

Prepared By: JENNINGS & GILCHRIST  
HOLD FOR: ROBERT A. BRADY

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BOOK 3935 PAGE 863

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR PRESTON

RECORDED  
IN  
RECORD BOOK 3935

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RECORDED IN BOOKS  
REGISTERED BOOKS  
WAKE COUNTY NC

STATE OF NORTH CAROLINA §  
§  
COUNTY OF WAKE §

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PRESTON, is made this 4th day of February, 1987, by PRESTONWOOD, INC., a North Carolina corporation ("Declarant");

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property located in Wake County, North Carolina, as more particularly described on Exhibit "A" attached hereto and made a hereof for all purposes (the "Property") which is being developed as a planned unit development which has been approved by the appropriate governmental authorities of the City of Cary, North Carolina, and now known as "Preston"; and

WHEREAS, in accordance with the above-described planned unit development, Declarant contemplates developing the Project, as hereinafter defined, in phases as a residential (both single family and multi-family) and commercial (retail and office) mixed use development; and

WHEREAS, Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in the Project and for the maintenance of the Property and improvements thereon, and to this end desires to subject the Property together with such additions as may hereafter be made thereto (as provided hereinafter) to the covenants, restrictions, easements, charges and liens hereinafter set forth and/or described; and

WHEREAS, although Declarant contemplates that separate easements, covenants, conditions and restrictions (which may include easements, covenants, conditions and restrictions similar to those herein contained) may be imposed in regard to the various phases or sections of the Project and that a separate owners association may be established for each of the various phases of the Project, Declarant desires to impose pursuant hereto easements, covenants, conditions and restrictions upon all of the Property, with the understanding that at the option of Declarant changed, additional and/or supplemental restrictions may be imposed in regard to the various phases or sections of the Project.

NOW, THEREFORE, Declarant hereby subjects the Property to the easements, covenants, conditions and restrictions hereinafter stated and hereby declares that (subject to the right of Declarant as hereinafter described to amend or supersede this Declaration in whole or in part by Supplemental Declarations, as hereinafter defined) all of the Property and the Project shall be held, sold and conveyed subject to the easements, covenants, conditions and restrictions as hereinafter stated, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project. Subject to the above-described rights of Declarant, the easements, covenants, conditions and restrictions herein contained shall run with the Property and all parts thereof and shall be binding on all parties having or acquiring any right, title or interest in the

Property or any part thereof or interest therein and shall inure to the benefit of each owner of the Property or any part thereof or interest therein.

## ARTICLE I

### DEFINITIONS

Section 1. The following words when used in this Declaration or any Supplemental Declaration, as hereinafter defined, or amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the following meanings:

(a) "Association" shall mean and refer to any one of the owners' associations which are to be formed in regard to the ownership of property within the various phases or sections developed in the Project.

(b) "Board" shall mean and refer to the Board of Directors of an Association.

(c) "Bylaws" shall mean and refer to the Bylaws of an Association as they may now or hereafter exist.

(d) "Common Area" shall mean and refer singularly or collectively, as applicable, to all land, improvements and other properties heretofore or hereafter owned by or in the possession of an Association or Declarant and being specifically designated by Declarant by plat, Supplemental Declaration, deed or other written instrument as Common Area for a phase(s) or section(s) of the Property, such land, improvements and other properties being subject to this Declaration and/or any applicable Supplemental Declaration, and being subject to control and maintenance assessments by the Association formed in regard to the portion or section of the Project to which such Common Area relates or Declarant (until such Common Area is conveyed to such Association).

(e) "Declarant" shall mean and refer to Prestonwood, Inc., its successors and assigns (in whole or in part) as Declarant.

(f) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Preston as it may be amended and supplemented (by Supplemental Declarations) from time to time as herein provided.

(g) "Landscaped Rights-of-Way" shall mean the medians and other areas within street rights-of-way within the Project that are to be landscaped and improved with sprinkler systems and maintained in accordance with the provisions hereinafter contained.

(h) "Lot" shall mean and refer to any numbered or lettered plot of land shown on any plat recorded in the office of the Register of Deeds, Wake County, North Carolina which is a part of the Property and which is thereby subject to this Declaration.

(i) "Member" shall mean and refer to each Owner of a Lot who shall be a member of the Association formed in regard to the phase or section of the Project in which such Owner's Lot is located as provided in Article III hereof.

(j) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

(k) "Person" shall mean and refer to any individual, corporation, partnership, association, trust or other legal entity.

(l) "Property" shall mean the Property and any and all other property hereafter made subject to this Declaration as provided hereinbelow.

(m) "Project" shall mean and refer to the mixed-use development now known as Preston into which the Property is being developed. Declarant has retained, and hereby retains, the right to change the name of the Project from "Preston" to another name selected by Declarant by filing an amendment hereto in the records of Wake County, North Carolina.

