

PREPARED BY & HELD FOR:
MICHAEL G. SANTMAN

87-69480575

PRESENTED

NORTH CAROLINA
WAKE COUNTY

DECLARATION OF MASTER COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR WINDWARD POINTE

THIS DECLARATION, made this 19 day of July, 1993, by
Windward Pointe Associates Limited Partnership, a North Carolina
limited partnership with its principal office and place of business
in Wake County, North Carolina, hereinafter referred to as the
Declarant;

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the
Town of Holly Springs, County of Wake, State of North Carolina,
which is more particularly described as:

SEE ATTACHED EXHIBIT A

AND WHEREAS, Declarant will convey the said properties subject
to certain protective covenants, conditions, restrictions,
reservations, and charges as hereinafter set forth; and

WHEREAS, Declarant desires to provide for the preservation and
enhancement of the property values, amenities and opportunities in
said community and for the maintenance of the properties and
improvements thereon, and to this end desires to subject the real
property described in Exhibit A together with such additions as may
hereafter be made thereto to the covenants, restrictions,
easements, charges and liens hereinafter set forth, each and all
of which is and are for the benefit of said property and each owner
thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient
preservation of the values and amenities in said community to
create an agency to which should be delegated and assigned the
powers of owning, maintaining and administering the community
properties and facilities, administering and enforcing the
covenants and restrictions, collecting and disbursing the
assessments and charges hereinafter created, and promoting the
recreation, health, safety, and welfare of the residents; and

WHEREAS, Declarant has incorporated under the laws of the
State of North Carolina the Windward Pointe Homeowner's
Association, Inc. as a non-profit corporation for the purpose of
exercising the functions, aforesaid, among others;

NOW, THEREFORE, Declarant hereby declares all of the property
described herein in the attached Exhibit A to be held, sold, and
conveyed subject to the following easements, restrictions,
covenants and conditions, all of which shall run with the real
property, shall be binding on all parties having or acquiring any
right, title or interest in the described properties or any part
thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I - DEFINITIONS

Section 1. "Windward Pointe Homeowner's Association, Inc." shall
mean and refer to Windward Pointe Homeowner's Association, a North
Carolina non-profit corporation, its successors and assigns.

Section 2. "Windward Pointe" shall mean and refer to that certain
real property subject to this Declaration and such additions
thereto as may hereafter be brought within the jurisdiction of
Windward Pointe Homeowner's Association.

Section 3. "Common Area" shall mean and refer to all real property
within Windward Pointe owned by Windward Pointe Homeowner's
Association for the common use and enjoyment of all Members.

Section 4. "Site" or "Lot" shall mean any plot of land regardless of size as shown on a recorded subdivision map of Windward Pointe which has been approved by Declarant as required by this Declaration.

Section 5. "Undeveloped Site" shall mean a site or an area of Windward Pointe yet undeveloped but intended to contain one or more residential units as provided in the general plan for Windward Pointe as approved by the Town of Holly Springs, including any additions thereto.

Section 6. "Dwelling Unit" shall mean a residence containing sleeping facilities for one or more persons and a kitchen.

Section 7. "Member" shall mean and refer to every person or entity entitled to membership in Windward Pointe Homeowner's Association as provided in this Declaration.

Section 8. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Dwelling Unit or Site which is a part of Windward Pointe, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 9. "Declarant" shall mean and refer to Windward Pointe Associates Limited Partnership, as well as their successors and assigns.

Section 10. "Board of Directors" or "Board" means those persons elected or appointed to act collectively as the directors of the Windward Pointe Homeowner's Association.

Section 11. "Book of Resolutions" shall mean and refer to the document containing rules and regulations and policies adopted by the Board of Directors.

Section 12. "Bylaws" mean the bylaws of Windward Pointe Homeowner's Association as they now or hereafter exist.

ARTICLE II - COMMON AREA OWNERSHIP AND MAINTENANCE

Section 1. Owners' Easements of Enjoyment: Every Owner shall have a right of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Site or Dwelling Unit.

Section 2. Delegation of Use: Any Owner may delegate his rights of enjoyment of the Common Area and facilities to the members of his family, his tenants, contract purchasers who reside on the property or his guests.

Section 3. Rules and Regulations: The Board of Directors shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions, which shall be maintained in a place reasonably convenient to the Members and available to them for inspection during normal business hours.

