

WYNDHAM SUBDIVISION

SK 600660516

PREPARED BY & MAIL TO:

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P.O. Box 10867, Raleigh, N.C. 27605

NORTH CAROLINA

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR WYNDHAM

WAKE COUNTY

THIS DECLARATION, made on the date hereinafter set forth by Wyndham Associates, a North Carolina General Partnership, hereinafter referred to as "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the Owner of that certain property in the City of Raleigh, County of Wake, State of North Carolina, which is more particularly described in Exhibit A attached hereto and incorporated herein ("Property").

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

NOW, THEREFORE, Declarant hereby declares that all of the Property together with such additions as may hereafter be made thereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which are for the purpose of protecting the value and desirability of and which shall run with the land and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Wyndham Homeowners Association, Inc., its successors, and assigns.

Section 2. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to that certain real property hereinbefore described and such additions thereto as may hereafter be brought within the

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jurisdiction of the Association.

Section 4. "Common Area" shall mean all real property owned by the Association and the easements granted thereto for the common use and enjoyment of the Owners. The Common Area to be owned by the Association shall be described in deeds to the Association and designated as such on each recorded map of the Property. Common area shall also mean: all water lines, sewer lines located outside public streets and City of Raleigh sewer easements not located on Lots but which are within the Property; and, all stormwater ponds, retention and detention devices.

Section 5. "Lot" shall mean and refer to any plot of land described by a metes and bounds description shown upon any recorded subdivision map of the Property with the exception of the Common Area.

Section 6. "Lot in Use" shall mean and refer to any Lot which has been conveyed by the Declarant to a subsequent purchaser, but in the event the Lot is a vacant lot, the Lot does not become a Lot in Use until such time as the Lot is initially inhabited or twelve months from the date of conveyance, whichever occurs later. In no event shall it mean a Lot owned by the Declarant on which no dwelling unit has been constructed.

Section 7. "Member" shall mean and refer to every person or entity who holds membership in the Association. There shall be two classes of voting membership in the Association.

A. "Class A Members" shall be all those Owners as defined in Article III herein, with the exception of the Declarant. Declarant may, however, be a Class A member upon termination of Class B membership.

B. "Class B Member" shall be the Declarant as defined herein.

Section 8. "Declarant" shall mean and refer to Wyndham Associates, a North Carolina General Partnership, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development or if such successors or assigns should acquire more than one Lot, whether developed or undeveloped, pursuant to foreclosure or a deed in lieu of foreclosure.

Section 9. "Additional Properties" shall mean and refer to any real property annexed or otherwise acquired by

the Association.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment: Every Owner shall have a right and easement of enjoyment in and to the Common Area including specifically an easement for access, ingress and egress from and to public streets and walkways which shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

A. Dedication and Transfer of Common Area: The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, utility, or non-profit corporation for recreational purposes, and subject to such conditions as may be agreed to by the Members, and provided that said dedication or transfer shall be approved by the appropriate municipal authority and shall also be approved as provided in Article VIII, Section 10. No such dedication or transfer shall be effective unless any instrument signed by two-thirds (2/3) of each Class of Members agreeing to such dedication or transfer has been recorded in the Wake County Registry. Any such dedication or transfer shall be made subject to every Owner's easement for access, ingress and egress to public streets and walkways.

B. Borrowing for Improvements: The right of the Association, in accordance with its articles and by-laws, to borrow money for the purpose of improving the Common Area and facilities and in aid thereof to mortgage said properties and the right of such mortgagee of said properties shall be subordinate to the rights of the Owners established hereunder.

Section 2. Delegation of Use: Any Owner may delegate, in accordance with the by-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, contract purchasers, or guests, who reside on the property, subject to the provisions of Article II.

Section 3. Encroachment Easements: Whenever building lines, patio lines, eaves, private walkways or plantings encroach upon the Common Area, the Homeowner's Association hereby grants a perpetual easement for the use of that portion of the Lot which creates an encroachment, to the Owner of the Lot.