## ARTICLE II

### PROPERTY

Section 1. Property Made Subject To Declaration. The Property is hereby made subject to this Declaration and (subject to the right of Declarant to, as hereinafter described, amend and/or supersede in whole or in part, this Declaration by Supplemental Declarations) the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2. Annexation of Additional Property. If Declarant is the owner from time to time of any property ("Additional Property") which it desires to add to the scheme of this Declaration, it may do so by filing of record a Supplemental Declaration (herein so called) which shall extend the scheme of this Declaration to such Additional Property; provided, however, that such Supplemental Declaration, as applied to the Additional Property covered thereby, may include such specific additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens as may be set forth in such Supplemental Declaration; and if a person or entity other than Declarant desires to add property to the scheme of this Declaration, such property may only be so added if the Declarant gives written consent thereto and if such consent is given, such property shall be considered "Additional Property".

Section 3. Contents of Supplemental Declaration. Each Supplemental Declaration shall set forth the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens to which the Additional Property covered thereby shall be subject. Such controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens may contain additions, deletions and modifications from those contained in this Declaration, as the parties subjecting such Additional Property to the scheme of this Declaration may desire; provided if such party is other than Declarant, as a condition to such party's right to so impose such additions, deletions or modifications, such party must obtain the prior written consent thereto of Declarant. In no event, shall such Supplemental Declaration revoke, modify or add to the controls, covenants, conditions, restrictions, easements, development

guidelines, charges and liens established by this Declaration or a previously filed Supplemental Declaration as it applies or they apply to the Property or to previously added Additional Property except as provided below in this Section or in Section 5 of this Article. In addition, Declarant shall have the right, to be exercised in its sole and absolute discretion, to impose or file Supplemental Declarations (which may or may not add Additional Property) in regard to particular phases(s) or sections(s) of the Project as Declarant completes the development of such phase(s) or section(s) or if Declarant desires to sell and convey such phase(s) or section(s) and such Supplemental Declaration may, in regard to the phase(s) or section(s) of the Project to which it relates, amend, add to, delete from, and/or supersede in whole or in part, the provision of this Declaration in regard to such phase(s) or section(s) of the Project to which such Supplemental Declaration relates. No party other than Declarant must join in any such Supplemental Declaration to make it effective.

Section 4. Merger or Consolidation. Upon a merger or consolidation of an Association with another Association which is a non-profit corporation composed of owners of Additional Property or other portions of the Project, the properties, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated Association or, alternatively, the properties, rights and obligations of another Association may, by operation of law, be added to the property, rights and obligations of such Association as the surviving corporation pursuant to a merger. The surviving or consolidated Association shall be considered an Association and shall administer the terms and provisions of this Declaration (to the extent they relate to the phase(s) or section(s) of the Project over which such Association has jurisdiction) and any applicable Supplemental Declarations, if any, affecting the portions of the Project in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the terms and provisions of this Declaration or any Supplemental Declaration pertaining to the Property or any portion thereof except as specifically provided in this Declaration.

Section 5. Supplemental Declaration Affecting Property. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that Declarant may, so long as it owns the Property, create and impose Supplemental Declarations (which may or may not add Additional Property) in regard to all or any part of the Property and thereby supplement, modify and/or amend, in whole or in part, the terms and provisions hereof.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Each and every Owner of a Lot shall automatically become and be a Member of the Association which has jurisdiction over the phase or section of the Project in which such Owner's Lot is located.

Section 2. Classes of Members; Voting, Quorum and Notice Requirements. The designation of classes of Members of an Association and provisions regarding voting, quorum and notice requirements and other applicable terms relating to membership in an Association shall be included in Supplemental Declarations and/or in the Articles of Incorporation and/or Bylaws of each particular Association.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON AREA

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Member who resides on a Lot, and each individual who resides with such Member on such Lot shall have a right and easement of use and enjoyment in and to the Common Area attributable to the phase or section of the Project in which such Common Area is located and in regard to any other Common Area which Declarant may designate as being usable by all (or any designated portion) of the Owners and such easement(s) shall be appurtenant to and shall pass with the title to such Member's Lot; PROVIDED, HOWEVER, such easement(s) shall not give such person the right to make alterations, additions or improvements to any part of the Common Area.

Section 2. Title to the Common Area. Declarant shall dedicate and convey (by deed without warranty) the fee simple title to the Common Area to the Associations (each such Association to have deeded to it the Common Area located within the phase or section of the Project over which such Association has jurisdiction), free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements, other encumbrances and mineral interests outstanding and of record in Wake County, North Carolina, on or (at Declarant's sole option) prior to December 31, 1999. Common Area may be conveyed by Declarant to the various Associations in whole or in part from time to time.