Section 4. Leasing Common Area Facilities: The Board of Directors shall have the power to lease and use any recreational facility for functions, lessons or special events, and to allow such lessee to charge admission or other fees for functions, lessons or special events.

Section 5. Operating Common Area Facilities: The Board of Directors shall have the power to limit the number of guests, to regulate hours of operation and behavior, and to curtail any use or uses it deems necessary for either the protection of the

facilities or the peace and tranquility of adjoining residents.

Section 6. Common Area Facilities Admission Fees: The Association may charge reasonable admission and other fees for the use of any Common Area recreational facility.

Section 7. Suspensions: The Board of Directors shall have the power to suspend the voting rights and right to the use of any Common Area facility of a Class A Member or any person to whom that Member has delegated his right of enjoyment for any period, during which any assessment against his Dwelling Unit or Site remains unpaid; and for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations.

Section 8. Declarant's Covenant to Convey Title to Common Area: The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the property that will be designated Common Area and portions thereof to Windward Pointe Homeowner's Association, as contained in a recorded subdivision plat or map, subject to easements of record for utilities, television antenna, drainage, access or other services. Similarly, Declarant will convey to Windward Pointe Homeowner's Association properties that will be designated as Common Area which become parts of Windward Pointe as those portions are annexed in the future until all designated properties have been conveyed to Windward Pointe Homeowner's Association.

Section 9. Mortgaging Common Area: The Windward Pointe Homeowner's Association shall have the power to borrow money for the purpose of improving the Common Area and facilities and pursuant thereto to mortgage the Common Area, or any portion thereof; provided, however, that the execution of such mortgage shall require the same approval of the membership which is required for special assessments for capital improvements as set forth in Article VI, Section 5 of this Declaration. The rights of such mortgagees in said Common Area properties shall not be subordinate to the rights of the Members.

Section 10. Common Area Dedication or Transfer: The Windward Pointe Homeowner's Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of the membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every Member and not less than thirty (30) days in advance.

ARTICLE III - LAND USE

Section 1. Restrictions: Each Dwelling Unit or Site and the facilities on the Common Area shall be subject to both the restrictions herein and those set forth in the Bylaws.

Section 2. Designated Residential Property Restrictions: All property designated for residential use shall be used, improved and devoted exclusively to residential use.

Section 3. Common Area Restriction: All Common Area recreational facilities and amenities shall be used, improved and devoted exclusively to recreational purposes for the benefit of the Owners.

Section 4. Common Area Offensive Use: No immoral, improper, offensive or unlawful use shall be made of the Common Areas. Any ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed.

Section 5. Common Area Construction or Alteration: No person

shall undertake, cause or allow any alteration or construction in or upon any portion of the Common Area except at the direction of and with the express written consent of the Windward Pointe Homeowner's Association.

Section 6. Nuisance or Annoying Activity: No obnoxious or offensive activity shall be carried on, in or upon Windward Pointe nor shall anything be done which may be or may become a nuisance or annoyance to any resident within Windward Pointe.

Section 7. Parking and Antennas: The Windward Pointe Homeowner's Association may regulate the parking of boats, campers, trailers and the placing of tents and other such items on the Common Area (including the provision of special facilities for which a reasonable charge may be made). No automobiles, trucks, tractors, boats, campers or trailers shall be regularly parked within the right-of-way of any street in or adjacent to Windward Pointe. The Windward Pointe Homeowner's Association may regulate or prohibit the erection of antennas on Dwelling Units or Sites.

PARKING. Adequate off-street parking shall be provided by the owner of each lot for the parking of automobiles owned by such owner, and owners of Lots shall not be permitted to park their automobiles on the streets in the development. Owners of lots shall not be permitted to park boats, trailers, campers and all other similar property on the streets in the development, and such property shall be parked in a garage or screened area only.

Section 8. Dwelling Size and Building Location: Except with the prior written approval of the Architectural Committee, no residential structure which has an area of less than 1400 square feet, exclusive of porches, breeze-ways, steps and garages, shall be erected or placed or permitted to remain on any lot. No building or garage shall be located on any lot which does not meet the front yard, rear yard and side yard requirements of the appropriate municipality at the time said building or garage is constructed. Declarant reserves the right to waive in writing any minor violation of this Article of this Declaration, and for purposes hereof, any violation which does not exceed 30% shall be considered a minor violation.

