

Gunter & Flowers **ENV**

Prepared by John M. Rich, Attorney at Law

**NORTH CAROLINA
WAKE COUNTY**

**AMENDED AND RESTATED
DECLARATION OF COVENANTS,
CONDITIONS & RESTRICTIONS FOR
PRESTWICKE SUBDIVISION**

This **Amended and Restated Declaration of Covenants, Conditions and Restrictions for Prestwicke Subdivision** made this 11TH day of November, 2010 by **Prestwicke Property Owners Association, Inc.** hereinafter called "Declarant",

WITNESSETH:

WHEREAS, Wellesley Associates, the Declarant desiring to provide for the preservation of the value, amenities and conceptual intent of the community and for the maintenance of the Common Properties; and, to this end, desired to subject the real property in Prestwicke Subdivision, together with such additions as may hereafter be made, to the covenants, restrictions, easements, affirmative obligations, charges and liens, hereinafter set forth, each and all of which is and are hereby declared to be for the benefit of said property and each and every owner of any and all parts thereof; and recorded in Book 8688 Page 668 Wake County Registry; and

WHEREAS, **Prestwicke Property Owners Association, Inc.** has been organized and incorporated under the Laws of the State of North Carolina, as a nonprofit corporation, for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth; and

WHEREAS, The owners of the lots in Prestwicke and **Prestwicke Property Owners Association, Inc.** desire to amend and restate the original Covenants recorded in Book 8688 Page 668 Wake County Registry.

NOW, THEREFORE, by action of its Members and Directors properly taken hereby amends and restates in their entirety the terms of that **Declaration of Covenants, Conditions and Restrictions for Prestwicke Subdivision** dated September 19, 2000 and recorded in Book 8688 Page 668 Wake County Registry.

**ARTICLE I
DEFINITIONS**

The following words and terms, when used in this Declaration, or any Supplemental Declaration, shall have the following meanings:

1) "**Association**" shall mean and refer to the Prestwicke Property Owners Association, Inc., a North Carolina nonprofit corporation which shall be organized and in good standing with the State of North Carolina prior to the sale of any lots.

2) "**Owner**" shall mean and refer to the record owner, whether one or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any tract situated upon the properties, but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to any mortgagee, its successors or assigns, unless and until such mortgagee has acquired title pursuant to foreclosure or a proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an owner.

WAKE COUNTY, NC 288
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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3) "**Properties**" shall mean and refer to that certain real property heretofore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association, as are subjected to this Declaration or any Supplemental Declaration.

4) "**Common Properties**" shall mean all real property owned by the Association for the common use and enjoyment of the owners.

5) "**Lot**" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties upon which a single family dwelling is to be situated, with the common properties.

6) "**Member**" shall mean and refer to all owners as heretofore defined.

7) "**Declarant**" shall mean and refer to Wellesley Associates, LLC, its successors and assigns.

ARTICLE II
SUBJECT PROPERTY

1) **Existing Property** The real property which is subject to these covenants is located in Wake County, North Carolina, and is particularly described on Schedule "A". All of the real property shall be referred to as "Existing Property".

2) **Additions to Existing Property** Additional lands may become subject to this Declaration in the following manner:

A) **By Declarant** The Declarant, its successors and assigns, including the Association, shall have the right to bring within the plan and operation of this Declaration, additional properties, whether currently owned or hereafter acquired, at future stages of the development.

The additions authorized under this and the succeeding subsection shall be made by filing of record Supplementary Declarations of Covenants for Common Properties with respect to the additional property which shall extend the operation and effect of these Covenants to such additional property.

The Supplementary Declarations may contain such complementary additions and modifications of the covenants contained in this Declaration as may be necessary or convenient, in the judgment of the Declarant, to reflect the different character, if any, of the added properties.

B) **By the Association** Upon approval in writing of the Association pursuant to two thirds (2/3) of the vote at a duly called meeting, the owner of property other than the Declarant who desires to add it to the plan of these covenants and to subject it to the jurisdiction of the Association, may record a Supplementary Declaration of Covenants with respect to the additional property which shall extend the operation and effect of the covenants to such additional property.

