

Georgia, Cherokee County
Filed in office this 23 day of January 19 95
at 3:40 P. M. Recorded in Book 2049 Page 281
this 24 day of March 19 93
Anne M. Ruman
Clerk Superior Court

PLEASE RETURN TO:
STEVEN M. WINTER, ESQ.
SUITE 300
3405 PIEDMONT ROAD, N.E.
ATLANTA, GEORGIA 30305
\$21.00 #21192

Ret: →
42

Cross Reference:
Deed Book 744
Page 600

STATE OF GEORGIA
COUNTY OF CHEROKEE

AMENDMENT TO THE DECLARATION OF
PROTECTIVE COVENANTS FOR WYNGATE

This Amendment to the Declaration of Protective Covenants for Wyngate (hereinafter "Amendment") is made this 4th day of January, 1995 by WYNGATE COMMUNITY ASSOCIATION, INC., a Georgia non-profit corporation (hereinafter referred to as the "Association").

WITNESSETH :

WHEREAS, Wyngate Associates, a Georgia general partnership whose sole partners are Middlesex Development Corporation, a California corporation and ^{JRC} ~~PER~~-TowneLake Limited Partnership, a Texas limited partnership (hereinafter "Declarant"), recorded a Declaration of Protective Covenants for Wyngate in the Office of the Clerk of the Superior Court of Cherokee County, Georgia in Deed Book 744, Page 600 (hereinafter the "Declaration"), whereby certain real property described in Exhibit "A" attached thereto was subjected to the terms of such Declaration; and

WHEREAS, Windgate Holdings, Inc., a Delaware corporation, is the successor Declarant to Wyngate Associates, a Georgia general partnership, pursuant to certain instrument of conveyance recorded in Deed Book _____, Page ____ of the Cherokee County, Georgia Recording; and

BK PG
2049 282

WHEREAS, pursuant to Section 4 of Article XII of the Declaration, the Declaration may be amended by the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots in Wyngate; provided the Towne Lake Residential Owners Association, Inc. consents to such amendment and, if Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX hereof, the Declarant also consents to such amendment; and

WHEREAS, the Association desires to amend the Declaration to include the benefits and provisions of O.C.G.A. § 44-3-220, et seq., known as the "Georgia Property Owners Association Act"; and

WHEREAS, this Amendment was properly presented to the membership and was adopted by the affirmative vote of at least a two-thirds (2/3) of the Owners of Lots. There were 600 eligible votes entitled to be cast of which there were 420 votes in favor of the Amendment, 64 votes opposed to the Amendment, and 116 votes abstaining from the vote thereon; and

WHEREAS, Towne Lake Residential Owners Association, Inc. has evidenced its consent to this Amendment by executing the written consent attached hereto as Exhibit "A" and made a part hereof by this reference; and

WHEREAS, Declarant has evidenced its consent to this Amendment by executing the written consent attached hereto as Exhibit "B" and made a part hereof by this reference, as Declarant still has the option to unilaterally subject additional property to the Declaration; and

WHEREAS, the Vice President of the Association, by execution of the sworn statement attached hereto as Exhibit "C" and made a part hereof by this reference, swears that the

agreement of the required two-thirds (2/3) of the Owners of Lots to amend the Declaration was lawfully obtained and that all required notices were properly given;

NOW, THEREFORE, the Declaration of Protective Covenants for Wyngate is amended as follows:

1. The fourth sentence of Section 2 of Article IV of the Declaration is amended by deleting such sentence in its entirety and substituting the following sentences in its place:

"Each Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of the conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee; provided, however, that if the grantor or grantee shall request a statement from the Association as provided in Section 2 of Article IV hereof, such grantee and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments against such grantor in excess of any amount set forth in the statement. In the event that the holder of a first priority mortgage or second purchase money mortgage of record, provided that neither the grantee or any successor grantee on the secondary purchase money mortgage is the seller of the Lot, or any other person acquires title to any Lot as a result of foreclosure of any such mortgage, such holder or other person and his or her successors, successors-in-title, and assigns shall not be liable for nor shall the Lot be subject to any lien for assessments under the Georgia Property Owners Association Act or under the Declaration on account of any period prior to the acquisition of title; provided, however, that the unpaid share of the assessment or assessments shall be deemed to be a common expense collectible from all of the Lots and the Owners thereof, including such holder or other person and his or her successors, successors-in-title, and assigns. A foreclosure shall not relieve the mortgagee in possession or the purchaser at any foreclosure sale from any liability for any assessments becoming due after such foreclosure."

