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**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR**

**WINDWARD PARK**

(A MIXED-USE DEVELOPMENT)

ALPHARETTA, FULTON COUNTY, GEORGIA

BY

WINDWARD POINT WHP, INC.  
a Georgia corporation ("DECLARANT")  
3930 East Jones Bridge Road, Suite 145  
Norcross, Georgia 30092

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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
WINDWARD PARK**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR WINDWARD PARK (hereinafter referred to as the "Master Declaration") is made on the date set forth below, by WINDWARD POINT WHP, INC., a Georgia corporation (hereinafter referred to as "Declarant").

**PREAMBLE**

Declarant is the fee simple owner of that certain real property described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"). Declarant desires to subject the Property to this Master Declaration, and, in connection therewith, intends to impose upon the Community (as defined herein) mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of real property within the Community. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Community, and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Community as are now or hereafter subjected to this Master Declaration.

Declarant intends to create a real estate development with a mixture of commercial and residential uses. To create a community that is both vibrant yet controlled, Declarant has reserved to itself and to the Master Association certain powers and discretion through this Master Declaration to control the environment and improvements within the Community. Since the Community will be developed over a period of time, and will therefore be subject to changing tastes, consumer preferences and market forces, Declarant reserves to itself the right to modify, alter or change the development plan for the Community. No statement contained herein should be construed as a warranty or representation with respect to the nature of the services, amenities and land uses to be located within the Community, the social or physical environment existing within the Community, or the administration and operation of the Community.

Declarant hereby declares that all of the Property and any additional property which is hereafter subjected to this Master Declaration by Supplemental Master Declaration (as defined herein) shall be held, sold, leased, used and conveyed subject to this Master Declaration, including, but not limited to, all of easements, restrictions, covenants, and conditions contained herein, which are for the purpose of protecting the value and desirability of and which shall run with the real property subjected to this Master Declaration. This Master Declaration shall be binding on all parties having any right, title, or interest in the Community 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.** The terms in this Master Declaration and the exhibits to this Master Declaration shall generally be given their natural, commonly accepted definitions except as

otherwise specified. When used in this Master Declaration, unless the context shall prohibit or otherwise require, the following capitalized terms shall have the following meanings, and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Additional Property" shall mean and refer to the real property described in Exhibit "B" which may be submitted to the terms of this Master Declaration as set forth in Article X. The Additional Property is owned by Windward Mill, LLC, a Georgia limited liability company and affiliate of Declarant.

(b) "Architectural Review Committee" or "ARC" shall mean the committee of the Master Association created pursuant to Article XII with authorization over new construction and modifications in the Community.

(c) "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by the terms of this Master Declaration, any Supplemental Master Declaration or other applicable covenants, contract, or agreement with any Parcel, become the responsibility of the Master Association.

(d) "Articles of Incorporation" or "Articles" shall refer to the Articles of Incorporation of Windward Park Master Association, Inc., as filed with the Secretary of State of Georgia.

(e) "Base Assessment" shall refer to assessments levied on all Parcels subject to assessment under Article XI to fund Common Expenses for the general benefit of all Parcels, as more particularly described in Article XI.

(f) "Board of Directors" or "Board" shall be the governing body responsible for administration of the Master Association, selected as provided in the Master Bylaws and generally serving the same role as a board of directors under Georgia corporate law.

(g) "Budget Preparation Date" shall mean that certain date more particularly described in Article XI, Section 2(a).

(h) "Common Area" shall mean all real and personal property, including facilities and improvements located within the Community, which the Master Association now or hereafter owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including easements held by the Master Association for such purpose. The term shall include any Exclusive Common Area, as defined below.

(i) "Common Expenses" shall mean the actual and estimated expenses incurred, or anticipated to be incurred, by or on behalf of the Master Association for the Common Area and to operate the Community pursuant hereto for the benefit of Owners and/or the Master Association, including, but not limited to, all funds lawfully assessed for the creation or maintenance of reserves.

(j) "Community" shall mean the Property, as described in Exhibit "A" attached hereto, as improved, together with such additional property as is hereafter subjected to this Master Declaration in accordance with Article X.

(k) "Declarant" shall refer to Windward Point WHP, Inc., a Georgia corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits "A" or "B" hereof for the purpose of development and/or sale and who is designated as Declarant in a recorded instrument executed by the immediately preceding Declarant. In all events there shall be only one (1) Declarant at any time and in no event shall more than one (1) Person have the right to exercise power and authority of Declarant at any time.

(l) "Declarant Control Period" shall refer to the period of time during which Declarant is entitled to appoint a majority of the members of the Board of Directors, as provided in Article IV, Section 3 hereof and in the Master Bylaws.

(m) "Default Rate" shall mean a rate of interest per annum of fifteen percent (15%).

(n) "Electronic Document" shall mean information created, transmitted, received or stored by electronic or digital means and retrievable in human perceivable form; including but not limited to email, web pages, documents executed by Electronic Signature, and facsimile transmissions.

(o) "Electronic Signature" shall mean a signature created, transmitted, received or stored by electronic or digital means.

(p) "Exclusive Common Area" shall mean a portion of the Common Area reserved for the exclusive use of one (1) or more, but less than all, Parcels, as more particularly set forth in this Master Declaration.

(q) "Master Association" shall mean Windward Park Master Association, Inc., a Georgia non-profit corporation, its successors or assigns.

(r) "Master Bylaws" shall mean the Master Bylaws of Windward Park Master Association, Inc., attached hereto as Exhibit "E" and incorporated by reference; as they may be amended from time to time.

(s) "Mortgage" shall mean a mortgage, a deed to secure debt, or any other form of security deed.

(t) "Mortgagee" shall mean a beneficiary or holder of a Mortgage.

(u) "Official Records" shall mean the official land records of the Clerk of the Superior Court of Fulton County, Georgia.

(v) "Owners" shall refer to one (1) Person who holds the record title to any Parcel, but excluding, however, (i) any Person holding an interest merely as security for the performance of an obligation; (ii) Permittees; and (iii) Persons owning any easements, rights-of-way, or licenses of real property. Notwithstanding the foregoing, if any Parcel is submitted to the condominium form of ownership under the Georgia Condominium Act, O.C.G.A. § 44-3-70, et seq., or is submitted to covenants subject to a mandatory membership sub-association, then the term "Owner" shall for all purposes herein mean the Parcel Association.

(w) "Parcel" shall refer to each separately developed land area within the Community as more particularly designated on Exhibit "C" attached hereto and incorporated herein.

(x) "Parcel Architectural Review Committee" or "PARC" shall mean the committee of a Parcel Association created pursuant to Article III with authorization over new construction and modifications in the Parcel.

(y) "Parcel Association" shall refer to any condominium association, community association, or other mandatory membership owners association having concurrent, but subordinate, jurisdiction over any Parcel.

(z) "Parcel Declaration" shall refer to any declaration of condominium, declaration of protective covenants, or similar instrument which subjects all or a portion of any property within a Parcel to covenants, restrictions and/or easements in addition to those contained in the Master Declaration.

(aa) "Parcel Developer" shall mean any Person that purchases one (1) or more Parcels or any portion thereof for the purpose of constructing improvements thereon for investment, leasing or sale, or portions of land within the Community for further subdivision, development, leasing, and/or resale in the ordinary course of such Person's business.

(bb) "Parcel Share" shall mean the cost sharing percentages for each Parcel as set forth in Exhibit "D" attached hereto and incorporated herein. Declarant shall have the right to unilaterally amend Exhibit "D" to the Declaration to show the Parcel Share for those Parcels that do not have a specific percentage shown thereon as of the date this Declaration is recorded in the Fulton County, Georgia land records.

(cc) "Parking Space Plan" shall mean the plan of certain parking spaces in the Community, not including the Townhome Parcel.

(dd) "Percentage Share" shall mean the fraction, the numerator of which the total number of parking spaces attributable to a Parcel, and the denominator of which is the total number of parking spaces in the Community (excluding the Townhome Parcel), rounded to the nearest 1/100<sup>th</sup> for the purposes hereof, the following shall be taken into consideration in determining the number of parking spaces "attributable" to a Parcel: (a) any parking space exclusively available to an Owner or its Permittees or any parking space assigned as an Exclusive Common Area to a Parcel shall be attributable to the Parcel to which it is exclusively available or assigned; (b) the number of vehicles capable of being parked in any enclosed garage shall equal the number of parking spaces attributable to a Parcel containing enclosed garages; (c) in the event a parking space is available to more than one (1) Parcel but not all Parcels, each Parcel (excluding the Townhome Parcel) shall be attributed a proportionate share of such parking space based on the number of Parcels to which such space is available or such other allocation that is reasonable under the circumstances but in no event shall the total proportionate shares for one (1) parking space exceed one (1) total attributed parking space; (d) any parking space capable of accommodating more than one (1) passenger vehicle shall be attributed such number of parking spaces as the number of vehicles that such parking space is capable of accommodating. During the Declarant Control Period, Declarant shall have the right and

authority to record a notice in the Official Records stating the number of attributable Parking spaces to each Parcel (excluding the Townhome Parcel) and such notice shall, be deemed conclusive evidence of the number of attributable parking spaces allocated to each Parcel (excluding the Townhome Parcel) for the purpose of determining the Percentage Shares. Declarant shall have the right to record a revised notice as it deems appropriate in its discretion in the event of any changes in the number of parking space. After the Declarant Control Period, the Master Association shall have the right to record such revised notices as it deems appropriate.

(ee) "Person" shall mean a natural person, a corporation, a limited liability company, a partnership, a joint venture, a trust, or any other legal entity.

(ff) "Permittees" shall mean any and all of the following: (a) an owner of any portion of a Parcel; (b) the tenants or lessees of a Parcel or portion thereof, and (c) the guests, licensees and invitees of an Owner of a Parcel, an owner of a portion of a Parcel, or the tenants and lessees of a Parcel or portion thereof.

(gg) "Rules and Regulations" shall mean the then current rules and regulations of the Master Association as may be adopted, amended and repealed from time to time by the Board of Directors.

(hh) "Special Assessment" shall mean assessments levied in accordance with Article XI, Section 4 of this Master Declaration.

(ii) "Specific Assessment" shall mean assessments levied in accordance with Article XI, Section 5 of this Master Declaration.

(jj) "Supplemental Master Declaration" shall mean an amendment or supplement to this Master Declaration either as a separate document or as part of the warranty deed conveying property to an Owner filed pursuant to Article X which subjects additional Property to this Master Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein.

(kk) "Total Master Association Vote" shall mean all of the eligible votes described in Exhibit "D" attributed to members of the Master Association (including votes attributable to Declarant), and the consent of Declarant for so long as Declarant owns any property described in Exhibits "A" and "B" for development, lease and/or sale.

(ll) "Unit" shall mean any lot, townhome unit or condominium unit established under a Parcel Declaration.

(mm) "Zoning Conditions" shall mean the zoning ordinances, restrictions and related conditions presently or hereafter applicable to the Community, and all modifications, amendments, variances, special uses or special exceptions thereto hereafter made or granted by the City of Alpharetta.

**ARTICLE II**  
**COMMON AREA**

**Section 1. Common Area.** The Master Association, subject to the rights of the Owners set forth in this Master Declaration, shall be responsible for the exclusive management and control of the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and common landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof.

**Section 2. Right to Use Common Area.** All Owners and Permittees shall have a right and non-exclusive easement of use, access, and enjoyment in and to the Common Area; subject to:

(a) This Master Declaration and any other applicable covenants, as they may be amended from time to time, and subject to any restrictions or limitations contained in any deed conveying such property to the Master Association.

(b) The right of the Board to adopt Rules and Regulations governing the use and enjoyment of the Common Area, including, without limitation, rules limiting the number of Owners and Permittees who may use the Common Area, the hours during which the Common Area may be used, and the manner, purposes and activities for which the Common Area may be used or which may take place on the Common Area. In establishing such Rules and Regulations, the Board may adopt different Rules and Regulations for different portions of the Common Area, and nothing contained-herein shall require that the Rules and Regulations apply uniformly within or to the entire Common Area; provided, however, all Rules and Regulations adopted by the Board shall be subject to the consent of Declarant while Declarant owns any property in the Community primarily for the purpose of sale or has the option to expand the Community pursuant to Article X of this Master Declaration, which consent may be withheld in Declarant's sole and unfettered discretion. The right of the Board of Directors to declare and treat any Owner or Permittee whose use of the Common Area or whose actions or activities therein violate any local, state or federal law, any of the covenants set forth in this Master Declaration or any Supplemental Master Declaration relating to the use and enjoyment of the Common Area, or any Rules and Regulations adopted by the Board of Directors relating to the use and enjoyment of the Common Area as a trespasser on the Common Area and to cause said Owner or Permittee to be removed from the Common Area and/or prosecuted to the fullest extent of the law.

(c) The right of the Board of Directors to suspend the right of an Owner or Permittee to use the Common Area for a period not to exceed six (6) months, after notice and a right to a hearing pursuant to the Master Bylaws, for (i) repeated violations of one or more of the covenants set forth in this Master Declaration or any Supplemental Master Declaration relating to the use and enjoyment of the Common Area by the Owner or Permittee, and/or any Rules and Regulations adopted by the Board of Directors relating to the use of the Common Area; or (ii) committing a criminal offense on the Common Area or being charged or arrested for the same.

(d) The right of the Master Association, acting through the Board, to dedicate or transfer all or any part of the Common Area pursuant to Article V hereof.



(e) The right of the Master Association, acting through the Board, to allow portions of the Common Areas to be used and/or reserved for public or private functions and activities (including the types described in Section 3 below) and charge fees for the same.

(f) The right of the Master Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to any approval requirements set forth in Article XV hereof.

(g) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as more particularly described in Section 4 below.

(h) The right of the Master Association, acting through the Board, to close temporarily portions of the Common Area.

(i) The right of the Master Association, acting through its Board, to grant easements and licenses over the Common Area (with the exception of Exclusive Common Areas) for the benefit of the Community or any Parcel or Parcels.

**Section 3. Permits for Activities on the Common Area.** Notwithstanding anything to the contrary stated herein, the following activities shall not be permitted on any portion of the Common Area without an Owner on behalf of itself and any Permittee first obtaining a written permit from the Board of Directors: (a) demonstrations; (b) solicitations; (c) use of loud speakers and amplifiers; (d) public speeches; (e) rallies; (f) public performances of music or theater; (g) sale of goods or services; (h) parades; (i) large gatherings, as determined in the discretion of the Board; (j) camping; and (k) transmitting television sound or playing music (unless using headphones and not audible to other persons). All Owners, on behalf of themselves and their Permittees, acknowledge that the Common Area is private property, that the scope and nature of the activities that will be permitted on the Common Area are intended to be far more restrictive than what might be permitted on public property, and that the Board may deny the granting of an activity permit in its sole and absolute discretion. Additionally, all Owners, on behalf of themselves and their Permittees acknowledge that the issuance of the permit may interfere with or have a potentially negative effect on: (a) the quiet enjoyment of other Parcels and/or the Common Area by Owners and their Permittees; (b) the ability of Owners and their Permittees to use their Parcel or Parcels for their intended purpose or purposes; and (c) the availability of parking. Nothing herein shall limit the Board from issuing permits for activities associated with public holidays or planned community events. The Board of Directors may, through its rule making authority, expand the list of activities for which a written permit is first required to be obtained.

**Section 4. Exclusive Common Area.**

(a) Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners within a particular Parcel or Parcels. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Specific Assessment against the Owners of those Parcels to which the Exclusive Common Areas are assigned.

(b) The Board of Directors, without need for a Membership vote, is hereby authorized to assign and to reassign Exclusive Common Areas and Common Areas not previously assigned, provided that any such assignment or reassignment shall be made in accordance with this Master Declaration and does not have a material adverse effect upon any Parcel or Owner. A Common Area not previously assigned as an Exclusive Common Area may be so assigned without the need for a vote of the Master Association upon written application to the Master Association by the Owner or Owners for whose exclusive use such Common Area is requested; provided, however, no such assignment shall be approved by the Board of Directors which would materially impair the rights of the other Owners under this Master Declaration. An Exclusive Common Area may be reassigned by the Board without the need for a vote of the Master Association, upon written application to the Master Association by the Owner or Owners to whose Parcel the Exclusive Common Area appertains and the Owner or Owners to whose Parcel the Exclusive Common Area is being reassigned. Upon such application and such approval by the Board, the Master Association shall prepare and execute an amendment to this Master Declaration assigning the Common Area as a Master Common Area or reassigning the Exclusive Common Area, which amendment shall be consented to and executed by the Owner or Owners making such application. Except as otherwise expressly provided herein, an Exclusive Common Area assigned to a Parcel may not be reassigned by the Board without the prior written consent of the Owner of the Parcel to which such Exclusive Common Area is assigned. For so long as Declarant owns any Parcel, or portion thereof, primarily for the purpose of sale, or Declarant has the right to submit Additional Property to this Master Declaration, Declarant shall have the right to sell to Owners one (1) or more parking spaces or other Common Area to be assigned as Exclusive Common Areas pursuant to this Section. The proceeds of the sale of parking spaces or other Common Areas as Exclusive Common Areas shall belong to Declarant.