Section 3. Extent of Members' Easement. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of an Association to prescribe regulations governing the use, operation and maintenance of the Common Area within the jurisdiction of such Association (including limiting the number of guests of Members who may use the Common Area) subject to limitations established by Declarant on such right to impose regulations;

(b) Subject to the affirmative vote of two-thirds (2/3) of the votes of each class of membership of an Association entitled to be cast by the Members of such Association present or represented by proxy at a meeting of such Association at which a quorum is present and which is duly called and held for the following purpose, the right of an Association, in accordance with its Articles of Incorporation, to borrow money for the purpose of improving the Common Area within the jurisdiction of such Association and facilities and/or the Landscaped Rights-of-Way within the jurisdiction of such Association and in aid thereof to mortgage such Common Area within the jurisdiction of such Association, provided the rights of such mortgagee in the Common Area shall be subordinate to the rights of the Owners hereunder or under any applicable Supplemental Declaration in regard to such Common Area;

(c) The right of an Association to take such steps as are reasonably necessary to protect the Common Area within the jurisdiction of such Association against foreclosure;

(d) The right of the Association to charge reasonable admission and other fees for the use of recreational facilities on the Common Area within the jurisdiction of such Association, if any; and

(e) Subject to the affirmative vote of two-thirds (2/3) of the votes of each class of membership of an Association entitled to be cast by the Members of such Association present or represented by proxy at a meeting of such Association at which a quorum is present and which is duly called and held for the following purpose, the right of an Association to dedicate or transfer all or any part of the Common Area within the jurisdiction of such Association to any public agency, authority, or utility for such purposes and upon such conditions as the Board of such Association may determine.

Section 4. Maintenance and Improvement of Common Area and Landscaped Rights-of-Way. At all times during the term hereof, each Association shall have the obligation to, and will, maintain and/or improve the Common Area within the jurisdiction of such Association and allow it to be used in a manner consistent with comparable Common Area in other portions of the Project, as required by Declarant. In addition, each Association shall at all times during the term hereof improve, landscape, install sprinkler system(s) in and maintain all Landscaped Rights-of-Way in roads within the portion of the Project within the jurisdiction of such Association in a manner consistent with other Landscaped Rights-of-Way in other portions of the Project, as required by Declarant.

#### ARTICLE V

##### ASSESSMENTS

Section 1. Creation of the Lien and Obligation for Assessments. By Supplemental Declaration, Declarant will establish and create the obligation in each Owner to pay to the Association of which such Owner is a Member, regular annual assessments, special assessments and special individual assessments. Such Supplemental Declarations will also create liens on each such Owner's Lot (or other portions of the Property owned by such Owner) as security for the payment by such Owner of his assessment obligations. Such Supplemental Declaration shall also establish a procedure for the setting of assessments, and a schedule for the payment thereof, rights and remedies available as a result of an Owner's default in the payment thereof and such other terms and provisions relating thereto as Declarant may require.

Section 2. Purpose of Assessments. The assessments levied by an Association shall be used for the purposes of enforcing and carrying out the terms and provisions hereof and of any Supplemental Declaration applicable to the portion of the Project over which such Association has jurisdiction and promoting the enjoyment and welfare of the Owners of Lots within the jurisdiction of such Association, and in particular, but without limitation, for the (i) development and maintenance of the Common Area and Landscaped Rights-of-Way within the jurisdiction of such Association; (ii) payment of premiums for hazard insurance in connection with the Common Area and Landscaped Rights-of-Way within the jurisdiction of such Association, and any improvements or facilities thereon and public liability and other insurance of such Association; (iii) paying the costs of labor, equipment (including the expense of leasing any equipment) and material required for, and management and supervision of, the Common Area and Landscaped Rights-of-Way within the jurisdiction of such Association; (iv) carrying out the duties of the Board of such Association; and (v) carrying out the purposes of such Association as stated in its Articles of Incorporation and as stated herein or in any applicable Supplemental Declaration.

ARTICLE VI

GENERAL POWERS AND DUTIES OF THE BOARD  
OF AN ASSOCIATION

Section 1. Powers and Duties of the Board of an Association. The Board of an Association, for the mutual benefit of the Owners of such Association, shall have the following powers and duties:

- a. To improve, maintain or cause to be maintained the Common Area and the Landscaped Rights-of-Way within the jurisdiction of such Association, including, but not limited to, planting, mowing, pruning, fertilizing, preservation and replacement of the landscaping and the upkeep and maintenance of sidewalks and other improvements in such Common Area and Landscaped Rights-of-Way within the jurisdiction of such Association, and the upkeep and maintenance of sprinklers, sprinkler mains and laterals, sprinkler heads, equipment, water pumps, wells, signs, lighting and planting boxes located in such Common Area and Landscaped Rights-of-Way within the jurisdiction of such Association;
- b. To enter into agreements with the appropriate governmental authorities to enable such Association to improve and maintain the Common Area and Landscaped Rights-of-Way within the jurisdiction of such Association or portions of either thereof;
- c. To make reasonable rules and regulations for the use and operation of the Common Area within the jurisdiction of such Association, and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by the Owners of a three-fourths (3/4) majority of the total eligible votes of the membership of the Association; provided further, however, that if such amendment is proposed prior to December 31, 1999, such amendment must also be approved by Declarant before it may become effective;
- d. To enter into agreements or contracts with insurance companies with respect to insurance coverage relating to the Common Area and/or Landscaped Rights-of-Way within the jurisdiction of such Association and/or such Association;
- e. To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Area and/or Landscaped Rights-of-Way within the jurisdiction of such Association and/or such Association;
- f. To borrow funds to pay costs of operation of such Association, which borrowings may be secured by assignment or pledge of rights against Owners who are in default in regard to the payment of assessments due to such Association or by liens on other Association assets, if the Board of such Association sees fit;
- g. To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of such Association;

- h. To sue or defend in any court of law in behalf of such Association and to provide adequate reserves for repairs and replacements;
- i. To make available to each Member of such Association within sixty (60) days after the end of each year an annual report and, upon the written request of the Members of such Association holding at least three-fourth (3/4ths) of the eligible votes of such Association at such time, to have such report audited (at the expense of such Association) by an independent certified public accountant, which audited report shall be made available to each Member of such Association within thirty (30) days after completion;
- j. Pursuant to Article VII hereof, to adjust the amount, collect, and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members of such Association in proportionate amounts to cover the deficiency;
- k. To exercise for such Association all powers, duties and authority vested in or delegated by this Declaration, the Bylaws of such Association, or the Articles of Incorporation of such Association to the Association and not reserved to the Members of such Association or Declarant by other provisions of this Declaration, any applicable Supplemental Declaration, the Bylaws of such Association or the Articles of Incorporation of such Association;
- l. To declare the office of a member of the Board of such Association to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of such Board;
- m. To employ a manager or firm to manage the affairs and property of such Association, to employ independent contractors, or such other employees as the Board of such Association may deem necessary, and to prescribe their duties and to set their compensation;
- n. To retain the services of legal and accounting firms;
- o. To enforce the provisions of this Declaration applicable to the portion of the Project over which such Association has jurisdiction, and any applicable Supplemental Declaration and any rules made hereunder or under any such applicable Supplemental Declaration and to enjoin and/or, in its discretion, seek damages or other relief from any Member of such Association for violation of such provisions or rules;
- p. To contract with any third party or any Owner (including, without limitation, Declarant) for performance, on behalf of such Association, of services which the Association is otherwise required to perform pursuant to the terms hereof or pursuant to any applicable Supplemental Declaration, such contracts to be at competitive rates and otherwise upon such terms and conditions and for such consideration as the Board of such Association may deem proper, advisable and in the best interest of such Association;

- q. To take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations hereunder or under any applicable Supplemental Declaration, for the operational protection of such Association or for the enforcement of the controls, covenants, conditions, restrictions and development standards contained herein applicable to the portion of the Project over which such Association has jurisdiction, and any applicable Supplemental Declaration; and
- r. To set assessments, whether annual or special, as provided by any applicable Supplemental Declaration.

Section 2. Liability Limitations. Neither Declarant, nor any Member nor any Board nor any directors on any Board (or any one of them) nor the officers (if any) of Declarant or of any Association shall be personally liable for debts contracted for or otherwise incurred by an Association or for a tort of another Member, whether or not such other Member was acting on behalf of an Association or otherwise. Neither Declarant, any Association, nor the directors, officers, agents or employees of either thereof shall be liable for any actual, incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, each Association or any other person, firm or association liable to make such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. Each Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board of such Association and all members of the Architectural Control Committee, as hereinafter defined, established in regard to the portion of the Project over which such Association has jurisdiction from and against any and all loss, cost, expense, damage, liability, action or cause of action arising from or relating to the performance by the Board of such Association and/or such Architectural Control Committee of their duties and obligations except for any such loss, cost, expense, damage, liability, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

Section 3. Reserve Funds. The Board of an Association may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and not net income to such Association. The aggregate deposits in such reserve funds shall not exceed an amount as may be reasonably determined by the Board of such Association to be necessary.

