

PREPARED BY/HOLD FOR: RUSSELL & HARRIS, P.A.

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KENNETH D. WILKINS
REGISTERED DEEDS
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR PRESTON FALLS VILLAS

NORTH CAROLINA
WAKE COUNTY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PRESTON FALLS VILLAS, is made this 27 day of December, 1988, by PRESTONWOOD, INC., a North Carolina corporation ("Declarant");

WITNESSETH:

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 part 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, Declarant has heretofore imposed certain restrictions and conditions upon the entire Project as set forth in Book 3935, Page 863, Wake County Registry, and Declarant now desires to impose separate and additional easements, covenants, conditions and restrictions and to establish a separate owners association upon the Property described in Exhibit A.

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 Falls Villas 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.

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(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 to 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 Falls Villas 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) "Building" shall mean and refer to a multi-unit structure containing townhomes constructed on a Lot.

(j) "Townhome" shall mean and refer to an attached single family dwelling constructed upon a Lot within the Property and constituting a part of a Building.

(k) "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.

(l) "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.

(m) "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.

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

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

(p) "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.

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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 affect 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

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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, 2000, or earlier at the election of Declarant.

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 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 prior to December 31, 2000, at the sole election of Declarant.

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

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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 Common Areas, Landscaped Rights-of-Way and roads within the Property in a manner consistent with other Landscaped Rights-of-Way in other portions of the Project, as required by Declarant. In the event the Association shall fail to adequately maintain (in Declarant's reasonable judgment) said Common Areas, Landscaped Rights-of-Way and roads, the Declarant may cause such work to be performed and charge the Association with the reasonable cost thereof and Association shall pay Declarant such amount on demand.

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 Assessment. 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) maintenance of the roadway medians and islands (the "Roadway Medians") in both dedicated rights-of-way and in streets which have not been dedicated to and accepted by a public authority; (iii) payment of premiums for hazard insurance in connection with the Common Area, the Roadway Medians and the Landscaped Rights-of-Way, and any improvements or facilities thereon and public liability and other insurance of the Association; (iv) paying the costs of labor, equipment (including the expense of leasing any equipment) and material required for, and management and supervision of, the Rights-of-Way; (v) carrying out the duties of the Board; and (vi) carrying out the purposes of the

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Association as stated in its Articles of Incorporation and as stated herein.

Section 3. Basis and Amount of Annual Assessment. On or before December 31st 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 1989 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 monthly basis on the first (1st) day of each month. The first monthly installment of the annual assessments shall become due and payable on the date specified by the Board. 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 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

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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

USE OF LOTS AND COMMON AREA - PROTECTIVE COVENANTS

Section 1. Rules and Regulations. The Board shall have the power to formulate, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of the front yard space of each Lot and the Common Area, including the recreational facilities. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board, shall be recorded in a Book of Resolutions which shall

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be maintained in a place convenient to the Owners and available to them for inspection during normal business hours.

Section 2. Use of Property. Each Building, the Townhomes therein, and the Common Area and facilities shall be for the following uses and subject to the following restrictions in addition to those set forth in the Bylaws:

(a) **Land Use.** All Buildings and the Common Area and facilities shall be used for residential and related common purposes. Each Townhome shall be used as a single-family residence and for no other purpose, except that an Owner may use one or more Townhomes as a model for sales purposes, consistent with the Cary City Code.

(b) **Insurance Matters.** Nothing shall be kept and no activity shall be carried on in any Building or Townhome or on the Common Area and facilities which will increase the rate of insurance, applicable to residential use, for the Property or the contents thereof. No owner shall do or keep anything, nor cause or allow anything to be done or kept, in his Townhome or on the Common Area and facilities which will result in the cancellation of insurance on any portion of the Property, or the contents thereof, or which will be in violation of any law, ordinance, or regulation. No waste shall be committed on any portion of the Common Area and facilities.

(c) **Compliance with Laws.** No immoral, improper, offensive, or unlawful use shall be made of the Property, or any part thereof, and all valid laws, ordinances, and regulations of all governmental agencies having jurisdiction thereof shall be observed. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property, shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property.

