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**DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR PRESTON TRACE-PHASE II**

KENNETH C. WILKINS
REGISTER OF DEEDS
WAKE COUNTY

STATE OF NORTH CAROLINA §
 §
COUNTY OF WAKE §

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PRESTON TRACE-PHASE II, is made this 22nd day of June, 1989, 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"); and

WHEREAS, the Property is part of a planned unit development 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, 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 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 of the Project.

NOW, THEREFORE, Declarant hereby subjects the Property to the easements, covenants, conditions and restrictions hereinafter stated and hereby declares that all of the Property 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. 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) shall have the following meanings:

(a) "Association" shall mean and refer to the Preston Trace-Phase II Homeowners Association, Inc., a North Carolina non-profit corporation which will be incorporated.

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

(c) "Bylaws" shall mean and refer to the Bylaws of the 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 the Association or Declarant and being specifically designated by Declarant pursuant to plat, Supplemental Declaration, deed or other written instrument as Common Area for the Property, such land, improvements and other properties being subject to this Declaration, and being subject to control and maintenance assessments by the Association or Declarant (until such Common Area is conveyed to the Association).

(e) "Common Expenses" shall mean and refer to (i) all sums lawfully assessed by the Association against its Members, (ii) expenses of administration, maintenance, repair or replacement of Common Area and/or Landscaped Rights-of-Way, (iii) expenses declared to be or described as common expenses by the provisions of this Declaration, (iv) premiums for hazard, liability or other insurance as may be obtained by the Association and (v) expenses agreed by the Members of the Association to be common expenses of such Association.

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

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

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

(i) "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.

(j) "Member" shall mean and refer to each Owner of a Lot who shall be a member of the Association as provided in Article III hereof.

(k) "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.

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

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

(n) "Project" shall mean and refer to the mixed-use development now known as Preston of which the Property is a part. 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 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 and the Association, acting through its Board, give written consent thereto and if such consents are 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 and the Association, acting through its Board. 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 in Section 5 of this Article.

Section 4. Merger or Consolidation. Upon a merger or consolidation of the Association with another association which is a non-profit corporation composed of owners of Additional Property, 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 the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association shall be considered the Association and shall administer the terms and provisions of this Declaration and any applicable Supplemental Declarations, if any, affecting the portions of the Property 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 in regard to all or any part of the Property and thereby supplement, modify and/or amend 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.

Section 2. Classes of Voting Members. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Members with the exception of Declarant (except as provided below in regard to the conversion of Declarant's Class B Membership to Class A Membership). Class A Members shall be entitled to one (1) vote for each Lot owned by such Class A Member at the time notice is given of the vote or of a meeting at which the particular vote is to be cast. When two (2) or more persons or entities hold undivided interests in any Lot, all such persons or entities shall be Class A Members, and the vote for such Lot shall be exercised as they, among themselves, determine, but in no event with respect to each Lot in which such Members own undivided interests shall more than one (1) vote be cast for such Lot.

Class B. The Class B Member shall be Declarant. The Class B Member shall be entitled to five (5) votes for each Lot owned by the Class B Member at the time notice is given of the particular vote or of a meeting at which the particular vote is to be cast.

Notwithstanding anything contained herein to the contrary, the Class B membership shall cease and be converted to Class A membership on December 31, 1999.

Section 3. Voting, Quorum and Notice Requirements. Except as may be otherwise specifically set forth in this Declaration or in the Articles of Incorporation of the Association or in the Bylaws, the vote of the majority of the aggregate votes entitled to be cast by all classes of the Members present, or represented by legitimate proxy, at a legally constituted meeting at which a quorum is present, shall be the act of the Members meeting. The number of votes present at a meeting that will constitute a quorum shall be as set forth in the Bylaws, as amended from time

to time. Notice requirements for all action to be taken by the Members of the Association shall be as set forth herein or in its Bylaws, as the same may be amended from time to time.

A person's or entity's membership in the Association shall terminate automatically whenever such person or entity ceases to be an Owner, but such termination shall not release or relieve any such person or entity from any liability or obligation incurred under or in any way connected with the Association or this Declaration during the period of such ownership, or impair any rights or remedies which the Association or any other Owner has with regard to such former Owner.

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 and such easement shall be appurtenant to and shall pass with the title to every Lot; PROVIDED, HOWEVER, such easement 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 Association, 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.

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

(a) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Area (including limiting the number of guests of Members who may use the Common Area);

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

(c) The right of the Association to take such steps as are reasonably necessary to protect the Common Area 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, if any; and

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

Section 4. Maintenance and Improvement of Common Area and Landscaped Rights-of-Way. At all times during the term hereof, the Association shall have the obligation to, and will, maintain and/or improve the Common Area and allow it to be used in a manner consistent with comparable common areas in other portions of the Project, as required by Declarant. In addition, the 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 Property in a manner consistent with other Landscaped Rights-of-Way in other portions of the Project, as required by Declarant.