Section 4. Owner's Obligations to Repair. Except for those portions, if any, of each Lot which an Association is required to maintain or repair hereunder or under any applicable Supplemental Declaration, each Owner shall, at his sole cost and expense, maintain and repair his Lot and the improvements situated thereon, keeping the same in good condition and repair and in compliance with the covenants, conditions and restrictions and development standards herein contained (to the extent not superseded or amended by any applicable Supplemental Declaration) and any thereof contained in each applicable Supplemental Declaration. In the event that any Owner shall fail to maintain and repair his Lot and/or such improvements as required hereunder or under any such applicable Supplemental Declaration, the

Association of which such Owner is a Member, in addition to all other remedies available to it hereunder or under any such applicable Supplemental Declaration or at law or in equity, and without waiving any of such alternative remedies, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and the exterior of the buildings and any other improvements (including, without limitation, all Improvements) erected thereon; and each Owner (by acceptance of a deed for his Lot) hereby covenants and agrees to repay to the Association of which such Owner is a Member the cost thereof immediately upon demand, and the failure of any such Owner to pay the same shall carry with it the same consequences as the failure to pay any assessment established pursuant to any applicable Supplemental Declaration when due. The Association of which the Owner is a Member, at the cost of the Owner of the affected Lot, shall, if the Owner of such affected Lot fails to promptly (and in any event, within sixty [60] days following the date of the casualty) do so following the date of occurrence of the hereinafter described damage, cause any and all improvements situated upon a Lot which are damaged or destroyed by fire or other casualty to be repaired and/or removed so as not to present an unsightly appearance and/or unsafe condition.

#### ARTICLE VII

##### INSURANCE; REPAIR AND RESTORATION

Section 1. Right to Purchase Insurance. Each Association shall have the right and obligation to purchase, carry and maintain in force insurance covering all portions of the Common Area situated within the phase or section of the Property over which such Association has jurisdiction and any improvements thereon or appurtenant thereto and any other property of such Association, for the interest of such Association, its Board, its agents and employees, Declarant and its officers and employees, and of all Members of such Association, in such amounts and with such endorsements and coverage as the Board of such Association shall consider to be good, sound insurance coverage for similar properties. Such insurance may include, but need not be limited to:

- a. Comprehensive public liability and property damage insurance on a broad form basis, including coverage of personal liability (if any) of the Declarant (and its officers, agents, employees and servants), such Association (and its officers, agents, employees and servants), the Board of such Association (and the individual members thereof) and the Members of such Association with respect to the Common Area and/or Landscaped Rights-of-Way situated within the phase or section of the Property over which such Association has jurisdiction;
- b. Fidelity bond for all officers and employees of such Association having control over the receipt or disbursement of such Association's funds; and
- c. Worker's compensation insurance to the extent necessary to comply with applicable laws.

Section 2. Insurance Proceeds. Subject to any limitations imposed by any applicable financing documents, each Association shall use the net proceeds of casualty insurance recovered by it to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of casualty insurance paid to an Association, as required in this Article, remaining after satisfactory completion

of repair and replacement, shall be retained by such Association as part of the general reserve fund for repair and replacement of the Common Area and/or Landscaped Rights-of-Way situated within the phase or section of the Property over which such Association has jurisdiction.

Section 3. Insufficient Proceeds. If the insurance proceeds received by an Association are insufficient to repair or replace any loss or damage, the Board of an Association may levy a special assessment against the Members of such Association to cover the deficiency.

#### ARTICLE VIII

##### USE OF LOTS AND COMMON AREA - PROTECTIVE COVENANTS

By Supplemental Declarations, Declarant will impose and file in regard to the various phases and sections of the Project protective covenants, conditions, restrictions and development guidelines relating to, without limitation, types of permissible uses, types of improvements, general development and improvement standards and other matters.

#### ARTICLE IX

##### ARCHITECTURAL CONTROL

Section 1. General. By Supplemental Declaration, Declarant will establish architectural control standards and restrictions in regard to the various phases or sections of the Project, which will include, without limitation the establishment of an Architectural Control Committee (herein so called) for each phase or section of the Project, which Architectural Control Committee will have review and approval or disapproval rights in regard to the development of the phase or section of the Project over which such Architectural Control Committee has jurisdiction and in regard to Improvements constructed within such phase or section of the Project.

Section 2. Definition of "Improvement." As used herein, the term "Improvement" shall mean and include all buildings, storage sheds or areas, roofed structures, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, driveways, ponds, lakes, changes in grade or slope, site preparation, clothesline installation, swimming pools, tennis courts, signs, exterior illumination, changes in any exterior color or shape and any new exterior construction or exterior improvement exceeding \$1,000.00 in cost which may not be included in any of the foregoing. The definition of Improvements does not include garden shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances. The definition of Improvements does include both original Improvements and all later changes to Improvements.

#### ARTICLE X

##### EASEMENTS

Section 1. Easements Reserved by Declarant. Easements for installation, maintenance, repair and removal of utilities and drainage facilities are reserved by Declarant for itself, its successors and assigns, over, under and across the Lots (other than the portions thereof used as building site). Full right of ingress and egress shall be had by Declarant at all times over the Lots (other than the portions thereof used as building sites)

for the installation, operation, maintenance, repair or removal of any utility together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder to one or more public utility companies. No new easements shall be established hereafter without consent of the Owner of the Lot which is subjected to such an easement. It is understood and agreed that Declarant has the right to impose other easements on Lots which it owns.