(c) Notwithstanding anything to the contrary herein, Declarant shall have the right, without obtaining the approval from any Owner or Master Association, to relocate any Exclusive Common Area parking space in the Community by recording an amendment to this Master Declaration designating the location of the relocated parking space. Such amendment may include a modified Parking Space Plan.

### **ARTICLE III** **PARCELS**

**Section 1. Creation of Parcels.** All real property subjected to the Master Declaration either initially or through the filing of a Supplemental Master Declaration or recorded plat shall be divided by Declarant into Common Area (some of which may be assigned as Exclusive Common Areas) and Parcels. The description of each Parcel is set forth on Exhibit "C" and Exhibit "C-1" attached hereto and incorporated herein. The Parcel descriptions are based upon the Zoning Conditions. Declarant may, with the written consent of the Owners of the affected Parcels thereof, amend this Master Declaration or any Supplemental Master Declaration from time to time to subdivide, combine and/or re-designate Parcels and/or revise Parcel boundaries. Additionally, Declarant (without the consent of the other Owners) may amend this Master Declaration or any Supplemental Master Declaration from time to time to re-designate Common Areas owned by Declarant as a new portion of a Parcel or Parcels. Parcels may be subjected to additional covenants and restrictions set forth in a Supplemental Master Declaration or separately filed by the Owner thereof.

**Section 2. Parcel Declaration.** No more than one (1) Person shall hold title to a Parcel, or any portion thereof, unless such Parcel is subject to a Parcel Declaration recorded in the Official Records. The Board of Directors and Declarant, so long as Declarant owns any property described in Exhibits "A" and "B" for development, leasing and/or sale, must approve in writing any Parcel Declaration before such Parcel Declaration may be recorded. No Parcel Declaration shall be approved unless the following are provided for in such Parcel Declaration:

(a) A Parcel shall be governed by a Parcel Association, established as a corporation under Georgia law.

(b) All owners of any real property in a Parcel shall be members of the Parcel Association.

(c) A Parcel Declaration shall have a duration of no less than the Master Declaration or any Supplemental Master Declaration applicable to the Parcel.

(d) A Parcel Association shall be responsible for the payment of all Base Assessments, Special Assessments, Specific Assessments, fees, charges, and fines levied by the Master Association against a Parcel or its Permittees. A Parcel Association may be sued in its own name for failure to pay such monies.

(e) A Parcel Association shall have the authority to collect assessments from all Persons owning any real property on the Parcel, including each such Person's pro-rata share of any assessments, charges, fees, or fines levied by the Master Association.

(f) A Parcel Association shall have a lien against any owner of any real property within that Parcel to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Georgia law), and the costs of collection (including reasonable attorneys' fees). Such lien shall be prior and superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; (ii) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value; and (iii) the liens of the Master Association against any Parcel to secure payment of delinquent assessments, as well as interest, late charges, and costs of collection (including reasonable attorneys' fees).

(g) A Parcel Association shall have authority to institute legal proceedings in his own name to collect all sums due and owing to it.

(h) The Parcel Declaration shall prohibit all uses not permitted in Article XIII. A Parcel Declaration may further restrict or prohibit activities permitted in this Master Declaration.

(i) All construction or modification subject to approval under Article XII shall first be subject to the approval of a Parcel Architectural Review Committee ("PARC") pursuant to the guidelines and procedures in Article XII. A PARC may have additional authority to review additional construction or modifications in a Parcel provided nothing therein is inconsistent with Article XII.

(j) The maintenance obligations of the Owner herein may be allocated to a Person owning a portion of a Parcel, provided the Parcel Association has the right to perform maintenance obligations in the event such Person fails to perform its allocated maintenance responsibilities.

**Section 3. Special Parcel Services.** The Owner of a Parcel or Parcels may request that the Master Association provide or perform a higher level of service or special services for the benefit of a Parcel or Parcels. The Master Association will provide such services, except where the Master Association, acting through its Board of Directors determines, in its sole discretion, that (a) the request would cause a material adverse effect on another Owner, (b) the Master Association does not have the capacity, skill, or expertise to provide the requested service, (c) the provision of the service would expose the Master Association to an unreasonable risk of claims, potential or legal exposure, or (d) where the Parcel or Parcels requesting the same owe outstanding assessments or other charges to the Master Association or have failed to timely pay such assessments or charges in the past two (2) years. The cost of such services shall be assessed against the Parcel or Parcels requesting the same as a Specific Assessment pursuant to Article XI hereof, provided, however, that the Master Association, may but will not be required to, request advance payment for start-up costs associated with providing the service. In such event, the Master Association will provide the requested services. The cost of such services shall be assessed against the Parcels as a Specific Assessment pursuant to Article XI hereof.

**Section 4. Subdivision of a Parcel.** The Owner of a Parcel may at any time petition the Board of Directors to divide the property comprising the Parcel into two (2) or more Parcels, provided that said division complies strictly with the Zoning Conditions. Such petition shall be in writing and shall include (a) a plat of survey that indicates the boundaries of the proposed Parcels, and (b) subdivision approval required from applicable governmental authorities. Such petition shall be granted upon the filing of all required documents with the Board, unless the Board of Directors denies such application in writing within sixty (60) days of its receipt thereof. Notwithstanding the above, so long as Declarant or Windward Mill, LLC owns any property described in Exhibits "A" and "B" for development and/or sale, any subdivision of Parcels shall require the prior written consent of Declarant. All applications and copies of any denials shall be filed with the books and records of the Master Association and shall be maintained as long as this Master Declaration is in effect.

#### **ARTICLE IV**

#### **MEMBERSHIP AND VOTING RIGHTS**

**Section 1. Membership.** The Master Association has been formed as a non-profit membership corporation. The business and affairs of the Master Association shall be governed by the Board, subject to the terms, conditions, obligations, powers, duties, rights and restrictions set forth in the Master Bylaws. All Owners shall be members of the Master Association, and, except as otherwise provided herein or in the Master Bylaws, shall be entitled to vote on all matters upon which members of the Master Association are entitled to vote pursuant to this Master Declaration and in accordance with the Master Bylaws.

**Section 2. Voting Generally.** Subject to the provisions of this Master Declaration and Master Bylaws, each Parcel shall be entitled to the number of votes allocated to such Parcel

in Exhibit "D" attached hereto (the "Votes"). Votes will be cast by the Owner as provided in the Master Bylaws.

**Section 3. Declarant Control.** The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Master Association until such time as the first of the following events shall occur:

- (i) the expiration of Declarant Control Period;
- (ii) unless the Declarant at that time has an unexpired option to add any portion of the Additional Property to the Community, the date as of which Parcels to which more than four-fifths (4/5) of the Votes appertain shall have been conveyed by Declarant to Owners other than a Person or Persons constituting the Declarant; or
- (iii) the surrender by Declarant of the authority to appoint and remove members of the Board of Directors and officers of the Master Association by an express amendment to this Master Declaration executed and recorded by Declarant.

Upon the expiration of the period of Declarant's right to appoint and remove members of the Board of Directors and officers of the Master Association, such right shall automatically pass to the Owners, including Declarant if Declarant then owns one or more Parcels, and a special meeting of the Association shall be called. At such special meeting the Owners shall elect a Board of Directors and shall undertake the responsibilities of the Master Association. Every grantee of any interest in the Community, by acceptance of a deed to or other conveyance of such interest, agrees that Declarant shall have such authority to appoint and remove members of the Board of Directors and officers of the Master Association and vests in Declarant such authority as provided by this Article IV, Section 3.

**ARTICLE V**  
**RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

**Section 1. Personal Property and Real Property for Common Use.** The Master Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. Declarant may convey to the Master Association improved or unimproved real estate located within the Community described in Exhibits "A" or "B," personal property and leasehold and other property interests. Upon conveyance or dedication by Declarant to the Master Association, such property shall be accepted by the Master Association and thereafter shall be maintained by the Master Association at its expense for the benefit of its members, subject to any restrictions or limitations set forth in the deed of conveyance.

**Section 2. Rules and Regulations.** The Master Association, through its Board of Directors, may make and enforce reasonable Rules and Regulations governing the use of property within the Community, which Rules and Regulations shall be consistent with the rights and duties established by this Master Declaration. Such Rules and Regulations shall be binding upon all Owners and Permittees until and unless overruled, cancelled, or modified in a regular or

special meeting of the Master Association by a majority of the Total Master Association Vote. Notwithstanding the foregoing, all Rules and Regulations adopted by the Board shall be subject to the consent of Declarant while Declarant owns any property in the Community primarily for the purpose of sale or has the option to expand the Community pursuant to Article X of this Master Declaration, which consent may be withheld in Declarant's sole and unfettered discretion.

**Section 3. Enforcement.** The Master Association shall be authorized to impose sanctions for violations of this Master Declaration, the Master Bylaws, or Rules and Regulations. Sanctions may include reasonable monetary fines and suspension of the right to vote and to use any facilities within the Common Area. In addition, the Master Association, through the Board, in accordance with Article VI, Section 3 of the Master Bylaws, shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Master Association to any Owner or such Parcel in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Master Association. The Board shall have the power to seek relief in any Court for violations or to abate nuisances.

**Section 4. Implied Rights.** The Master Association may exercise any other right or privilege given to it expressly by this Master Declaration or the Master Bylaws. The Master Association may also exercise every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**Section 5. Indemnification.** The Master Association shall indemnify every officer and director against any and all expenses, including reasonable fees, reasonably incurred by or imposed upon such officer, director, or committee member 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 of the Master Association 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 Master Association (except to the extent that such officers or directors may also be members of the Master Association). The Master 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 present or former officer or director may be entitled. The Master 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 6. Dedication of Common Areas.** The Master Association, acting through the Board of Directors, shall have the power to dedicate portions of the Common Areas to the City of Alpharetta or Fulton County, Georgia, or to any other local, state, or federal governmental entity, subject to such approval as may be required by Article XV of this Master Declaration.

**Section 7. Security.** The Master Association may, but shall not be obligated to, maintain or support certain activities within the Community designed to make the Community safer than they otherwise might be. THE MASTER ASSOCIATION, DECLARANT, ANY SUCCESSOR DECLARANT AND THE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING (THE "PARTIES") SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY AND SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND PERMITTEES ACKNOWLEDGE THAT THE PARTIES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, VIDEO OR CAMERA SYSTEM, OR OTHER SECURITY SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE ARCHITECTURAL REVIEW COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY FIRE PROTECTION OR VIDEO OR CAMERA SYSTEMS OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE; NOR THAT FIRE PROTECTION OR VIDEO OR CAMERA SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. ALL OWNERS AND PERMITTEES ACKNOWLEDGE AND UNDERSTAND THAT THE PARTIES ARE NOT INSURERS. ALL OWNERS AND PERMITTEES ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS AND PROPERTY, AND FURTHER ACKNOWLEDGE THAT THE PARTIES HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER OR ANY PERMITTEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR VIDEO OR CAMERA SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE COMMUNITY.

**Section 8. Powers of the Master Association and Guidelines Relating to Parcels.** The Board of Directors of the Master Association shall have the power to veto any action taken or contemplated to be taken by any Owner that the Board reasonably determines to be materially adverse to the interests of the Master Association or the Community. The Board of Directors of the Master Association also shall have the power to require specific action to be taken by any Owner in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Community. Without limiting the generality of the foregoing the Master Association may (a) require specific maintenance or repairs or aesthetic changes to be effectuated by the Owner, and (b) require that a proposed Parcel Association budget include certain items and that expenditures be made therefor.

Any action required by the Master Association in a written notice pursuant to the foregoing paragraph to be taken by an Owner shall be taken within the reasonable time frame set by the Master Association in such written notice. If the Owner fails to comply with the requirements set forth in such written notice, the Master Association shall have the right to effect such action on behalf of the Parcel Owner. To cover the Master Association's administrative

expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Master Association, the Master Association shall assess each Parcel for its pro rata share of any expenses incurred by the Master Association in taking such action in the manner provided in Article XI Section 5. Such assessments may be collected as a Specific Assessment hereunder and shall be subject to all lien rights provided for herein.

The actions of the Board of Directors on behalf of the Master Association will be governed by the following general principles, in the absence of a specific provision in this Master Declaration to the contrary:

- (a) The Board will act in a commercially reasonable manner;
- (b) The Board will enforce and adhere to the Zoning Conditions and the requirements imposed by governmental authorities;
- (c) The Board will not arbitrarily or capriciously abrogate or imperil any material, vested property rights of any Owner inconsistently with the terms of this Master Declaration;
- (d) The Board will not act to impose burdens or neglect to act in a manner which will create a material, adverse economic effect on any single Owner;
- (e) The Board will not substantially change the site plan or proposed uses of the Parcels to materially alter the mixed-use character of the Community, which includes residential, retail, office, hotel and restaurant uses.

**Section 9. Management Agreements.** At such time as it becomes the duty of the Master Association to maintain, repair and replace parts of the Common Areas and facilities, the Board of Directors may enter into such management agreements as it may deem necessary or advisable for the administration and operation of the Community. Any such management agreement may be entered into upon the favorable vote of a majority of the Association's Board of Directors and shall provide therein that the same may be terminated by majority vote of the Board. Unless otherwise provided in any such management agreement, the Person with whom the Master Association contracts for such administration and operation (hereinafter sometimes referred to as the "Manager"), during its tenure, shall be responsible for exercising all powers and performing all duties of the Master Association as provided for in this Declaration, excepting only those powers and duties specifically and exclusively assigned to the officers, directors or members of the Master Association by this Declaration and the Master Association Bylaws. The Manager shall be a responsible individual, limited liability company or corporation, as the Board of Directors may determine, having experience adequate for the management of a mixed-use development of the type provided for in this Master Declaration. Should the Board of Directors terminate any such management agreement as authorized above, the Manager shall receive such notice, or compensation in lieu thereof, as may be provided for therein. The Manager shall be bonded in such amount as the Board of Directors may reasonably require. Each Owner and member hereby agrees to be bound by the terms and conditions of all management agreements entered into as hereinabove provided.



**ARTICLE VI**  
**MAINTENANCE**

**Section 1. Master Association's Responsibility.** The Master Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. The Area of Common Responsibility shall include, but need not be limited to:

(a) all landscaping and other flora, parks, structures, and improvements, including any streets, curbs, sidewalks, bike and pedestrian pathways/trails, situated upon the Common Area;

(b) landscaping, sidewalks and streetscapes within public rights-of-way and Common Area within or abutting the Community, to the extent not maintained by a Parcel Association, the City of Alpharetta or other governmental entity, and landscaping and other flora within any public utility easement within the Community (subject to the terms of any easement agreement relating thereto);

(c) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Master Declaration, any Supplemental Master Declaration, or any contract or agreement for maintenance thereof entered into by the Master Association;

(d) the drainage and storm water retention system for that portion of the Community outside the Townhome Parcel, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith; and

(e) any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Master Association, Owners, and Permittees, such property and facilities to be identified by written notice from Declarant to the Master Association and to remain a part of the Area of Common Responsibility and be maintained by the Master Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Master Association.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Master Declaration or any other means except with the prior written approval of the Declarant, as long as Declarant owns any property described in Exhibits "A" and "B" for development, lease and/or sale.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Parcels in accordance with Article XI, Section 2 hereof, without prejudice to the right of the Master Association to seek reimbursement from the Owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Master Declaration, or pursuant to other recorded covenants, easements, or agreements applicable to the Community. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be assessed as a Specific Assessments solely against the Parcel(s) to which

the Exclusive Common Areas are assigned, notwithstanding that the Master Association may be responsible for performing such maintenance hereunder.

**Section 2. Additional Responsibility.** Upon request, the Master Association may agree to assume maintenance responsibility for property within any Parcel by agreement with the Owner of the Parcel. All costs of maintenance pursuant to this Section shall be assessed as a Specific Assessment only against the Parcel to which the services are provided.