ARTICLE V

COVENANTS FOR ASSESSMENTS

Section 1. Creation of the Lien and Obligation for Assessments. Declarant, for each Lot owned by it, hereby covenants and agrees, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree (and such covenant shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot), to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies): (i) regular annual assessments or charges; (ii) special assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to time as hereinafter provided; and (iii) special individual assessments levied against an individual Owner to reimburse the Association for extra costs for maintenance and/or repairs caused by the failure of such Owner to maintain its individual Lot and Improvements, as hereinafter defined. Such assessments are to be fixed, established and collected from time to time as hereinafter provided. The regular, special and special individual assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made and shall also be the continuing obligation of the then-existing Owner of such Lot at the time when the assessment became due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used for the purposes of enforcing and carrying out the terms and provisions hereof and of any Supplemental Declaration and promoting the enjoyment and welfare of the Owners of Lots, and in particular, but without limitation, for the (i) development and maintenance of the Common Area and the Landscaped Rights-of-Way; (ii) payment of premiums for hazard insurance in connection with the Common Area and the Landscaped Rights-of-Way, and any improvements or facilities thereon and public liability and other insurance of the 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;

(iv) carrying out the duties of the Board; and (v) carrying out the purposes of the Association as stated in its Articles of Incorporation and as stated herein.

Section 3. Basis and Amount of Annual Assessment. On or before December 31 of each year during the term hereof, the Board shall set the amount of the annual assessment for the ensuing year for each Lot, taking into consideration, among other things, the then current development and/or maintenance costs, estimated increases in development and/or maintenance costs, and the future needs of the Association. The amount of the annual assessment for each Lot as set by the Board shall be determined by multiplying the amount of costs and expenses to be incurred by the Association for the year in question, as such amount is reasonably estimated by the Board (and which estimated amount may include a reasonable contingency fund), times a fraction, the numerator of which is the assessed value of the Lot (and all Improvements, as hereinafter defined, thereon) in question (as such assessed value for such Lot and Improvements is determined by the appropriate governmental authorities for ad valorem tax purposes for the preceding year) and the denominator of which is the assessed value of all Lots and all Improvements thereon (as such assessed value for all Lots and all Improvements thereon is determined by the appropriate governmental authorities for ad valorem taxes purposes for the preceding year). If more than one assessed value is applicable to any Lot and all Improvements thereon at any one time, the Board shall determine which such assessed value is to be used in making the determinations described above.

Section 4. Special Assessment. In addition to the annual assessment authorized by Section 3 hereof, the Board may levy in any assessment year or years a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of an Association owned improvement including the necessary fixtures and personal property related thereto, or for carrying out other purposes and/or duties and obligations of the Association as stated in its Articles of Incorporation or as stated herein. Special Assessments shall be assessed pursuant to this Section 4 against the Owners on a pro rata basis in accordance with the assessed value of Lots as described in Section 3 above.

Section 5. Commencement Date of Annual Assessment. The first annual assessment provided for herein shall commence with the year 1990 and annual assessments shall continue thereafter from year to year.

Section 6. Due Date of Assessments. Annual assessments shall be due and payable on a quarterly basis on the fifteenth (15th) day of January, April, July, and October of each year. The first quarterly installment of the annual assessments shall become due and payable on January 15, 1990. The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 7. Duties of the Board with Respect to Assessments. In the event of the establishment or revision in the amount or rate of the regular annual assessment, or establishment of a special assessment, the Board shall fix the amount of the assessment against each Lot and, in regard to special assessments, the applicable due date(s) for the payment of such special assessment (which due date for a special assessment except for a special assessment levied against a defaulting Owner as provided in this Declaration, shall be at least thirty (30) days after the date notice of such special assessment is given to the Owners) and shall prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and

shall be open to inspection by any Owner. Written notice of the assessment shall be delivered or mailed to every Owner subject thereto.

The Board shall, after receipt of a written request accompanied by payment of a reasonable fee as established by the Board, furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid; provided, however, that no Owner shall be entitled to receive more than one (1) certificate for each payment. Such certificate shall be conclusive evidence of the payment for any assessment therein stated to have been paid.

Section 8. Owner's Personal Obligation for Payment of Assessments. The annual and special assessments provided for herein shall be the personal and individual debt of the Owner (as of the due date of the applicable assessment payment) of the Lot to which such assessments relate. No Owner may exempt himself from liability for such assessments by non-use of such Owner's Lot(s) or the Common Area or otherwise. In the event of default in the payment of any such assessment, the defaulting Owner shall be obligated to pay interest at the lesser of eighteen percent (18%) per annum or the highest lawful rate per annum on the amount of the assessment from the due date thereof until the date such assessment and interest is paid, together with all costs and expenses of collection, including reasonable attorney's fees.

