

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS*
FOR
WINDWARD COMMUNITY SERVICES ASSOCIATION

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* Amendments have been made which are not included in these documents to add new property as additional land has been sold in Windward.

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

WINDWARD COMMUNITY SERVICES ASSOCIATION

This Declaration of Covenants, Conditions, and Restrictions is made this 22nd day of April 1983, by Windward Properties, Inc., a Delaware Corporation, (hereinafter referred to as "Declarant");

WITNESSETH

Declarant is the owner of the real property described in Exhibit "A" attached hereto and incorporated herein by reference. Declarant intends by this Declaration to impose upon the property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential property within Windward. Declarant desires to provide a flexible and reasonable procedure for the overall development of the property and the interrelationships of the component residential associations, and to establish a method for the administration, maintenance, preservation, use, and enjoyment of such property as is now or may hereafter be submitted to this Declaration. The Association hereby created may perform educational, recreational, charitable, and other social welfare activities.

NOW, THEREFORE, Declarant hereby declares that all of the property described in Exhibit "A" and any additional property as may by subsequent amendment be added to and subjected to this Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the real property submitted to this Declaration and which shall be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

Article I
Definitions

Section 1. "Association" shall mean and refer to Windward Community Services Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Georgia corporate law.

Section 2. "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto and shall further refer to such additional property as may hereafter be annexed by amendment to this Declaration or which is owned in fee simple by the Association.

Section 3. "Owner" shall mean and refer to the record owner, whether one or more Persons or entities, of any residential Unit which is part of the Properties, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. For the purpose of this definition, the Owner of Residential Units in an apartment shall be the record Owner of the apartment building or buildings. The Owner of Residential Units in a cooperative, if any, shall be the cooperative corporation.

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

Section 5. "Residential Unit" shall mean any portion of the Properties intended for any type of independent ownership for use and occupancy as a residence by a single household and shall, unless otherwise specified, include within its meaning (in way of illustration, but not limitation) single family detached houses, condominium units, apartment and cooperative units, patio or zero lot line homes, as may be developed, used, and defined, as herein provided or as provided in subsequent Declarations covering all or a part of the Properties.

For the purposes of this Declaration, a newly constructed Residential Unit shall come into existence upon the earlier of the date that it is substantially complete, as determined by the Board of Directors, or the date that a certificate of occupancy is issued by the appropriate governmental entity.

Section 6. "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by contract with any residential or condominium association, with any commercial establishment or association, or with any apartment building Owner or cooperative within Windward, become the responsibility of the Association. In addition, the office of any property manager employed by or contracting with the Association and located on the Properties shall be part of the Area of Common Responsibility.

Section 7. "Common Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation.

Section 8. "Member" shall mean and refer to a person or entity entitled to membership in the Association as provided herein.

Section 9. "Mortgage" shall include a deed to secure debt and a deed of trust, as well as a mortgage.

Section 10. "Mortgagee" shall include a beneficiary of a deed of trust and a grantee under a deed to secure debt, as well as a mortgagee.

Section 11. "Mortgagor" shall include the trustor of a deed of trust and the grantor under a deed to secure debt, as well as a mortgagor.

Section 12. "Person" means a natural person, a corporation, a partnership, trustee, or other legal entity.

Section 13. "Parcel" shall mean and refer to separately designated, developed residential areas comprised of various types of housing initially or by amendment made subject to this Declaration, for example, and as by way of illustration and not limitation: condominiums, cooperatives, or fee simple townhouses. In the absence of a specific designation of separate Parcel status, all property made subject to this Declaration shall be considered a part of the same Parcel; provided, however, the Declarant may designate in any subsequent amendment adding property to the terms and conditions of this Declaration that such property shall constitute a separate Parcel or Parcels. Any amendment creating a Parcel shall set out the rights and obligations of the Association and of all Owners of Residential Units in a Parcel, which rights and obligations are provided for herein.

Section 14. "Parcel Assessments" shall mean assessments for Common Expenses provided for herein or by any subsequent amendment by Declarant creating a Parcel which are used for the purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of the Residential Units against which the specific Parcel Assessment is levied and of maintaining the property within a given Parcel, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized below.