Section 4. Title the Common Area: The Declarant hereby covenants for itself, its heirs, successors and assigns, that it will convey fee simple title in the Common Area to the Association, subject to utility, drainage, greenway and other easements of record, prior to the conveyance of the first Lot. Title to Common Areas annexed pursuant to Article IV shall be conveyed subject to these Declarations.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every person or entity who is a record Owner of a fee or undivided fee in any Lot which is subject by covenants of record to assessments, or which is specifically exempted from assessment either by the terms of this declaration or by the terms of appropriate governmental laws, ordinances, or regulation, or will become subject to assessment by the Association, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to, or will become subject to assessment by the Association. Ownership of said Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in this subdivision.

Section 2. The Association shall have two classes of voting membership.

Class A: Class A members shall be all Owners with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. Declarant may, however, be a Class A member upon the termination of Class B membership. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote of such Lots shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot. Fractional voting is prohibited.

Class B: The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon either of the following events, whichever occurs first:

A. When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, additional lands are annexed to the Property without the assent of Class A Members for the development of such additional lands by the Declarant, all as provided in Article IV, Section I, herein; or

B. On June 30, 2004.

C. Upon the surrender of all Class B memberships by the holder thereof.

ARTICLE IV

ANNEXATION OF ADDITIONAL PROPERTIES: DECLARANT'S RESERVED RIGHTS

Section 1. Annexation by Members: Except as provided in Section 2 of this Article, additional lands may be added and annexed to the Property only if two-thirds (2/3) of each class of all the votes entitled to be cast in such class by Members are cast in favor of annexation. A meeting shall be duly called for this purpose, written notice of which shall be sent to all Members not less than ten (10) days in advance of the meeting.

For the purpose of such meeting, the presence thereof of Members or authorizing proxies entitled to cast sixty (60%) percent 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 at which he is entitled to vote either in favor of or against the annexation. 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 the Property in the following manner:

(a) If, on or before June 30, 2004, the Declarant either should develop additional lands within the property described in Exhibit B attached hereto, such additional lands may be annexed to the Property without the assent of the Members; provided that such annexation of such additional lands referred to in this Subsection shall not exceed 54 Lots.

(b) If, on or before June 30, 2004, the Declarant should develop, from time to time, an additional tract or additional tracts of land, other than set forth in Subsection (a) above, consisting of any property contiguous to the property described in Exhibit B attached hereto, such additional lands may be annexed to the Properties without the assent of the Members; provided, however, that such annexation shall be approved by the City of Raleigh, and further provided that the annexation of such additional lands referred to in this Subsection shall not exceed one hundred (100) acres in size or two hundred (200) Lots, whichever is less.

(c) The Declarant may annex to the Property the additional land described in Subsections (a) and (b) by recording with 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 may be deemed annexed to the Property on no other action or consent shall be necessary except of the City of Raleigh.

(d) Subsequent to recordation of the Declaration of Annexation by the Declarant, the Declarant shall deliver to the 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.

(e) The maximum number of Lots and the maximum number of Lots per acre that may be contained on the Property or transferred to portions of the Property without rezoning the Property is 297 Lots and 2 Lots per acre, respectively.

Section 3. Density Transfers. The Property is a

part of a cluster unit development approved by the Raleigh City Counsel in which residential density transfers are permitted. Therefore, even though some Lots may appear to contain sufficient land area to construct additional Dwelling Units, prior approved density transfers with in the cluster unit development may in fact preclude City of Raleigh approval of additional Dwelling Units.

Section 4. Reserved Declarant Rights. As long as Class B membership exists, the Declarant reserves the following development rights: (i) to add real estate to the Property in accordance with Article VIII, Section 2 of this Declaration; (ii) to create Dwelling Units; (iii) to add Common Areas; (iv) to modify or change Dwelling Unit types; (v) to reallocate Dwelling Units or Lots within the property described on Exhibit B attached hereto; and (vi) to withdraw real estate from the property described on Exhibit B attached hereto.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments: The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association.

- (1) Annual assessment or charges; and
- (2) Special assessments for extraordinary maintenance and capital improvements.