Section 9. Assessment Lien and Foreclosure. All sums assessed in the manner provided in this Article but unpaid, shall, together with interest as provided in Section 8 hereof and the cost of collection, including reasonable attorney's fees, become a continuing lien and charge on the Lot owned by the defaulting Owner as of the assessment due date and improvements thereon covered by such assessment, which shall bind such Lot and improvements then in the hands of the Owner, and the defaulting Owner's heirs, devisees, personal representatives, successors, and assigns. Except as hereinafter provided, the aforesaid lien shall be superior to all other liens and charges against such Lot and improvements thereon. The Board shall have the power to subordinate the aforesaid assessment lien to any other lien, and such power shall be entirely discretionary with the Board. To evidence the aforesaid assessment lien, the Board may prepare a written notice of assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot and improvements thereon covered by such lien and a description of the Lot. Such notice shall be signed by one of the officers of the Association and shall be recorded in the Office of the Register of Deeds of Wake County, North Carolina. Such lien for payment of assessments shall attach with the priority above set forth from the date that such payment becomes delinquent and may be enforced by the foreclosure of the defaulting Owner's Lot and improvements thereon by the Association in like manner as a deed of trust with power of sale on real property subsequent to the recording of a notice of assessment lien as provided above, or the Association may institute suit against the Owner personally obligated to pay the assessments and/or for foreclosure of the aforesaid lien judicially or may seek any other available remedy or relief. In any foreclosure proceeding, whether judicial or non-judicial, the Owner shall be required to pay the costs, expenses, and reasonable attorney's fees incurred. The Association shall have the power to bid on the Owner's Lot and improvements at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate and inferior to the lien of any mortgage or deed of trust in favor of any bank, savings and loan association, insurance company or similar financial institution for the financing of construction of Improvements upon said Lot or refinancing of Improvements now or hereafter placed upon any Lot; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the sale (whether public or private) of such Lot pursuant to the terms and conditions of any such mortgage or deed of trust. Such sale shall not relieve any such new Owner thereof from liability for the amount of any assessments thereafter becoming due nor from the lien of any such subsequent assessment. Notwithstanding anything contained in this Declaration to the contrary, Declarant shall have the right to unilaterally amend or modify this Section 10 by causing an amendment document to be recorded in the real property records of Wake County, North Carolina.

Section 11. Common Area Exempt. The Common Area and all portions of the Property owned by or otherwise dedicated to any political subdivision shall be exempt from the assessments and lien created herein.

Section 12. Omission of Assessments. The omission of the Board, before the expiration of any year, to fix the assessments hereunder for that or the next year, shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments, or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

ARTICLE VI

GENERAL POWERS AND DUTIES OF THE BOARD OF THE ASSOCIATION

Section 1. Powers and Duties of the Board. The Board, for the mutual benefit of the Owners of the 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, 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 the Common Area and the Landscaped Rights-of-Way, and the upkeep and maintenance of sprinklers, sprinkler mains and laterals, sprinkler heads, equipment, water pumps, wells, signs, lighting and planting boxes located in the Common Area and the Landscaped Rights-of-Way;
- b. To enter into agreements with the appropriate governmental authorities to enable the Association to improve and maintain the Common Area and the Landscaped Rights-of-Way or portions of either thereof;
- c. To make reasonable rules and regulations for the use and operation of the Common Area, 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, the Landscaped Rights-of-Way and/or the 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, the Landscaped Rights-of-Way and/or the Association;
- f. To borrow funds to pay costs of operation of the Association, which borrowings may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Association assets, if the Board 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 the Association;
- h. To sue or defend in any court of law in behalf of the Association and to provide adequate reserves for repairs and replacements;
- i. To make available to each Owner within sixty (60) days after the end of each year an annual report and, upon the written request of the Members holding at least three-fourth (3/4ths) of the eligible votes of the Association at such time, to have such report audited (at the expense of the Association) by an independent certified public accountant, which audited report shall be made available to each Member 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 Owners in proportionate amounts to cover the deficiency;
- k. To exercise for the Association all powers, duties and authority vested in or delegated by this Declaration, the Bylaws, or the Articles of Incorporation of the Association to the Association and not reserved to the Members or Declarant by other provisions of this Declaration, the Bylaws or the Articles of Incorporation of the Association;
- l. To declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board;
- m. To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors, or such other employees as the Board 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 and any rules made hereunder and to enjoin and/or, in its discretion, seek damages or other relief from any Owner 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 the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be at competitive rates and otherwise upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the 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, for the operational protection of the Association or for the enforcement of the controls, covenants, conditions, restrictions and development standards contained herein; and
- r. To set the assessments, whether annual or special, described in this Declaration.

Section 2. Liability Limitations. Neither Declarant nor any Member nor the Board nor any director on the Board (or any one of them) nor any officer (if any) of Declarant or the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, the Association, its directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the 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. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board and all members of the Architectural Control Committee 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 and 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 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 the Association. The aggregate deposits in such reserve funds shall not exceed an amount as may be reasonably determined by the Board to be necessary.

Section 4. Board Powers. With respect to the performance of the obligations of the Association hereunder, the Board shall have the right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

Section 5. Owner's Obligations to Repair. Except for those portions, if any, of each Lot which the Association is required to maintain or repair hereunder, 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. In the event that any Owner shall fail to maintain and repair his Lot and/or such improvements as required hereunder, the Association, in addition to all other remedies available to it hereunder 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 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 hereunder when due. The Association, 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. The Association shall have the right and obligation to purchase, carry and maintain in force insurance covering all portions of the Common Area and any improvements thereon or appurtenant thereto and any other property of the Association, for the interest of the Association, the Board, its agents and employees, Declarant and its officers and employees, and of all Members of the Association, in such amounts and with such endorsements and coverage as the Board 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), the Association (and its officers, agents, employees and servants), the Board (and the individual members thereof), the Owners and Members with respect to the Common Area and/or Landscaped Rights-of-Way;
- b. Fidelity bond for all officers and employees of the Association having control over the receipt or disbursement of Association funds; and
- c. Worker's compensation insurance to the extent necessary to comply with applicable laws.