The Parcel Assessment shall be levied equally against Owners of Residential Units in a Parcel for such purposes that are authorized by the Declaration or by the Board of Directors from time to time.

Section 15. "Residential Association" shall mean any homeowners, condominium, cooperative, or other such association created on property subject to this Declaration containing units, homes, apartments, or other structures for residential purposes.

Section 16. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in Windward. Such standard may be more specifically determined by the Board of Directors.

Section 17. "By-Laws" shall mean the By-Laws of Windward Community Services Association, Inc., as amended.

Article II
Property Rights

Every Owner shall have a right and easement of enjoyment in and to the Common Area subject to any restrictions or limitations contained in this Declaration or the By-Laws. In addition, this right and easement shall be subject to any restrictions or limitations contained in any deed conveying Common Area to the Association. This right and easement shall also be subject to any restrictions or limitations contained in any amendment to this Declaration subjecting Common Area to this Declaration. Any Owner may delegate his or her right of enjoyment to the members of his or her family, tenants, and social invitees subject to reasonable regulation by the Board and in accordance with procedures it may adopt.

Article III
Membership and Voting Rights

Section 1. Membership. The Declarant and every Person who is the record Owner of a fee or undivided fee interest in any Residential Unit that is subject to this Declaration shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of a Residential Unit. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No owner, whether one or more Persons, shall have more than one (1) membership per Residential Unit owned. In the event of multiple Owners of a Residential Unit, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote, may be exercised by a Member or the Member's spouse, but in no event shall more than one (1) vote be cast for each Residential Unit.

Section 2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B" as follows:

(a) Class "A". Class "A" Members shall be all Owners with the exception of the Class "B" Members, if any. Class "A" Members shall be entitled on all issues to one (1) vote for each Residential Unit in which they hold the interest required for membership by Section 1 hereof; there shall be only one (1) vote per Residential Unit. When more than one Person holds such interest in any Residential Unit, the vote for such Residential Unit shall be exercised as those Owners themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the Residential Unit's vote shall be suspended in the event more than one Person seeks to exercise it.

Any Owner of Residential Units which are leased may, in the lease or other written instrument, assign the voting right appurtenant to that Residential Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary prior to any meeting.

(b) Class "B". Class "B" Members shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale. The Class "B" Member shall originally be entitled to eight thousand (8,000) votes; this number shall be decreased by one (1) vote for each Class "A" Member existing at any one time. The Class "B" membership shall terminate and become converted to Class "A" membership upon the happening of the earlier of the following:

- (i) when the total outstanding Class "A" votes equal or exceed six thousand (6,000);
- (ii) January 1, 2012; or
- (iii) when, in its discretion, the Declarant so determines.

From and after the happening of these events, whichever occurs earlier, the Class "B" Member shall be deemed to be a Class "A" Member entitled to one (1) vote for each Residential Unit in which the interest

required for membership under Section 1 hereof is held. At such time, the Declarant shall call a meeting, as provided in the By-Laws for special meetings, to advise the membership of the termination of Class "B" status.

Article IV
Maintenance

Section 1. Association Responsibility. The Association shall maintain and keep in good repair the Common Area, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements situated upon the Common Area.

The Association may, in the discretion of its Board, and shall, if so required by any amendment to this Declaration executed by Declarant establishing a Parcel, assume part or all of the maintenance responsibilities for any Parcel or Residential Association. In such event, all costs of such maintenance shall be assessed only against those Members residing in the Residential Association or Parcel to which the services are provided. The assumption of this responsibility may take place either by the execution of an amendment to this Declaration by Declarant, contract, or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard; provided, however, no such action shall be taken without giving the affected Owners in the Residential Association or Parcel fifteen (15) days written notice and an opportunity to cure. The provision of services in accordance with this Section shall not constitute discrimination within a class.