(d) **Alteration or Impairment.** Nothing shall be done in or to any Townhome or in, to, or upon any of the Common Area and Recreational Facilities which will impair the structural integrity of any Building, Townhome, or portion of the Common Area and recreational facilities or which would impair or alter the exterior of any Building or portion thereof, except in the manner provided in this Declaration.

(e) **Business Use Prohibited.** No industry, business, trade, occupation, or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted in any Townhome, except that the Declarant or its agents and builders may use any unsold Townhome for sales or display purposes.

(f) **Signage.** No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than four (4) square feet which is hereafter approved in writing by Declarant and which is for the purpose of (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. Notwithstanding the foregoing, all signs erected and maintained on any Lot must conform with all applicable governmental requirements.

(g) **Alteration of and Damage to Common Area.** Each Owner shall be liable to the Association and/or the Declarant for any damage to the Common Area, Roadway Medians, and/or Landscaped Rights-of-Way caused by the negligence or willful misconduct of the Owner or his family, tenants, guests, or invitees.

(h) **Use of Townhome Common Area.** The Common Area and facilities shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the townhomes, subject to any rules or regulations that may be adopted by the Association pursuant to its Bylaws.

(i) **Nuisance.** No noxious or offensive activity shall be conducted upon any Lot or any Building nor should anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

(j) **Animals.** No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any Building except that dogs, cats, or other household pets may be kept or maintained, provided they are properly curbed and leashed and provided further that they are not kept or maintained for commercial purposes.

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(k) Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot unless and until permission for the same has been granted by the Architectural Control Committee, or its designated agent or representative.

(l) 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.

(m) 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 on a temporary basis.

(n) Fences. No Owner shall fence, enclose or screen any portion of his Lot without prior approval of the Architectural Control Committee.

(o) Access to Lot. The Declarant and Association, its agents, or employees, shall have access to all Lots from time to time during reasonable working hours upon giving oral or written notice to the Owner, as may be necessary for the maintenance, repair, or replacement of any portion of the Common Area or facilities situated upon such Lot which serves another Owner's Lot. The Declarant and Association or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Area or another Lot.

(p) Dwelling Specifications. No dwelling shall be constructed or permitted to remain on any attached Lot having an area of the main structure, exclusive of open porches and decks, of less than 1400 square feet. No Building shall exceed two stories in height exclusive of finished or unfinished attics and basements.

(q) Garbage Disposal. All garbage shall be stored within the residence of each Owner or in the storage facilities, if any, provided for said residents at the time same is constructed. No Owner may change or supplement the garbage disposal facilities provided for such owner's residence on the date of completion of the construction thereof, unless the Architectural Control Committee of the Association shall first approve in writing the change or addition to the method of storage. It is provided, however, that if the public health authorities, or other public agencies, shall require a specific method of garbage disposal, nothing herein contained shall prevent the compliance by Owners with obligatory public rules and regulations.

(r) Clothes Drying. No drying or airing of any clothing or bedding shall be permitted outdoors on any Lot or in any other enclosed area (including patios) within the Property.

(s) Yard Sales. No yard sale shall be conducted upon the Property at any time whatsoever.

(t) 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.

(u) 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.

(v) 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.

(w) Water Systems. No individual water supply system shall be permitted on any Lot.

(x) Sewer Systems. No individual sewerage system shall be permitted on any Lot.

(y) 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

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the Architectural Control Committee in accordance with the provisions of this Declaration.

(z) 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.

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

Section 3. Residential Purposes Only. Each Lot shall be used exclusively for single-family attached, 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 6 of this Article. Except as provided in Section 2 (e) above, 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 attached single-family private dwelling. 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 4. 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 5. 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 6. 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 parking areas 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 or on the streets, driveways or parking areas otherwise within the property.

ARTICLE VII ARCHITECTURAL CONTROL

Section 1. General. Anything contained in the foregoing Article VI 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 on the property shall be commenced, erected or maintained 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, 2000, 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 for 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

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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, 2000 (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 the Property 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 the Property shall be submitted in triplicate 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

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specific, nonexclusive right (but no obligation) to enforce the provisions contained in this Article of the Declaration and/or to prevent any violation of the provisions contained in this Article of the 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 VIII
EXTERIOR MAINTENANCE

In addition to maintenance of the Common Area, the Association shall provide exterior maintenance upon each Townhome subject to assessment, as follows: stain and/or paint the exterior of Townhomes, replace, repair and care for roofs, walks, trees, shrubs, grass and other such exterior improvements.