Section 2. Insurances Proceeds. Subject to any limitations imposed by any applicable financing documents, the Association shall use the net proceeds of casualty insurance recovered 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 the Association, as

required in this Article, remaining after satisfactory completion of repair and replacement, shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Area and/or Landscaped Rights-of-Way.

Section 3. Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Board may levy a special assessment, as provided for in Articles V and VI of this Declaration, to cover the deficiency.

ARTICLE VIII

USE OF LOTS AND COMMON AREA - PROTECTIVE COVENANTS

The Property (and each Lot situated therein) and the Common Area shall be occupied and/or used as follows:

Section 1. Residential Purposes Only. Each Lot shall be used exclusively for single-family, non-transient residential purposes, and garages, carports, and parking spaces shall be used exclusively for the parking of passenger automobiles therein or thereon. No planes, trailers, boats, campers, abandoned cars or trucks shall be parked or housed in garages, carports, and parking spaces except as otherwise provided in Section 11 of this Article. No trade or business of any kind shall be conducted upon a Lot or any part thereof. No structure shall be erected, placed, altered, used or permitted to remain on any Lot other than one detached single-family private dwelling and one private garage for not more than four (4) automobiles. Each residence constructed upon a Lot shall include an attached garage for at least two (2) automobiles. No Lot and no Improvements may be used for hotel or other transient residential purposes. Each lease relating to any Lot or any Improvements thereon (or any part of either thereof) must be for a term of at least sixty (60) days and must provide that the tenant is obligated to observe and perform all of the terms and provisions hereof applicable to such Lot and/or Improvements.

Section 2. Obstructions, etc. There shall be no obstruction of the Common Area, nor shall anything be kept or stored in the Common Area, nor shall anything be altered, or constructed or planted in, or removed from, the Common Area, without the prior written consent of the Declarant. Declarant shall have the right to install signs in the Common Area.

Section 3. Restricted Actions by Owners. No Owner shall permit anything to be done or kept on his Lot or in the Common Area which will result in the cancellation of or increase of cost of any insurance carried by the Association, or which would be in violation of any law. No waste shall be committed in the Common Area. Each Owner shall comply with all laws, regulations, ordinances (including, without limitation, applicable zoning ordinances) and other governmental rules and restrictions in regard to such Owner's Lot(s).

Section 4. Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five (5) square feet (i) advertising the Lot for sale or rent, (ii) advertising the building contractor constructing improvements on the Lot during the initial construction and sales period, and (iii) identifying the sales office and/or model home of a building contractor who owns the Lot; however, the foregoing shall not act to restrict or prohibit Declarant from erecting and maintaining signs and billboards advertising the Property, the Project or portions of either thereof. Notwithstanding the foregoing, all signs erected and maintained on any Lot must conform with all applicable governmental requirements.

Section 5. Nuisances. Nothing shall (i) be done in any part of the Property, nor shall (ii) any noxious or offensive activity be carried on, nor shall (iii) any outside lighting or loudspeakers or other sound-producing devices be used, which, in the judgment of the Board, may be or become an unreasonable annoyance or nuisance to the other Owners.

Section 6. Attachments. No permanent attachments of any kind or character whatsoever (including, but not limited to, television and radio antennas) shall be made to the roof or exterior walls of any residence on a Lot, unless such attachments shall have been first submitted to and approved by the Architectural Control Committee, as hereinafter defined.

Section 7. Damage to the Common Area. Each Owner shall be liable to the Association and/or the Declarant for any damage to the Common Area and/or Landscaped Rights-of-Way caused by the negligence or willful misconduct of the Owner or his family, tenants, guests, or invitees, to the extent that the damage shall not be covered by insurance.

Section 8. Rules of the Board. All Owners and occupants of any Lot shall abide by all rules and regulations adopted by the Board from time to time. The Board shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association and/or the Declarant for all damages and costs, including attorneys' fees.

Section 9. Animals. No animals, livestock or poultry shall be raised, bred or kept in any portion of the Property except that dogs, cats or other household pets may be kept, but not for any commercial purposes, provided that they do not create a nuisance (in the judgment of the Board) such as, but without limitation, by noise, odor, damage or destruction of property or refuse.

Section 10. Waste. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. Waste of any nature shall not be kept on any part of the Property except on a temporary basis in sanitary containers.

Section 11. Boats. Neither a motorboat, houseboat or other similar water-borne vehicle nor any "camper" vehicle may be maintained, stored or kept on any portion of the Property, except in enclosed garages or in areas specifically designated by the Board.

Section 12. Floor Areas, Stories. The total floor area of the main dwelling house on each Lot, exclusive of porches, terraces, garages and outbuildings, shall contain not less than 2,200 square feet of space, provided, however, in regard to Lots that are adjacent to any portion of the Prestonwood Country Club, such minimum floor area of the main dwelling house on each such Lot shall be 2,500 square feet. The ground floor of each such main dwelling house, exclusive of porches, terraces, garages and outbuildings, shall contain not less than 1,500 square feet of space. Notwithstanding the foregoing, the Architectural Control Committee shall have the right to allow or require variances from such minimum total floor area and ground floor area restrictions of up to twenty-five percent (25%) of either or both such minimum areas by a specific written variance(s). No Improvements, as hereinafter defined, may be constructed or maintained on any Lot which exceed two (2) stories (plus a finished or unfinished basement and attic) in height.