The Supplementary Declaration may contain such complementary additions and modifications of the covenants contained in this Declaration as may be necessary or convenient, in the judgment of the Declarant, to reflect the different character, if any, of the added properties.

C) **Mergers** Upon a merger or consolidation of the Association with another association as provided for in the Bylaws of the Association, their properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration, together with the covenants and restrictions established upon any other properties as one plan. No such merger or consolidation, however, shall effect any revocation, change of or addition to the Covenants established by this Declaration as herein provided.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

1) **Membership** The Declarant and every person or entity who is a record owner of a fee simple or undivided fee simple interest in any lot which is subject to the Covenants is a member of the Association, provided that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a member of the Association; membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association.

2) **Voting** The Association no longer has classes of voters. There shall be one (1) vote for each lot in Prestwicke.

3) **More Than One Lot Owner** When more than one person holds an interest in any lot, all such persons shall be members; and the vote for such lot shall be exercised as they among themselves determine, but in no event may more than one vote be cast with respect to any lot owned by Class A members. When one or more co-owners sign a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more of the other co owners is present and objects to such vote, or if not present, submits a proxy or objects in writing delivered to the Secretary of the Association before a vote is counted. If co owners disagree as to the vote, it shall be split equally among the co-owners.

4) **Suspension of Voting Rights** The Association may suspend the voting rights of a member:

A) For any period during which any Assessment against the Member's lot remains unpaid; and

B) For a period not to exceed sixty (60) days for any infraction of the published rules and regulations.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

1) **Use of Common Properties** Common properties shall be reserved for the use of residents and their guests only or as this use is modified by agreements between the property owner or homeowners association and public recreational agencies.

2) **Delegation of Use** Any member may delegate in accordance with the Bylaws, his right of enjoyment to the Common Properties and facilities to the members of his family, his guests, his tenants, or contract purchasers who reside on the property.

3) **Title to Common Properties** The Declarant hereby covenants, for itself, its successors and assigns, that it shall convey, bargain and sell, free and clear of all outstanding liens and encumbrances, the Common Properties to the Association on or before the date the Declarant sell the first lot shown on the recorded maps of the subdivision.

4) **Extent of Member's Easements** The rights and easements of enjoyment created hereby shall be subject to the following:

A) The right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties.

B) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure.

C) The right of the Association, as provided in its Bylaws, to suspend the enjoyment of rights of any member or any tenant of any member for any period during which any assessment remains unpaid; and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations, it being understood that any suspension for either nonpayment of any assessment

or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligations to pay the assessment, or abide by the rules and regulations.

D) The right of the Association to mortgage, sell, lease or otherwise convey all or any part of the Common Properties for such purposes and subject to such conditions as may be agreed to by the members, provided that no such mortgage or conveyance shall be effective unless authorized by the vote of two thirds (2/3) (2/3) of the Class A members at a duly called meeting and unless written notice of the proposed action is sent to every Class A member at least twenty (20) days in advance of any action taken. A true copy of such resolution together with a certificate of the result of the vote taken and a certificate of mailing executed by the Secretary of the Association thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument affecting the Common Properties, prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

ARTICLE V

COVENANTS FOR MAINTENANCE ASSESSMENTS

1) **Creation of the Lien and Personal Obligation** Each owner of any lot shall, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms and provisions of these Covenants and to pay to the Association: (1) Annual assessments or charges; (2) Special Assessments for the purposes set forth in Section 4 of this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special Assessments together with such interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the property against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. In the case of co-ownership of a lot, all of such co owners shall be jointly and severally liable for the entire amount of the assessment.

2) **Purpose of Assessments** The assessments levied by the Association shall be used exclusively for the improvement, maintenance, and operation of the Common Properties, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement, and additions thereof, and for the cost of labor, equipment, materials, management and supervision thereof and any other additions, replacements and repair of structures, recreation facilities, or any other facilities used for the common benefit of Prestwicke Subdivision. The Special Assessments shall be used for the purposes set forth in Section 4 of this Article.

The Association is expressly authorized to accumulate and maintain assessment funds in a reserve account reasonably calculated to meet the needs of the Association at times when unusually large expenses are incurred, and to make purchases of a capital nature.

