;

North 88 degrees 32 minutes 08 seconds West, a distance of 96.46 feet to a point;

North 59 degrees 23 minutes 28 seconds West, a distance of 106.63 feet to a point;

North 25 degrees 20 minutes 38 seconds West, a distance of 97.33 feet to a point;
 North 88 degrees 11 minutes 41 seconds West, a distance of 58.90 feet to a point;
 South 64 degrees 59 minutes 34 seconds West, a distance of 36.30 feet to a point;
 North 68 degrees 43 minutes 18 seconds West, a distance of 54.75 feet to a point;
 South 86 degrees 40 minutes 50 seconds West, a distance of 61.94 feet to a point;
 North 71 degrees 14 minutes 52 seconds West, a distance of 150.89 feet to a point;
 North 20 degrees 18 minutes 16 seconds West, a distance of 25.83 feet to a point;
 North 85 degrees 51 minutes 29 seconds West, a distance of 84.77 feet to a point;
 South 43 degrees 56 minutes 23 seconds West, a distance of 24.12 feet to a point;
 North 73 degrees 24 minutes 28 seconds West, a distance of 58.40 feet to a point;
 North 11 degrees 50 minutes 26 seconds West, a distance of 32.19 feet to a point;
 South 61 degrees 00 minutes 34 seconds West, a distance of 80.85 feet to a point;
 North 49 degrees 17 minutes 45 seconds West, a distance of 57.84 feet to a point;
 North 59 degrees 49 minutes 21 seconds West, a distance of 65.47 feet to a point;
 North 01 degrees 16 minutes 31 seconds West, a distance of 41.22 feet to a point;
 North 58 degrees 47 minutes 14 seconds West, a distance of 20.57 feet to a point, which point is hereby established as Traverse Point "B"; (the herein described line traverses the centerline of a creek which centerline of the creek forms the southerly property line of subject property);

thence leaving the centerline of the creek at Traverse Point "B" and running South 29 degrees 30 minutes 31 seconds West, a distance of 750.73 feet to a point; thence running North 81 degrees 59 minutes 21 seconds West, a distance of 300.82 feet to a three eighths-inch rebar found; thence running North 32 degrees 07 minutes 44 seconds East, a distance of 222.21 feet to a five eighths-inch rebar found; thence running North 81 degrees 12 minutes 25 seconds West, a distance of 199.61 feet to a three fourths-inch round iron rod found; thence running South 32 degrees 12 minutes 40 seconds West, a distance of 216.56 feet to a one-inch rebar found in concrete; thence running North 21 degrees 05 minutes 40 seconds East, a distance of 632.84 feet to a center of tree; thence running North 44 degrees 08 minutes 04 seconds East, a distance of 139.08 feet to a

three fourths-inch open top found; thence funning North 18 degrees 49 minutes 24 seconds West, a distance of 43.83 feet to a point; thence running North 60 degrees 38 minutes 37 seconds East, a distance of 305.76 feet to a point; thence running South 29 degrees 21 minutes 23 seconds East, a distance of 35.73 feet to a point; thence running North 41 degrees 03 minutes 47 seconds East, a distance of 926.55 feet to a point; thence running South 30 degrees 16 minutes 37 seconds East, a distance of 136.28 feet to the one and one fourth-inch open top found at the TRUE POINT OF BEGINNING, said property being Parcel One, Four, Six and Eight, as shown and delineated on that certain Boundary Survey for Jolly Development Corporation, dated April 1, 1993, prepared by Travis Pruitt & Associates, P.C., and bearing the seal of Travis N. Pruitt, Sr., GRLS No. 1729.