Section 2. Easement Reserved for the Association. Full rights of ingress and egress shall be had by the Association having jurisdiction over the hereinafter described Lots at all times over and upon each Lot situated within the phase or section of the Project over which such Association has jurisdiction for the maintenance and repair of each Lot in accordance with the provisions hereof (to the extent applicable thereto) and of any Supplemental Declaration applicable thereto and for the carrying out by such Association of its rights, functions, duties and obligations hereunder (to the extent applicable) and under each applicable Supplemental Declaration; provided, that any such entry by an Association upon any such Lot shall be made with as minimum inconvenience to the Owner of such Lot as reasonably practical, and any damage caused as a result of the gross negligence of such Association's employees or agents shall be repaired by such Association at the expense of such Association.

# ARTICLE XI

## MAINTENANCE

Section 1. Duty of Maintenance. The Owner of each Lot in the Property shall have the duty and responsibility, at such Owner's sole cost and expense, to keep that part of the Property owned by such Owner, including Improvements thereon, ground and drainage easements or other rights-of-way incident thereto, in accordance with the terms and provisions of this Declaration (to the extent applicable) and of any applicable Supplemental Declaration and in a well-maintained, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

- (1) Prompt removal of all litter, trash, refuse and waste;
- (2) Lawn mowing on a regular basis;
- (3) Tree and shrub pruning;
- (4) Watering by means of a lawn sprinkler system and hand watering as needed;
- (5) Keeping exterior lighting and mechanical facilities in working order;
- (6) Keeping lawn and garden areas alive;
- (7) Removing and replacing any dead plant material;
- (8) Keeping vacant land well maintained and free of trash and weeds;
- (9) Keeping parking areas and driveways in good repair;

- (10) Complying with all governmental health and police requirements;
- (11) Repainting of Improvements; and
- (12) Repair of exterior damage to Improvements.

Section 2. Enforcement. If any Owner or occupant has failed in any of the duties or responsibilities of such Owner as set forth in this Declaration (to the extent applicable) or in any applicable Supplemental Declaration, then the Board of the Association of which such defaulting Owner is a Member or Declarant may give such person written notice of such failure and such person must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner. Should any such person fail to fulfill this duty and responsibility within such period, then the Association of which such Owner is a Member, acting through its authorized agent or agents, or the Declarant, acting through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such care and maintenance without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owner of a Lot on which such work is performed shall be liable for the cost of such work together with interest on the amounts expended by such Association or the Declarant in performing such work computed at the highest lawful rate from the date(s) such amounts are expended until repaid to such Association or the Declarant, as the case may be, and for all costs and expenses incurred in seeking the compliance of such Owner with his duties and responsibilities hereunder and shall reimburse such Association or the Declarant, as the case may be, on demand for such costs and expense (including interest as above provided). If such Owner shall fail to reimburse such Association or the Declarant, as the case may be, within thirty (30) days after mailing to such Owner of a statement for such costs and expense by such Association or the Declarant, then, without limitation of any other rights of such Association or Declarant, such Association may issue a special assessment against such Owner.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

Section 1. Duration. This Declaration and the controls, covenants, restrictions and standards set forth herein shall run with and bind the Property and shall inure to the benefit of every Owner of a Lot in the Property, including Declarant, and their respective heirs, successors, and assigns, for a term beginning on the date this Declaration is recorded and continuing through and including December 31, 2050. At such time, the easements, covenants, conditions and restrictions herein may be extended for period(s) of ten (10) additional years each by majority vote of the Owners of the Lots, and the right of the Owners to extend such covenants and restrictions shall exist as long as such a desire is expressed by a majority vote of said Owners. Owners may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall have been given to all Owners at least thirty (30) days in advance of the date of such vote, which notice shall set forth the purpose of such meeting. The foregoing shall not limit the right of

Declarant to amend and/or supersede, in whole or in part, the terms and provisions hereof by Supplemental Declarations, as such right in favor of Declarant is described above.

Section 2. Amendment. Subject to the limitations hereinafter contained, this Declaration or any Supplemental Declaration may be amended or modified at any time by a vote of seventy-five percent (75%) of the Owners of Lots. Notwithstanding anything contained hereinabove, it is understood and agreed that the consent of Declarant in writing to any amendment or modification hereof or of any Supplemental Declaration must first be obtained if such amendment or modification is to be effected prior to December 31, 1999. In addition, Declarant may make minor amendments or modifications hereof which do not involve a change which materially affects the rights, duties or obligations specified herein provided it first obtains the approval (by vote at a called meeting of Owners) of fifty-one percent (51%) of the Owners of Lots. Any amendment or modification effected pursuant to this Section 2 shall become effective when an instrument is filed for record in the Deed Records of Wake County, North Carolina, with the signatures of the requisite number of Owners (and the signature of Declarant, if such amendment or modification is to be effected prior to December 31, 1999). The foregoing shall not limit the right of Declarant to amend and/or supersede, in whole or in part, the terms and provisions hereof by Supplemental Declarations, as such right in favor of Declarant is described above. In addition to the foregoing rights, Declarant may (at Declarant's option) amend and modify this Declaration and any Supplemental Declaration without obtaining the consent or approval of any other person or entity if such amendment or modification is necessary to cause this Declaration or any such Supplemental Declaration to comply with the requirements of FHA, VA, Fannie Mae or other similar agency.