Section 13. Exterior Finish; Roof Materials. The exterior of each building (exclusive of windows) erected on a Lot shall consist of brick, stone or other masonry and/or wood or wood type siding or such other first class materials as the Architectural Control Committee may approve. Attached garages shall be of the same construction and exterior finish as the main dwelling house thereon. Detached accessory buildings shall be of the same construction and material as listed in this Section. All roofs on all improvements (including, without limitation, Improvements) constructed on each Lot shall be of slate, clay tile, cedar shingles, cedar shakes, standing seam cooper or laminated, heavy weight composition shingles, for example, Architect 80 or Timberline or such other materials as may be specifically approved in writing by the Architectural Control Committee. Windows and doors shall be of wood or vinyl clad or aluminum clad wood and glazing shall be clear or gray tinted only. Attached hereto and made a part hereof as Annex I are additional architectural standards that are hereby imposed upon the Lots as part of these covenants, conditions and restrictions.

Section 14. Building Setback Lines. The main building on each Lot (and all required parking for such Lot) shall not be located on any Lot nearer to the Lot boundary line than the building setback line specified as follows or, if a greater setback is required thereby, as required by applicable zoning laws and other governmental requirements:

(i) Front Setback - thirty (30) feet from back of curb;

(ii) Side Setback - ten (10) feet from side boundary lines except that for corner lots the side setbacks for the street side of the Lot shall be twenty (20) feet; and

(iii) Rear Setback - twenty-five (25) feet from rear boundary line except that for Lots with a rear boundary line adjoining any part of the Prestonwood Country Club or a lake, the rear setback line shall be the greater of thirty (30) feet or the setback line established by the Architectural Control Committee.

Notwithstanding the foregoing, the Architectural Control Committee shall have the right and power, in its sole and absolute discretion, to grant variances to such building setback lines, as such Architectural Control Committee shall determine to be appropriate, provided, however, that the Architectural Control Committee shall not authorize any such variance where (i) the proposed Improvements on the Lot in question are deemed by the Architectural Control Committee, in its sole discretion, to be incompatible in any way with other Lots, or (ii) the requested variance will violate any applicable zoning laws or any other governmental law, regulation or requirement.

Section 15. New Construction. Construction of new buildings only shall be permitted on Lots, it being the intent of this covenant to prohibit the moving of any existing building onto a Lot and remodeling or converting same into a dwelling house.

Section 16. Limitation of Truck Parking and Other Vehicles. Trucks with tonnage in excess of one ton shall not be permitted to park overnight on the streets, driveways or otherwise within the Property. No vehicle of any size which transports inflammatory or explosive cargo may be kept in the Property at any time. No vehicles that are not in a condition to be normally operated may be stored or situated on any Lot for more than thirty (30) days unless stored in an enclosed garage. The Owner of each Lot will be responsible for providing on such Lot sufficient parking

area for all vehicles normally parked and/or situated on or in regard to such Lot such that on street parking will be restricted to no more than one (1) vehicle for each Lot.

Section 17. No Temporary Structure. No structure of a temporary character, such as a trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a dwelling house.

Section 18. No Drilling or Mining. No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in quarrying or for drilling for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 19. Landscaping. Except for the building pad, driveways and sidewalks on each Lot, the surface of each Lot shall be of grass or other live foliage and/or ground cover and such grass, foliage and ground cover shall be neatly maintained at all times.

Section 20. Water Systems. No individual water supply system shall be permitted on any Lot.

Section 21. Sewer Systems. No individual sewerage system shall be permitted on any Lot.

Section 22. Fences and Walls. No fence or wall shall be erected, placed or altered on any Lot nearer to any street fronting such Lot than the building corner of the main dwelling constructed on such Lot and shall not exceed ~~six (6)~~ ^{four (4)} feet in height unless otherwise specifically required by governmental authorities having jurisdiction. ^{see below} ~~All fences shall be maintained in a structurally sound and attractive manner.~~ All fences shall be of wood, metal or masonry construction and, as more particularly described hereinafter, an Owner must obtain the approval of the Architectural Control Committee before erecting a fence on such Owner's Lot.

Section 23. Sight Line Limitations. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point twenty (20) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersection unless the foliage line is maintained at sufficient height to prevent obstruction of sight lines.

Section 24. Sidewalks. The erection of Improvements beginning with the first placed on a Lot or Lots shall (unless Declarant specifically waives this requirement in whole or in part in writing) include the laying of a sidewalk across the whole of the front of each Lot and along the side of corner Lots next to the side streets by the respective Owner of each Lot, such sidewalks to be constructed in conformity with applicable ordinances, standards and codes.

AM ** provided, however, the Architectural Control Committee may approve in its sole discretion, any fence or wall with a height in access of four (4) feet.

Section 25. Antennae. No exterior antennae, earth satellite station, microwave dish or other similar improvement may be constructed, placed or maintained on any Lot without the prior written consent of the Architectural Control Committee.

Section 26. Gas Meters. No gas meters shall be set in the front of a residence on a Lot unless such meter is of an underground type.