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All that tract or parcel of land lying and being in Land Lots 265 and 292 of the 6th District of Gwinnett County, Georgia, and being more particularly described as follows:

BEGINNING at a flat iron found at the intersection formed by the common land lot lines of Land Lots 292, 293, 264 and 265, said District and County; thence running southeasterly along the land lot line common to Land Lots 264 and 265, said District and County, South 30 degrees 16 minutes 37 seconds East, a distance of 976.23 feet to a point; thence running South 41 degrees 03 minutes 47 seconds West, a distance of 926.55 feet to a point; thence running North 29 degrees 21 minutes 23 seconds West, a distance 35.73 feet to a point; thence running South 60 degrees 38 minutes 37 seconds West, a distance of 305.76 feet to a point; thence running North 18 degrees 29 minutes 24 seconds West, a distance of 427.08 feet to an one-half inch open top found; thence running North 15 degrees 05 minutes 53 seconds West, a distance of 200.00 feet to a point; thence running North 05 degrees 06 minutes 40 seconds West, a distance of 170.08 feet to a point; thence running North 47 degrees 56 minutes 40 seconds West, a distance of 170.08 feet to a point; thence running North 57 degrees 19 minutes 41 seconds East, a distance of 175.47 feet to an one-inch crimp top found; thence running North 34 degrees 14 minutes 09 seconds West, a distance of 156.35 feet to a point; thence running North 34 degrees 14 minutes 09 seconds West, a distance of 403.85 feet to a point; thence running North 27 degrees 36 minutes 07 seconds West, a distance of 342.81 feet to a point on the southeasterly right of way line of Buford Highway a/k/a S.R. 13/U.S. 23; thence running northeasterly along the southeasterly right of way line of Buford Highway a/k/a S.R. 13/U.S. 23, North 36 degrees 16 minutes 40 seconds East, a distance of 109.57 feet to a point; thence leaving the southeasterly right of way line of Buford Highway a/k/a S.R. 13/U.S. 23 and running South 54 degrees 11 minutes 22 seconds East, a distance of 307.81 feet to a point; thence running North 36 degrees 16 minutes 40 seconds East, a distance of 200.00 feet to a point; thence running North 54 degrees 11 minutes 22 seconds West, a distance of 307.81 feet to a point on the southeasterly right of way line of Buford Highway a/k/a S.R. 13/U.S. 23; thence running northeasterly along the southeasterly right of way line of Buford Highway a/k/a S.R. 13/U.S. 23, North 36 degrees 16 minutes 40 seconds East, a distance of 200.00 feet to a one-half inch rebar found; thence leaving the southeasterly right of way line of Buford Highway a/k/a S.R. 13/U.S. 23 and running South 54 degrees 11 minutes 22 seconds East, a distance of 307.81 feet to a leaf spring found; thence running North 35 degrees 13 minutes 16 seconds East, a distance of 100.45 feet to a one-inch open top found; thence running South 48 degrees 52 minutes 57 seconds East, a distance of 418.01 feet to a point; thence running South 48 degrees 52 minutes 57 seconds East, a

distance of 265.60 feet to the flat iron found at the TRUE POINT OF BEGINNING, said property being known as Parcel Two, Three and Seven, as shown and delineated on that certain Boundary Survey for Jolly Development Corporation, dated April 1, 1993, prepared by Travis Pruitt & Associates, P.C., and bearing the seal of Travis N. Pruitt, Sr., GRLS No. 1729

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BY-LAWS

OF

ENNFIELD HOMEOWNERS ASSOCIATION, INC.

ARTICLE I

NAME, MEMBERSHIP, APPLICABILITY, AND DEFINITIONS

Section 1. Name. The name of the Association shall be ENNFIELD HOMEOWNERS ASSOCIATION, INC. ("Association").

Section 2. Membership. The Association shall have one class of membership, as is more fully set forth in the Declaration of Protective Covenants for JOLLY DEVELOPMENT CORPORATION, INC., ("Declaration"). The provisions of the Declaration pertaining to membership are by this reference made a part of these By-Laws.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

ARTICLE II

ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES

Section 1. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at another place convenient to the members as determined by the Board of Directors.

Section 2. First Meeting and Annual Meetings. An annual or special meeting shall be held within one (1) year from the date the Declaration is recorded. Annual meetings shall be set by the Board so as to occur no later than sixty (60) days after the close of the Association's fiscal year.