ARTICLE IV - ARCHITECTURAL CONTROL

Section 1. Architectural Committee: An Architectural Committee consisting of three (3) persons shall be appointed by Declarant at or prior to the sale and transfer of title to the first Site. This right shall continue until January 1, 2008 or until Windward Pointe Associates Limited Partnership has sold one hundred percent (100%) of all properties in its name and shown on the general plan of development for Windward Pointe. Thereafter, the Architectural Committee shall be appointed by the Board of Directors of Windward Pointe Homeowner's Association.

Section 2. Plan or Design Approval: No Site preparation or initial construction, erection or installation of any improvements, including but not limited to, Dwelling Units, outbuildings, fences, walls, signs, antennas (including satellite dish antennas), clotheslines and other structures, excavation or changes in grade shall be undertaken upon any Site unless the plans and specifications therefore, showing the nature, kind, shape, height, materials and location of the proposed improvements shall have been submitted to the Architectural Committee and expressly approved in writing. No subsequent alteration or modification of any existing improvements or construction, erection or installation of additional improvements may be undertaken or allowed to remain on any of the Sites without the review and express written approval of the Architectural Committee.

Section 3. Effect of Failure to Approve or Disapprove: In the

event that the Architectural Committee fails to approve or disapprove the design of any proposed improvements within thirty (30) days after plans and specifications therefore have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully satisfied; provided that the plans and specifications required to be submitted shall not be deemed to have been received by the Architectural Committee if they contain erroneous data or fail to present adequate information upon which the Architectural Committee can arrive at a decision.

Section 4. Right of Inspection: The Architectural Committee shall have the right, at its election, to enter upon any of the Sites in Windward Pointe during preparation, construction, erection or installation of any improvements to determine that such work is being performed in conformity with the approved plans and specifications.

Section 5. Exterior Maintenance: The exterior maintenance of Dwelling Units, Sites and improvements constructed thereon shall be the duty of the Owners of such Dwelling Units or Sites (except where specifically provided otherwise) and shall not normally be interfered with by Windward Pointe Homeowner's Association or any person. If, however, in the opinion of Windward Pointe Homeowner's Association any Owner shall fail to maintain any Dwelling Unit or Site in a manner which is reasonably neat and orderly or shall fail to keep improvements constructed thereon in a state of repair so as not to be unsightly, Windward Pointe Homeowner's Association at its discretion, and following ten (10) days written notice to the Owner, may enter upon and make or cause to be made repairs to such improvement and perform such maintenance on the Dwelling Unit or Site such as, but not limited to, the removal of trash, cutting of grass, pruning of shrubbery and seeding for erosion control. Windward Pointe Homeowner's Association, or its agents, shall have an easement for the purpose of accomplishing the foregoing. The costs incurred by the Windward Pointe Homeowner's Association in rendering all such services, plus a service charge of twenty percent (20%) of such costs, shall be added to and become a part of such other assessments to which such Dwelling Unit or Site is subject.

ARTICLE V - MEMBERSHIP AND VOTING RIGHTS

Section 1. Members: The Declarant, for so long as it shall be an Owner, and every person or entity who is an Owner of a fee or undivided fee interest in any Dwelling Unit or Site which is subject by covenants of record to assessments by Windward Pointe Homeowner's Association, including contract sellers, shall be a Member of Windward Pointe Homeowner's Association. The foregoing does not include persons or entities who hold an interest merely as security for the performance of an obligation. Ownership of such Dwelling Unit or Site shall be the sole qualification for membership. Membership shall be appurtenant to and may not be separated from ownership of any Dwelling Unit or Site which is subject to assessment by Windward Pointe Homeowner's Association. The Board of Directors may make reasonable rules relating to the proof of ownership of a Dwelling Unit or Site in Windward Pointe.

Section 2. Member Classes and Voting Rights: The Windward Pointe Homeowner's Association shall have two (2) classes of voting Members:

Class A - Class A Members shall be all those Owners with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Dwelling Unit or Site in which they hold the required ownership interest. When more than one person or entity holds such interest in any Dwelling Unit or Site all such persons shall be Members. The vote for such Dwelling Unit or Site shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Dwelling

Unit or Site and no fractional vote may be cast with respect to any Dwelling Unit or Site.