**Section 3. Owner's Responsibility.** Except as otherwise expressly provided in this Master Declaration, each Owner shall operate and fully maintain, repair and, when necessary, replace, at its cost and expense, all portions of such Owner's Parcel, and all areas that Owner is obligated to operate and fully maintain, repair and replace elsewhere in this Master Declaration, so that the same are at all times in good order, condition and repair, consistent with property of similar stature to that of the Parcel in the Alpharetta, Georgia area. The foregoing obligation by each Owner to operate, maintain, repair and, when necessary, replace, shall include, without limitation: (i) keeping all portions of the Parcel in a clean, uncluttered, orderly and sanitary condition; (ii) removing, to the extent practicable, snow, ice and surface waters, but recognizing that during ice and/or snow storms some amount of ice and/or snow may remain on the Parcel and the same may continue to be a hazard; (iii) keeping all marking and directional signs, if any, on the Parcel clear, distinct and legible; (iv) periodic cleaning of those window surfaces on commercial buildings on a reasonable schedule to be determined by each Owner; and (v) managing trash removal for its own Parcel, including providing suitable receptacles for garbage, and all garbage receptacles, tools and equipment for use the Community, except for the Townhome Parcel, shall be placed in a fenced area in accordance with reasonable standards established by Declarant or the Master Association to shield same from general visibility from adjacent Parcels and roads abutting the Community. An Owner shall perform its responsibility in such manner so as not to unreasonably disturb other Owners. In addition to any other enforcement rights available to the Master Association, if any Owner fails properly to perform his or her maintenance responsibility, the Master Association may perform such maintenance responsibilities and assess all costs incurred by the Master Association against the Parcel and the Owner in accordance with Article XI, Section 5(b) of this Master Declaration. However, the Master Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

**Section 4. Party Walls and Party Fences.**

(a) **General Rules of Law to Apply.** Each wall, fence or driveway built as a part of the original construction on the Parcels that shall serve and/or separate any two adjoining Parcels shall constitute a party wall, party fence, or party driveway, as applicable. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party wall and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall, fence or driveway shall be shared equally by the Owners who make use of or benefit from the wall, fence or driveway.

(c) Damage and Destruction. If a party wall, fence or driveway is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used or benefitted from the wall, fence or driveway may restore it. If other Owners thereafter use or benefit from the wall, fence or driveway, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. Any dispute arising concerning a party wall, fence, or driveway shall be resolved by binding arbitration in accordance with the Commercial Rules and Procedures of the American Arbitration Association, as in effect on the date of the recordation of the Master Declaration. The decision of the Arbitrator shall be final. The Arbitrator shall have authority to award attorney fees and allocate the costs of arbitration as part of any final award. If the parties cannot agree on the selection of the Arbitrator, then the dispute shall be submitted to the American Arbitration Association who shall appoint the Arbitrator.

**ARTICLE VII  
INSURANCE AND CASUALTY LOSSES**

**Section 1. Master Association Insurance.** The Master Association, acting through its Board of Directors or its duly authorized agent, shall have the authority to and shall obtain blanket "special perils" property insurance, if reasonably available, for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that the Master Association has assumed responsibility for maintenance, repair and/or replacement thereof in the event of a casualty. If blanket "special perils" coverage is not generally available at reasonable cost, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief, shall be obtained. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured peril.

The Board also shall obtain a public liability policy covering the Area of Common Responsibility, insuring the Master Association and the Owners for all damage or injury caused by the negligence of the Master Association, any of the Owners, its employees, agents, or contractors while acting on behalf of the Master Association. If generally available at reasonable cost, the public liability policy shall have at least a One Million Dollar (\$1,000,000) combined single limit as respects bodily injury and property damage and at least a Three Million Dollar (\$3,000,000) limit per occurrence and in the aggregate.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment. However, premiums for insurance on Exclusive Common Areas may be included in the Specific Assessment of the Parcel(s) benefited

unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Specific Assessment in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines; after notice and an opportunity to be heard in accordance with the Master Bylaws, that the loss is the result of the negligence or willful conduct of one (1) or more Owners, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Parcel(s) as a Specific Assessment pursuant to Article XI.

All insurance coverage obtained by the Board of Directors, whether obtained on behalf of the Master Association or a Parcel, shall be governed by the following provisions:

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

(b) All insurance shall be written in the name of the Master Association as trustee for the benefited parties. Policies on the Common Area shall be for the benefit of the Master Association and the Owners.

(c) Exclusive authority to adjust losses under policies obtained by the Master Association shall be vested in the Master 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 Master Association be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

(e) If reasonably available, all property insurance policies shall have an inflation guard endorsement. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Master Association shall arrange for an annual review of the sufficiency of insurance coverage by two (2) or more qualified persons, at least one (1) of whom must be in the real estate industry and familiar with construction in the Alpharetta, Georgia area.

(f) The Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

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

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

(iii) a statement that no policy may be cancelled, invalidated, suspended or nonrenewal on account of any one (1) or more individual Owners;

(iv) a statement that no policy may be cancelled, invalidated, suspended, or subjected to nonrenewal on account of any curable defect or violation without prior demand in writing delivered to the Master Association to cure the defect or violation and the allowance of a reasonable time thereafter within which it may be cured by the Master Association, its manager, any Owner, or Mortgagee;

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

(vi) a statement that the Master Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to other insurance required by this Section, the Master Association shall obtain, as a Common Expense, (x) workers compensation insurance if and to the extent required by law, (y) directors' and officers' liability coverage, if reasonably available, and (z) flood insurance, if advisable.

The Master Association also shall obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Master Association funds. The amount of fidelity coverage shall be determined in the Board of Directors' best business judgment but, if reasonably available, may not be less than one-sixth of the annual Base Assessments on all Parcels plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days prior written notice to the Master Association of any cancellation, substantial modification or nonrenewal.

**Section 2. Owners Insurance.** By virtue of taking title to a Parcel subject to the terms of this Master Declaration, each Owner covenants and agrees with all other Owners and with the Master Association that each Owner shall carry blanket "special perils" property insurance on its Parcel(s) and structures constructed thereon providing full replacement cost coverage (less a reasonable deductible). If blanket "special perils" coverage is not generally available at reasonable cost, then at a minimum an insurance policy providing fire and extended coverage, including coverage for vandalism and malicious mischief, shall be chained.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures comprising his or her Parcel, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plan; and specifications as are approved in accordance with Article XI of this Master Declaration. Alternatively, the Owner shall clear the Parcel of all debris and ruins and thereafter shall maintain the Parcel in a neat and attractive, landscaped condition. The Owner shall pay any costs of repair or reconstruction that are not covered by proceeds.

Additional recorded covenants applicable to any Parcel may establish more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Parcels

and the standards for clearing and maintaining the Parcels in the event the structures are not rebuilt or reconstructed.

**Section 3. Damage and Destruction.**

(a) Immediately after damage or destruction by fire or other peril to all or any part of the Community covered by insurance written in the name of the Master 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 shall 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 peril, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Owners representing at least seventy-five percent (75%) of the Total Master Association Vote decide, within sixty (60) days after the loss, 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 Master Association within said period, then the period shall be extended until such funds or information shall be made available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area or common property of a Parcel shall be repaired or reconstructed.

(c) If it is determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected portion of the Community shall be cleared of all debris and ruins. Thereafter, such property shall be maintained by the Master Association in a neat and attractive, landscaped condition.

**Section 4. Disbursement of Proceeds.** Any insurance proceeds remaining after defraying such costs of repair or reconstruction, or if no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Master Association or the Parcel Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Parcel and may be enforced by such Mortgagee.

**Section 5. Repair and Reconstruction.** If the insurance proceeds are insufficient to defray the costs of repairing or reconstructing the damage to the Common Area, the Board of Directors shall, without the necessity of a vote of the Owners, levy a special assessment against the Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

**ARTICLE VIII**  
**NO PARTITION**

Except as is permitted in this Master Declaration or amendments hereto, or required by the Zoning Conditions (such as for the dedication of roads), there shall be no judicial partition of the Common Area or any part thereof. No Person acquiring any interest in the Community or any part thereof shall seek any judicial partition unless the Community or such portion thereof have been removed from the provisions of this Master Declaration. This Article 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 Master Declaration.

**ARTICLE IX**  
**CONDEMNATION**

Whenever all or any part of the Common Area shall be taken or conveyed in lieu of and under threat of condemnation, each Owner shall be entitled to notice thereof. The Board, acting on the written direction of Owners representing at least sixty-seven percent (67%) of the Total Master Association Vote, shall have the power and authority to respond to any governmental authority having the power of condemnation or eminent domain. The award made for such taking shall be payable to the Master Association as trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Area on which improvements have been constructed, then the Master Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available, unless within sixty (60) days after such taking Owners representing at least seventy-five percent (75%) of the Total Master Association Vote shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board of Directors of the Master Association. If such improvements are to be repaired or restored, the provisions in Article VII hereof regarding the disbursement of funds for the repair of casualty damage or destruction shall apply.

(b) 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 Master Association and used for such purposes as the Board of Directors shall determine.

**ARTICLE X**  
**ANNEXATION AND WITHDRAWAL OF PROPERTY**

**Section 1.** Annexation Without Approval of Membership. Declarant shall have the unilateral right, privilege, and option, from time to time at any time until all Additional Property described on Exhibit "B" attached hereto has been subjected to this Master Declaration or December 31, 2030, whichever is earlier, to subject to the provisions of this Master Declaration and the jurisdiction of the Master Association all or any portion of the Additional Property. Declarant shall have the unilateral right to transfer to any other Person the right, privilege, and option to annex the Additional Property which is herein reserved to Declarant, provided that such

transferee or assignee shall be the owner or developer of at least a portion of the real property described in Exhibits "A" or "B" and that, such transfer is memorialized in a written, recorded instrument executed by Declarant. Such annexation shall be accomplished by filing a Supplemental Master Declaration annexing such property in the Official Records. Such Supplemental Master Declaration shall not require the consent of Owners, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Master Declaration unless otherwise provided therein. If, and when, any portion of the Additional Property is added to the Community pursuant to this Section 1, only such portion added shall be subject to this Master Declaration. The Additional Property may be added as a whole at one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the order of addition or boundaries thereof. The exercise of the option as to any portion of the Additional Property shall not bar the further exercise of the option as to any other portions of the Additional Property.

**Section 2. Annexation With Approval of Membership.** Subject to the consent of the Owners, the Master Association may annex real property located on Dryden Road other than the Additional Property and following the expiration of the right in Section 1, subject any property described on Exhibit "B" to the provisions of this Master Declaration and the jurisdiction of the Master Association. Such annexation shall require the affirmative vote of Owners representing a majority of the Total Master Association Vote. Annexation shall be accomplished by filing a Supplemental Master Declaration describing the property being annexed in the Official Records. Any such Supplemental Master Declaration shall be signed by the President and the Secretary of the Master Association, and by the owner of the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplemental Master Declaration unless otherwise provided therein. If, and when, any portion of the Additional Property is added to the Community pursuant to this Section 2, only such portion added shall be subject to this Master Declaration. The Additional Property may be added as a whole at one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the order of addition or boundaries thereof. The exercise of the option as to any portion of the Additional Property shall not bar the further exercise of the option as to any other portions of the Additional Property.

**Section 3. Withdrawal of Property.** Declarant reserves the right to amend this Master Declaration unilaterally at any time so long as it holds an unexpired option to expand the Community pursuant to this Article X, without prior notice and without the Consent of any Person, for the purpose of removing certain portions of the Community then owned by Declarant, its affiliates, or the Master Association from the provisions of this Master 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 effected by Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Community.

**Section 4. Additional Covenants and Easements.** For a Parcel it owns, Declarant may unilaterally subject any portion of the property submitted to this Master Declaration initially or by Supplemental Master Declaration to additional covenants, restrictions, and easements. Such additional covenants, restrictions, and easements shall be set forth in a Supplemental Master Declaration filed either concurrent with or after the annexation of the subject property.



**Section 5.** Exclusive Common Area on Additional Property. No limitation is placed on Declarant's right to create Exclusive Common Area within any portion of the Additional Property to be submitted, nor are there any limitations on the right to designate Common Area therein which may be subsequently assigned as Exclusive Common Area.

**Section 6.** Amendment. This Article shall not be amended without the prior written consent of Declarant so long as Declarant owns any property described in Exhibits "A" or "B." Any provision of this Master Declaration requiring Declarant to own any property described in "Exhibit "A" or "B" shall be deemed to be satisfied by Windward Mill, L.L.C.'s ownership of the Additional Property.

**ARTICLE XI**  
**ASSESSMENTS**

**Section 1.** Creation of Assessments. There are hereby created assessments for Master Association expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in Section 8 of this Article XI. There shall be three (3) types of assessments: (a) Base Assessments as described in Section 2 below to fund Master Association operating costs and Common Expenses for the general benefit of all Parcels; (b) Special Assessments as described in Section 4 below; and (c) Specific Assessments as described in Section 5 below. Each Owner (including Declarant), by ownership or by acceptance of a deed or recorded contract of sale for any portion of the Community, is deemed to covenant and agree to pay these assessments, which shall be the personal obligation of the Owner and a charge against and continuing lien on the Parcel. Assessments are payable to and may be collected by the Master Association pursuant to the terms and conditions of this Master Declaration.

If any assessment, or portion thereof, is not paid within thirty (30) days after the due date, such assessment shall bear interest at the Default Rate from the date the delinquency first occurs, and shall be a continuing lien upon each Parcel against which the assessment is made until paid, as more particularly provided in Section 8 of this Article. The personal obligation of all Owners and lien for assessments shall further include costs of collection, including court costs, the expenses of sale, any expenses required for the retention or preservation of the Parcel or Unit, and reasonable attorneys' fees actually incurred. In the event of a transfer of title to a Parcel or Unit, the grantee shall be jointly and severally liable with the grantor for such portion thereof as may be due and payable at the time of conveyance. However, no first Mortgagee who obtains fee simple title to a Parcel or Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid assessments that accrued prior to such acquisition of title. If any delinquent assessment or portion thereof is not paid within thirty (30) days after written notice is given to the Owner to make such payment, the entire unpaid balance of the assessment may be accelerated at the option of the Board of Directors and may be declared due and payable in full, and foreclosure proceedings may be instituted to enforce such lien.

The Master Association shall, upon demand at any time, furnish to any Owner, Mortgagee or Person having executed a contract for the purchase of a Parcel or Unit, or a lender considering a loan to be secured by such Unit or Parcel a certificate in writing signed by an officer of the Master Association or its managing agent setting forth whether such assessment

has been paid as to any particular Parcel. Such certificate shall be conclusive evidence of payment to the Master Association of such assessment therein stated to have been paid. The Master Association or its managing agent may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Declarant during the Declarant Control Period or thereafter by the Board of Directors. If the Declarant or Board so elects, assessments may be paid in two (2) or more installments. Unless the Declarant or Board otherwise provides, the Base Assessment and any Special or Specific Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on its Parcel, the Board may require any unpaid installments of all outstanding assessments be paid in full immediately.

No Owner (including Declarant) may waive or otherwise exempt itself from liability for the assessments, including, by way of illustration and not limitation, by non-use of Common Area or abandonment of all or any portion of its Parcel. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Master Association or Board to take some action or perform some function required to be taken or performed by the Master Association or Board under this Master Declaration or the Master Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Master Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Assessments shall not be chargeable to the following properties, which shall be exempt from the assessments and liens created herein: (a) all properties dedicated to and accepted by any local public authority, and (b) the Common Area.

The Master Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

## **Section 2. Computation of Base Assessment.**

(a) It shall be the duty of the Board, at least sixty (60) days but less than ninety (90) days (the "Budget Preparation Date") before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses and other operational costs of the Master Association during the coming year. The budget may include a capital contribution establishing a reserve fund in accordance with a budget separately prepared as provided in Section 4 of this Article. The Board shall send each Owner a copy of the budget and notice of the amount of the Base Assessment to be levied against each Parcel for the following year, to be delivered at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Owners representing at least seventy-five (75%) percent of the Total Master Association Vote. There shall be no obligation to call a meeting for the purpose of considering the budget except on

petition of the Owners as provided for special meetings in the Master Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments. Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget in effect for the immediately preceding year shall continue for the current year.

(b) The Base Assessment shall be levied against all Parcels and shall be set at a level that is reasonably expected to produce total income for the Master Association equal to the total budgeted Common Expenses and operational costs, including reserves. The Base Assessment obligation for each Parcel shall be calculated as the amount equal to the sum of the Common Expenses, reserve requirements and operational costs of the Master Association, multiplied by its Parcel Share.

(c) So long as Declarant has the unilateral right to annex Additional Property pursuant to Article X hereof, Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting Base Assessment for any fiscal year by payment of a subsidy, which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Master Association and Declarant.