Section 2. Owner's Responsibility. In accordance with any additional Declaration or covenants which may be filed on portions of the Properties and in accordance with this Declaration, all maintenance of the Residential Unit and all structures, parking areas, and other improvements thereon shall be the sole responsibility of the Owner thereof who shall maintain said property in a manner consistent with the Community-Wide Standard and the applicable covenants.

Article V
Insurance and Casualty Losses

Section 1. Insurance. 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 Area and for such insurable improvements in a Parcel as may be required by any amendment to this Declaration by Declarant establishing a Parcel and may, by written agreement with any other Person in the Properties subject to this Declaration, assume the insurance responsibility for the property held by or which is the responsibility of such other Person against loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance 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.

The Board shall also obtain a public liability policy, applicable to the Common Area 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 at least a Five Hundred Thousand (\$500,000.00) Dollar per Person limit, as respects bodily injury; a One Million (\$1,000,000.00) Dollar limit, per occurrence; and a Two Hundred Fifty Thousand (\$250,000.00) Dollar minimum property damage limit. Premiums for all insurance on the Common Area shall be Common Expenses of the Association; premiums for insurance provided to other associations shall be charged to those associations. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

Cost of insurance coverage obtained for the Common Area shall be included in the General Assessment, as defined in Article IX, Section 1.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as Trustee, for the respective benefited parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Georgia and holding a rating of XI or better in the Financial Category as established by A. M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.

(b) All policies on the Common Area shall be for the benefit of the Residential Unit Owners and their Mortgagees, as their interests may appear.

(c) Exclusive authority to adjust losses under policies in force on the Properties 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, if any, related thereto.

(d) 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.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified Persons, at least one of whom must be in the real estate industry and familiar with construction in the Fulton County, Georgia, area.

(f) 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 canceled, invalidated, or suspended on account of any one or more individual Owners;

(iv) that no policy may be canceled, 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 the defect may be cured 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 canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, workmen'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. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than 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 canceled or substantially modified without at least ten (10) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of The Mortgage Corporation or the Federal National Mortgage Association.

Section 2. No Partition. Except as is permitted in this Declaration, there shall be no physical partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any such judicial partition until the happening of the conditions set forth in

Section 4 of this Article in the case of damage or destruction, or unless the Properties have been removed from the provisions of this Declaration. This Section shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

Section 3. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction, as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area, or, in the event no repair or reconstruction is made after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s), as their interests may appear, if any Residential Unit is involved, shall be retained by and for the benefit of the Association. This is a covenant for the benefit of any Mortgagee of a Residential Unit and may be enforced by such Mortgagee.

(b) If it is determined, as provided for in Section 4 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 3 (a) hereof.

Section 4. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties 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 paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless Declarant, so long as it owns any property described in Exhibits "A" or "B", and at least seventy-five (75%) percent of the Class "A" Members shall decide within sixty (60) days after the casualty not to 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 said 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 the Common Area damage or destruction shall be repaired or reconstructed.

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

Section 5. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, 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 Residential Units 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 cost of repair, such excess shall be deposited to the benefit of the Association.

Article VI Condemnation

Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners of Residential Units

subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners. The award made for such taking shall be payable to the Association, as Trustee for all Owners and Mortgagees, as their interests may appear, to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as it owns any land described on Exhibits "A" or "B", and at least seventy-five (75%) percent of the Class "A" Members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area, to the extent lands are available therefore, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

Article VII
Annexation of Additional Property

Section 1. Annexation Without Approval of Class "A" Membership. As the owner thereof, or if not the Owner, with the consent of the Owner thereof, Declarant shall have the unilateral right, privilege, and option, from time to time at any time until twenty-five (25) years from the date this Declaration is recorded in the Fulton or Forsyth County Land Records to subject to the provisions of this Declaration and the jurisdiction of the Association all or any portion of the real property described in Exhibit "B" attached hereto and by reference made a part hereof, whether in fee simple or leasehold, by filing in the Fulton or Forsyth County, Georgia Records, an amendment annexing such property. Such amendment to this Declaration shall not require the vote of Members. Any such annexation shall be effective upon the filing for record of such amendment, unless otherwise provided therein.