Any Owner whose Lot contains a fence, enclosure or screen along any portion of his Lot (whether permitted with the prior approval of the Architectural Control Committee, or otherwise) may plant trees, shrubs, flowers, and grass in the fenced or enclosed portion as he elects, and he shall maintain the fence, enclosure and the enclosed portion, at his own expense. No such maintenance by an Owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association, any such Owner fails to maintain his yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period not to exceed one year and the Association shall perform maintenance during the revocation period. The Owner shall not plant any vegetation in front, back or on the sides of his Townhome except with the prior written

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approval of the Architectural Control Committee.

In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or his family, tenants, contract purchasers, guests, invitees or contractors, or is caused by fire, lightning, windstorm, hail, explosion, riot attending a strike, civil commotion, aircraft, vehicles, or smoke, as the foregoing are defined and explained in North Carolina standard fire and extended coverage insurance policies, or for the purpose of correcting, repairing or alleviating any emergency condition provided for in Article XI, Section 5, (but only if such would normally be an expense of the Lot Owner), the cost of such maintenance, replacement, or repairs shall be added to and become a part of the assessment to which such lot is subject.

ARTICLE IX INTERIOR MAINTENANCE

Each Owner shall maintain, repair, and replace at his expense all Improvements on his Lot which shall need repair including patios, fencing and decks located on the Lot, and all bathroom and kitchen fixtures, light fixtures, or other electrical or plumbing equipment, pipes and fittings serving an Owner's Townhome which are located in a party wall, if any. Further, each Owner shall repair, maintain and replace at his own expense when necessary the heating and air conditioning system servicing his Townhome, whether located on his Lot or in the Townhome Common Area adjacent to the Lot.

ARTICLE X PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the townhomes upon the property and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost or restoration thereof in proportion of such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Certification by Adjoining Property Owner that No Contribution is Due. If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining property Owner has a right of contribution, request of the adjoining property Owner or property Owners a certificate that no contribution exists, whereupon it shall be the duty of each adjoining property Owner to make such certification immediately upon request without charge; provided, however, that where the adjoining property Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

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Section 7. Easement and Right of Entry for Repair, Maintenance, and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall and those improvements belonging to one Lot which encroach on an adjoining Lot or Common Area. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 8. Arbitration. In the event of any dispute arising concerning a party wall under the provisions of this Article, such dispute shall be settled by arbitration as provided under the laws of the State of North Carolina as they now are or are hereafter amended.

ARTICLE XI EASEMENTS

Section 1. Walks, Drives, Parking Area, and Utilities. All of the Property, including Lots and Common Area, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewer, storm drainage facilities, gas line, telephone and electric power lines, television antenna lines, and other public utilities as shall be established prior to subjecting the Property to this Declaration by the Declarant, and the Association and/or Declarant shall have the power and authority to grant and to establish in, over, upon, and across the Common Area such further easements as are requisite for the convenient use and enjoyment of the Property.

Section 2. Easements Appurtenant to Lots. All private streets shall be subject to an easement in favor of every Lot to which they are adjacent or which they are designated to serve and shall be deemed appurtenant to each such Lot, whereby the Owner of each such Lot shall be entitled to use them as a means of ingress, egress and regress and such other uses as shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

Section 3. Encroachments. All Lots and the Common Area shall be subject to easements for the encroachment of initial improvements actually encroaching, including without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, and walls. If any encroachment shall occur subsequent to subjecting the property to this Declaration as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alternation, there is hereby created and shall be a valid easement for such encroachment and for the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant and builders for the purpose of drainage or easements thereon. The party upon making entry for such purpose shall restore the affected Lot or Lots to as near the original condition as practicable.

Section 4. Structural Support. Every portion of a Townhome which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of all other Townhomes within the Building.

Section 5. Emergencies. Every Lot and Townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any Townhome and the endangers any Building or portion of the Common Area.