Section 3. OBLIGATION TO IMPROVE PROPERTY AND WAIVER THEREOF. IF ANY OWNER (OR ITS SUCCESSORS OR ASSIGNS) OF A LOT DOES NOT, WITHIN TWO (2) YEARS AFTER CONVEYANCE OF TITLE TO SUCH LOT FROM DECLARANT BEGIN THE CONSTRUCTION OF A PERMANENT RESIDENCE (OR SUCH OTHER PRINCIPAL IMPROVEMENT TO BE CONSTRUCTED ON SUCH LOT) ON SUCH LOT AND WHICH IS APPROVED BY THE ARCHITECTURAL CONTROL COMMITTEE HAVING JURISDICTION OVER SUCH LOT, DECLARANT SHALL HAVE AN OPTION (BUT NOT AN OBLIGATION) TO REPURCHASE SUCH LOT FOR A CASH PURCHASE PRICE EQUAL TO THE PURCHASE PRICE PAID TO DECLARANT FOR SUCH LOT. THIS OPTION TO REPURCHASE MUST BE EXERCISED IN WRITING WITHIN SIX (6) MONTHS AFTER THE EXPIRATION OF THE ABOVE-REFERENCED TWO (2) YEAR PERIOD. CLOSING OF THE REPURCHASE SHALL TAKE PLACE WITHIN NINETY (90) DAYS AFTER THE EXERCISE OF THE OPTION TO REPURCHASE AND SHALL BE HELD AT THE OFFICE OF DECLARANT. THE SUBJECT LOT SHALL BE RECONVEYED TO DECLARANT BY GENERAL WARRANTY DEED SUBJECT ONLY TO THE EXCEPTIONS TO TITLE INCLUDED IN THE DEED FROM DECLARANT TO THE PURCHASER OF SUCH LOT FROM DECLARANT AND SUCH OTHER EXCEPTIONS, IF ANY, AS DECLARANT MAY SPECIFICALLY APPROVE IN WRITING AT THE CLOSING OF SUCH SALE.

Section 4. Enforcement. Enforcement of the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens for which provision is made in this Declaration shall be by any proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charge or lien either to restrain violation or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by an Association, Declarant or any Owner to enforce any such control, covenant,

condition, restriction, easement, development guideline, charges or lien shall in no event be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof.

Section 5. Severability of Provisions. If any paragraph, section, sentence, clause or phrase of this Declaration shall be or become illegal, null or void for any reason or shall be held by any court of competent jurisdiction to be illegal, null or void, the remaining paragraphs, sections, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby. It is hereby declared that said remaining paragraphs, sections, sentences, clauses and phrases would have been and are imposed irrespective of the fact that any one or more other paragraphs, sections, sentences, clauses or phrases shall become or be illegal, null or void.

Section 6. Notice. Whenever written notice to an Owner (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner appearing on the records of the Association. If notice is given in such manner, such notice shall be conclusively deemed to have been given by placing same in the United States mail properly addressed, with postage prepaid, whether received by the addressee or not.

Section 7. Titles. The titles, headings and captions which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

Section 8. No Exemption. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby by non-use of such Owner's Lot(s) or the Common Area.

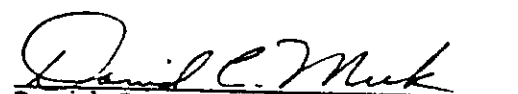
IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this Declaration to be executed on the day and year first above written.

PRESTONWOOD, INC.

ATTEST:

  
\_\_\_\_\_  
Secretary

By:

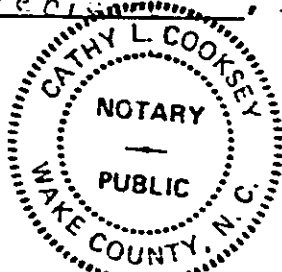
  
\_\_\_\_\_  
David C. Meek,  
Vice President



THE STATE OF TEXAS §  
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, on this day personally appeared DAVID C. MEEK, Vice President of PRESTONWOOD, INC., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 21<sup>st</sup> day of February, 1987.