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2049 284

2. Section 2 of Article IV of the Declaration is hereby further amended by deleting the second (2nd) paragraph thereof in its entirety and substituting the following paragraph in its place:

"Any Owner, mortgagee of a Lot, person having executed a contract for the purchase of a Lot, or lender considering the loan of funds to be secured by a Lot shall be entitled upon request to a statement from the Association or its management agent setting forth the amount of assessments past due and unpaid together with late charges and interest applicable thereto against that Lot. Such request shall be in writing, shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. Failure on the part of the Association, within five (5) business days from the receipt of such request, to mail or otherwise furnish a statement regarding amounts due and payable at the expiration of such five (5) day period with respect to the Lot involved to such address as may be specified in the written request therefor shall cause the lien or assessments created hereunder to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, if any, as the case may be, and their respective successors and assigns, in the transaction contemplated in connection with such request. Information specified in such statement shall be binding upon the Association and upon every Owner. Payment of a \$10.00 fee is required as a prerequisite to the issuance of each such statement, and payment of the fee shall accompany any such request."

3. Section 5 of Article IV of the Declaration is amended by deleting the first (1st) paragraph thereof in its entirety and substituting the following paragraph in its place:

"Section 5. Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with late charges, interest in the maximum amount allowed by law, costs of collection including court costs, the expenses required for the protection and preservation of the Lot, and reasonable attorney's fees actually incurred, all as further provided herein, shall be secured by a lien on such Lot in favor of the Association. Such lien shall be prior and superior to all other liens whatsoever except for (a) liens for ad valorem taxes on the Lot; (b) the lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Amendment; or (c) the lien of any secondary purchase money mortgage covering the Lot, provided that neither the grantee nor any successor grantee on the mortgage is the seller of the Lot;

or (d) the lien of any mortgage to Declarant duly recorded in the land records of the county where the Community is located and all amounts evidenced pursuant to such mortgage and secured thereby in accordance with the terms of such instrument. The recording of this Amendment shall constitute record notice of the existence of the lien, and no further recordation of any claim of a lien for assessments shall be required."

4. Section 6 of Article IV of the Declaration is amended by deleting the first five (5) sentences thereof in their entirety and substituting the following sentences in their place:

"Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within ten (10) days after it is due, shall also include:

(a) A late or delinquency charge not in excess of the greater of \$10.00 or ten percent (10%) of the amount of each assessment or installment thereof not paid when due;

(b) Interest on each assessment or installment thereof and any delinquency or late charge pertaining thereto at the rate of ten percent (10%) per annum from the date the same was first due and payable;

(c) The costs of collection, including court costs, the expenses required for the protection and preservation of the Lot, and reasonable attorney's fees actually incurred; and

(d) The fair rental value of the Lot from the time of the institution of an action until the sale of the Lot at foreclosure or until any judgment rendered in the action is otherwise satisfied.

Not less than ten (10) days after notice is sent by certified mail, return receipt requested, to the Lot Owner both at the address of the Lot and at any other address or addresses which the Lot Owner may have designated to the Association in writing, the lien in favor of the Association may be foreclosed by the Association by an action, judgment and foreclosure in the same manner as other liens for the improvement of real property. The notice shall specify the amount of the assessments then due and payable together with authorized late charges and interest accrued thereon. The Association shall have the power to bid on the Lot at any foreclosure sale and to acquire, hold, lease, encumber and convey such Lot. The lien for assessments provided herein shall lapse and be of no further effect as to assessments and installments thereof, together with late charges and

BK PG
2049 286

interest applicable thereto, which first become due and payable more than three (3) years prior to the date upon which the notice contemplated in this Section is given or more than three (3) years prior to the institution of an action therefor if an action is not instituted within ninety (90) days after the giving of the notice."