Class B - The Class B Member shall be the Declarant. The Class B Member shall be entitled to seven (7) votes for each Dwelling Unit or Site in which it holds the required ownership interest, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(a) The total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; provided that the Class B membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B membership to Class A membership, as provided hereunder, additional lands are annexed to the properties without the assent of the members on account of the development of such additional lands by the Declarant, all within the times and as provided in Article VIII, Section 2; or

(b) January 1, 2008.

Section 3. Voting Rights Suspension: The right of any Class A Member to vote may be suspended by the Board of Directors of the Windward Pointe Homeowner's Association for just cause pursuant to its rules and regulations and according to the provisions of Article II, Section 7.

Section 4. Right of Declarant to Representation on Board of Directors of the Association: Notwithstanding anything contained herein to the contrary, until January 1, 2008, or until Windward Pointe Associates, Inc. shall have conveyed one hundred percent (100%) of the properties shown on the general plan of Windward Pointe heretofore submitted to the Town of Holly Springs, North Carolina, whichever first occurs, Windward Pointe Associates Limited Partnership (or its express assignee of the right granted in this Section) shall have the right to designate and select a two-thirds (2/3) majority of the Board of Directors of the Windward Pointe Homeowner's Association. Whenever Windward Pointe Associates Limited Partnership shall be entitled to designate and select any person or persons to serve on any Board of Directors, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association. Windward Pointe Associates Limited Partnership shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any Director or Directors so removed. Any Director designated and selected by Windward Pointe Associates, Inc. need not be an Owner. Any representative of Windward Pointe Associates Limited Partnership serving on the Board of Directors of the Association shall not be required to disqualify himself from any vote upon any contract or matter between Windward Pointe Associates Limited Partnership and the Association where Windward Pointe Associates Limited Partnership may have a pecuniary or other interest. Similarly, Windward Pointe Associates Limited Partnership, as a member of the Association, shall not be required to disqualify itself upon any vote upon or entrance into any contract or matter between Windward Pointe Associates Limited Partnership and the Association where Windward Pointe Associates Limited Partnership may have a pecuniary or other interest.

ARTICLE VI - ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment: The Declarant, for each Site and each Dwelling Unit owned, hereby covenants, and every other Owner of any Site and any Dwelling Unit covered by this Declaration, by acceptance of a deed therefore, whether or not expressed in any such deed or other covenant, is deemed to covenant and agrees to pay to Windward

Pointe Homeowner's Association:

(a) Annual assessments or charges;

(b) Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The annual and special assessments on a Dwelling Unit or Site, together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees (as provided in North Carolina General Statutes 6-21.2) incurred by Windward Pointe Homeowner's Association in collecting delinquent assessments shall also be the personal obligation of the person or entity who was the Owner of such Dwelling Unit or Site at the time when the assessment became due. The obligation of the Owner for delinquent assessments shall pass to his successors or assigns in title unless expressly excused in writing by Windward Pointe Homeowner's Association.

Section 2. Purpose of Assessments: The assessments levied by Windward Pointe Homeowner's Association shall be used exclusively for the purposes of promoting the beautification of Windward Pointe, the recreation, health, safety and welfare of the Owners in Windward Pointe, the enforcement of these covenants and the rules of Windward Pointe, and in particular, the improvement and maintenance of the services and facilities of the Common Area.

Section 3. Annual Assessment: To and including December 31, 1993, the Annual Assessment shall not be in excess of Two Hundred Forty and No/100 Dollars (\$240.00) per Dwelling Unit or Site, except as otherwise provided herein, the exact amount of which shall be determined from time to time by the Board of Directors in accordance with the following provisions:

(a) From and after December 31, 1993, the basic annual assessment may be increased by the Board of Directors of the Windward Pointe Homeowner's Association effective January 1 of each year, without the vote of the Members, by a percentage which may not exceed the percentage increase reflected in the U.S. City Average, Consumer Price Index-United States (published by the U.S. Bureau of Labor Statistics, Washington, D.C.) or such index as may succeed the Consumer Price Index, for the twelve (12) month period ending the immediately preceding July 1.

(b) Notwithstanding the preceding subparagraph, after December 31, 1993, the basic annual assessment may be increased by the assent of two-thirds (2/3) of the votes of each class of the Members who are voting in person or by proxy at a meeting called for such purpose. For this purpose, the Class B Member shall be entitled only to one vote for each Dwelling Unit or Site as to which it owns the required ownership interest. Written notice of the meeting shall be given to all members not less than thirty (30) days in advance of the meeting.