**Section 3. Reserve Budget and Capital Contribution.** The Board of Directors shall annually prepare reserve budgets for both general and Parcel purposes that take into account the number and nature of replaceable assets, the obligation under the Zoning Conditions for the Owners to maintain the streetscape improvements and roads in the Community, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Master Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments or Specific Assessments, as appropriate, over the period of the budget, and shall always include an amount sufficient to ensure the appropriate long-term repair and/or replacement of any paved streets, roadways, curbs, street lights, benches, bike racks, landscaping, or related improvements owned by the Master Association or which the Master Association is obligated to maintain in accordance with the Zoning Conditions, any permit condition or agreement with a governmental entity or as a result of any applicable governmental laws or regulations. The capital contribution required shall be fixed by the Board and included within and distributed with the applicable budget and notice of assessments, as provided in Sections 1 and 2 of this Article.

**Section 4. Special Assessments.**

(a) Unbudgeted Expenses. In addition to other assessments authorized hereunder, the Declarant or Master Association may levy a Special Assessment from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment shall be levied against the entire membership, if such Special Assessment is for Common Expenses

benefiting the entire membership, or against the Parcels, if such Special Assessment is for Common Expenses benefiting less than all the Parcels. Except as otherwise specifically provided in this Master Declaration, and after the Declarant Control Period, any Special Assessment shall have the affirmative vote or written consent of Owners representing at least fifty-one percent (51%) of the total votes allocated to Parcels that will be subject to such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by Declarant or the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

(b) Costs to Cure Non-compliance. The Master Association may levy a Special Assessment against any Parcel or Parcels to reimburse the Master Association for costs incurred in bringing the Parcel or Parcels into compliance with the provisions of the Master Declaration, any applicable Supplemental Master Declaration, the Articles, the Master Bylaws, and the Master Association's Rules and Regulations. Such Special Assessments may be levied upon the vote of the Board after notice to the Parcel Owner or the Owner(s) of the Parcel(s), as applicable, and an opportunity for a hearing.

**Section 5. Specific Assessments.** Declarant and following the Declarant Control Period, the Board shall have the power to specifically assess expenses of the Master Association against Parcels: (a) receiving benefits, items, or services not provided to all Parcels within a Parcel or within the Community that are incurred upon request of the Owner of a Parcel for specific items or services relating to the Parcel; (b) that are incurred as a consequence of the conduct of less than all Owners, or their Permittees; (c) to whom an Exclusive Common Area is assigned for costs and expense related to such Exclusive Common Area; or (d) for costs and expenses of any damages to the Common Area caused by the actions, including any negligent actions, of an Owner or its Permittees.

**Section 6. Lien for Assessment.** The Master Association shall have a lien against any Parcel to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Georgia law), and costs of collection (including reasonable attorneys' fees). Such lien shall be prior and superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or non-judicial foreclosure in accordance with Georgia law.

The Master Association, acting on behalf of the Owners, shall have the power to bid for the Parcel or Unit at the foreclosure sale and to acquire, hold, lease, mortgage, and convey the Parcel or Unit. During the period in which a Parcel or Unit is owned by the Master Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Parcel shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Parcel had it not been acquired by the Master Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any Parcel or Unit shall not affect the assessment lien or relieve such Parcel from the lien for any assessments thereafter becoming due. However, the sale or transfer of any Parcel or Unit pursuant to judicial or non-judicial foreclosure of a first Mortgage shall extinguish the lien as to any installments of such assessments that became due prior to such sale or transfer. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Parcel or Unit obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be personally liable for the share of the Common Expenses or assessments by the Master Association chargeable to such Parcel that became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all Parcels subject to assessment under Section 8 below, including such acquirer, its successors and assigns.

Notwithstanding anything to the contrary herein, in the event the Master Association has a lien on a Parcel subject to a Parcel Declaration and an owner of a Unit in such Parcel, a Mortgagee or Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by such Unit has requested a statement from the Master Association or its managing agent setting forth the amount of assessments past due and unpaid under this Declaration, such owner may pay the pro-rata share of the assessments due under this Declaration to the Master Association (such amount calculated by dividing the total amount of the assessments and late fees due by the Parcel by the number of Units subject to assessments under the Parcel Declaration) and upon payment thereof, the Unit shall be entitled to have the lien released as to his Unit.

**Section 7. Date of Commencement of Assessments.** The obligation to pay the assessments provided for herein shall commence as to each Parcel on the first day of January, April, July, or October, whichever occurs first, following the day in which a certificate of occupancy, or its equivalent, is issued by the appropriate governmental entity for any improvements situated on the Parcel. The first annual Base Assessment shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Parcel.

**Section 8. Failure to Assess.** The omission or failure of the Board to fix the assessment amounts or rates, or to deliver or mail to each Owner an assessment notice, shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Master Association.

## **ARTICLE XII**

### **ARCHITECTURAL STANDARDS**

**Section 1. General.** No structure shall be commenced, placed, erected, or installed upon any Parcel or any portion thereof, and no construction or modification (which shall include staking, clearing, excavation, grading and other site work, exterior alteration or modification of existing improvements, and planting or removal of plants, trees, or shrubs) other than as may be permitted in Article XII, Section 10, shall take place except in strict compliance with this Article,

until the requirements below have been fully met, and approval of the appropriate committee has been obtained pursuant to Section 2 below.

Modifications or alterations to the interior of structures located on a Parcel visible from the Common Areas. Notwithstanding the foregoing, improvements made to the interior of window storefronts of structures located on a Parcel that are visible from the Common Areas shall not be subject to the review and approval of the Architectural Review Committee ("ARC"). Furthermore, no permission or approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications.

This Article shall not apply to the activities of Declarant, nor to construction or improvements or modifications to the Common Area by or on behalf of the Master Association.

In addition, this Article shall not apply to the Townhome Parcel; provided, however, the Parcel Association representing the Townhome Parcel shall be required to obtain approval in accordance with the procedures herein prior to substantially modifying existing landscaping improvements or installing new landscaping improvements which are located along Northpoint Parkway or Dryden Road, respectively.

This Article may not be amended without Declarant's written consent so long as Declarant owns the Additional Property, any land subject to this Master Declaration or any land subject to annexation to this Master Declaration.

**Section 2. Architectural Review.** Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by Declarant during the Declarant Control Period, and thereafter by the ARC. The members of the ARC need not be Owners or representatives of Owners, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board of Directors. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Master Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Until one hundred percent (100%) of the Community has been developed and conveyed to Owners other than Declarant or Parcel Developers, Declarant shall retain the right to appoint and remove all members of the ARC, who shall serve at the discretion of Declarant. These shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint and remove the members of the ARC, who shall serve and may be removed at the discretion of the Board of Directors.

**Section 3. Guidelines and Procedures.**

(a) Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") which shall be applicable to all construction activities within the Community. The Design Guidelines may contain general provisions applicable to all of the Community, as well as specific provisions which vary from one (1) Parcel or portion of the Community to another depending upon the location, unique

characteristics, zoning requirements, and intended use thereof. Following the Declarant Control Period, the ARC shall have sole and full authority to amend Design Guidelines from time to time, without the consent of the Owners or Board.

The Declarant and ARC shall make the Design Guidelines available to Owners and Parcel Developers who seek to engage in development of or construction upon all of any portion of the Community and all such Persons shall conduct their activities in strict accordance with such Design Guidelines. In the discretion of Declarant, such Design Guidelines may be recorded in the Official Records, in which event the recorded version, as it may unilaterally be amended from time to time by the ARC by recordation of amendments thereto, shall control in the event of any dispute as to which version of the Design Guidelines was in effect any particular time.

Any amendments to the Design Guidelines adopted from time to time by Declarant, and following the Declarant Control Period, by the ARC in accordance this Section shall apply to construction and modifications commenced after the date of such amendment only, and shall not apply to require modifications to or removal of structures previously approved by the Declarant or ARC once the approved construction or modification has commenced.

(b) Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed construction and modifications shall first be submitted to the appropriate PARC, if any, for review and approval (or disapproval). Any construction and modification on a Parcel owned by a single Owner shall not require the approval of a PARC.

(c) Upon approval by the appropriate PARC, if necessary, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed construction and modifications shall be submitted to the ARC for review and approval (or disapproval). In reviewing each submission, the ARC may consider the quality of workmanship and design, harmony of external design with existing structures, compliance with applicable governmental construction permit requirements, Zoning Conditions, and location in relation to surrounding structures, topography, and finish grade elevation, among other things.

(d) In the event that the ARC fails to approve or to disapprove any application within forty-five (45) days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARC pursuant to Section 7 below.

**Section 4. Appeals.** Each Owner hereby agrees that any controversy, claim or dispute arising out of or relating to the decision of the ARC, as to an Owner's application, for approval of an architectural modification or interpretation or effect of any provision contained in this Article shall be submitted for resolution by the Board of Directors. Any Owner desiring to appeal the decision of the ARC as to any application by such Owner for approval of architectural modification or interpretation or effect of any provision contained in this Article shall provide the Board of Directors with a written notice of appeal within thirty (30) days after the date of the written notification by the ARC of its decision. If the Board of Directors does not receive such written notification within said time period, the decision of the ARC shall be deemed final and all rights of appeal shall terminate and thereafter be void. The Board shall rule on the appeal

within forty-five (45) days of receiving written notice requesting an appeal from the Owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Owner or the ARC, the decision of the ARC, and the application of the Owner to the ARC. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the application of the Owner. The decision of the Board of Directors shall be deemed final and binding upon the ARC and the appealing Owner and no further appeals process shall be available to the parties.

**Section 5. Signs.** Any Owner or Permittee may, before erecting a sign permitted under Article XIII, Section 1, request that the ARC determine whether such sign and the plans for the installation of such signs complies with the Design Guidelines. If the ARC determines that such sign complies with the Design Guidelines and the sign is installed pursuant to the plans for the installation of such, such sign shall not later be deemed not to comply with the Design Guidelines. No Owner or Permittee is required to request the approval of the ARC before erecting a sign, but such sign may later be deemed to violate the Design Guidelines and the ARC may order its removal within ten (10) days after receipt of notice to the responsible Owner or Permittee. All signs shall comply with all relevant zoning ordinances and conditions.

**Section 6. No Waiver of Future Approvals.** The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters subsequently or additionally submitted for approval or consent.

**Section 7. Variance.** The ARC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, lot configuration, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted Rules and Regulations. Such variances may only be granted, however, when unique, unforeseen circumstances dictate and no variance shall: (a) be effective unless in writing; (b) be contrary to the restrictions set forth in this Master Declaration; or (c) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency or the issuance of any permit, economic or density considerations, or the terms of any financing shall not be considered a hardship warranting a variance.

**Section 8. Limitation of Liability.** Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the ARC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Master Association, the Board of Directors, the ARC, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Parcel.

**Section 9. Enforcement.** Any construction, alteration, or other work done in violation of this Article shall be deemed to be nonconforming. Upon written request from the Board or Declarant, Owners shall, at their own cost and expense, remove such nonconforming



construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs, together with the interest at the Default Rate, may be assessed against the benefited Parcel and collected as a Special Assessment.

Any Permittee, contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded by the Board from the Community. In such event, neither the Master Association, its officers, nor directors shall be held liable to any Person for exercising the rights granted by this Article.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Master Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC.

### **ARTICLE XIII USE RESTRICTIONS**

The Community shall be used for residential, office, commercial, retail, hotel, and related purposes in accordance with the Zoning Conditions and all applicable governmental, laws and regulations. Any Supplemental Master Declaration or additional covenants imposed on the any Parcel or a portion thereof may prohibit, regulate or limit the above referenced uses and/or impose stricter standards than those contained in this Article. The Master Association, acting through its Board of Directors, shall have standing and the power to enforce such additional covenants or Supplemental Master Declarations.

**Section 1. Signs.** Except as may be provided for herein or as may be required by legal proceedings, and except for signs which may be erected by Declarant related to the development, leasing and/or sale of Parcels (or portions thereof), no signs, advertising posters, flags, flyers, political placards or billboards of any kind shall be erected, placed, or permitted to remain within the Community that are visible from the Common Areas or publicly dedicated roadways without the prior written consent of Declarant, and following the Declarant Control Period, of the ARC or its designee, unless the sign complies with the Design Guidelines.

**Section 2. Parking and Prohibited Vehicles.**

(a) **Parking.** Any parking in the Common Areas not assigned as Exclusive Common Area shall be available on a first-come, first-serve basis unless the Board determines otherwise. Vehicles shall be subject to such reasonable Rules and Regulations as the Board of Directors may adopt. Boats, campers, recreational vehicles, trailers, construction vehicles, and trucks or vans with more than six (6) wheels may not be parked longer than twelve (12) hours or overnight in any open air parking space or lot.

(b) **Booting and Towing.** If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Rules and Regulations, the Board or agent of the

Master Association may place a notice on the vehicle specifying the nature of the violation and stating that after twelve (12) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of the Person that will do the towing or booting and the name and telephone number of a person to contact regarding the alleged violation. If twelve (12) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Master Association may have the vehicle towed or booted in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another parking space, is obstructing the flow of traffic, is blocking access to any improvements located in the Community, is parked on any grassy area, is parked in a parking space which has been exclusively assigned, or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Master Association may have the vehicle towed or booted immediately. If a vehicle is towed or booted in accordance with this Section, neither the Master Association nor any officer or agent of the Master Association shall be liable to any Person for any claim of damage as a result of the towing or booting 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 tow or boot.

**Section 3. Permittees Bound.** All provisions of the Master Declaration, any applicable Supplemental Master Declaration, Master Bylaws, and the Rules and Regulations which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Permittees. Every Owner shall cause all Permittees of his or her Parcel to comply with the Master Declaration, any applicable Supplemental Master Declaration, Master Bylaws, and the Rules and Regulations. Every Owner shall be responsible for all violations and losses to the Common Area caused by such Permittees, notwithstanding the fact that such Permittees of a Parcel are fully liable and may be sanctioned directly for any violation of the Master Declaration, Master Bylaws, and the Rules and Regulations.

**Section 4. Quiet Enjoyment.** No noxious, illegal, or offensive activity shall be carried on upon any portion of the Community, which in the reasonable determination of the Board tends to cause unreasonable embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants, tenants, and invitees of other Parcels. No outside burning shall be permitted within the Community. No speaker, horn, whistle, bell, or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on any Parcel without the written consent of the Board.

**Section 5. Unightly or Unkempt Conditions.** All portions of a Parcel visible from the Common Areas or from public roadways shall be kept in a clean and tidy condition at all times. Nothing shall be done, maintained, stored, or kept which, in the determination of the Board of Directors, causes an unclean, unhealthy, or untidy condition to exist or is obnoxious to the senses. No exterior lights shall be installed or operated which are directed toward another Parcel, Common Area, or dwelling unit in a fashion which creates a disturbance or nuisance to any neighbor or to the Community. Any structure, equipment or other item which may be permitted to be erected or placed on portions of Parcels and is visible from the Common Area or from publicly dedicated roadways shall be kept in a neat, clean and attractive condition and shall

promptly be removed upon request of the Board if, in the judgment of the Board, it has become rusty, dilapidated or otherwise fallen into disrepair.

No Owner or Permittee shall deposit grass clippings, leaves, construction debris or other trash, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, lake, Common Area or elsewhere within the Community, except that fertilizers may be applied to landscaping on Parcels provided care is taken to minimize runoff.

**Section 6. Tents, Mobile Homes, Fuel Tanks, and Temporary Structures.** Except as may be permitted by Declarant or the ARC during initial construction within the Community, no tent, shack, mobile home, or other structure of a temporary nature shall be placed upon a Parcel or any part of the Community. No storage tanks of any kind for fuel or hazardous substances shall be permitted anywhere in the Community, except for those of five (5) gallons or less commonly acceptable for residential use. These prohibitions shall not apply to restrict the construction or installation of a single utility or similar outbuilding to be permanently located on a Parcel, or temporary fuel tanks used exclusively for construction equipment or generators, provided it receives the prior approval of the Declarant or ARC, as appropriate, in accordance with Article XII hereof. In addition, party tents or similar temporary structures may be erected for a limited period of time for special events with prior written approval of the Board.

**Section 7. Grading, Drainage and Septic Systems.** The Townhome Parcel shall manage and detain storm water on and for that Parcel at the sole expense of its Owner or Parcel Association. No Person shall alter the grading of any Parcel without prior approval pursuant to Article XII of this Master Declaration, except by the Owner of the Townhome Parcel during its development period. Catch basins, drop inlets and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for itself and the Master Association a perpetual easement across the Community for the purpose of altering drainage and water flow. However, the exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Parcel without the Owner's consent. Septic tanks and drain fields, other than those installed by or with the consent of Declarant, are prohibited within the Community.