Section 3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a Majority of the Board of Directors or upon a petition signed by Owners holding at least twenty-five (25%) percent of the total Association vote. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of record of each Lot a notice of each annual or special meeting of the Association stating the purpose of the special meeting, as well as the time and place where it is to be held. If an Owner wishes

notice to be given at an address other than his or her Lot, he or she shall have designated by notice in writing to the Secretary such other address. The mailing of such notice or delivery of such notice by leaving at the residence located on the Lot in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than seven (7) nor more than thirty (30) days before a special meeting and not less than twenty-one (21) nor more than sixty (60) days before an annual meeting.

Section 5. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

Section 6. Adjournment of Meetings. If any meetings of the association cannot be held because a quorum is not present, a Majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at a meeting originally called may be transacted without further notice.

Section 7. Voting. The voting rights of the members shall be as set forth in the Declaration, and these voting rights are specifically incorporated in these By-Laws.

Section 8. Proxies. At all meeting of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his or her Lot; or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 9. Quorum. The presence, in person or by proxy, of Owners holding at least twenty-five (25%) percent of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

ARTICLE III
BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. Composition and Selection.

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, the directors shall be members or spouses of such members; provided, however, no person and his or her spouse may serve on the Board at the same time.

Section 2. Directors Appointed by Declarant. Declarant shall have the right to appoint or remove all members of the Board of Directors and all officers of the Association until such time as the first of the following events shall occur: (a) the expiration of five (5) years after the date of the recording of the Declaration; (b) the date on which seventy-five (75%) percent of the Lots which are then subject to the Declaration, plus any additional lots which when developed will be subject to the Declaration, have been conveyed to persons who have not purchased such Lots for the purpose of construction of a residence and resale of such lot and residence; or (c) the surrender by Declarant in writing of the authority to appoint and remove directors and officers of the Association. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant this authority to appoint and remove directors and officers of the Association. The directors and officers appointed by the Declarant need not be Owners or residents in the Community. The names of the initial directors selected by the Declarant are set forth in the Articles of Incorporation of the Association.

Section 3. Number of Directors. The Board shall consist of three (3) members during the period in which the Declarant has the right to appoint directors and officers as described in Section 2 of this Article and five (5) members after the expiration of this right.

Section 4. Nomination of Directors. Elected directors shall be nominated from the floor and may also be nominated by a Nominating Committee, if a committee is established by the Board. All Candidates shall have reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Section 5. Election and Term of Office. Not later than thirty (30) days after termination of the Declarant's right to appoint directors and officers as described in Section 2 of this Article, the Association shall call a meeting to be held at which Owners shall elect five (5) directors. The term of three (3) directors shall expire two (2) years after the first annual meeting following termination of the Declarant's right to appoint directors, and term of two (2) directors shall expire one (1) year after that annual meeting. At the expiration of the first term of office of each member of the initial Board of Directors, a successor shall be elected to serve for a term of two (2) years. The members of the

Board of Directors shall hold office until their respective successors shall have been elected by the Association.

At each annual meeting of the membership, directors shall be elected to succeed those directors whose terms are expiring. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected.

Section 6. Removal of Directors. At any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed, with or without cause, by Owners holding a Majority of the total Association vote and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Owners shall be given at least ten (10) days' notice of the calling of the meeting and its purpose and shall be given an opportunity to be heard at the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than twenty (20) days may be removed by a Majority vote of the directors at a meeting, a quorum being present. This Section shall not apply to directors appointed by Declarant.

Section 7. Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting the unexpired portion of the term of his predecessor.

B. Meetings.

Section 8. Organization Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days at the time and place determined by the Board.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a Majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of the meetings.

Section 10. Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two (2) directors. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone

communication, either directly to the director or to a person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph company shall be given at least forty-eight (48) hours before the time set for the meeting.