Section 4. Special Assessment for Repairs: In the event any portion of any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or family members, such Owner does hereby authorize Windward Pointe Homeowner's Association to repair said damaged area in a good and workmanlike manner. The amount necessary for such repairs, labor and material, shall become a special assessment upon the Dwelling Unit or Site of said Owner.

Section 5. Special Assessments for Capital Improvements: In addition to the Annual Assessments authorized above, the Windward Pointe Homeowner's Association may levy one or more special assessments applicable to that year only for the purpose of

defraying the costs of construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of the Members (as defined and determined above in Section 3(b)) who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days in advance of the meeting.

Section 6. Uniform Rate of Assessment: Both Annual and Special Assessments (with the exception of the Special Assessment authorized by Article VI, Section 4 above) must be fixed at a uniform rate for all Dwelling Units or Sites and may be collected on a monthly, quarterly, or annual basis in advance.

Section 7. Date of Commencement of Annual Assessments-Due Dates: The Annual Assessments provided for herein shall commence as to all Dwelling Units or Sites on the first day of the year following the date on which such Site has either: (a) had construction of a Dwelling Unit begun; or (b) been owned by one other than Declarant for two (2) years. The Board of Directors shall fix the amount of the Annual Assessment against each Dwelling Unit or Site at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. If the Board of Directors shall determine that it would be inequitable to require the payment of the full amount of the Annual Assessment (as might be the case if only a few of the recreational amenities are available for the use of the Members at such time), the Board may waive payment of any portion of the assessment. The due dates and appropriate penalties for late payment shall be established by the Board of Directors. Windward Pointe Homeowner's Association, upon demand at any time, shall furnish a certificate in writing setting forth whether the assessments on a specified Dwelling Unit or Site have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment status.

Section 8. Remedies for Non-Payment of Assessments: Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the due date at a rate not to exceed 10%. The Windward Pointe Homeowner's Association may bring an action at law against the Owner personally obligated to pay any assessments and interest or foreclose the lien created herein in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of Deeds of Trust. Costs and reasonable attorney's fees (as set forth in Article VI, Section 1 above), of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by the nonuse of the Common Area or abandonment of his Dwelling Unit or Site.

In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of Windward Pointe Homeowner's Association, then, and in that event, Windward Pointe Homeowner's Association shall be further empowered to execute on that judgment in such manner and to the extent provided and permitted by the laws of the State of North Carolina.

Section 9. Subordination of the Lien to Mortgages and Ad Valorem Taxes: The lien of the assessments provided for herein on any Dwelling Unit or Site shall be subordinate to the lien of any first mortgage, deed of trust or first purchase money deed of trust representing a first lien on said property and shall be subordinate to ad valorem taxes. Sale or transfer of any Dwelling Unit or Site shall not affect the assessment lien; provided, however, that the sale or transfer of any Dwelling Unit or Site pursuant to a decree

of foreclosure on a mortgage thereon or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Dwelling Unit or Site from liability or liens arising from assessments thereafter becoming due.

Section 10. Exempt Property: Any portion of Windward Pointe dedicated to, and accepted by, a local public authority shall be exempt from the assessments created herein; provided, however, no land or improvements devoted to Dwelling Unit use shall be exempt from said assessments.

Section 11. Annual Budget: By a majority vote of the directors, the Board shall adopt an annual budget for the subsequent year of operation, which shall provide for allocation of expenses in such a manner that the obligations imposed by the Declaration and any and all Supplementary Declarations will be met.

ARTICLE VII - EASEMENTS

Section 1. Walks, Drives, Parking Areas, Utilities, Etc.: Windward Pointe, including Sites and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, television antenna lines, other utilities, ingress, egress and regress and otherwise as shall be established by the Declarant or by its predecessor in title, prior to the conveyance of the property designated to be the Common Area to Windward Pointe Homeowner's Association; and Windward Pointe Homeowner's Association shall have the power and authority to grant and establish further easements upon, over, under and across the Common Area.

Section 2. Declarant's Easement to Correct Drainage: For a period of twenty-five (25) years from the date of conveyance of the first Site in a parcel, phase or section, the Declarant reserves a blanket easement and right on, over and under the ground within that parcel, phase or section to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary. Declarant shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by the Declarant.