**Section 8. Prohibited Uses.** A Parcel or any portion thereof may be used for only purposes that are permitted by zoning ordinance and use restrictions and other applicable laws now or hereafter in effect having jurisdiction over the Community.

**Section 9. Enforcement.** Every Owner and Permittee shall comply with all laws, statutes, ordinances, and rules of federal, state, and municipal governments applicable to the Community. Any violation may be considered a violation of this Master Declaration, including, without limitation, violations relating to: (a) zoning of any improvements constructed on a Parcel; (b) noise restrictions; (c) hours of operation of any commercial activity; and (d) construction permits. However, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances, and rules.

**ARTICLE XIV**  
**EASEMENTS**

**Section 1. Easements of Encroachment.** Declarant hereby declares, grants, creates, imposes and establishes for the benefit of each Parcel reciprocal, perpetual, non-exclusive easements of encroachment, in favor of each respective Owner, Declarant and the Master Association, its agents and representatives, for maintenance and use of any permitted encroachment, between each Parcel and any adjacent Common Area and between adjacent Parcels, due to the growth of trees or 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 two (2) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, Permittee, Declarant or the Master Association.

**Section 2. Utilities - Blanket Easement.** Subject to the other provisions of this Master Declaration and recorded title documents relating to specific existing or future utilities and the general conditions established in this Article, Declarant hereby declares, grants, creates, imposes and establishes for the benefit of each Parcel with respect the Common Area and that portion of any Parcel within ten feet (10 ft.) of a Common Area (the "Extended Common Area"), in favor of each respective Owner, Declarant and the Master Association, its agents and representatives, a perpetual, non-exclusive easement for access, ingress, egress to, from, under, through, over and across that portion of the Common Area upon which any existing or future utilities and related improvements are located, as reasonably necessary to access those areas, including, but not limited to, electric power, water, fuel, storm drainage, sanitary sewer, natural gas, telecommunications, HVAC refrigerant lines, property monitoring and other telecommunications systems such as closed-circuit cable television and high-speed internet, parking control systems and controlled access systems and all conduit, raceways and other pathways relating to any of the foregoing which benefit another Parcel, for the purpose of maintaining, repairing, replacing and using such utilities, subject to the right of the Owner of the Parcel (or, in the case of the Common Areas, the Master Association) upon which such utilities may be located to relocate such utilities at its own cost and expense in a manner reasonably satisfactory to the Owner of the benefited property at any time.

**Section 3. Surface Water Drainage and Runoff.** Declarant hereby declares, grants, creates, imposes and establishes for the benefit of each Parcel with respect to each of the other Parcels, a perpetual, non-exclusive easement over and across any portion of such other Parcels (but only that portion) upon which any surface water drainage and runoff flow, which benefits another Parcel, subject to the right of the Owner of the Parcel on which such surface water drainage and runoff flow to collect and discharge same at its own cost and expense in a manner reasonably satisfactory to the Owner of the benefited property at any time; and provided that no Owner benefited by such drainage may construct any new improvements or alter any existing or future improvements upon such Owner's property or otherwise divert the flow of water from such Owner's property onto another Parcel such that the rate of flow of such drainage or runoff would materially adversely increase over the rate of flow presently existing as of the date hereof,

without the prior consent of the affected Owner which consent shall not be unreasonably withheld or delayed.

**Section 4. Easements to Serve Additional Property.** There is reserved to Declarant and its successors and assigns, including any purchaser of the Additional Property, a non-exclusive easement upon, across, above and under the Common Area and roadways within the Master Condominium for purposes of constructing and developing the Additional Property whether or not it is developed as part of the Community. In accordance therewith and until such time as Declarant or its successors record an amendment to this Master Declaration effecting the submission of the Additional Property (which is not required), then it shall be expressly permissible for Declarant, Windward Mill, LLC and their successors and assigns, to maintain and carry on, upon such portion of the Common Area and roadways within 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 development, construction and sales activities related to developing the Additional Property whether or not it is developed as part of the Community 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 within the Common Area and Extended Common Area 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;
- (c) the right to carry on sales and promotional activities in the Community and the right to construct and operate signs approved pursuant to Section 1 of Article XIII; and
- (d) the right to access and remove dirt (pursuant to an appropriate permit) from any stockpile on a parcel owned by Declarant.

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 his or her sole expense. This Section shall not be amended without Declarant or Declarant's successor's and assign's express written consent for so long as the Additional Property has not been submitted to the Community.

**Section 5. Right of Entry.** The Master Association shall have the right, but not the obligation, to enter upon any Parcel for emergency, security, and safety reasons, to perform maintenance pursuant to Article VI hereof, and to inspect for the purpose of ensuring compliance with this Master Declaration, any Supplemental Master Declaration, Master Bylaws, and the Rules and Regulations, which right may be exercised by the 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 alerting the Owner or its on-site representative.

This right of entry shall include the right of the Master Association to enter upon any Parcel 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 within a reasonable time after requested by the Board.

**Section 6. Sidewalks/Walkways.** Subject to any exclusive easements reserved to Declarant hereunder and the rights otherwise granted herein to the Master Association, Declarant hereby establishes, creates and reserves for itself, its successors and assigns, for all Owners and their respective Permittees with respect to, and as a burden upon, the other Parcels and the Common Areas, a perpetual non-exclusive right, privilege, easement and reservation for the passage of pedestrians over, across and through all sidewalk and walkway areas which are located in the Community.

**Section 7. Temporary Closings.** In order to establish that the ingress and egress easements, and any non-public access ways or road ways, located in the Community, are and will continue to remain private property and to prevent a dedication thereof or the accrual of any rights to any person or to the public therein, except as herein specifically granted, or as may be reasonably necessary in connection with the performance of any construction, repair, relocation, replacement or maintenance of the improvements comprising such access ways or road ways, any utilities or any other improvements, located or to be located in or on the ingress and egress easement areas, the Master Association, for the Common Area, and the Owner of any Parcel within the Community on which an ingress and egress easement is located, shall have the right to temporarily restrict access to the general public with respect to all or any portion of any such access way or road way, to the extent and for such limited periods as shall be necessary to prevent such dedication or accrual or to permit such construction, repair, relocation, replacement or maintenance; provided, however, that neither the Master Association nor any such Owner shall exercise the rights granted in this Section in any manner which will unreasonably interfere with rights and privileges granted herein or in any manner which will deny pedestrian or vehicular access over any of the ingress and egress easements granted herein, and in no event shall the exercise of such rights totally preclude pedestrian access to any portion of the Community by any parties benefited by the easements granted herein, and provided further that no ingress and egress or parking easement shall be closed except as otherwise expressly permitted in this Master Declaration.

**Section 8. Access Easement.** Declarant hereby declares, grants, creates, imposes and establishes for the benefit of each Parcel reciprocal, perpetual, non-exclusive easements (hereinafter referred to as the "Access Easement") to, from, through, over and across the Common Area in favor of each respective Owner, Declarant and the Master Association, its agents and representatives, for vehicular and pedestrian ingress, egress, access and travel over and upon the driveways, roadways, inter-Parcel roads and entrances and exits of the Community (hereinafter referred to as the "Access Easement Area"). The Access Easement shall be perpetual in duration and shall, both as to the benefits and the burdens thereof, run with title to, and burden the title to, the Parcels. Notwithstanding the foregoing, exercise of the Access Easement is subject to the Rules and Regulations, if any, as may be imposed thereon by the Master Association; provided, however, such Rules and Regulations: (1) shall be nondiscriminatory to all of the Owners and their respective Permittees with respect to use of the

Access Easement Area; (2) shall not impair any existing right; and (3) shall not be capricious or inconsistently enforced against any Person or Owner.

**Section 9. Landscape Easement.** Declarant hereby declares, grants, creates, imposes and establishes for the benefit of the Community a perpetual, non-exclusive easement in favor of Declarant, the Master Association, its agents and representatives, for the purposes of ingress, egress, access and travel over, and planting, root growth under, and foliage canopy over the Common Area and Extended Common Area (hereinafter referred to as the "Landscape Easement Area") for the purpose of installation, maintenance, growth, repair and replacement of landscaping and irrigation systems serving the Common Area (hereinafter referred to as the "Landscape Easement") in the Landscape Easement Area.

**Section 10. Streetlight Easement.** Declarant hereby declares, grants, creates, imposes and establishes for the benefit of the Community a perpetual, non-exclusive easement in favor of Declarant, the Master Association, its agents and representatives, for the purposes of ingress, egress, construction on and under, access and travel over the Common Area and Extended Common Area (hereinafter referred to as the "Streetlight Easement Area") for the purposes of installation, maintenance, repair and replacement of streetlights and related electrical components in the Streetlight Easement Area (hereinafter referred to as the "Streetlight Easement").

**Section 11. Sign Easement.** Declarant hereby declares, grants, creates, imposes and establishes for the benefit of the Community a perpetual, non-exclusive easement in favor of Declarant, the Master Association, its agents and representatives, for the purposes of ingress, egress, construction on and under, access and travel over the Common Area and Extended Common Area (hereinafter referred to as the "Sign Easement Area") as may be necessary for the installation, maintenance, repair and replacement of identification, directional, street and traffic signs and related electrical components in the Sign Easement Area (hereinafter referred to as the "Sign Easement").

**Section 12. Sanitary Sewer.** Declarant hereby declares, grants, creates, imposes and establishes for the benefit of each Parcel reciprocal, perpetual, non-exclusive easements over, under, on, and through the Common Area in favor of the Owners, Declarant, the Master Association, its agents and representatives, for the construction, use and enjoyment, maintenance and repair of all future or existing sanitary sewer lines, pump stations and systems (hereinafter referred to as the "Sanitary Sewer Systems") and related replacement and upgrades thereof. This easement shall cover the Extended Common Area (except on the Townhome Parcel) if reasonably necessary to maintain, repair and replace said Sanitary Sewer Systems and shall serve all Parcels in order to provide sanitary services to all Parcels.

**Section 13. Water Main.** Declarant hereby declares, grants, creates, imposes and establishes for the benefit of each Parcel reciprocal, perpetual, non-exclusive easements over, under, on, and through the Common Area in favor of the Owners, Declarant, the Master Association, its agents and representatives, for the construction, use and enjoyment, maintenance and repair of all future or existing water mains, facilities, equipment, meters, pipes, lines and systems (hereinafter referred to as the "Water Main Systems") and related replacement and upgrades thereof. This easement shall cover the Extended Common Area (except on the

Townhome Parcel) if reasonably necessary to maintain, repair and replace said Water Main Systems and shall serve all Parcels in order to provide water services to all Parcels.

**Section 14. Roundabout Roadway Utility Easements.** In furtherance of and to provide detail and clarity as to a portion of the sanitary sewer easements described above in Section 12 and as to a portion of the water main easements described above in Section 13, attached hereto as Exhibit "F" and incorporated herein by reference is a drawing of the sanitary sewer and water lines Declarant will install in the vicinity of the roundabout roadway, which runs along the northern boundary of the Townhome Parcel. Such sanitary sewer and water lines will be located in Common Area and Extended Common Area approximately as illustrated in Exhibit "F" and such location will be referred to herein as the "Roundabout Roadway Utility Area." Declarant hereby declares, grants, creates, imposes and establishes for the benefit of each Parcel reciprocal, perpetual, non-exclusive easements to, from, through, over and across the Roundabout Roadway Utility Area in favor of each respective Owner, Declarant and the Master Association, its agents and representatives, for the use, enjoyment, maintenance and repair of all existing or future Sanitary Sewer Systems and Water Main Systems located therein and related replacement and upgrades thereof. The easements described in this Section 14 shall be perpetual in duration and shall, both as to the benefits and the burdens thereof, run with title to, and burden the title to, the Parcels. For the sake of clarity and the avoidance of doubt, the roundabout roadway shown on Exhibit "F" constitutes a portion of the Access Easement Area defined in Section 8 of this Article.

**Section 15. Limitation and Cooperation.** All easements granted in this Master Declaration, and the use thereof, shall be deemed to be limited to the extent reasonably necessary to accomplish the specific purposes for which such easements are granted. Declarant, the Master Association and each Owner shall cooperate with the reasonable requests of the others in furtherance of the spirit and intent of the matters addressed in this Article XIV. To this end, Declarant and the Owners may enter into cooperative agreements with each other for the common provision of services, facilities and systems, so long as such agreement is consistent with the other terms and conditions contained in this Master Declaration.

## **ARTICLE XV**

### **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Parcels or portions of Parcels in the Community. The provisions of this Article apply to both this Master Declaration and to the Master Bylaws, notwithstanding any other provisions contained therein.

**Section 1. Notices of Action.** An institutional holder, insurer, or guarantor or a first Mortgage who provides written request to the Master Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the property to which its Mortgage relates, thereby 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 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 a Parcel subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Master Declaration or Master Bylaws relating to such Parcel or the Owner or Permittee which is not cured within sixty (60) days. Notwithstanding this provision, any holder of a first Mortgage is entitled to written notice upon request to the Master Association of any default in the performance by an Owner of a Parcel of any obligation under the Master Declaration or Master Bylaws which is not cured within sixty (60) days;

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

(d) Any proposed action that would require the consent of a specified percentage of Eligible Holders.

**Section 2. No Priority.** No provision of this Master Declaration or the Master Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Parcel in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

**Section 3. Notice to Master Association.** Upon request, each Owner shall be obligated to furnish to the Master Association the name and address of the holder of any Mortgage encumbering such Owner's Parcel.

**Section 4. 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 Master Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Master Association's request, provided such request is delivered to the Mortgagee by certified or overnight mail, return receipt requested.

## **ARTICLE XVI DECLARANT'S RIGHTS**

**Section 1. Transfer of Declarant's Rights and Obligations.** Any or all of the special rights and obligations of Declarant set forth in this Master Declaration or the Master Bylaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Master Declaration or in the Master Bylaws, as applicable. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Official Records. Nothing in this Master Declaration shall be construed to require Declarant or any successor to develop any of the Additional Property in any manner whatsoever.

**Section 2. Reservation of Declarant's Rights.** Notwithstanding any provisions contained in this Master Declaration to the contrary, so long as Declarant owns any property in

the Community or has the unexpired option to add the Additional Property or any portion thereof to the Community:

(a) it shall be expressly permissible for Declarant and Parcel Developers authorized by Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction, marketing or sale of such Parcels, including but not limited to, business offices, signs, models, and sales offices. Declarant and Parcel Developers authorized by Declarant shall have easements for access to and use of such facilities.

(b) Declarant shall have the right, but not the obligation, to make improvements and changes to all parts of the Common Area of the Community and the Parcels owned by Declarant, including, without limitation, addition and realignment of parking spaces, addition and reconfiguration of storage spaces, renovation and installation of and changes to roadways, drainage areas, utility systems and facilities, rearrangement and installation of security and refuse facilities, and work relating to building exteriors; provided, however, Declarant shall have no obligation to construct or complete any improvements on the Additional Property.

**Section 3. Effectiveness; Amendment of this Article.** This Article XVI may not be amended without the express written consent of Declarant. However, the rights contained in this Article XVI shall terminate upon the earlier of (a) twenty (20) years from the date this Master Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased and/or the Declarant no longer owns any portion of the Community.

**ARTICLE XVII**  
**ZONING CONDITIONS**

**Section 1. Limitation of Density of and Permitted Uses on Each Parcel.** Declarant hereby assigns and allocates to each Parcel in accordance with the Zoning Conditions, the maximum density of structures and improvements that may be constructed on the Parcel (hereinafter, "Density"). Said Density restrictions may be expressed in terms of a restriction on the maximum square footage or structures and improvements that are heated or air conditioned permitted to be constructed on a Parcel measured from the interior wall to interior wall of said structures and improvements or such other limitation or restrictions on Density as may be agreed to by Declarant and to purchasers of the Parcel. In addition, prior to the sale and conveyance of a Parcel, Declarant may limit, restrict and/or regulate the types and scope of uses and activities permitted on or in the Parcel, including designating the permissible height of structures and improvements to be constructed on or in a Parcel, and may place such other covenants and restrictions on a Parcel as may be agreed to by Declarant and the purchaser of the Parcel (all of which including the Density restrictions shall hereinafter be collectively referred to as "Special Parcel Covenants"). Such Special Parcel Covenants shall be reflected in an amendment or amendments to the Master Declaration which Declarant may unilaterally execute and record prior to any warranty deed for a Parcel in the Officials Records (without the necessity of further approvals or consents) and which upon recording, shall run with the land, bind said Parcel, and be enforced in the same manner as any other covenant contained in this Master Declaration.