Such assessments are to be established and collected as hereinafter provided. All assessments relating to the Common Area shall be shared equally by the Owners of each Lot in Use. Special assessments for capital improvements shall, except as provided herein, be shared equally by the Owners of each Lot without regard as to whether or not said Lot is a Lot in Use. The annual and special assessments, together with such interest thereon and the cost of collection thereof, including reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon such until paid in full. Each such assessment, together with such interest, and costs of collection, including reasonable attorney fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the purpose of promoting the beautification of the Property, the recreation, health, safety and welfare of the residents in the Property, and for the improvement and maintenance of the Common Area. Such shall include, but not be limited to, the payment of taxes, liability insurance and all assessments for the public improvements of the Common Area and easements appurtenant thereto, the enforcement of these covenants and the rules of the Association and, in particular, for the improvement and maintenance of the Property, private drives, services, and facilities devoted to this purpose and related to the use and enjoyment of the Common Area. The Association shall be required to maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Area out of the assessments levied.

Section 3. Maximum Annual Assessments:

A. Until January 1 of the year immediately following the conveyance of the first Lot to the Owner, the maximum annual assessment shall be \$120.00 per year per Lot in Use.

B. Thereafter, annual assessments shall be established by the Association through its Board of Directors pursuant to Section 6 of this Article, but each annual increase shall not be more than twenty (20%) percent except by approval by two-thirds (2/3) of the votes of each Class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

C. As long as Declarant or its successors or assigns, has a majority of the total vote of the Class A and Class B votes, as calculated pursuant to Article III, Declarant, its successors or assigns, will advance all expenses for the maintenance and operation of the Common Area to the extent that annual assessments paid by the Owners are inadequate for this purpose. Such advance shall be to the Association and on terms generally available to Declarant from its lending institution. At such time as the majority of the total votes of Class A and Class B votes are no longer possessed by Declarant, its successors or assigns, it shall have no further obligation for maintenance and operation of the Common Area pursuant to the terms of this section. Declarant, its successors and assigns, shall be responsible for the payment of homeowner dues and charges pursuant to other sections of this Article.

Section 4. Special Assessments for Capital Improvements: In addition to the annual assessments

authorized above, the Association may levy in any assessment year a special assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any unexpected repair, or replacement of a described capital improvement upon the Common Area; including the private drives located on the Property (which the Association shall maintain). Any such assessment shall have the assent of two-thirds (2/3) of the votes of each Class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Uniform Rate of Assessment: Both annual and special assessments related to the Common Area must be fixed at a uniform rate for all Lots and/or Lots in Use (as appropriate) and may be collected on a monthly or yearly basis. Provided, however, that the Association shall also have the authority, through the Board of Directors, to establish, fix and levy a special assessment on any Lot to secure the liability of the Owner thereof to the Association arising from Owner's breach of any of the provisions of this Declaration.

Section 6. Date of Commencement of Annual Assessment Due Dates: The annual assessments provided for herein shall commence as to all Lots in Use on the first day of the month following the conveyance of the Common Area to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot in Use 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 at least fifteen (15) days in advance of each annual assessment period. The due date shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot 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 of any assessment therein stated to have been paid as to third parties acting in reliance on said statement.

Section 7. Effect of Non-Payment of Assessment Remedies of the Association: Any assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof shall become delinquent as defined herein. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum and the Association

may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. Interest, costs, and reasonable attorney fees of any such action shall be added to the amount of such assessment. Each such Owner, by this acceptance of a deed to a Lot hereby expressly vests in the Association, its agents or assigns, the right and power to bring all actions against such Owner personally liable for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property and such Owner hereby expressly grants to the Association a power of sale in connection with foreclosure of said lien. The lien provided for in this action shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid in an interest foreclosed at foreclosure and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 8. Subordination of the Lien to Mortgage:
The lien of the assessments provided for herein shall be subordinated to the lien of the first mortgage on the Lots. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to the foreclosure of any mortgage or of deed of trust or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer; provided that the Association and Declarant have been notified of said foreclosure prior to the date thereof. Such unpaid assessments extinguished by the foreclosure sale shall be deemed to be common assessments collected from all Owners, including the purchaser at foreclosure, his successors and assigns. No sale or transfer shall relieve any such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

Section 9. Exempt Property: The following property, subject to this Declaration, shall be exempt from the assessment created herein:

A. All properties dedicated to and accepted by a local public authority.

B. The Common Area.

C. All property owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina. However, no land or

improvements devoted to dwelling use shall be exempt from said assessments except as otherwise provided herein.