Section 27. Air Conditioning Equipment. No air conditioning apparatus shall be installed on the ground in front of any residence on a Lot. No air conditioning apparatus shall be attached to any front wall of a residence on a Lot. No evaporative cooler shall be installed on the front wall or the side wall of a residence on a Lot.

Section 28. Mail Boxes. All mail boxes, unless affixed to the residence on a Lot, shall be affixed to a substantial pole or stand permanently placed in the ground and shall not be located within a sidewalk.

Section 29. Utilities. All utilities and utility connections shall be located underground, including electrical and telephone cables and wires. Transformers, electric, gas or other meters of any type, or other apparatus shall be contained within the buildings constructed on Lots or, if approved by the Architectural Control Committee in writing, located on the exterior of buildings provided they are adequately screened as required by the Architectural Control Committee in accordance with the provisions of this Declaration.

Section 30. Governmental Requirements. Nothing herein contained shall be deemed to constitute a waiver of any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to the Lots.

ARTICLE IX

ARCHITECTURAL CONTROL

Section 1. General. Anything contained in the foregoing Article VIII of this Declaration to the contrary notwithstanding, no site preparation on any Lot or change in grade or slope of any Lot or erection of buildings or exterior additions or alterations to any building situated upon the Property or erection of or changes or additions in fences, hedges, walls and other structures, or construction of any swimming pools or other Improvements, shall be commenced, erected or maintained on any Lot until the Architectural Control Committee (herein called the "Architectural Control Committee") appointed as hereinafter provided, has approved the plans and specifications therefor and the location of such Improvements.

Section 2. Composition. Until December 31, 1999, Declarant shall annually appoint the members of the Architectural Control Committee which will be composed of at least three (3) individuals (the exact number of members of the Architectural Control Committee to be designated by Declarant from time to time), each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within the Project. In the event of the death or resignation of any member of the Architectural Control Committee, Declarant, for so long as it has the authority to appoint the

members of the Architectural Control Committee, and thereafter, the remaining members of the Architectural Control Committee, shall have full authority to designate and appoint a successor. No member of the Architectural Control Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or willful misconduct of such member) arising out of services performed pursuant to this Declaration. Subsequent to December 31, 1999 (and earlier if Declarant specifically assigns this right to the Board), the Board shall designate the number of and appoint the members of the Architectural Control Committee on an annual basis. At any time Declarant may elect not to designate the number of and/or appoint the members of the Architectural Control Committee and may assign this right to the Board.

Section 3. Procedure. No Improvement of any kind or nature shall be erected, remodeled or placed on any Lot until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the Architectural Control Committee, as to:

- (i) quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets;
- (ii) conformity and harmony of the external design, color, type and appearance of exterior surfaces;
- (iii) location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and improvements situated thereon and drainage arrangement;
- (iv) the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within bulletins promulgated by the Architectural Control Committee, or matters in which the Architectural Control Committee has been vested with the authority to render a final interpretation and decision.

Final plans and specifications for all Improvements proposed to be constructed on a Lot shall be submitted in duplicate to the Architectural Control Committee for approval or disapproval. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials. At such time as the plans and specifications meet the approval of the Architectural Control Committee, one complete set of plans and specifications will be retained by the Architectural Control Committee and the other complete set of plans and specifications will be marked "Approved" and returned to the Lot Owner or his designated representative. If found not to be in compliance with these covenants, conditions and restrictions or if found to be otherwise unacceptable to the Architectural Control Committee pursuant hereto, one set of plans and specifications shall be returned to the Lot Owner marked "Disapproved," accompanied by a reasonable statement of items found not to be in compliance with these covenants, conditions and restrictions or otherwise being so unacceptable. Any modification or change to the Architectural Control Committee-approved set of plans and specifications must again be submitted to the Architectural Control Committee for its inspection and approval. The Architectural Control Committee's approval or disapproval, as required herein, shall be in writing.

The Architectural Control Committee may from time to time publish and promulgate architectural standards bulletins which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these

covenants, conditions and restrictions. Although the Architectural Control Committee shall not have unbridled discretion with respect to taste, design and any standards specified herein, the Committee shall be responsive to technological advances or general changes in architectural designs and materials and related conditions in future years and use its best efforts to balance the equities between matters of taste and design (on the one hand) and use of private property (on the other hand). Such bulletins shall supplement these covenants, conditions and restrictions and are incorporated herein by reference.

Section 4. Jurisdiction. The Architectural Control Committee is authorized and empowered to consider and review any and all aspects of the construction of any Improvements on a Lot which may, in the reasonable opinion of the Architectural Control Committee, adversely affect the living enjoyment of one or more Owners or the general value of the Property or the Project.

Section 5. Enforcement. The Architectural Control Committee shall have the specific, nonexclusive right (but no obligation) to enforce the provisions contained in this Article of this Declaration and/or to prevent any violation of the provisions contained in this Article of this Declaration by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article of this Declaration.

Section 6. Definition of "Improvement." 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.

Section 7. Failure of the Architectural Control Committee to Act. If the Architectural Control Committee fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements hereof or to reject them as being inadequate or unacceptable within thirty (30) days after submittal thereof, and provided such submittal was a full and complete submittal of all items that were to have been submitted to the Architectural Control Committee, it shall be conclusively presumed that the Architectural Control Committee has approved such conforming plans and specifications and other submittals, EXCEPT that the Architectural Control Committee has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in the Declaration. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the Architectural Control Committee may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject the balance. The Architectural Control Committee is authorized to request the submission of samples of proposed construction materials.