Declarant shall have the unilateral right to transfer to any other Person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transfers or assignee shall be the developer of at least a portion of said real property described in said Exhibit "B" attached hereto.

Section 2. Annexation With Approval of Class "A" Membership. Subject to the written consent of the Owner thereof, upon the written consent or affirmative vote of a majority of the Class "A" Members, other than Declarant, of the Association present or represented by proxy at a meeting duly called for such purpose, and of the Declarant, the Association may annex real property other than that shown on Exhibit "B", and following the expiration of the right in Section 1, the property shown on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Fulton or Forsyth County, Georgia Records, a supplementary amendment in respect to the property being annexed. Any such supplementary amendment shall be signed by the President and the Secretary of the Association, and any such annexation shall be effective upon filing, unless otherwise provided therein. The time within which and the manner in which notice of any such meeting of the Class "A" Members of the Association, called for the purpose of determining whether additional property shall be annexed, and the quorum required for the transaction of business at any such meeting, shall be as specified in the By-Laws of the Association for regular or special meetings, as the case may be.

Section 3. Condominium Conversions. Apartment buildings subject to the Declaration for Windward Business Center may subsequently be converted to the condominium form of ownership. In such event, the property subjected to the condominium Declaration shall be transferred from the Business Center to the Community Services Association. The Owner of the property shall, at the time the Declaration of Condominium is filed, cause an amendment to be made to both the Windward Business Center Declaration and this Declaration which shall transfer the property. Such amendment shall not require the consent of other Members of either Association.

Section 4. Conveyance of Common Area. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold 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 thereafter be maintained by the Association for the benefit of all or a part of its Members. This Section shall not be amended without the consent of Declarant so long as the Declarant owns any property described in Exhibits "A" or "B".

Article VIII
Rights and Obligations of the Association

Section 1. The Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including furnishings and equipment related thereto), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof. In addition, the Association shall be authorized to expand General Assessment funds for the improvement and maintenance of certain real and personal property which is not Common Area but which is made available for use of enjoyment by all Owners by Declarant or other Persons. Such expenditures may be made only for so long as such property is made available for use or enjoyment by all Owners and shall create no ownership rights, easements, or licenses, whether legal or equitable, express or implied, over such property in the Association or any Owner, such use or enjoyment being permissive only and subject to termination by Declarant or the owner of such property at any time, without notice.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property.

Section 3. Rules and Regulations; Sanctions; Enforcement. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration and the By-Laws.

Each Owner shall comply strictly with the By-Laws, the rules and regulations, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed to his or her Residential Unit, if any, as any of the foregoing may be lawfully amended from time to time.

If an Owner does not comply with the Declaration, By-Laws, or rules and regulations, the Board of Directors may impose sanctions, which may include suspension of the right to vote and the right to use the Common Area and reasonable monetary fines, which shall constitute a lien upon the Owner's Residential Unit or Units and which may be collected as provided herein for the collection of assessments.

Failure to comply with this Declaration, the By-Laws, or the rules and regulations shall be ground for an action to recover sums due 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 shall in no event be deemed a waiver of the right to do so thereafter.

In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon a Residential Unit or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any erection, thing, or condition which violates this Declaration, the By-Laws, or the rules and regulations. Unless an emergency situation exists, the Board shall give the violating Owner ten (10) days' written notice of its intent to exercise self-help. All costs of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Article IX
Assessments

Section 1. Creation of General Assessment. There are hereby created assessments for Common Expenses as may be from time to time specifically authorized by the Board of Directors. General Assessments shall be allocated equally among all Residential Units within the Association and shall be for expenses determined by the Board to be for the benefit of the Association as a whole. Parcel Assessments shall be levied against Parcels where Common Expenses are incurred which benefit less than the Association as a whole. Each Owner, by acceptance of a deed, is deemed to covenant and agrees to pay these assessments. All such assessments, together with late charges, interest, not to exceed the highest rate allowable under the laws of Georgia from time to time relating to usury for residential real estate loans, costs, and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Residential Unit against which each assessment is made.