Section 10. Insurance Assessments. The Board of Directors or its duly authorized agent shall obtain a broad-form public liability policy covering all Common Area and all damage or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be a common expense. All such insurance coverage shall be written in the name of the Association as Trustee for each of the Owners in equal proportions. The minimum amount of liability insurance shall be five hundred thousand dollars.

ARTICLE VI

EASEMENTS

Section 1. There is hereby created a blanket easement upon, across, over, and under all of the Common Area for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, telephones, and electricity. By virtue of this easement, it shall be expressly permissible for the providing electrical, telephone, gas or cablevision company to erect and maintain the necessary underground equipment and other necessary equipment on said Common Area. An easement is further granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar persons to enter upon the streets and Common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company elected by the Association to enter in or to cross over the Common Area provided for herein. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated in the Common Area except as initially planned and approved by the Declarant or thereafter approved by the Declarant or the Association's Board of Directors. Should any utility furnishing a service covered by the general easement herein provide request a specific easement by separate recordable documents, Declarant (the Association after the termination of Class B membership or in the event the easement crosses property owned by the Association) will have the right and authority to grant such easement on said property without conflicting with the terms hereof. The easement provided for in this Article shall in no way affect other recorded easements on said premises.

Section 2. Underground Electrical Services:

A. Underground, single-phase electrical service shall be available to all Lots.

B. Easements for the underground service may be crossed by the driveways and walkways, provided the Declarant or builder makes prior arrangements with the utility company furnishing such service. Such easements for the underground service shall be kept clear of all other improvements including buildings, patios and/or pavings, other than crossing walkways or driveways, and neither Declarant nor any such utility company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants to shrubbery, trees, flowers, and other improvements of the Owner located on land covered by said easements.

C. The developer reserves the right to subject the real property in this subdivision to a contract with Carolina Power & Light Company for the installation of underground electric cables which may require an initial contribution and/or the installation of street lighting, which will require a continuing monthly payment to Carolina Power & Light Company by the Owner of each building.

Section 3. An easement is hereby established for the benefit of the City of Raleigh over all Common Area and over an area five feet behind the curb line of any street or roadway in the Property hereby or hereafter established for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage

Section 4. Notwithstanding any other provisions of these Declarations, the Association, Owners, Members, tenants of members, members' guests or invitees, or families of members shall not, within any portion of the Common Area which is greenway area dedicated to the City of Raleigh, without prior written consent of the City of Raleigh;

- (a) Grant easements of any nature whatsoever;
- (b) Remove any trees or vegetation;
- (c) Erect gates, fences or other structures;
- (d) Place any garbage receptacles;
- (e) Fill or excavate;
- (f) Plant vegetation or otherwise restrict or interfere with the use, maintenance and preservation of said

greenway in its natural state, including without limitation, recreational pursuits such as walking, bicycling and other similar activities by the general public.

It is understood and agreed that within any greenway area, the City of Raleigh may erect trails, trail markers, place litter receptacles, and other convenience facilities and adopt and amend regulations concerning the use of the greenway (including without limitation hours of operation), which shall be equally applicable to the general public and the Owners. The Association and Lot Owners may adopt such other regulations governing the use of the greenway, not inconsistent with those adopted by the City and may enter into such agreements with the City of Raleigh as is deemed appropriate to insure the maintenance and upkeep of the greenway in its natural state, free of litter and unsightly debris.

ARTICLE VII

ARCHITECTURAL CONTROL AND USE RESTRICTIONS

Section 1. The Property is hereby made subject to the protective covenants and restrictions hereby declared for the purpose of insuring the best use and most appropriate development and improvement of each building site in this subdivision; to protect the Owners against such improper use of surrounding building sites as will depreciate the value of the Property; to preserve, so far as practicable, the natural beauty of said Property; to guard against the erection thereof of poorly designed or proportioned structures, and structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said Property; to encourage and secure the erection of attractive homes hereon, with appropriate locations thereof on building sites; to secure and maintain proper set backs from streets and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvements in said Property and thereby to enhance the values of investments made by the purchasers of building sites therein.