Section 8. Limitation of Liability. Neither the Architectural Control Committee nor the members thereof nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

Section 9. Miscellaneous. No member of the Architectural Control Committee shall be entitled to compensation for, or be liable for, claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to this Article. The Association shall reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses.

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 sites). 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 easements, 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 at all times over and upon each Lot for the maintenance and repair of each Lot in accordance with the provisions hereof and for the carrying out by the Association of its rights, functions, duties and obligations hereunder; provided, that any such entry by the Association upon any Lot shall be made with as minimum inconvenience to the Owner as reasonably practical, and any damage caused as a result of the gross negligence of the Association's employees or agents shall be repaired by the Association at the expense of the 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 so owned, including Improvements, ground and drainage easements or other rights-of-way incident thereto, in accordance with the terms and provisions of the 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 wastes;

- (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 such Owner or occupant has failed in any of the duties or responsibilities of such Owner as set forth in this Declaration, then the Board 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, 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 the 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 the 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 the 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 the 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 the Association or the Declarant, then, without limitation of any other rights of the Association or Declarant, the Association may issue a special assessment against such Owner pursuant to Article V, Section 1 hereof.

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.

Section 2. Amendment. Subject to the limitations herein-after 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 total eligible votes of the membership of the Association as defined in Article III hereof, with both Classes of the membership voting together. Members may vote in person or by proxy at a meeting duly called for such purpose, written notice of which shall be given to all Members at least thirty (30) days in advance of the date of such vote, which notice shall set forth the purpose of such meeting. 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 duly called meeting) of the holders of fifty-one percent (51%) or more of the eligible votes of the Association (with both Classes of voting Members voting together). 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 rights of Declarant under Article II, Section 5 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 THERE-OF. 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 ON SUCH LOT AND WHICH IS APPROVED BY THE ARCHITECTURAL CONTROL COMMITTEE, 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 the 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.

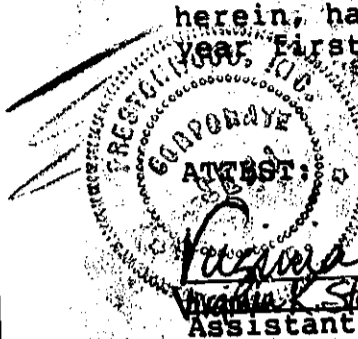
Section 6. Notice. Whenever written notice to an Owner (including Declarant) is required hereunder, such notice shall be given by the mailing of same, postage prepaid, to the address of such Owner appearing on the records of the Association. If notice is given in such manner, such notice shall be conclusively 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 first above written.

PRESTONWOOD, INC.



Virginia K. Stephenson
Assistant Secretary

By:

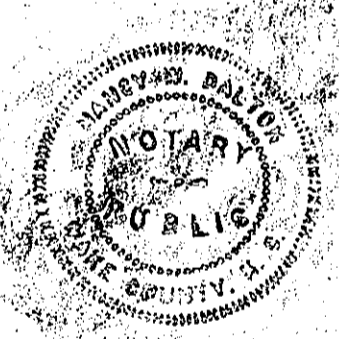
Jerry L. Moore,
Executive Vice President

THE STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, Nancy W. Dalton (Whelan), a Notary Public hereby certify that Virginia K. Stephenson, personally appeared before me this day and acknowledged that she is assistant Secretary of PRESTONWOOD, INC., and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its Executive Vice President, attested by herself as its Assistant Secretary.

WITNESS my hand and Notarial Stamp/Seal this the 22nd day of June, 1989.

Nancy W. Dalton (Whelan)
Notary Public
My Commission Expires: Sept. 8, 1990



NORTH CAROLINA -- WAKE COUNTY

The foregoing certificate of Nancy W. Dalton (Whelan)

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 Kenneth C. Wilkins
Asst. / Deputy Register of Deeds

BK4514PG0205

EXHIBIT A

BEING all of Lots 20 - 49, inclusive, as shown on that map entitled "Preston Trace, Phase II - Section I" prepared by Michael Baker III, Associates, Inc. and recorded in Book of Maps 1989, Page 731, Wake County Registry.

BK 4514 PG 0206

ANNEX I

PRESTON TRACE - PHASE II
ADDITIONAL ARCHITECTURAL STANDARDS

FLOOR AREAS:

Minimum total floor area of the main dwelling house on each lot, exclusive of porches, terraces, garages and out buildings, shall be as follows:

Golf Course Lots	2,500 sq. ft.
Interior Lots	2,200 sq. ft.

The ground floor of each such main dwelling house, exclusive of porches, terraces, garages and out buildings shall contain not less than 1,500 square feet. However, the Architectural Control Committee shall have the right to allow variances from such minimum total floor area and ground floor area of up to twenty percent (20%). TWO CAR GARAGE MANDATORY.

SETBACKS:

Front setback shall be at least 30 feet.

Side setbacks shall be at least 10 feet.

Rear setbacks shall be at least 25 feet (30 feet on golf course).