Section 3. Easement to Town of Holly Springs: An easement is hereby established for municipal, state or public utilities serving the area, their agents and employees over all Common Area hereby or hereafter established for setting, removing and reading utility meters, maintaining and replacing utility or drainage connections, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection.

ARTICLE VIII - ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. Annexation by Members: Except as provided in Section 2 of this Article, additional lands may be added and annexed to Windward Pointe only if two-thirds (2/3) of each class of all the votes entitled to be cast, in the aggregate, by Members are cast in favor of annexation. In such event, the holder of Class B voting rights shall be entitled only to one vote for each Dwelling Unit or Site owned. A meeting shall be duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days in advance of the meeting.

For the purpose of such meeting, the presence thereof of Members or authorizing proxies entitled to cast sixty percent (60%) of the

votes, in the aggregate, of the Members, shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called within sixty (60) days thereafter, subject to the notice requirement set forth above, and the required quorum of such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting.

If a quorum is present and a majority of the votes are cast in favor of the annexation, but the majority is less than the two-thirds (2/3) majority of each class required for approval of the annexation, and it appears that the required two-thirds (2/3) of each class may be achieved if the Members not present or voting by proxy assent to the annexation, then and in that event, the Members not present or voting by proxy may assent to or dissent from the proposed annexation in writing within one hundred twenty (120) days following the date of the meeting. If the number of votes cast at the meeting in favor of the annexation, together with the votes deemed to have been cast by the Members assenting to the annexation, shall constitute the requisite two-thirds (2/3) majority of each class of all votes entitled to be cast, the annexation shall stand approved.

Section 2. Annexation by Declarant: The Declarant may annex additional lands to Windward Pointe in the following manner:

(a) If, within fifteen (15) years of the date of incorporation of the Windward Pointe Homeowner's Association the Declarant should develop, from time to time, an additional tract or additional tracts of land, consisting of any property contiguous to the boundaries shown in the general plan of Windward Pointe, such additional lands may be annexed to Windward Pointe without the assent of the Members.

(b) The Declarant may annex to Windward Pointe the additional land described in Sub-Section (a) of this Section 2 by recording in the Wake County Registry a Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. The additional land shall be deemed annexed to Windward Pointe on the date of recordation of the Declaration of Annexation, and no other action or consent shall be necessary except applicable governmental approval.

(c) Subsequent to recordation of the Declaration of Annexation by such Declarant, the Declarant shall deliver to the Windward Pointe Homeowner's Association one or more deeds conveying any property that will be designated as Common Area within the lands annexed as such designated property is developed.

ARTICLE IX - GENERAL PROVISIONS

Section 1. Enforcement: The Windward Pointe Homeowner's Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Windward Pointe Homeowner's Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Rights of Mortgage Lenders: Lenders holding mortgages shall have the following rights:

(a) In the event that any Member is in default in any obligation hereunder which default remains uncured for a period of sixty (60) days, every lender who is a mortgagee as to the Dwelling Unit or Site of the defaulting Member shall be immediately notified of such default, provided that such lender and/or insurer shall have given written certified notice by mail to the Windward Pointe Homeowner's Association that it is a mortgagee or insurer as to the

Dwelling Unit or Site of such Member and shall have requested the notice of default as herein set forth.

(b) Every first mortgagee and/or insurer of the first mortgage of the Dwelling Unit or Site of a Member of the Windward Pointe Homeowner's Association shall have the right, during regular business hours, and after written notice given at least three (3) business days in advance, to examine the books and records of Windward Pointe Homeowner's Association.

Section 3. Amendment by Owners: The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by Windward Pointe Homeowner's Association or the Owner of any Dwelling Unit or Site subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants, conditions and restrictions of the Declaration may be amended during the first thirty (30) year period or thereafter by an instrument signed by the Owners of not less than ninety percent (90%) of the Dwelling Units or Sites, provided, however, that the Board of Directors of the Windward Pointe Homeowner's Association may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction without action or consent of the Owners, and such amendment shall be certified as an official act of the Board and recorded in the Wake County Registry.

Section 4. Amendment to Achieve Tax-Exempt Status: The Declarant, Windward Pointe Associates, Inc., for so long as it shall retain control of the Board of Directors of Windward Pointe Homeowner's Association, and thereafter, the Board of Directors, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, in order to qualify the Windward Pointe Homeowner's Association or Windward Pointe, or any portion thereof, for tax-exempt status. Such amendment shall become effective upon the date of its recordation in the Wake County Registry.