Assessments shall commence, provided Common Expenses are incurred, at the time that a Residential Unit is first occupied.

Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Residential Unit at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Residential Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation, acceleration of the annual assessment for delinquents.

It is the intention of this Declaration that assessments be collected by the Residential Associations within Windward and be paid by such Associations to the Community Services Association. Such a system shall prejudice neither the right for direct collection nor the lien rights set out in Section 4 of this Article.

The Association is specifically authorized and encouraged to seek public and private funds to help defray in whole or in part the expenses for which assessments would be necessary. To the extent received, such funds shall be used to reduce the assessments otherwise required by the budget in Section 2.

Section 2. Computation of Assessment. If the Association incurs ongoing Common Expenses, the Board shall prepare an annual budget, and the following provisions shall apply:

It shall be the duty of the Board at least thirty (30) days prior to the meeting at which the budget shall be presented to the membership to prepare a budget covering the estimated costs of operating the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund, in accordance with a capital budget separately prepared, and shall separately list general and Parcel expenses, if any. The Board shall cause a copy of the budget, and the amount of the assessments to be levied against each Residential Unit for the following year, to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget and the assessments shall become effective unless disapproved at the meeting by a vote of at least a majority of the total Association membership.

Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined, as provided herein, the budget in effect for the then current year shall continue for the succeeding year.

Section 3. Special Assessments. In addition to the assessments authorized in Section 1, the Association may levy Special Assessments in any year. So long as the total amount of Special Assessments allocable to each Residential Unit does not exceed Three Hundred (\$300.00) Dollars in any one fiscal year, the Board may impose the Special Assessment. Any Special Assessment which would cause the amount of Special

Assessments allocable to any Residential Unit to exceed this limitation shall be effective only if approved by a majority of the Class "A" members. 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 4. Lien for Assessments. Assessments shall constitute a lien on each Residential Unit prior and superior to all other liens, except (1) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto, and (2) the lien or charge of any first Mortgage of record made in good faith and for value.

The Association, acting on behalf of the Owners, shall have the power to bid for the Residential Unit at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. During the period owned by the Association following foreclosure: (1) no right to vote shall be exercised on its behalf; (2) no assessment shall be assessed or levied on it; and (3) each other Residential Unit may be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Residential Unit had it not been acquired by the Association as a result of foreclosure.

Suit to recover a money judgment for unpaid Common Expenses, rent, and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 5. Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by annual assessments over the period of the budget. The capital contribution required shall be fixed by the Board and included within the budget and assessment, as provided in Section 2 of this Article. A copy of the capital budget shall be distributed to each Member in the same manner as the operating budget.

Article X Architectural Standards

Windward has been designed to provide a high quality environment for property Owners. The master land use plan, letter of intent, this Declaration, the design guidelines, the use restrictions, and the Association are the means of achieving high standards of quality. All those associated with or impacted by these covenants and the Association benefit from the maintenance of the highest design and operation standards.

This Declaration indicates that development and maintenance standards have been established and will be in effect throughout Windward's economic life. These covenants are the basic principles that protect the values of all Windward property Owners.

All property which is now or may hereafter be subject to this Declaration is subject to architectural and environmental review. This review shall be in accordance with this Article and such other standards as may be promulgated by the Board, the New Construction Committee, or the Modifications Committee. The Board of Directors shall have the authority and standing on behalf of the Association to enforce in courts of competent jurisdictions decisions of either Committee.

Section 1. New Construction Committee. The New Construction Committee (NCC) shall have exclusive jurisdiction over all original construction on any portion of the Properties. The NCC shall promulgate architectural and environmental standards and applicable procedures. It shall make both available to Owners, builders, and developers who seeks to engage in development of or construction upon all or any portion of the Properties and shall conduct its operations in accordance therewith. So long as Declarant holds title to any property described in Exhibit "B" for sale in the ordinary course of business, the Declarant shall appoint the members of the NCC which shall consist of no less than three (3) members, none of whom shall be required to be Owners or occupants in Windward. This provision may not be amended without Declarant's written consent, so long as Declarant owns any property described in Exhibit "B".