BK 4514 PG 0207

3. Design Features (continued):

- B. Windows and doors should reflect restraint in the number of types, styles, and sizes. Consistency of detailing on all elevations should be maintained. All openings should be articulated through the use of shutters, flat or arched lintels, projecting sills, or surrounds.
- C. Main entrance should have a sense of prominence that is reflected in the design. It should be sheltered on the exterior and include either a pair of doors with or without sidelights or a single door with sidelights. It should contain more detail than other openings but be consistent in styling.
- D. Raised deck supports should incorporate materials which relate to the residence such as brick, stucco, or stone. If wood posts are used, they should be a minimum of 6" x 6" with base and capital detailing.
- E. Retaining walls which attach to the residence should utilize the same materials that the wall comes in contact with. Cross-tie timber walls may be used if set apart from the residence.
- F. Garage entrances should face the side property line whenever possible. No brick columns allowed at driveway entrance.
- G. Quoins, when utilized in the design, should be expressed on the side elevations as well as the front and on all elevations when on a golf course lot.
- H. Bay windows should be carried down to grade or express visual support of a cantilevered condition. When bay windows are stacked in a 2-story condition, the blank panel between on all facets should be articulated.
- I. All fencing must be approved by the Architectural Control Committee. Fencing along the golf course shall not exceed 4' in height and must be at least sixty (60) feet from the golf course property line.
- J. Driveway slopes should not exceed 14% grade.
- K. The Architectural Control Committee encourages all plans of spec houses to be previewed by the sales staff to ensure marketability.
- L. Please indicate on building elevations and/or on application form all exterior materials and colors (including garage door material and finish). We do not encourage glass to be used in garage doors. We prefer raised panel wood garage doors.

PRESTON TRACE
ARCHITECTURAL GUIDELINES

-3-

3. Design Features (continued):

- M. Shed roofs of any nature are not encouraged. We prefer roof elements be designed to fit in with the overall designs and not look as though it was an addition or the less costly thing to do.
- N. Masonry or stone facing used as a veneer material on the front of a residence should return around a corner to a logical point of termination, such as an inside corner. Ending the veneer at an outside corner which would expose the edge of the material is not acceptable. It would be preferable to carry the material completely around the residence.
- O. No pools are allowed within building setback areas. Pool decks at or within two feet of grade may encroach into setback areas, but not closer than 10 feet to any property line. No encroachment is permitted into a golf course easement or property. All pools subject to Preston A.C.C. approval.
- P. Building of driveways over sewer and storm easements is permissible, but is the responsibility of the lot owner if in the future there is a need to remove same for access to such utilities.
- Q. Site surveys and topographical information are the responsibility of the lot owner. The property owner is encouraged to use a surveyor to obtain this information, and to also plot significant trees and site conditions.
- R. Flue pipes are required to be encased with a chimney enclosure of masonry or stucco and be supported by a foundation at grade when located at an exterior wall.

4. Technical and Procedural Items:

- A. Mailboxes: Community standard mailboxes are the only style that is approved for use in Preston Trace and the provision thereof is the responsibility of the lot purchaser prior to final inspection by the Architectural Control Committee. (See attachment)
- B. Water run-off and control for each lot is the responsibility of the lot owner.
- C. It is requested that a realistic construction schedule be provided as to the start and finish of construction. This should be submitted when final plan approval is obtained.

3/89

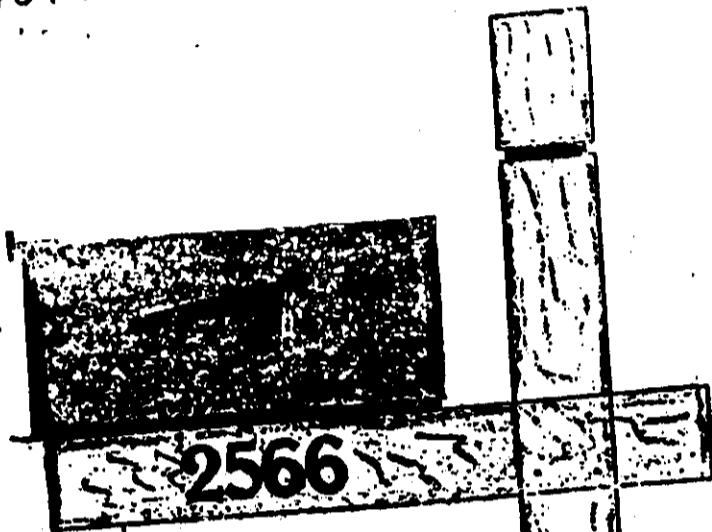
PRESTON TRACE
ARCHITECTURAL GUIDELINES

-4-

4. Technical and Procedural Items (continued):

- D. Contractors are reminded of the requirement to keep sites clean. No stockpiling of dirt or debris is allowed. Weekly clean-up is required. The street R.O.W. is also to be maintained. If sites are not kept up you will receive a phone call from a Prestonwood, Inc. employee who will follow up in three days, and if not done will issue a letter of citation and proceed to have it cleaned up at the expense of the violating party.
- E. Curb cuts are required immediately following lot clearing to minimize damage to roads and curbs. Also, an adequate road should be provided for temporary drive before commencing construction.

BK4514PG0210



OLYMPIC SEMI-TRANSPARENT STONEHENGE STAIN

SCALE $1\frac{1}{2}'' = 1'-0''$

- MAILBOX - POST - SIGN -