5. Section 9 of Article IV of this Declaration is amended by deleting subparagraphs (a) and (b) thereof and substituting in their place the following:

"(a) Any common expenses benefiting less than all of the Lots shall be specifically assessed equitably among all of the Lots so benefited, as determined by the Board of Directors;

(b) Any common expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots shall be specifically assessed against the Lot or Lots, the conduct of any occupant, licensee or invitee of which occasioned any such common expenses;

(c) Any common expenses significantly disproportionately benefiting all of the Lots shall be assessed equitably among all of the Lots in the Development as determined by the Board of Directors; and

(d) Other than for limited common areas which may be expressly designated as such in this Declaration and assigned to fewer than all Lots, nothing contained in subparagraph (a) or (c), above, shall permit the Association to specifically or disproportionately allocate common expenses for periodic maintenance, repair and replacement of any portion of the Common Property or the Lots which the Association has the obligation to maintain, repair or replace.

A specific assessment assessed hereunder shall be and become a lien against such Lot(s) and the personal obligation of the Owner(s) thereof. A specific assessment may be collected in the same manner as the annual assessment assessed hereunder."

6. Article VI of the Declaration is amended by deleting Section 18 in its entirety and substituting the following Section 18 in its place:

"Section 18. Commercial and Business Use. Except as otherwise permitted by this Declaration, each Lot shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. Nothing in this section shall prohibit a Builder's temporary use of a residence of a sales office until such Builder's last residence in the Community is sold. The use of a portion of a residence on a Lot for business or commercial purposes by an Owner shall not be considered to be a violation of this Section if: (a) the home occupation is conducted only within the enclosed living area of the residence; (b) no goods, materials or products connected with the home occupation are stored in any accessory building or detached garage on any Lot; (c) no alteration of the residential appearance of the Lot occurs as a result of the home occupation; (d) there is no display or storage of products, material, equipment or machinery where they may be visible from the exterior of the residence on a Lot; (e) the conduct of the home occupation does not increase the normal flow of traffic or on-street or off-street parking; (f) no interior or exterior business signs advertising the home occupation are placed within the residence or on the Lot; (g) there is no increased noise, vibration, glare, fumes, odors or electrical interference created by the home occupation; and (h) the home occupation shall not be open to the public at times earlier than 8:00 a.m. nor later than 10:00 p.m. The Board of Directors of the Association shall have the right, from time to time, to promulgate reasonable rules and regulations further governing or restricting the rights of Owners to use their Lot for business or commercial purposes, so long as such reasonable rules and regulations do not contravene or contradict the Zoning Ordinances of Cherokee County, Georgia, as the same now exists and as may be amended from time to time."

7. Article X of the Declaration is amended by deleting Section 8 in its entirety and substituting the following Section 8 in its place:

"Section 8. Failure of Mortgagee to Respond. The approval of any proposed amendment by a mortgagee shall be deemed implied and consented to if the mortgagee fails to submit a response to any written proposal for an amendment to the Declaration or for any action requested by the Board of Directors within thirty (30) days after the mortgagee receives such notice sent by certified mail, return receipt requested."

BK PG
2049 288

8. Article XII of the Declaration is hereby amended by deleting Section 1 in its entirety and substituting the following Section 1 in its place:

"Section 1. Enforcement. Each Owner and every occupant of any Lot shall comply strictly with the Bylaws, the rules and regulations, and the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions and restrictions set forth in this Declaration and in the deed to his or her Lot, if any. Any lack of such compliance shall entitle the Board of Directors to impose and assess fines, other sanctions, and suspend temporarily voting rights and the right of use of the common areas and services paid for by each Owner as a common expense in order to enforce such compliance; provided, however, that no such suspension shall deny any Owner or occupant of a Lot access to the Lot owned or occupied. Failure to comply with this Declaration, the Bylaws, the use restrictions, or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or, in a proper case, by an aggrieved Owner or the Master Association. Failure by the Association, any Owner or the Master Association to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter."

9. Section 4 of Article XII of the Declaration is amended by deleting the second (2nd) paragraph thereof in its entirety and substituting the following paragraph in its place:

"In addition to the above, this Declaration may be amended by the agreement of Owners of Lots to which two thirds of the votes in the Association pertain and the consent of the Master Association; provided, however, that, during any such time as there shall exist an unexpired option to add any additional property to this Declaration or during any such time as the Declarant has the right to control the Association pursuant to this Declaration, the agreement shall be that of the Declarant, the Master Association and the Owners of Lots to which two thirds of the votes in the Association pertain, exclusive of any vote or votes pertinent to any Lot or Lots then owned by the Declarant. Notwithstanding the foregoing, during such time as the Declarant shall own at least one Lot primarily for the purpose of sale of such Lot, no amendment shall be made to the Declaration without the written consent of the Declarant if such amendment would impose a greater restriction on the use or development by the Declarant of the Lot or Lots owned by the Declarant."