**Section 2. Unused Density.** Any assigned or allocated Density that has not been used by an Owner within five (5) years of the date the amendment to the Master Declaration allocating or assigning such Density to the Parcel was recorded shall automatically revert to Declarant and shall thereafter be the sole and exclusive property of Declarant. Upon such reversions, Declarant may hold such unused Density or sell, transfer and assign the same to other Parcel Owners to the Master Association. Upon the reversion of unused Density and upon any further transfer and assignment of such Density by Declarant to other Parcels or to the Master Association, Declarant shall unilaterally execute and record an amendment to the Master Declaration setting forth the reallocations of Density among and between the affected Parcels. For the purposes of this Section, unused Density shall mean any which has not actually been constructed on a Parcel and/or which no Certificate of Occupancy has been issued on Density for which a building permit allowing for its construction by the appropriate governing authority has not been issued.

**Section 3. Transfer of Density Between Parcels.** The Owner of a Parcel with unused Density may not sell, transfer and convey such unused Density, or portion thereof, to the Owner of any other Parcel without the written consent of Declarant which may be withheld in the sole and absolute discretion of Declarant.

**Section 4. Zoning Limitations.** Without limiting the provisions of this Section 4, and except to change a permitted zoning non-conformity to a zoning conformity, no Owner shall: (i) alter, modify or limit the maximum density allowed for another Parcel or the permitted land uses of the Community; (ii) use the Community for any use other than those permitted under the zoning classification for the Community, (iii) seek a municipal variance or special use permit; or (iv) make any alterations or allow any use of its respective Parcel or take or fail to take any action that would violate the provisions of the Zoning Conditions or of the City of Alpharetta Zoning Ordinance (hereinafter collectively referred to as "Zoning Change"). In the event any Owner desires to seek a Zoning Change, such Owner must receive the prior written consent of Declarant and the Board, except as provided below. Such consent by the other Owners shall be deemed proper authorization for the Owner seeking the Zoning Change to act on behalf and as the limited lawful agent of the other Owners to seek and obtain said Zoning Change, whereupon the other Owners shall do all things as may be reasonably requested to obtain approval of the Zoning Change, at no cost or expense to the Owners not seeking the change. The aforementioned authorization to act as the limited lawful agent shall be limited to the purposes expressly contemplated herein and any attempt to use the authorization in violation of this Master Declaration shall be deemed null and void. Notwithstanding anything to the contrary herein, Declarant shall have the right to seek a Zoning Change without obtaining approval from the Board (so long as such Zoning Change does not materially adversely interfere with or limit the use of a Parcel not owned by Declarant), and the other Owners shall do all things as may be reasonably requested by Declarant to obtain approval of the Zoning Change, at no cost or expense to the Owners not seeking the change.

## **ARTICLE XVIII GENERAL PROVISIONS**

**Section 1. Term.** The covenants, restrictions and easements of this Master Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be

enforceable by the Master 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 may run, any provision of this Master Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time said restrictive provisions shall be automatically extended for successive periods of twenty (20) years, unless fifty-one percent (51%) of the Owners execute a document to terminate the covenants containing a legal description of the entire area affected by the covenant, a list of all Owners affected by the covenant and a description of the covenant to be terminated or such other requirement as provided in O.C.G.A § 44-5-60. A written instrument reflecting any such termination must be recorded no sooner than, but within two (2) years immediately preceding the beginning of any twenty (20) year renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Master Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Master Declaration may be extended and renewed as provided in this Section.

**Section 2. Amendment.**

(a) **By Declarant.** Declarant may unilaterally amend this Master Declaration if such amendment is: (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable national title insurance company licensed in Georgia to issue title insurance coverage on the property in the Community; (iii) 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 property in the Community; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the property in the Community; (v) expressly permitted elsewhere in this Master Declaration; or (vi) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any property in the Community unless the Owner shall consent thereto in writing. As long as Declarant still owns property described in Exhibits "A" or "B" for development as part of the Community, it may unilaterally amend this Master Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) **By Owners.** Except as provided in Section 2(a) above or otherwise in this Master Declaration, this Master Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of owners representing seventy-five percent (75%) of the Total Master Association Vote, and the consent of Declarant, as long Declarant owns any property described in Exhibits "A" and "B" for development, leasing and/or sale. In addition, the approval requirements set forth in Article XIV hereof shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. To be effective, any amendment must be recorded in the Official Records. If an Owner consents in writing to any amendment to this Master Declaration or the Master Bylaws, it will be conclusively presumed that such Owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. 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.

**Section 3. Disclosures.** Each Owner and Occupant acknowledge the following:

(i) The Community is located adjacent to thoroughfares and a MARTA facility that may be affected by traffic, construction and noise from time to time and may be improved and/or widened in the future.

(ii) The views from a Parcel may change over time due to, among other circumstances, additional development and the removal or addition of landscaping.

(iii) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

(iv) Since in every community, there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Community property that an Owner or Occupant may find objectionable and that it shall be the sole responsibility of the Owners and Occupants to become acquainted with neighborhood conditions.

(v) All Owners and Occupants acknowledge and understand that Declarant and Parcel Developers may be constructing/renovating portions of the Community and engaging in other construction activities related to the construction of additional phases of the Community. Such renovation and construction activities may, from time to time, produce certain conditions in the Community, including, without limitation: (A) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (B) smoke; (C) noxious, toxic, or corrosive fumes or gases; (D) obnoxious odors; (E) dust, dirt or flying ash; (F) unusual fire or explosion hazards; (G) temporary interruption of utilities; (H) drilling, boring, channeling, piping or subterranean excavation; and/or (I) other conditions that may threaten the security or safety of Persons in the Community. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions in the Community resulting from renovation and construction activities shall not be deemed a nuisance and shall not cause Declarant, Parcel Developers and their agents to be deemed in violation of any provision of the Master Declaration.

(vi) Declarant makes no representations or warranties that competing business will not be established or permitted in the Community. Each business owner shall be solely responsible for verifying the Zoning Conditions, market conditions and determining whether his or her business can succeed in the Community.

**Section 4. Severability.** Whenever possible, each provision of this Master Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Master Declaration to any person, organization 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 Master Declaration are declared to be severable.

**Section 5. Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Master 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 6. Litigation.**

(a) All Owners hereby acknowledge and agree that the Master Association shall not be entitled to institute any legal action against anyone on behalf of any or all of the Owners which is based on any alleged defect in any Parcel or any damage allegedly sustained by any Owner by reason thereof, but rather, that all such actions shall be instituted by the Person(s) owning such Parcel, or portion thereof, or allegedly sustaining such damage.

(b) All Owners hereby acknowledge and agree that no Owner shall be entitled to institute any legal action against anyone which is based on any alleged defect in the Common Areas, but rather, that all such actions shall be instituted by the Master Association on behalf of the Owners.

(c) No judicial or administrative proceeding shall be commenced or prosecuted by the Master Association, nor shall the Master Association participate in any land-use or zoning proceedings (unless reasonably necessary to accommodate improvements in the Community or to comply with applicable zoning ordinance and use restrictions), unless approved by a vote of the Owners as hereinafter provided. The Board shall prepare a budget of the total estimated cost of the litigation or proceeding which shall be submitted to the Owners for a vote along with the estimate of the total cost of the litigation or proceeding made by the attorney being retained by the Master Association for the litigation or proceeding. The Master Association shall assess all Owners by special assessment for the total estimated costs and fees of the proposed litigation or proceeding and no funds from regular periodic assessments or capital contributions may be used for such purpose. The proposed litigation or proceeding, the budget, and the special assessment for litigation, must all be approved by a vote of the Owners representing at least seventy-five percent (75%) of the Total Master Association Vote. This subsection shall not apply, however, to (a) actions involving imposition and collection of assessments as provided herein; (b) actions brought by the Master Association to enforce the covenants in this Declaration (including, without limitation, the foreclosure of liens); (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Master Association in proceedings instituted against it; or (e) actions taken independently by Declarant at its own expense. This subsection shall not be amended unless such amendment is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

**Section 7. Cumulative Effect; Conflict.** The covenants, conditions, restrictions, easements, and provisions of this Master Declaration shall be cumulative with those of any Parcel, and the Master Association may, but shall not be required to, enforce the covenants, conditions, restrictions, easements, and provisions of the Master Declaration for or against any Parcel; provided, however, in the event of conflict between or among such provisions, and provisions of any articles of incorporation, Master Bylaws, the Rules and Regulations, policies, or practices adopted or carried out pursuant thereto, those of any Parcel shall be subject and

subordinate to those of the Master Association. The foregoing priorities shall apply, but not be limited to, the liens for "Windward Park" assessments created in favor of the Master Association.

**Section 8. Use of the Words "Windward Park".** No Owner or Person shall use the words "Windward Park" or any derivative in any printed or promotional material without the prior written consent of Declarant. However, Owners, Parcel Developers, and builders may use the term "Windward Park" in printed or promotional matter where such term is used solely to specify that particular property is located at or within the Community, and the Master Association and Parcel Associations shall each be entitled to use the words "Windward Park" in their names.

**Section 9. Compliance.** Every Owner, Permittee, tenant, and occupant of any Parcel shall comply with all lawful provisions of this Master Declaration, the Master Bylaws, and the Rules and Regulations of the Master Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Master Association or, in a proper case, by any aggrieved Parcel Owner(s). In addition, the Master Association may avail itself of any and all remedies provided in this Master Declaration or the Master Bylaws.

**Section 10. Binding Effect.** The covenants, restrictions, easements and other agreements provided for herein shall run with the land and be binding upon and shall inure to the benefit of the parties hereto and their respective successors, transferees and assigns.

**Section 11. Interpretation.** This Master Declaration shall be governed by and construed under the laws of the State of Georgia. The preambles of this Master Declaration are incorporated herein by this reference.

**Section 12. Compliance with Governmental Authority.** The Owners agree to comply and to cause compliance by their Permittees, members, invitees, licensees, and guests with all laws, ordinances, statutes, rules and regulations of any governmental authority relating to the use, condition, or maintenance of the Common Area, and in the event that any expense is required to effect such governmental compliance, such expense shall be considered a Common Expense.

**Section 13. Waiver.** No failure of any party to exercise any power given any of them hereunder or to insist upon strict compliance by the other with its obligations hereunder and no custom or practice at variance with the terms hereof shall constitute a waiver of the right to demand exact compliance with the terms hereof.

**Section 14. 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 15. Electronic Recognition.** Electronic Signatures and Electronic Documents shall be recognized and enforced by Declarant, Owners and the Master Association for all purposes under this Master Declaration, and for the business of the Master Association, the Board and the Community.

**Section 16. Notices.** Each notice required or permitted to be given hereunder must comply with the requirements of this Section. Each such notice shall be in writing and shall be delivered either by personally delivering it by hand or Federal Express or similar courier service to the Person to whom notice is directed, or by facsimile transmission, or by depositing it with the United States Postal Service, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party (and marked to a particular individual's attention). Unless expressly provided otherwise in this Master Declaration, such notice shall be deemed delivered at the time of personal delivery or, if mailed, when it is deposited as provided above, but the time period in which a response to any such notice must be given or any action taken with respect thereto shall commence to run from the date it is personally delivered or, if mailed, the date of receipt of the notice by the addressee thereof, as evidenced by the return receipt. Notwithstanding the above, notice by facsimile transmission shall be deemed to have been given as of the date and time it is transmitted if the sending facsimile machine produces a written confirmation with a date, time and telephone number to which the notice was sent. Rejection or other refusal by the addressee to accept the notice shall be deemed to be receipt of the notice. In addition, the inability to deliver the notice because of a change of address of the party of which no notice was given to the other party as provided below shall be deemed to be the receipt of the notice sent. The addresses of the parties to which notice is to be sent shall be those set forth below. Such addresses may be changed by the other parties by designating the change of address to the other parties in writing.

**Declarant:**                   Windward Point WHP, Inc.  
                                       3930 East Jones Bridge Road, Suite 145  
                                       Norcross, Georgia 30092  
                                       Attn: Robert Worthington

**Section 17. 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 18. Obligations.** The obligation to pay any sum due herein shall be mandatory and independent of whether the Owners agrees with or is satisfied with the manner and extent of the Master Association's performance of its duties and responsibilities set forth or referred to herein, their sole remedy being to demand, in an appropriate forum, performance of the duties and responsibilities set forth or referred to herein this Master Declaration.

**Section 19. Conveyances.** Conveyances of any portion of the Property shall be expressly subject to the terms and provisions of this Master Declaration, and each and every owner of such property, by acceptance of a deed therefor, acknowledges the validity of this Master Declaration and its binding effect upon him regardless of whether or not express mention of this Master Declaration is made in such deed or in any other conveyance documents.

**Section 20. Reservation of Rights.** No portion of this Master Declaration shall be construed as granting any general easements for use of any portion of the Property to any owners or residents or any other Person therein except as specifically described herein.

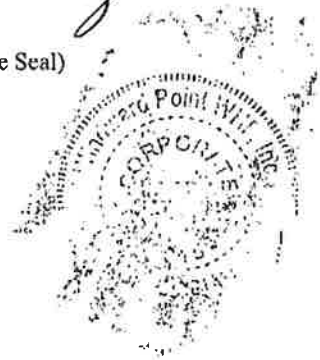


IN WITNESS WHEREOF, the undersigned Declarant has executed this Master Declaration this 26<sup>th</sup> day of September, 2016.

DECLARANT: WINDWARD POINT WHP, INC.  
a Georgia corporation

By: [Signature]  
Name: Robert W. Worthington  
Title: President

(Corporate Seal)



Signed, sealed and delivered in the presence of:

[Signature]  
Unofficial Witness

[Signature]  
Notary Public, State of Georgia

My commission expires: June 19, 2019



**LIST OF EXHIBITS**

- EXHIBIT "A" - Description of Dedicated Property
- EXHIBIT "B" - Description of Additional Property
- EXHIBIT "C" - List and Description of Parcels and Common Areas
- EXHIBIT "C-1" - Site Plan from Zoning Conditions
- EXHIBIT "D" - Parcel Voting and Parcel Cost Sharing Percentages
- EXHIBIT "E" - Master Bylaws of Windward Park Master Association, Inc.
- EXHIBIT "F" - Roundabout Roadway Utility Exhibit

**EXHIBIT "A"**Description of Dedication Property**TRACT 3 (Townhome Parcel)**

ALL THAT TRACT or parcel of land lying and being in Land Lots 1188, 1189 and 1260 of the 2nd District, 2nd Section, City of Alpharetta, Fulton County, Georgia, being shown as Tract 3 containing 19.071 acres per that certain ALTA/ACSM Land Title Survey for Lennar Georgia, Inc. and First American Title Insurance Company prepared by GeoSurvey, Ltd., Craig Jennings, Georgia LRS #3043, dated 12/17/2015 and last revised 08/03/2016, and being more particularly described as follows:

Commencing at a 5/8" rebar set at the intersection of the Southerly right of way of Dryden Road having a 60' right of way and the westerly right of way of Northpoint Parkway having a variable right of way and thence run along said western right of way the following five (5) courses; South 00 degrees 14 minutes 54 seconds West a distance of 44.61 feet to a 5/8" rebar set; Thence South 22 degrees 30 minutes 05 seconds West a distance of 539.98 feet to a 5/8" rebar set; Thence along a curve to the right having an arc length of 202.47 feet, with a radius of 1382.41 feet, being subtended by a chord bearing of South 26 degrees 41 minutes 50 seconds West, for a distance of 202.29 feet to a 5/8" rebar set; Thence South 30 degrees 53 minutes 35 seconds West a distance of 377.58 feet to a 5/8" rebar set; Thence along a curve to the left having an arc length of 24.02 feet, with a radius of 868.52 feet, being subtended by a chord bearing of South 30 degrees 06 minutes 03 seconds West, for a distance of 24.02 feet to a 5/8" rebar set and the Point of Beginning; Thence from said Point of Beginning and continue along said right of way the following five (5) courses; Thence along a curve to the left having an arc length of 363.42 feet, with a radius of 868.52 feet, being subtended by a chord bearing of South 17 degrees 19 minutes 16 seconds West, for a distance of 360.77 feet to a 5/8" rebar set; Thence South 05 degrees 20 minutes 01 seconds West a distance of 286.62 feet to a 5/8" rebar set; Thence along a curve to the right having an arc length of 372.07 feet, with a radius of 586.61 feet, being subtended by a chord bearing of South 23 degrees 30 minutes 14 seconds West, for a distance of 365.86 feet to a 5/8" rebar set; Thence South 41 degrees 40 minutes 27 seconds West a distance of 229.36 feet to a 5/8" rebar set; Thence along a curve to the left having an arc length of 124.87 feet, with a radius of 686.62 feet, being subtended by a chord bearing of South 36 degrees 27 minutes 52 seconds West, for a distance of 124.70 feet to a 5/8" rebar set; Thence leaving said right of way and run North 30 degrees 34 minutes 32 seconds West a distance of 86.15 feet to a concrete monument found; Thence North 00 degrees 54 minutes 41 seconds West a distance of 181.40 feet to a concrete monument found; Thence North 00 degrees 48 minutes 46 seconds West a distance of 199.81 feet to a 5/8" rebar set; Thence North 00 degrees 24 minutes 07 seconds West a distance of 123.48 feet to a point; Thence North 03 degrees 44 minutes 15 seconds East a distance of 74.79 feet to a concrete monument found; Thence North 19 degrees 57 minutes 27 seconds West a distance of 72.25 feet to a concrete monument found; Thence North 32 degrees 55 minutes 17 seconds West a distance of 107.89 feet to a concrete monument found; Thence North 34 degrees 43 minutes 30 seconds West a distance of 92.25 feet to a concrete monument found; Thence North 50 degrees 29 minutes 02 seconds West a distance of 178.10 feet to a concrete monument found; Thence North 55 degrees 00 minutes 25 seconds West a distance of 131.97 feet to a concrete monument found; Thence North 75 degrees 31 minutes 56 seconds West a distance of 110.81 feet to a 1/2" rebar

found; Thence North 34 degrees 02 minutes 37 seconds East a distance of 401.61 feet to a 5/8" rebar set on the eastern right of way line of Dryden Road; thence run along said eastern and southern right of way the following five (5) courses; Thence North 33 degrees 56 minutes 42 seconds East a distance of 62.82 feet to a pk nail set; Thence along a curve to the left having an arc length of 135.63 feet, with a radius of 560.00 feet, being subtended by a chord bearing of North 27 degrees 00 minutes 25 seconds East, for a distance of 135.30 feet to a 5/8" rebar set; Thence North 20 degrees 04 minutes 02 seconds East a distance of 116.54 feet to a 5/8" rebar set; Thence along a curve to the right having an arc length of 63.62 feet, with a radius of 500.00 feet, being subtended by a chord bearing of North 23 degrees 42 minutes 46 seconds East, for a distance of 63.57 feet to a 5/8" rebar set; Thence continue along a curve to the right having an arc length of 22.29 feet, with a radius of 500.00 feet, being subtended by a chord bearing of North 28 degrees 38 minutes 07 seconds East, for a distance of 22.29 feet to a 5/8" rebar set; Thence leaving said right of way and run along the lot line South 60 degrees 05 minutes 15 seconds East a distance of 2.81 feet to a point; Thence along a curve to the right having an arc length of 86.00 feet, with a radius of 120.00 feet, being subtended by a chord bearing of South 43 degrees 11 minutes 03 seconds East, for a distance of 84.17 feet to a point; Thence South 22 degrees 39 minutes 08 seconds East a distance of 26.62 feet to a point; Thence along a curve to the left having an arc length of 102.23 feet, with a radius of 168.85 feet, being subtended by a chord bearing of South 38 degrees 45 minutes 57 seconds East, for a distance of 100.68 feet to a point; Thence South 56 degrees 06 minutes 39 seconds East a distance of 257.49 feet to a point; Thence along a curve to the left having an arc length of 194.52 feet, with a radius of 80.00 feet, being subtended by a chord bearing of South 57 degrees 47 minutes 30 seconds East, for a distance of 150.02 feet to a point; Thence South 56 degrees 33 minutes 22 seconds East a distance of 45.00 feet to a point; Thence along a curve to the right having an arc length of 52.99 feet, with a radius of 120.00 feet, being subtended by a chord bearing of South 43 degrees 24 minutes 28 seconds East, for a distance of 52.56 feet to a point; Thence South 30 degrees 45 minutes 26 seconds East a distance of 42.18 feet to a point; Thence along a curve to the left having an arc length of 73.79 feet, with a radius of 180.00 feet, being subtended by a chord bearing of South 42 degrees 30 minutes 06 seconds East, for a distance of 73.28 feet to a point; Thence South 54 degrees 14 minutes 45 seconds East a distance of 30.08 feet to a point and the Point of Beginning.

#### **TOGETHER WITH**

#### **TRACT 2 (Developer's Parcel)**

All that tract or parcel of land lying and being in the City of Alpharetta, Georgia in Land Lots 1112 and 1177 of the 2nd District, 1st Section and Land Lots 1188 and 1189 of the 2nd District, 2nd Section of Fulton County and being more particularly described as follows:

Beginning at a 5/8" rebar set at the intersection of the Southerly right of way of Dryden Road having a 60' right of way and the westerly right of way of Northpoint Parkway having a variable right of way and thence run along said western right of way the following five (5) courses; South 00 degrees 14 minutes 54 seconds West a distance of 44.61 feet to a 5/8" rebar set; Thence South 22 degrees 30 minutes 05 seconds West a distance of 539.98 feet to a 5/8" rebar set; Thence along a curve to the right having an arc length of 202.47 feet, with a radius of 1382.41 feet, being subtended by a chord bearing of South 26 degrees 41 minutes 50 seconds West, for a distance of 202.29 feet to a 5/8" rebar set; Thence South 30 degrees 53 minutes 35 seconds West a distance of 377.58 feet to a 5/8" rebar set; Thence along a curve to the left having an arc length of 24.02 feet, with a radius of 868.52 feet,

being subtended by a chord bearing of South 30 degrees 06 minutes 03 seconds West, for a distance of 24.02 feet to a 5/8" rebar set; Thence leaving said right of way and run North 54 degrees 14 minutes 45 seconds West a distance of 30.08 feet to a point; Thence along a curve to the right having an arc length of 73.79 feet, with a radius of 180.00 feet, being subtended by a chord bearing of North 42 degrees 30 minutes 06 seconds West, for a distance of 73.28 feet to a point; Thence North 30 degrees 45 minutes 26 seconds West a distance of 42.18 feet to a point; Thence along a curve to the left having an arc length of 52.99 feet, with a radius of 120.00 feet, being subtended by a chord bearing of North 43 degrees 24 minutes 28 seconds West, for a distance of 52.56 feet to a point; Thence North 56 degrees 33 minutes 22 seconds West a distance of 45.00 feet to a point; Thence along a curve to the right having an arc length of 194.52 feet, with a radius of 80.00 feet, being subtended by a chord bearing of North 57 degrees 47 minutes 30 seconds West, for a distance of 150.02 feet to a point; Thence North 56 degrees 06 minutes 39 seconds West a distance of 257.49 feet to a point; Thence along a curve to the right having an arc length of 102.23 feet, with a radius of 168.85 feet, being subtended by a chord bearing of North 38 degrees 45 minutes 57 seconds West, for a distance of 100.68 feet to a point; Thence North 22 degrees 39 minutes 08 seconds West a distance of 26.62 feet to a point; Thence along a curve to the left having an arc length of 86.00 feet, with a radius of 120.00 feet, being subtended by a chord bearing of North 43 degrees 11 minutes 03 seconds West, for a distance of 84.17 feet to a point; Thence North 60 degrees 05 minutes 15 seconds West a distance of 2.81 feet to a point on the easterly right of way of Dryden Road; Thence run along said right of way the following seven (7) courses; thence along a curve to the right having an arc length of 34.72 feet, with a radius of 500.00 feet, being subtended by a chord bearing of North 31 degrees 54 minutes 07 seconds East, for a distance of 34.72 feet to a pk nail set; Thence North 33 degrees 53 minutes 27 seconds East a distance of 598.14 feet to a pk nail set; Thence along a curve to the right having an arc length of 372.33 feet, with a radius of 333.00 feet, being subtended by a chord bearing of North 67 degrees 03 minutes 51 seconds East, for a distance of 353.24 feet to a 5/8" rebar set; Thence South 80 degrees 54 minutes 12 seconds East a distance of 153.32 feet to a 5/8" rebar set; Thence along a curve to the right having an arc length of 183.92 feet, with a radius of 770.00 feet, being subtended by a chord bearing of South 74 degrees 03 minutes 40 seconds East, for a distance of 183.48 feet to a 5/8" rebar set; Thence South 67 degrees 13 minutes 07 seconds East a distance of 116.03 feet to a 5/8" rebar set; Thence South 44 degrees 36 minutes 43 seconds East a distance of 49.59 feet to a 5/8" rebar set and the Point of Beginning.

Said tract or parcel contains 18.912 Acres.

**EXHIBIT "B"**Description of Additional Property

All that tract or parcel of land lying and being in the City of Alpharetta, Georgia in Land Lot 1112 of the 2nd District, 1st Section and Land Lot 1188 of the 2nd District, 2nd Section of Fulton County and being more particularly described as follows:

Beginning at a concrete monument found on the north side of the mitered intersection of the Southerly right of way of Windward Parkway having a variable right of way and the westerly right of way of Northpoint Parkway having a variable right of way and thence run along said miter South 58 degrees 14 minutes 40 seconds East a distance of 21.74 feet to a concrete monument found; Thence run along said westerly right of way the following five (5) courses; South 13 degrees 03 minutes 10 seconds East a distance of 139.85 feet to a 5/8" rebar set; Thence along a curve to the right having an arc length of 178.33 feet, with a radius of 768.51 feet, being subtended by a chord bearing of South 06 degrees 24 minutes 19 seconds East, for a distance of 177.93 feet to a pk nail set; Thence South 10 degrees 55 minutes 37 seconds West a distance of 94.90 feet to a 5/8" rebar set; Thence South 11 degrees 52 minutes 38 seconds West a distance of 118.94 feet to a 5/8" rebar set; Thence South 40 degrees 27 minutes 46 seconds West a distance of 31.28 feet to a pk nail set on the northern right of way line of Dryden Road; Thence run along said right of way the following five (5) courses; South 88 degrees 52 minutes 45 seconds West a distance of 30.78 feet to a 5/8" rebar set; Thence North 67 degrees 13 minutes 07 seconds West a distance of 124.17 feet to a 5/8" rebar set; Thence along a curve to the left having an arc length of 198.25 feet, with a radius of 830.00 feet, being subtended by a chord bearing of North 74 degrees 03 minutes 40 seconds West, for a distance of 197.78 feet to a 5/8" rebar set; Thence North 80 degrees 54 minutes 12 seconds West a distance of 153.31 feet to a 5/8" rebar set; Thence along a curve to the left having an arc length of 398.80 feet, with a radius of 393.00 feet, being subtended by a chord bearing of South 70 degrees 01 minutes 35 seconds West, for a distance of 381.91 feet to a 5/8" rebar set; Thence leaving said right of way and run North 58 degrees 57 minutes 54 seconds West a distance of 365.12 feet to a 5/8" rebar set; Thence North 30 degrees 13 minutes 22 seconds East a distance of 154.62 feet to a 5/8" rebar set on said southerly right of way; Thence run along said southerly right of way the following eight (8) courses; North 87 degrees 30 minutes 06 seconds East a distance of 196.16 feet to a 5/8" rebar set; Thence along a curve to the left having an arc length of 158.53 feet, with a radius of 125.00 feet, being subtended by a chord bearing of North 51 degrees 10 minutes 10 seconds East, for a distance of 148.12 feet to a concrete monument found; Thence North 82 degrees 51 minutes 06 seconds East a distance of 243.73 feet to a concrete monument found; Thence North 05 degrees 52 minutes 02 seconds West a distance of 10.58 feet to a concrete monument found; Thence along a curve to the left having an arc length of 66.58 feet, with a radius of 3044.00 feet, being subtended by a chord bearing of North 83 degrees 20 minutes 39 seconds East, for a distance of 66.58 feet to a point; Thence along a curve to the left having an arc length of 50.01 feet, with a radius of 3044.00 feet, being subtended by a chord bearing of North 82 degrees 14 minutes 49 seconds East, for a distance of 50.01 feet to a point; Thence along a curve to the left having an arc length of 270.64 feet, with a radius of 3044.00 feet, being subtended by a chord bearing of North 79 degrees 13 minutes 45 seconds East, for a distance of 270.55 feet to a 5/8" rebar set; Thence North 76 degrees 40 minutes 52 seconds East a distance of 143.91 feet to a concrete monument found and the Point of Beginning.

Said tract or parcel contains 9.611 Acres

**EXHIBIT "C"**List and Description of Parcels and Common Areas

<u>Parcel Name</u>	<u>Type</u>	<u>Sub- Assoc</u>
Townhome	Residential	Yes
Condominium	Residential	Yes
Office A	Low Rise Office with Parking Deck	No
Live/Work	Residential	Yes
Retail Village	Commercial	No
Retail Outparcel A	Restaurant	No
Retail Outparcel B	Retail	No

Common Areas

Central Green	Storm Water Park
Road 1	Roundabout - runs EW
Road 2	Commercial - runs N from Roundabout

**THE PARCELS AND COMMON AREAS ARE FURTHER ILLUSTRATED IN THE ZONING SITE PLAN ATTACHED AS EXHIBIT "C-1"**

**EXHIBIT "C-1"**

Site Plan from Zoning Conditions

MIXED USE DEVELOPMENT SUMMARY		WINDWARD POINT	
PERVIOUS AREA (GREENSPACE) AS DEFINED BY CITY OF ALPHARETTA*	0.74 AC = 40% OF TOTAL SITE AREA		
OPEN SPACE AS DEFINED BY CITY OF ALPHARETTA*	4.87 AC = 51% OF TOTAL SITE AREA		
GROUND COVERAGE AS DEFINED BY CITY OF ALPHARETTA*	16.81 AC = 94% OF TOTAL SITE AREA		

SITE AREA CALCULATIONS	
Site Area	18.55 AC
PerVIOUS Area	0.74 AC
Open Space	4.87 AC
Ground Coverage	16.81 AC

**HGOR**  
Hatch, Golder & Ortengren  
 1000 Peachtree Street, N.E.  
 Atlanta, GA 30309  
 Tel: 404.525.4400  
 Fax: 404.525.4401

MASTER PLAN  
**WINDWARD POINT**  
 PDD 66 OF WINDWARD MASTER PLAN  
 ALPHARETTA, GA

ALPHARETTA, GA  
  
Transwestern Construction Services, Inc.  
 1000 Peachtree Street, N.E.  
 Atlanta, GA 30309  
 Tel: 404.525.4400  
 Fax: 404.525.4401



**EXHIBIT "D"**Parcel Voting and Parcel Cost Sharing Percentages

<u>Parcel Name</u>	<u>Votes in Master Association</u>	<u>Parcel Share for Assessments</u>
Townhome	5	35.11%
Condominium	5	To be determined
Office A	8	To be determined
Live/Work	2	To be determined
Retail Village	3	To be determined
Retail Outparcel A	1	To be determined
Retail Outparcel B	1	To be determined

**EXHIBIT "E"**

Master Bylaws of Windward Park Master Association, Inc.

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MASTER BYLAWS  
OF  
WINDWARD PARK MASTER ASSOCIATION, INC.

Prepared By:  
Rachel E. Conrad  
Dorough & Dorough, LLC  
Attorneys at Law  
160 Clairemont Avenue, Suite 650  
Decatur, Georgia 30030  
(404) 687-9977

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MASTER BYLAWS  
OF  
WINDWARD PARK MASTER ASSOCIATION, INC.

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MASTER BYLAWS  
OF  
WINDWARD PARK MASTER ASSOCIATION, INC.

Article 1  
Name, Membership, Applicability and Definitions

1.1. Name. The name of the corporation shall be Windward Park Master Association, Inc. (hereinafter sometimes referred to as the "Master Association").

1.2. Membership. The Master Association shall have one class of membership, as is more fully set forth in that certain Declaration of Covenants, Conditions, Restrictions and Easements for Windward Park (such Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Master Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

1.3. Definitions. The words used in these Master Bylaws shall have the same meaning as set forth in the Master Declaration, unless the context shall prohibit or the meaning set forth in the Georgia Nonprofit Corporation Code, O.C.G.A. Section 14-3-101, *et seq.* ("Nonprofit Code"). Statutory references shall be construed as meaning the referenced statute or portion thereof as the same may exist from time to time.

Article 2  
Association: Meetings, Quorum, Voting, Proxies

2.1. Place of Meetings. Meetings of the Master Association shall be held at the principal office of the Master Association or at such other suitable place convenient to the members as may be designated by the Board of Directors, either in the Property or as convenient thereto as possible and practical.