Section 2. Each Lot, as approved by the appropriate municipal authority, shall constitute a residential building site (hereinafter called "Building Site") and shall be used for residential purposes only. The lay of the Lots as shown on the recorded plat shall be substantially adhered to; provided, however, that with the prior written approval of the Declarant, its successors and assigns, or the Association's Board of Directors (or the Architectural Committee appointed by it) and the appropriate municipal authority the size and

shape of any Building Site may be altered; provided that no Building Site or group of Building Sites may be resubdivided so as to produce a greater number of Building Sites than that allowed by the applicable zoning or subdivision laws in force at the time of said change. More than one Lot may be used as one Building Site provided the location of any structure permitted thereon is approved in writing by the Architectural Committee or the Declarant, its successors or assigns, and said Lot is recombined as provided in N.C. General Statute 160A-376(1). Except as provided in this paragraph, no structure shall be erected, altered, placed, or permitted to remain on any Building Site other than one detached single family dwelling, not to exceed three stories in height.

No residential structure shall be located on any lot nearer than 40 feet to the front lot line, or nearer than 20 feet to any side street line. No residential structure shall be located nearer than 10 feet to an interior lot line, or nearer than 30 feet to the rear lot line. For the purposes of this covenant, eaves, steps, carports and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building, on a lot to encroach upon another lot. The Declarant and/or the Architectural Committee may approve by written waiver a violation of these requirements, but in no event shall a residential structure be located on any lot nearer to the front, side or rear lot lines or nearer to the side street line than the minimum building setback lines shown on the recorded plat, or as allowed by the City of Raleigh.

Section 3. No residential structure, which has a minimum area of less than 1,800 square feet of heated area for a one story residence and 2,000 square feet for a one and one-half or two story residence exclusive of porches, basement and garage, shall be erected or placed on any Building Site.

Section 4. No building, wall, fence, or other structure shall be commenced, erected, or maintained upon the Property, nor shall any repair be made thereto, nor shall any building, wall, fence or other structure be rebuilt after destruction by any hazard until the plans and specifications, showing the nature, kind, space, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Declarant or the Board of Directors of the Association or its Architectural Committee. In the event said Board or its designated committee or Declarant fails to approve or disapprove such design and location within thirty (30) days after completed design plans and specifications have been submitted to it, approval will not be required and this

Article will be deemed to have been fully complied with.

Section 5. Said Property is hereby restricted solely to residential dwellings for residential use. All buildings and structures erected upon said Lots shall be of new construction and no building or structures, other than detached single-family homes shall be constructed. No structures of a temporary character, manufactured home, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of said Property at any time as a residence, either temporarily or permanently.

Section 6. Each Lot shall be conveyed as a separately designated and legally described freehold estate, subject to the terms, conditions and provisions hereof.

Section 7. Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for Declarant to maintain during the period of construction and sale of said Lots, upon such portion of the premises as Declarant deems necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the construction and sale of said Lots, including but without limitation, a business office, storage area, construction yards, signs, model units and sales office.

Section 8. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on said Lots, except that dogs, cats, or other household pets may be kept provided they are not kept, bred or maintained for any commercial purpose.

Section 9. No "For Sale" signs, (except as otherwise specifically authorized by the Association) advertising signs or rent signs, bill boards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Property, and in no event in the Common Area, nor shall said Property be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Associates or detached single-family dwelling or the resident thereof. No business activities of any kind whatsoever shall be conducted in any building or in any portion of said property, however, the foregoing covenants shall not apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of Declarant, its agent and assigns, during the construction and sales period.

Section 10. All clothes line, equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view. All garbage, trash, or rubbish shall be regularly

removed from the premises and shall not be allowed to accumulate therein.

Section 11. No fences, hedges, or walls shall be erected or maintained upon said Property except such as are installed in accordance with initial construction of the buildings located thereon by Declarant or thereafter by the Association, except as approved by the Architectural Committee. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all the Owners and the Association, and is necessary for the protection of the Owners.

Section 12. Without the prior written approval and the authorization of the Board of Directors or Architectural Committee, no exterior television or radio antennas, satellite dishes or solar panels or other utility devices, of any sort shall be placed, allowed or permitted upon any portion of the exterior of the improvements to be located upon the Property.