10. Article XII of the Declaration is amended by adding thereto a Section 22 which reads as follows:

"Section 22. Election to Be Governed by the Georgia Property Owners Association Act. The Community shall be governed by the Georgia Property Owners Association Act set forth in Article VI of Chapter 3 of Title 44 of the Official Code of Georgia Annotated, as the same now exists or may be amended from time to time."

WYNGATE COMMUNITY ASSOCIATION, INC.

By: Ralph N. Osika
Vice President

Attest: [Signature]
(Assistant) Secretary

[CORPORATE SEAL]



Signed, sealed and delivered on the
27th day of January, 1995
in the presence of:

Michelle C. Hogge
Unofficial Witness



BK PG
2049 290

EXHIBIT A

CONSENT AND APPROVAL OF
TOWNE LAKE RESIDENTIAL OWNERS ASSOCIATION, INC.
TO THE AMENDMENT TO THE DECLARATION
OF PROTECTIVE COVENANTS FOR WYNGATE

Towne Lake Residential Owners Association, Inc., a Georgia non-profit corporation,
pursuant to Section 4 of Article XII of the Declaration of Protective Covenants of Wyngate,
hereby consents to the Amendment to the Declaration of Protective Covenants of Wyngate, dated
of even date herewith.

This 1st day of Feb, 1995.

TOWNE LAKE RESIDENTIAL OWNERS
ASSOCIATION, INC.

By: [Signature]
President

Attest: [Signature]
Secretary

[CORPORATE SEAL]

Signed, sealed and delivered
before me this 1st day of
February, 1995

[Signature]
Witness

[Signature]
Notary Public

Notary Public, Fulton County, Georgia
My Commission Expires: April 12, 1996

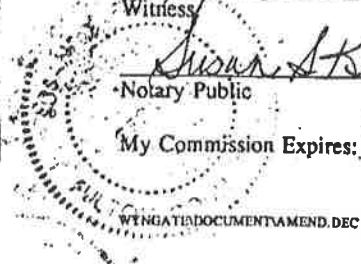


EXHIBIT B

CONSENT AND APPROVAL OF WINDGATE HOLDINGS, INC.
TO THE AMENDMENT TO THE DECLARATION
OF PROTECTIVE COVENANTS FOR WYNGATE

Windgate Holdings, Inc., a Delaware corporation, successor declarant to Wyngate Associates, a Georgia general partnership whose sole partners are Middlesex Development Corporation, a California corporation, and TRC-TowneLake Limited Partnership, a Texas limited partnership, pursuant to Section 4 of Article XII of the Declaration of Protective Covenants of Wyngate, hereby consents to the Amendment to the Declaration of Protective Covenants of Wyngate, dated of even date herewith.

This 17 day of March, 1995.

WINDGATE HOLDINGS, INC., a Delaware corporation

By: [Signature]
President

Attest: [Signature]
~~Secretary~~
Vice President

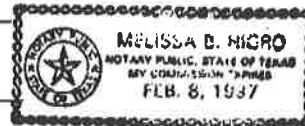


Signed, sealed and delivered
before me this 17th day of
March, 1995

[Signature]
Witness

[Signature]
Notary Public

My Commission Expires: _____



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2049 292

EXHIBIT C

SWORN STATEMENT OF THE PRESIDENT
OF WYNGATE COMMUNITY ASSOCIATION, INC.

The undersigned, being the Vice President of Wyngate Community Association, Inc., hereby swears under oath that the agreement of the required two-thirds (2/3) of the Owners of Lots to amend the Declaration of Protective Covenants for Wyngate was lawfully obtained and all required notices were properly given.

This 27th day of January, 1995.

By: Ralph H. Pitt
Vice President, Wyngate Community Association, Inc.



Sworn to and subscribed before me this 27th day of January, 1995

Bob Quance
Notary Public

Notary Public, DeKalb County, Georgia
My Commission Expires May 11, 1997



WYNGATE\DOCUMENT\AMEND.DBC

Rec. 3-24-95

ANNE M. RENEAU
CLERK, SUPERIOR COURT OF CHEROKEE COUNTY