Section 11. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or notice consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 12. Quorum of Board of Directors. At all meetings of the Board of Directors, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time that the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No director shall receive any compensation from the Association for acting as a director unless approved by a Majority of the Owners.

Section 14. Open Meetings. All meetings of the Board shall be open to all members, but members other than directors or officers may not participate in any discussion or deliberation unless expressly so authorized by the Board.

Section 15. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The

nature of any and all business to be considered in executive session shall first be announced in open session.

Section 16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 17. Telephonic Participation. One or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and those directors participating by telephone shall be deemed to be present at such meeting for quorum and other purposes. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

C. Powers and Duties.

Section 18. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these By-Laws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the common expenses;
- (b) making assessments to defray the common expenses, establishing the means and methods of collecting the assessments, and establishing the period of the installment payments of the annual assessment;
- (c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

- (e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;
- (f) making and amending rules and regulations;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) enforcing by legal means the provisions of the Declaration, these by-laws, and the rules and regulations adopted by it, and bring any proceedings which may be instituted on behalf of or against the Owners concerning the association;
- (i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost;
- (j) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners;
- (k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred; and
- (l) contracting with any person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominiums, or other association. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 19. Management Agent. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize the Declarant or an affiliate of the Declarant may be employed as managing agent or manager. The term of any management agent shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon not more than thirty (30) days' written notice.

Section 20. Borrowing. The Board of Directors shall have the power to borrow money for any lawful purpose including, without limitation, repair or restoration of the Common Property and facilities, without the approval of the members of the Association. However, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the proposed borrowing is for the purpose of modifying, improving, or adding

amenities, or the total amount of such borrowing exceeds or would exceed Ten Thousand (\$10,000.00) Dollars outstanding debt at any one time.

Section 21. Fining Procedure. The Board shall not impose a fine (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) Notice. Written notice shall be served upon the violator specifying:

(i) the nature of the violation and the fine imposed;

(ii) that the violator may, within ten (10) days from the date of the notice, request a hearing regarding the fine imposed;

(iii) the name, address and telephone number of a person to contact to challenge the fine;

(iv) that any statements, evidence, and witnesses may be produced by the violator at the hearing; and

(v) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days of the date of the notice.

(b) Hearing. If a hearing is requested, it shall be held before the Board in executive session, and the violator shall be given a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing.

ARTICLE IV OFFICERS

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same person, excepting the offices of President and Secretary. The President and Treasurer shall be elected from among the members of the Board of Directors.

Section 2. Election, Term of Office, and Vacancies. Except during the period in which the Declarant has the right to appoint the officers of the Association under article III, Section 2 of these By-Laws, the officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board following each annual meeting of the members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever, in its judgement, the removal will serve the best interests of the Association.

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code.

Section 5. Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 6. Secretary. The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with Georgia law.

Section 7. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors.

Section 8. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

ARTICLE V COMMITTEES

The Board of Directors is authorized to establish committees to perform those tasks and to serve for those periods that it designates. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Section 1. Fiscal Year. The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules. Roberts Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, these By-Laws, or a ruling made by the person presiding over the proceeding.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Georgia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Amendment. These By-Laws 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 the 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 the 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 the Declaration. However, any such amendment shall not adversely affect the title to any Owner's Lot unless any Lot Owner consents to the amendment in writing. Further, so long as Declarant has the right unilaterally to subject additional property to the Declaration as provided in Article IX, Declarant may unilaterally amend these By-Laws 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, these By-Laws may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of owners holding at least a majority of the total Association vote and the consent of the Declarant (so long as Declarant has an option unilaterally to subject additional property to the Declaration as provided in Article IX of the Declaration). Amendments to these By-Laws shall become effective upon recordation, unless a later effective date is

specified in the amendment. No provision of these By-Laws 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.

Notwithstanding the above, VA and HUD shall have the right to veto amendments to these By-Laws for as long as the Declarant has the right to appoint directors and officers of the Association under Article III, Section 2 of these By-Laws.