Section 13. No action shall at any time be taken by the Association, its Board of Directors, or the Architectural Committee, which in any manner would discriminate against any Owner in favor of any of the other Owners.

Section 14. No boats, recreation vehicles, or trailers of any Owner or member of his family, his tenants, guest or contract purchasers shall be parked within the Common Area, or within the right-of-way of any street in or adjacent to the Property. All boats, recreation vehicles, or trailers shall be stored either within the Owner's garage or other facilities not located on the Property, or screened from public view from the street and must be located no closer to the street than the front foundation of the house, the exact location to be approved by the Board of Directors or Architectural Committee.

Section 15. No obnoxious or offensive activity shall be carried on upon the Property or improvements thereon, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 16. In addition to those restrictions contained in Article VII, the Board of Directors or the Architectural Committee of the Association shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the use and enjoyment of the front yard space of each Lot and of the Common Area.

ARTICLE VIII

GENERAL PROVISIONS

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

Section 2. Severability: Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

Section 3. Amendment: These Declarations cannot be amended or revoked without the written consent of City of Raleigh City Attorney's Office. The covenants, conditions and restrictions of the Declarations shall run with the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time, said covenants shall automatically be extended for successive periods of ten (10) years. Except as specifically otherwise provided herein, the covenants, conditions and restrictions of this Declaration may be amended as provided in Article VIII during the first twenty (20) years by an instrument signed by not less than the Owners of seventy-five percent (75%) of the Lots and thereafter by an instrument signed by not less than the Owners of seventy-five percent (75%) of the Lots.

Section 4. Disputes: In the event of any dispute arising concerning a party wall or other provisions of this Declaration, such dispute shall be settled by legal proceedings or the parties may, by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of said committee.

Section 5. Voting: Voting by Members of the Association shall be in accordance with the applicable provisions set forth in the Association's By-Laws.

Section 6. If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

A. Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots (for this purpose, the Board may rely on its roster of Members, and shall not be required to cause the title to any Lot to be examined).

B. Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that these were executed. The following form of certification is suggested:

"CERTIFICATION OF VALIDITY OF AMENDMENT TO COVENANTS, CONDITIONS AND RESTRICTIONS OF WYNDHAM HOMEOWNERS ASSOCIATION, INC.

By authority of its Board of Directors, Wyndham Homeowners Association, Inc. hereby certifies that the foregoing instrument has been duly executed by the Owners of _____ percent of the Lots of Wyndham and is therefore a valid amendment to existing covenants, conditions and restrictions of Wyndham.

WYNDHAM HOMEOWNERS ASSOCIATION, INC.

BY: _____

President

ATTEST:

R. W. Mullins
Secretary"

C. Immediately and within the thirty (30) day period, aforesaid, cause the amendment to be recorded in the Wake County Registry.

All amendments shall be effective from the date of recordation in the Wake County Registry; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Board of Directors, recorded and indexed as provided in this section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all persons thereafter purchasing any Lot in Wyndham. All amendments shall be approved as set forth in Article VIII, Section 10, as required.

Section 7. All amendments to this Declaration and/or revocation of this Declaration must be approved by the City of

Raleigh, City Attorney's Office, if so required. In the event said amendment has not been approved or disapproved within thirty (30) days after being submitted to the City of Raleigh, approval will not be required and it shall be deemed that this provision has been fully complied with.

Section 8. In no case shall the City of Raleigh be responsible for failing to provide any emergency or regular fire, police or other public service to the Property or their occupants when such failure is due to the lack of access to such areas due to inadequate design or construction, blocking of access routes, or any other factor within the control of the Declarant, Association, Owners or occupants.

Section 9. Each Member agrees to keep Association informed of his address at any time and any notice sent or delivered to said address shall be sufficient. Each new Member agrees to provide the Association with evidence of his Ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as to the Ownership of each Lot.

Section 10. VA/HUD Approval: As long as there is a Class B membership, the following actions will require prior approval of the Veterans Administration referred to herein as VA and/or the Department of Housing and Urban Affairs referred to herein as HUD: Annexation of Additional Properties, dedication or withdrawal of land from dedication of Common Area, or an Amendment of this Declaration of Covenants, Conditions and Restrictions.