2.2. Annual Meetings. There shall be an annual meeting of the Owners at such date, place and time as the Board of Directors shall determine to receive the reports of the outgoing Board of Directors, to install directors for the ensuing year and to transact such other business as may come before the meeting.

2.3. Special Meetings. The President or the Board of Directors may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Master Association upon the delivery of a petition signed and dated by Owners entitled to cast at least twenty-five percent (25%) of the Total Master Association Vote and describing the purpose or purposes for which it is to be held. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose(s) thereof. No business shall be transacted at a special meeting, except those matters that are within the purpose or purposes described in the notice.

2.4. Record Date. The Board of Directors shall fix in advance a record date for a determination of Owners entitled to notice of and to vote at any meeting of Owners or any adjournment thereof, or to make a determination of Owners for any other purpose, such date to be not more than seventy (70) days before the date on which the particular action requiring such determination of Owners is to be taken.

2.5. Notice of Meetings. It shall be the duty of the Secretary or such other agent as the Master Association may designate to mail or to cause to be delivered to each Owner (as shown in the records of the Master Association as of the record date) a written notice of each annual or special meeting of the Master Association stating the date, time and place where it is to be held and, if and to the extent required by the Nonprofit Code or other applicable law (the "Governing Law"), the purpose(s) thereof. Such notice shall be delivered personally or sent by United States mail, postage prepaid, statutory overnight delivery, or sent by electronic transmission in accordance with the Nonprofit Code to all Owners of record at the address shown in the Master Association's current records. If an Owner wishes notice to be given at an address other than the Parcel, the Owner shall designate by notice in writing to the Secretary such other address. Notices shall be mailed or delivered not less than ten (10) days (or if notice is mailed by other than first-class or registered mail, thirty (30) days) nor more than sixty (60) days in advance of any annual, regularly scheduled or special meeting. If any meeting of the Members is adjourned to a different date, time or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment. If, however, a new record date is or must be fixed under the Governing Law, notice of the adjourned meeting shall be given to persons who are Owners of record as of the new record date.

2.6. Waiver of Notice. Waiver of notice of a meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing or by electronic transmission signed by the Owner entitled to notice and delivered to the Master Association for inclusion in the minutes for filing with the Master Association's records, waive notice of any meeting of the Owners, either before or after such meeting. Attendance at a meeting by an Owner, whether in person or by proxy, shall be deemed waiver by such Owner of lack of notice or defective notice, unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order.

2.7. Adjournment of Meetings. If any meeting of the Master Association cannot be held because a quorum is not present, a majority of the Owners 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 the meeting originally called may be transacted without further notice.

2.8. Membership List. After the record date for any meeting is established by the Board of Directors, the Secretary shall prepare an alphabetical list of the names and addresses of all of the Owners who are entitled to notice of the meeting. Beginning at least two (2) business days after notice is given of the meeting for which the list was prepared, the list of Owners shall be available for inspection by any Owner or an Owner's agent or attorney: (1) on a reasonably accessible electronic network, provided that the information required to gain access to such list is

included with the notice of the meeting or upon request; or (2) during ordinary business hours at the Master Association's principal office or at such other reasonable place as may be specified in the notice in the city where the meeting will be held. In the event that the Master Association makes the list available on an electronic network, the Master Association may take reasonable steps to ensure that such information is available only to Owners. In addition, the list shall be available for inspection at the meeting or any adjournment thereof.

2.9. Voting. The voting rights of the Owners shall be as set forth in the Articles of Incorporation and the Master Declaration, and such voting rights are specifically incorporated herein.

2.10. Proxies. At all membership meetings, Owners, may vote in person or by proxy. All proxy appointment forms shall be in writing, signed either personally or by an electronic transmission, dated, and filed with the Secretary before the appointed time of each meeting. Proxies may be delivered to the Board of Directors by personal delivery, U.S. mail or electronic transmission to the Secretary or other officer or agent authorized to tabulate votes. An electronic transmission must contain or be accompanied by information acceptable to the Board from which it can be determined that the Owner, the Owner's agent, or the Owner's attorney-in-fact, as the case may be, authorized the electronic transmission. Every proxy shall be revocable and shall automatically cease upon: (a) receipt of notice by the Secretary of the death or judicially declared incompetence of an Owner; (b) receipt by the Secretary or other officer or agent authorized to tabulate votes of written revocation signed by the Owner; (c) receipt by the Secretary or other officer or agent authorized to tabulate votes of a subsequent appointment form signed by the Owner; (d) attendance by the Owner and voting in person at any meeting; or (e) the expiration of eleven (11) months from the date of the proxy appointment form.

2.11. Quorum. The presence, in person or by proxy, of Owners entitled to cast at least twenty-five percent (25%) of the votes entitled to be cast at the meeting shall constitute a quorum at all meetings of the Master Association. The Owners 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.

2.12. Action by Written Consent. Any action required or permitted to be approved by the Owners may be approved without a meeting if one (1) or more consents, in writing or by electronic transmission, setting forth the action so taken, shall be signed, either personally or by an electronic transmission, and dated by Owners (including the Declarant, if the consent of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first Owner signs a consent. Such action shall be approved when the Secretary receives a sufficient number of such consents dated within seventy (70) days of the record date for such action. If less than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives written notice of the approval to all Owners who did not sign a consent. Each consent in writing or by electronic transmission shall be included in the minutes of meetings of Owners filed in the permanent records of the Master Association. No consent in writing or by electronic transmission shall be valid unless: (1) the consenting Owner has been furnished the same material that, pursuant to the Nonprofit Code, would have been required to be sent to

Owners in a notice of a meeting at which the proposed action would have been submitted to the Owners for action; or (2) the written consent contains an express waiver of the right to receive the material otherwise required to be furnished.

2.13. Action By Written Ballot. Any action that may be taken at any annual, regular or special meeting of Owners may be taken without a meeting if approved by ballot in writing or by electronic transmission as provided herein. The Master Association shall deliver a ballot in writing or by electronic transmission to each Owner entitled to vote on the matter. The ballot in writing or by electronic transmission shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. All solicitations for votes by ballot in writing or electronic transmission shall: (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter other than election of directors; and (c) specify the time by which a ballot must be received by the Master Association in order to be counted. A timely ballot in writing or by electronic transmission received by the Master Association may not be revoked. Approval by ballot in writing or by electronic transmission of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. The results of each action by ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the permanent records of the Master Association.

### Article 3

#### Board of Directors: Number, Powers, Meetings

3.1. Governing Body: Composition. The affairs of the Master Association shall be governed by a Board of Directors.

3.2. Directors Appointed by Declarant. Declarant shall have the right to appoint or remove any director or directors of the Board of Directors or any officer or officers of the Master Association as set forth in Article IV, Section 3 of the Master Declaration. Each Owner, by acceptance of a deed to or other conveyance of property within the Property, vests in Declarant such authority to appoint and remove directors and officers of the Master Association. The directors selected by the Declarant need not be Owners or occupants in the Property.

3.3. Number of Directors. During the period that the Declarant has the right to appoint and remove the officers and directors of the Master Association as provided above, the Board of Directors shall consist of one director as determined by Declarant in writing from time to time.

Thereafter, the Board shall consist of five directors, with at least one director from each Parcel, as shown on Exhibit "D" to the Master Declaration; provided however, the three retail Parcels shall collectively elect one member to serve on the Board of Directors to represent the concerns and interests of all of the retail Owners in the Property. The President of any mandatory membership Parcel Association shall serve as the ex officio director for such Parcel and all other



Parcels, except for the retail Parcels outlined above, shall be represented by a director elected or appointed by the Owners in each Parcel.

3.4. Nomination of Directors. Elected directors may be nominated from the floor, if a meeting is held for the election of directors and may also be nominated by a nominating committee, if established by the Board.

3.5. 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 the Board, provided that, after the right of Declarant to appoint the directors terminates, 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 such meetings.

3.6. Special Meetings. Special meetings of the Board of Directors shall be held when requested by the President, Vice President or by any two directors. The notice shall specify the date, time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery (including commercial delivery service) to such director's home or office; (b) written notice by first class mail, postage prepaid; (c) by telephone communication (including facsimile), either directly to the director or to the director's home or office; or (d) issued electronically in accordance with the Nonprofit Code, if the director has consented in writing to such method of delivery and has provided the Board with an address regarding the same. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Master Association. Notices sent by first class mail shall be deposited with the U.S. Postal Service at least four (4) days before the day of the meeting. Notices given by personal delivery, electronic transmission or telephone shall be given at least two (2) days before the day of the meeting.

3.7. Waiver of Notice. The business transacted at 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 either in writing or by electronic transmission which is included in the minutes or filed with the official records of the Master Association. The waiver of notice or 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.

3.8. 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.

3.9. Compensation. No director shall receive any compensation from the Master Association for acting as such.

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

3.11. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Master 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.

3.12. Action Without A Formal Meeting. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if one or more consents, in writing or by electronic transmission, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Master Association for inclusion in the minutes for filing in the corporate records. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.13. Telephonic Participation. One (1) or more directors may participate in and vote during any meeting of the Board by telephone conference call or any other means of communication by which all directors participating may simultaneously hear each other during the meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Board.

3.14. Powers. The Board of Directors shall be responsible for the affairs of the Master Association and shall have all of the powers and duties necessary for the administration of the Master Association's affairs and, as provided by law, may do all acts and things as are not by law, the Master Declaration, Articles, or these Master Bylaws directed to be done and exercised by the members. In addition to the duties imposed by these Master Bylaws or by any resolution of the Master 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) preparing and adopting 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 and establishing the means and methods of collecting such assessments;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Master Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Master 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 Master Association;

(f) making and amending rules and regulations;

(g) opening bank accounts on behalf of the Master Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Master Declaration, these Master Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Master Association, which enforcement power shall include, without limitation, the power to levy fines as provided herein and in the Master Declaration in such amounts as from time to time the Board may deem proper in the circumstances, counting each day a violation continues after notice from the Board as a separate violation;

(i) obtaining and carrying insurance against casualties and liabilities, as provided in the Master Declaration, and paying the premium cost thereof;

(j) keeping books with detailed accounts of the receipts and expenditures of the Master Association and the actions thereof, and specifying the maintenance and repair expenses and any other expenses incurred; and

(k) authorizing contracts on behalf of the Master Association.

3.15. Management Agent. The Board of Directors may employ for the Master 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 agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon not more than ninety (90) days' written notice.

3.16. Borrowing. The Board of Directors shall have the power to borrow money without the approval of the members of the Master Association; provided, however, except as otherwise provided in the Master Declaration, the Board shall obtain membership approval in the same manner as for special assessments, in the event that the total amount of such borrowing exceeds or would exceed the amount of the annual budget.

3.17. Fining Procedure. A fine shall not be imposed (a late charge shall not constitute a fine) unless and until the following procedure is followed:

(a) Written notice shall be delivered to the Owner by first-class or certified mail sent to the address of the Owner shown on the Master Association's records, specifying:

(1) the nature of the violation, the fine to be imposed and the date, not less than ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, from the date of the notice, that the fine will take effect;

(2) that the violator may, within ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, from the date of the notice, request a hearing in writing regarding the fine imposed;

(3) the name and address of a person to contact to challenge the fine;

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

(5) that all rights to have the fine reconsidered are waived if a hearing is not requested within ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, of the date of the notice.

(b) 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. No fine shall be imposed prior to the date that is ten (10) days or, in the event of an unapproved sign, twenty-four (24) hours, after the date of the hearing, as applicable.

(c) Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the violation recurs, the Board may, upon notice stating the nature of the violation and delivered to the member by first class or certified mail sent to the address of the member shown on the Master Association's records, impose a fine.

#### Article 4

##### Officers

4.1. Officers. The officers of the Master Association shall be a President, Vice President, Secretary, and Treasurer. During the time that the Declarant has the right to appoint the officers and directors of the Master Association as provided in these Master Bylaws, all offices may be held by the same Person. Thereafter, any two or more offices may be held by the same Person, excepting the offices of President and Secretary. The officers shall also be directors.

4.2. Election, Term of Office, and Vacancies. Except during the period in which the Declarant has the right to appoint the officers of the Master Association, the officers of the Master Association shall be appointed annually by the Board of Directors at the first meeting of the Board of Directors following the election of directors. 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.

4.3. Additional Officers and Agents. The Board of Directors may appoint such other officers, including vice presidents, assistant secretaries and assistant treasurers, and agents as it shall deem necessary. Such officers and agents shall hold their respective offices for such terms

and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

4.4. Salaries. The officers shall receive no compensation.

4.5. Removal. Except for officers appointed by the Declarant, any officer may be removed, with or without cause, by the Board of Directors.

4.6. President. The President shall be the chief executive officer of the Master Association and shall preside at all meetings of the Owners and directors. The immediate supervision of the affairs of the Master Association shall be vested in the President. It shall be the President's duty to attend to the business of the Master Association and maintain strict supervision over all of its affairs and interests. The President shall keep the Board of Directors fully advised about the affairs and conditions of the Master Association, and shall manage and operate the business of the Master Association pursuant to and in accordance with such policies as may be prescribed from time to time by the Board of Directors.

4.7. Secretary. The Secretary shall keep the minutes of all meetings of the Owners and of the Board of Directors; notify the Owners and directors of meetings as provided by these Master Bylaws and Georgia law; have custody of the seal of the Master Association; affix such seal to any instrument requiring the same; attest the signature or certify the incumbency or signature of any officer of the Master Association; and perform such other duties as the President, or the Board of Directors may prescribe. The Secretary shall perform the duties of the Treasurer of the Master Association in the absence or disability of the Treasurer.

4.8. Treasurer. The Treasurer shall keep, or cause to be kept, the financial books and records of the Master Association, and shall faithfully account for the Master Association's funds, financial assets, and other assets entrusted to the Treasurer's care and custody. The Treasurer shall make such reports as may be necessary to keep the President and the Board of Directors informed at all times as to the financial condition of the Master Association, and shall perform such other duties as the President, or the Board of Directors may prescribe. The Treasurer shall maintain the money and other assets of the Master Association in the name and to the credit of the Master Association in such depositories as may be designated by the Board of Directors. The Treasurer may provide for the investment of the money and other assets of the Master Association consistent with the needs of the Master Association to disburse such money and assets in the course of the Master Association's business. The Treasurer shall perform the duties of the President or Secretary of the Master Association in the absence or disability of the President or Secretary, respectively.

4.9. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors. 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 5  
Committees

Advisory, standing and architectural review committees to perform such tasks and to serve for such periods as may be designated by the Board or as provided in the Master Declaration are hereby authorized. Each such committee shall be composed and shall operate in accordance with the terms of the Master Declaration or resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. An advisory, standing or architectural review committee shall not be authorized to exercise any authority of the Board under the Articles of Incorporation, the Master Declaration, these Master Bylaws or the Nonprofit Code except as expressly provided therein.

Article 6  
Miscellaneous

6.1. Fiscal Year. The fiscal year of the Master Association shall be the calendar year unless otherwise determined by resolution of the Board.

6.2. Parliamentary Rules. *Roberts Rules of Order* (current edition) shall govern the conduct of all Master Association proceedings, when not in conflict with Georgia law, the Articles of Incorporation, the Master Declaration or these Master Bylaws.

6.3. Conflicts. If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation, the Master Declaration and these Master Bylaws, the provisions of Georgia law, the Master Declaration, the Articles of Incorporation and the Master Bylaws (in that order) shall prevail.

6.4. Amendment.

(a) By the Declarant. The Declarant may unilaterally amend these Master Bylaws for any purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights or obligations of any Owner.

(b) By the Board of Directors. These Master Bylaws may be amended by the Board of Directors with the consent of the Declarant if such amendment is necessary to: (a) bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) enable any title insurance company to issue title insurance coverage with respect to the Parcels subject to the Master Declaration; (c) enable an institutional or governmental lender or purchaser of mortgage loans, including, without limitation, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make or purchase Mortgage loans on Parcels; or (d) enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on Parcels.

(c) By the Members. In addition, these Master Bylaws may be amended upon the affirmative vote or written consent or any combination of affirmative vote or written consent of at least two-thirds (2/3) of the Total Master Association Vote and the Declarant.

6.5. Electronic Records, Signatures and Documents. To the extent permitted by the Uniform Electronic Transaction Act, O.C.G.A. § 10-12-1, *et seq.*, the Nonprofit Code, the Master Declaration and these Master Bylaws, the Master Association and its members, officers, directors, Owners and occupants may perform any obligation or exercise any right by use of electronic means providing sufficient security, reliability, identification and verifiability, which electronic means have been approved by the Board of Directors in its sole discretion.

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