Section 2. Modifications Committee. The Modifications Committee (MC) shall consist of at least three (3) and no more than five (5) members, all of whom shall be appointed by the Board of Directors. The MC shall have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Residential Units, structures, signs, and the open space, if any, appurtenant thereto. The jurisdiction of the MC shall be subordinate to the NCC. The MC shall promulgate architectural and environmental standards and applicable procedures, which it shall make available to all Owners.

Section 3. Procedures. Both the NCC and the MC shall promulgate detailed standards and procedures governing their areas of responsibility and practice. Such standards and procedures may be modified or deleted without the consent of any Owner. In the event either Committee fails to approve or to disapprove plans submitted to it pursuant to the standards and procedures promulgated by the Committee or to request additional information reasonably required within ninety (90) days after submission, the plans shall be deemed approved.

Article XI Use Restrictions

The Properties shall be used only for residential, recreational, and related purposes as may more particularly be set forth in this Declaration, amendments thereto, or subsequently recorded Declarations creating Residential Associations subject to this Declaration. The Association, acting through the Board of Directors, shall have standing and the power to enforce use restrictions contained in any such Declaration as if such provision were a regulation of the Association.

The Board of Directors may, from time to time, promulgate, modify, and delete regulations and use restrictions governing the use of Residential Units and the Common Area and facilities thereon, including the imposition of reasonable user fees for the Common Area and facilities thereon and the lake. In the discretion of the Board, members of the Windward Business Center Association and their designees may use the Common Area and facilities thereon, subject, however, to rules and fees as the Board may promulgate and require. In addition, the Board may authorize special use groups such as, for example, but not limited to, a boating club or equestrian club, and may delegate some rule making and enforcing power to such groups for their limited purposes. The Board may except such groups from use restrictions promulgated by the Board under this Article which would otherwise be applicable to such group.

Any lake front Owner may erect or construct a boat dock, but only in strict compliance with procedures established by the New Construction Committee provided for in Article X.

Article XII Mortgagees' Rights

The following provisions are for the benefit of holders of first Mortgages on Residential Units in Windward. To the extent applicable, necessary, or proper, the provisions of this Article XII apply to both this Declaration and to the By-Laws of Windward Community Services Association, Inc.

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Residential Unit 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 Properties or which affects any Residential Unit 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 Residential Unit subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Residential Unit of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

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

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

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation (The Mortgage Corporation), 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 give their consent, the Association shall not:

(a) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Area 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 Area shall not be deemed a transfer within the meaning of this subsection);

(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 Residential Units and of the Common Area (the issuance and amendment of architectural standards and procedures and regulations and use restrictions under Articles X and XI hereof shall not constitute a change, waiver, or abandonment within the meaning of this subsection);

(d) fail to maintain fire and extended coverage insurance, as required by this Declaration; or

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

Nothing contained in Article XII, Section 2, of this Declaration 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 Area and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for the Common Area, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Article XIII General Provisions

Section 1. Coverage and Right of Action. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns.

Section 2. Amendment. Subject to the provisions of Article XII, this Declaration may be amended only by the affirmative vote (in person or by proxy) or written consent of a majority of the Class "A" Members and the consent of the Class "B" Member, so long as such Class "B" membership shall exist. Any amendment must be recorded among the land records of Fulton and Forsyth Counties, Georgia. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege. So long as the Class "B" membership exists, the Declarant may, without vote of the Owners, amend this Declaration, so long as the substantive rights of no existing Owner are adversely affected. The foregoing notwithstanding, the percentage of votes necessary to amend a clause or provision hereof shall not be less than the percentage vote required for action to be taken under that clause or provision.

Section 3. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including counsel fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws of the Association, his or her right of enjoyment to the Common Area and facilities to the members of his or her family, tenants, and social invitees.

Section 5. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each Residential Unit and such portion or portions of the Common Area adjacent thereto or as between adjacent Residential Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Residential Unit and the adjacent portion of the Common Area or as between said adjacent Residential Units, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, tenant, or the Association.