Section 11. Special conditions Lots 1, 20, 21 and 91. Lots 1, 20, 21 and 97 of the Property shall not have or gain access to or from Six Forks Road.

Section 12. Gender and Grammer: The singular, wherever used herein shall be construed to mean the plural when applicable and the necessary grammatical changes required to make provisions hereby apply to either corporations or individuals, man or wife, shall in all cases be assumed as though in each case fully expressed.

ARTICLE IX

UNDERGROUND UTILITIES AND STREET LIGHTING

Declarant reserves the right to subject the Property to a contract with Public Service Company of North Carolina, Inc. and/or Carolina Power & Light Company for the installation of underground utility service and the installation of street lighting, either or both of which may require a continuous

monthly charge to the Owner of each Lot. Declarant reserves the right to contract on behalf of each Lot with Carolina Power & Light Company, or its successors and assigns, for street lighting service. Upon acceptance of a deed to a Lot, each Owner agrees to pay the continuing monthly payment therefor as approved by the North Carolina Utilities Commission, or other appropriate governmental authorities.

ARTICLE X

OWNER RESPONSIBILITY

Anything contained herein to the contrary notwithstanding, an Owner shall be responsible for any and all violations of these Declarations by his Employees, tenants, guests and invitees.

IN WITNESS WHEREOF, the undersigned, being the general partners of Declarant herein, have executed this instrument this 10 day of November, 1989.

WYNDHAM ASSOCIATES, a North
Carolina General Partnership
BY: Bock Construction Company,
Inc., a General Partner

ATTEST:

R. J. Mullins
Secretary

By:

Paul F. Bock
President

(CORPORATE SEAL)

ATTEST:

Debra H. Tillman
Secretary

By:

R. W. Mullins
President

(CORPORATE SEAL)

NORTH CAROLINA
WAKE COUNTY

I, Debra H. Tillman, a Notary Public of the County of Wake, State of North Carolina, do hereby certify that Paul F. Bock, personally appeared before me this day and acknowledged that he is President of Bock Construction Company, Inc., General Partner of Wyndham Associates, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name as General Partner by its President, sealed with its corporate seal and attested

by its Secretary.

Witness my hand and official seal this the 10th day of
November, 1989.

Debra H. Tillman
Notary Public

My Commission expires: 2-21-90

NORTH CAROLINA
WAKE COUNTY

I, Debra H. Tillman, a Notary Public of the
County of Wake, State of North Carolina, do hereby certify
that R. W. Mullins, Jr., personally appeared before me this
day and acknowledged that he is President of DSM, Inc.,
General Partner of Wyndham Associates, and that by authority
duly given and as the act of the corporation, the foregoing
instrument was signed in its name as General Partner by its
President, sealed with its corporate seal and attested by its
Secretary.

Witness my hand and official seal this the 10th day of
November, 1989.

Debra H. Tillman
Notary Public

Commission expires: 2-21-90

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NORTH CAROLINA — WAKE COUNTY

The foregoing certificate

5 of Debra H. Tillman

Notar(y)(ies) 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 C. WILKINS, Register of Deeds

By P. Anne Redd
Asst./Deputy Register of Deeds

EXHIBIT A TO DECLARATION
WYNDHAM

Being all of Lots 1 through and including 14, Lots 36 through and including 51, Lots 55 and 56, 59 and 60, Lots 89 through and including 97; being all of those areas as shown as open space containing 5.48 acres; and, being all of the area within the private drives and streets known as Grosvenor Drive, Kirkhill Drive, Tibury Court, Fulham Place, and Crawley Place, all as shown on map entitled "Subdivision Plat - Phase One, Wyndham Subdivision" by Priest, Craven & Associates, Inc. recorded in Book of Maps 1989, Page 1265, Wake County Registry. The total acreage in Phase I is 40.64 acres.

EXHIBIT B TO DECLARATION
WYNDHAM

Being all of those areas shown as Reserved for Future Development on a map entitled "Subdivision Plat - Phase One, Wyndham Subdivision by Priest, Craven & Associates and recorded in Book of Maps 1989, Page 1265, Wake County Registry. The total acreage shown as Reserved for Future Development is 54.52 acres.