Section 5. Certification and Recordation of Amendment: Any instrument amending these covenants, conditions and restrictions (other than an amendment by the Board to correct an error or inconsistency in drafting, typing or reproduction) shall be delivered, following approval by the Owners, to the Board of Directors. Thereupon, the Board of Directors shall, within thirty (30) days after delivery, do the following:

(a) Reasonably assure itself that the amendment has been duly approved by the Owners as provided in Section 3 of this Article. (For this purpose, the Board may rely on its roster of Members and shall not be required to cause any title to be examined.)

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Windward Pointe Homeowner's Association.

(c) Within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry.

Section 6. Effect and Validity of Amendments: All amendments shall be effective from the date of proper recordation in the Wake County Registry. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors and recorded as provided in this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners of all Dwelling Units or Sites in Windward Pointe.

Section 7. Conflicts: In the event of an irreconcilable conflict between this Declaration and the Bylaws of the Windward Pointe

AK5694P60586

Homeowner's Association or Articles of Incorporation of the Windward Pointe Homeowner's Association, the provisions of this Declaration shall control.

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

ARTICLE X - DISSOLUTION OR INSOLVENCY OF THE
WINDWARD POINTE HOMEOWNER'S ASSOCIATION

Windward Pointe Homeowner's Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of Members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of Windward Pointe Homeowner's Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which Windward Pointe Homeowner's Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization to be devoted to such similar purposes.

WITNESS WHEREOF, the undersigned Windward Pointe Associates Limited Partnership, as the Declarant, has caused this instrument to be executed and sealed in its name by authority duly given, the day and year first above written.



WINDWARD POINTE ASSOCIATES
LIMITED PARTNERSHIP, A NORTH
CAROLINA LIMITED PARTNERSHIP
By: TILLET DEVELOPMENT COMPANY,
INC., GENERAL PARTNER

By: E. J. Tillett
President

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, Michael E. Sandman a Notary Public in and for the
aforesaid County and State, do hereby certify that
Susan M. Orwig personally came before me this day and
acknowledged that she is First Secretary of Tillett Development
Company, Inc., a North Carolina corporation, general partner of
Windward Pointe Associates Limited Partnership, a North Carolina
limited partnership, and that by authority duly given and as the
act of the corporation, the foregoing instrument was signed in its
name by E. J. Tillett President, sealed with its corporate seal and attested
by Susan M. Orwig Secretary. WITNESS my hand and official
seal this 10th day of July, 1983.

My Commission Expires:



Michael E. Sandman
Notary Public

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of _____
Michael E. Sandman
Notary (real) Public is

(are) certified to be correct. This instrument and this certificate are duly registered at the date and time
and in the book and page shown on the first page hereof.

KENNETH G. WILKINS, Register of Deeds

By Kenneth G. Wilkins
Register of Deeds

00589370241

PREPARED BY AND HOLD FOR: Michael G. Sandman

PRESENTED
FOR
REGISTRATION

STATE OF NORTH CAROLINA
COUNTY OF WAKE

000480

FIRST AMENDMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR WINDWARD POINTE
REGISTER OF DEEDS
WAKE COUNTY

THIS FIRST AMENDMENT TO DECLARATION, made this 18th day of November, 1993, by Windward Pointe Associates Limited Partnership, a North Carolina limited partnership (hereinafter referred to as the "Declarant"), Tri-State Homes, Inc., Timberline Builders, Inc., M&T Homes, Inc., and Windward Pointe Homeowners' Association, Inc.

W I T N E S S E T H:

WHEREAS, Declarant has recorded that certain Declaration of Covenants, Conditions and Restrictions for Windward Pointe (hereinafter referred to as the "Declaration") in Book 5694, Page 575, Wake County Registry; and

WHEREAS, Declarant, Tri-State Homes, Inc., Timberline Builders, Inc., M&T Homes, Inc. and Windward Pointe Homeowners' Association, Inc. are the owners of all of the real property described in the Declaration, and therefore desire to amend the Declaration pursuant to Article IX, Section 3 of said Declaration; and

WHEREAS, Windward Pointe Homeowners' Association, Inc. joins in the execution of this instrument for the sole purpose of giving the necessary consent to and as evidence of compliance with Article IX, Sections 5 and 6 of Declaration.