Section 6. Easement for Utilities, Etc. Declarant hereby reserves for itself and its designees blanket easements upon, across, over, and under all of the Properties for ingress, egress, installation, replacing, repairing, and maintaining master television antenna systems, security, and similar systems, walkways, and all utilities, including, but not limited to, water, sewers, telephones, gas, and electricity. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant.

Declarant hereby reserves for itself and its designees as easement of access across the Properties for the purpose of lake maintenance. Such easement shall be used in a reasonable manner and at reasonable times in order to minimize the effect upon the use and enjoyment of privately owned property. This reserved easement may be assigned by Declarant by written instrument to the Association, and the Association shall accept the assignment upon such terms and conditions as are acceptable to Declarant.

Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as may be deemed necessary by Declarant for the purpose of construction and sale. Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the owner of the property upon which a specific easement is requested hereby authorizes the holder of the blanket easement to execute the recordable document. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties. The Board shall have, by two-thirds (2/3) vote of the Class "A" Members and approval of the Class "B" Member, so long as such Class "B" membership shall exist, the power to dedicate all or part of the Common Area to the City of Alpharetta, Fulton or Forsyth Counties, or other local governmental entity.

The Association shall have an easement to enter into any Residential Unit for emergency, security, and safety, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. It is intended that this right of entry shall include (and this right of entry

shall include) the right of the Association to enter a Residential Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

Section 7. Pets. Except as may be authorized and established by the Declarant as part of the facilities on the Common Area or as may subsequently be authorized by the Board for the same purpose, animals, livestock, or poultry of any kind may be raised, bred, or kept on the Properties only as permitted by rules and regulations adopted by the Association through its Board of Directors. Pets may not be kept, bred, or maintained for any commercial purpose. The Declarant may designate all or portions of the Properties which may contain equine animals (horses, mules, and ponies) and may promulgate reasonable rules for their use and control. The Board shall have the absolute power to prohibit pets from being kept on the Properties, including inside Residential Units constructed thereon; provided, however, the Declaration or other creating document for any Residential Association may impose stricter standards than those contained in this Section 7.

Section 8. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 9. 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 Ronald Reagan, President of the United States.

Section 10. Construction and Sale Period. Notwithstanding any provisions contained in the Declaration to the contrary, it shall be expressly permissible for Declarant and any builder (if other than Declarant) to maintain and carry on, during the period of development, construction and sale, upon such portion of the Properties as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to such development, construction, and sale, including, but without limitation, business offices, signs, model residences, and sales offices. Declarant and any builder other than Declarant may use residences or offices owned or leased by Declarant or such builder as model residences and sales offices.

Section 11. Duration. The provisions of this Declaration shall run with and bind the land and shall be and remain in effect perpetually to the extent permitted by law; provided, however, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, and such provisions may be renewed or extended, in whole or in part, beyond the initial period permitted by such law for successive periods not to exceed the period permitted by such law, provided such renewal or extension is approved by at least a majority of the votes which the Class "A" Members of the Association present or represented by proxy are entitled to cast as a meeting duly called for such purpose. Further, no such renewal or extension shall be effective unless there is filed for record in the Office of the Clerk of the Superior Court of Fulton County, Georgia, on or before the effective date thereof, an instrument executed by the President and Secretary of the Association which shall state the terms of such renewal or extension and which shall contain a certification by such Secretary that such extension and renewal was duly approved by the Class "A" Members of the Association. Every purchaser or grantee of any interest in any real property subject to this Declaration, by acceptance of a deed or other conveyance therefore, thereby agrees that such provisions of the Declaration may be extended and renewed as provided in this Section.

EXHIBIT "A"
Submitted Property

All that tract or parcel of land lying and being in Land Lots 1237, 1238, and 1250 of the 2nd District, 1st Section, Fulton County, Georgia, and being more particularly described on the plat of Clipper Bay Subdivision recorded in Plat Book 129, Page 80, Fulton County, Georgia Records.

EXHIBIT "B"
Additional Land

The Additional Land shall include all property as Declarant now or may subsequently own in the First and Second Districts of Fulton County and the Second District of Forsyth County, Georgia.