Cathy L. Cooksey  
Notary Public in and for  
the State of Texas N.C.  
Cathy L. Cooksey  
Printed Name of Notary

My commission expires:  
11/19/89

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate of Cathy L. Cooksey

Notary 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 Kenneth C. Wilkins  
Asst. / Deputy Register of Deeds

RECORDS OF POOR QUALITY DUE TO CONDITION  
OF ORIGINAL DOCUMENT

BEGINNING at an iron pipe located on the North side of N.C.S.R. 1615, begin the N.E. corner of the Town of Cary Park property and being the S.E. corner of the property hereon described, having N.C. Grid coordinates of North 740,725.23 and East 2,053,324.48, thence N87°53'29"W—208.61' to a point, thence N70°22'55"W—337.54 to a point, thence S26°32'30"W—111.56 to a point, thence N87°53'20"W—2479.46 to a point, thence N18°12'52"W—390.54 to a point, thence N10°46'17"W—378.21 to a point, thence N10°43'38"W—192.15 to a point, thence N26°25'44"W—198.18 to a point, thence N45°30'53"E—57.65 to a point, thence N19°30'49"W—52.46 to a point, thence N28°01'36"W—133.16 to a point, thence N12°26'51"W—469.06 to a point, thence N77°42'39"W—154.40 to a point, thence N78°38'40"W—99.96 to a point, thence N80°17'27"W—99.98 to a point, thence N82°18'43"W—100.08 to a point, thence N84°14'17"W—187.54 to a point, thence N82°19'52"W—49.97 to a point, thence N77°21'08"W—50.03 to a point, thence N72°18'28"W—49.94 to a point, thence N66°45'12"W—50.04 to a point, thence N61°50'15"W—49.99 to a point, thence N59°16'06"W—49.99 to a point, thence N57°32'44"W—99.99 to a point, thence N57°14'07"W—150.66 to a point, thence N01°36'42"E—42.64 to a point, thence N00°37'04"W—150.36 to a point, thence N01°19'21"E—829.23 to a point, thence N04°04'31"W—76.72 to a point, thence S56°57'24"W—215.41 to a point, thence S56°57'24"W—202.89 to a point, thence S64°27'01"W—464.44 to a point, thence S69°35'21"W—67.71 to a point, thence S69°30'09"W—217.19 to a point, thence N88°22'27"W—50.09 to a point, thence S86°47'29"W—50.15 to a point, thence S83°00'10"W—50.04 to a point, thence S78°24'56"W—173.67 to a point, thence N01°09'01"E—1685.75 to a point, thence N86°22'44"W—2572.82 to a point, thence N05°52'30"W—60.52 to a point, thence N03°42'56"W—55.84 to a point, thence N01°43'08"W—96.52 to a point, thence N01°15'35"W—121.14 to a point, thence S87°02'22"E—592.69 to a point, thence N03°37'33"W—622.84 to a point, thence S85°35'11"E—394.87 to a point, thence N23°19'53"W—567.36 to a point, thence S89°22'33"E—1841.51 to a point, thence N00°05'02"E—402.90 to a point, thence N89°45'56"W—1721.63 to a point, thence N00°35'04"W—164.85 to a point, thence N89°58'51"W—821.23 to a point, thence N00°22'14"E—110.70 to a point, thence N00°46'21"W—100.06 to a point, thence N01°55'03"W—100.09 to a point, thence N02°51'59"W—100.15 to a point, thence N03°11'00"W—100.12 to a point, thence N03°50'40"W—100.01 to a point, thence N05°40'48"W—33.46 to a point, thence S89°18'59"W—320.42 to a point, thence N00°43'23"E—414.13 to a point, thence S89°22'32"E—346.50 to a point, thence N00°05'12"E—566.50 to a point, thence N42°35'12"E—302.50 to a point, thence N02°07'44"E—523.27 to a point, thence S87°55'58"E—2317.92 to a point, thence S88°13'53"E—1234.92 to a point, thence N03°08'17"E—460.14 to a point, thence S80°08'20"E—2654.12 to a point, thence S22°44'59"W—1012.97 to a point, thence S05°15'43"E—687.57 to a point, thence S06°51'09"E—445.41 to a point, thence S18°21'55"W—167.38 to a point, thence S22°30'27"W—232.36 to a point, thence S21°46'36"W—873.41 to a point, thence S54°43'06"W—217.76 to a point, thence S75°16'46"E—264.81 to a point, thence S01°01'46"W—920.29 to a point, thence S88°34'09"E—2838.55 to a point, thence S00°49'03"W—1171.98 to a point, thence S02°31'26"W—457.95 to a point, thence S01°20'28"W—385.52 to a point, thence S01°20'28"W—342.72 to a point, thence S00°32'08"E—687.37 to a point, thence S00°59'39"W—1252.88 to a point, thence and place of beginning, and containing 1009.49 acres.