Section 6. Easement or Governmental Agencies. An easement is hereby established over the Common Area for the benefit of applicable governmental agencies, public utility companies and public service agencies as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage facilities, electrical, telephone, gas and cable antenna lines, fire fighting, garbage collection, postal delivery, emergency and rescue activities and law enforcement activities.

Section 7. Easement and Right of Entry for Repair, Maintenance and Reconstruction. If any Townhome is located closer than five (5) feet from its Lot line, the Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his

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Townhome. Such repair, maintenance or reconstruction shall be done expeditiously and, upon completion of work, the Owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

Section 8. Scenic Easement. The Association shall maintain existing trees, shrubbery, grass and vegetation in the Common Area in a neat and orderly fashion and in accordance with customary rules of good husbandry; subject to acts of God or other matters beyond the Association's control.

**ARTICLE XII
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, the Roadway Medians 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, the Roadway Medians 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, the Roadway Medians 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, the Roadway Medians and the Landscaped Rights-of-Way or portions of any 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, 2000, 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 Areas, the Roadway Medians, 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 Roadway Medians, the Landscaping 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 or 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 replacement;
- 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 member of the Board to be vacant in the event such

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- 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 herof, 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 on the Board nor any directors on the Board (or any one of them) nor the officers (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. Owner's Obligations to Repair. Except for those portions, if any, of each Lot which the Association and/or Declarant 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 or Declarant, 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 or Declarant 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

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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 XIII
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 or repair and replacement, shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Area, Roadway Medians, 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 XII of this Declaration, to cover the deficiency.

ARTICLE XIV
MISCELLANEOUS PROVISIONS

Section 1. Duration. This Declaration and the controls, covenants, restrictions and standards set forth herein shall run with the land and apply to 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 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 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

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any Supplemental Declaration must first be obtained if such amendment or modification is to be effected prior to December 31, 2000. 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 Register of Deeds Office 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, 2000). 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. 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 4. 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 5. 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 6. 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 7. No Exemptions. No Owner or other party may exempt himself from the coverage hereof or obligations imposed hereby through non-use of such Owner's Lot(s) or the Common Area.

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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.

By: [Signature]
Executive Vice-President

Rinda Purcell
Asst. Secretary

STATE OF NORTH CAROLINA, ⁱⁿ
COUNTY OF WAKE ^{Orange}

I, V.K. Whitaker (Stephenson) Notary Public for said County and State, certify that Rinda Purcell, personally appeared before me this day and acknowledged that she is Asst. Secretary of Prestonwood, Inc. a North Carolina corporation, and that be authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its Exec. Vice President, sealed with its corporate seal and attested by her as its Asst. Secretary,

Witness my hand and official stamp or seal, this 21st day of December, 1988.

V.K. Whitaker (Stephenson)
Notary Public
My Commission Expires [blank]



NORTH CAROLINA - WAKE COUNTY

The foregoing certificate of V.K. Whitaker (Stephenson)
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: Sail C. Morse
Asst./Deputy Register of Deeds

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EXHIBIT A

BEGINNING at a point located in the western margin of the right of way of Crabtree Crossing Parkway, said point having North Carolina Grid Coordinates N = 745,364.3176 and E = 2,049,935.7685, runs thence North 89 degrees 21 minutes 03 seconds West 178.36 feet to a point; runs thence North 07 degrees 58 minutes 35 seconds West 191.12 feet to a point; runs thence North 49 degrees 40 minutes 05 seconds East 138 feet to a point; runs thence North 83 degrees 58 minutes 31 seconds East 64.49 feet to a point located in the western margin of the right of way of Crabtree Crossing Parkway; runs thence along said right of way South 06 degrees 01 minute 29 seconds East 147.88 feet to a point; runs thence along the curve of the margin of the right of way in a southeasterly direction, said curve having a radius of 1,940.00 feet and an arc length of 141.77 feet to the point and place of BEGINNING and being that property containing 1.031 acres as shown on that map entitled "Preston Falls - Plaza E" prepared by Barrett Kays & Associates, P.A. on September 19th, 1988 and recorded in Book of Maps 1988, Page 1366, Wake County Registry.