NOW, THEREFORE, in consideration of premises, and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree that the Declaration is hereby amended as follows:

1. Article V, Section 2, entitled "Member Classes and Voting Rights" is hereby amended to read in its entirety as follows:

"Section 2. Member Classes and Voting Rights: The Windward Pointe Homeowners' Association shall have two (2) classes of voting Members:

Class A - Class A Members shall be all those Owners with the exception of the Declarant. Class A Members shall be entitled to one (1) vote for each Dwelling Unit or Site in which they hold the required ownership interest. When more than one person or entity holds such interest in any Dwelling Unit or Site all such persons shall be Members. The vote for such Dwelling Unit or Site shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Dwelling Unit or Site and no fractional vote may be cast with respect to any Dwelling Unit or Site.

Class B - The Class B Member shall be the Declarant. The Class B Member shall be entitled to three (3) votes for each Dwelling Unit or Site in which it holds the required ownership interest, provided that the Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs first:

(a) The total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; provided that the Class B membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B membership to Class A membership, as provided hereunder, additional lands are

annexed to the properties without the assent of the members on account of the development of such additional lands by the Declarant, all within the times and as provided in Article VIII, Section 2; or

(b) January 1, 2008."

2. Article VI, Section 3(a), entitled "Annual Assessment" is hereby amended to read in its entirety as follows:

"Section 3. Annual Assessment: To and including December 31, 1993, the Annual Assessment shall not be in excess of Two Hundred Forty and No/100 Dollars (\$240.00) per Dwelling Unit or Site, except as otherwise provided herein, the exact amount of which shall be determined from time to time by the Board of Directors in accordance with the following provisions:

(a) From and after December 31, 1993, the basic annual assessment may be increased by the Board of Directors of the Windward Pointe Homeowner's Association effective January 1 of each year, without the vote of the Members, by ten percent (10%) above the assessment for the previous year.

(b) Notwithstanding the preceding subparagraph, after December 31, 1993, the basic annual assessment may be increased by the assent of two-thirds (2/3) of the votes of each class of the Members who are voting in person or by proxy at a meeting called for such purpose. For this purpose, the Class B Member shall be entitled only to one vote for each Dwelling Unit or Site as to which it owns the required ownership interest. Written notice of the meeting shall be given to all members not less than thirty (30) days in advance of the meeting."

3. Article VI, Section 7, entitled "Date of Commencement of Annual Assessments - Due Dates" is hereby amended to read in its entirety as follows:

"Section 7. Date of Commencement of Annual Assessments-Due Dates: The Annual Assessments provided for herein shall commence as to all Dwelling Units on the first day of the month following the date a certificate of occupancy is issued, or would have been issued by the Town of Holly Springs upon application therefor. The Board of Directors shall fix the amount of the Annual Assessment against each Dwelling Unit at least thirty (30) days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. If the Board of Directors shall determine that it would be inequitable to require the payment of the full amount of the Annual Assessment (as might be the case if only a few of the recreational amenities are available for the use of the Members at such time), the Board may waive payment of any portion of the assessment. The due dates and appropriate penalties for late payment shall be established by the Board of Directors. Windward Pointe Homeowner's Association, upon demand at any time, shall furnish a certificate in writing setting forth whether the assessments on a specified Dwelling Unit have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be conclusive evidence of payment status."

4. There is hereby added a new Article XI which shall read in its entirety as follows:

"ARTICLE XI - FHA/VA/FNMA APPROVAL

As long as there is a Class B membership, the following actions will require the prior written approval of FNMA, and the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions."

655093PG0243

Except as herein amended and modified, all terms and conditions of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, each of the undersigned has hereunto set his hand and seal or if corporate has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of the Board of Directors, the day and year first above written.



Windward Points Associates
Limited Partnership, a North
Carolina Limited Partnership
By: Tillet Development Company,
Inc., General Partner

By: [Signature]
President

[Signature]
Secretary



Windward Points Homeowners's
Association, Inc.

By: [Signature]
President

[Signature]
Secretary



Tri-State Homes, Inc.

By: [Signature]
President

[Signature]
Secretary



Timberline Builders, Inc.

By: [Signature]
President

[Signature]
Secretary



M&T Homes, Inc.

By: [Signature]
President

[Signature]
Secretary