Upon a vote of the Directors, the Association may assume maintenance of the front yard areas of all lots in Prestwicke and all areas located in the street rights of way adjoining any lot. Such maintenance shall include, but not be limited to, planting, fertilizing, mowing, pruning and replanting grass, bushes, trees, shrubs and other vegetation according to a harmonious plan for all of Prestwicke. Such plan shall be developed, maintained and amended from time to time by the Directors or their duly appointed Architectural Committee.

3) **Maximum Assessment** The maximum annual assessment must be fixed at a uniform rate for all lots and shall be payable annually.

A) The maximum annual assessment may be increased each calendar year by not more than ten percent (10%) above the assessment for the previous calendar year without a vote of the membership..

B) The maximum annual assessment may be increased above ten percent (10%) by a vote of two thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose. Notice of the meeting stating its purpose shall be given no less than twenty (20) days, and no more than thirty (30) days before the meeting.

C) The Board of Directors may fix the annual assessment at less than the maximum amount.

4) **Special Assessments for Improvements and Additions** In addition to the annual assessments authorized by Section 2, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement, recreation facilities, or any other facilities upon the Common Properties, including the necessary fixtures and personal property related thereto or addition to the Common Property. Any such assessment shall have the assent of two thirds (2/3) of the vote at a duly called meeting, written notice of which shall be sent no less than twenty (20) nor more than thirty (30) days in advance and shall set forth the purpose of the meeting. For the purpose of acting under this Section 4, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of the total vote of the Class A membership shall constitute a quorum. For the purposes of this subsection only, no vote shall be cast under Class B.

5) **Date of Commencement of Annual Assessments** The annual assessments provided for herein shall commence on the date (which shall be the first day of the month) fixed by the Board of Directors of the Association to be the date of commencement.

The first annual assessment shall be made for the balance of the calendar year and shall be payable in full within thirty (30) days after the first day of the month fixed for commencement. The assessments for any year after the first year, shall similarly be payable in full within thirty (30) days after the first day of January of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereto, as the remaining number of months in the year bear to twelve. The same reduction in the amount of assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

The prorating of any annual or special assessment due to change in ownership of any lot during a calendar year shall be the responsibility of the individuals involved and not the Association.

6) **Duties of the Board of Directors** The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against all lots for each assessment period and shall at that time, prepare a roster of the properties 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 thereupon be sent to every owner subject thereto.

The Association shall upon demand at any time furnish to any owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has

ARTICLE VIII
ARCHITECTURAL CONTROL

1) Review and Approval of Landscaping Specifications for Additions, Alterations or Changes to Structures

Declarant shall appoint a three person Architecture Committee which shall review and approve all improvements and construction proposed on any lot. Declarant, so long as it shall own at least one lot in Prestwicke, shall appoint any successor members to the committee. At such time as Declarant shall no longer own a lot in Prestwicke, the Board of Directors of the Association shall appoint a committee of persons who own lots in the subdivision to serve as the Architectural Committee.

No site work, construction, clearing of trees, disturbing of earth, landscaping, installation of any facilities, or any other improvements whatsoever shall occur on any lot in the subdivision or upon the Common Properties or elsewhere for the common benefit of Prestwicke Subdivision, without the prior written approval of the Architecture Committee. This shall include, but shall not be limited to: buildings, fences, walls, swimming pools, outside lighting, dog pens, screen plantings, and landscaping where natural topography, or, natural vegetative cover, is disturbed.

The property owner shall submit a plot plan showing all proposed activity, and all plans and specifications for such, including, but not limited to: topography, beginning and finished ground elevations, existing trees and shrubs, trees and shrubs to be planted, exterior design of structures, exterior colors of structures, external materials, and all other matters affecting the appearance of the lot and its improvements. Approval shall be based upon a finding that the proposed changes are harmonious and compatible with the external design and location of existing structures, with the surrounding structures and topography of the subject lot and surrounding spaces, and with the colors, textures and materials already in Prestwicke.

The further written approval of the Committee shall be required for any alteration to approved plans, and the alteration or modification of existing structures and improvements made after a house shall be occupied.

Lot owners shall submit their plot plans, drawings, plans and specifications personally to the Committee. If the Committee fails to give its written approval within 30 days of the date of submission, then approval shall be deemed to have been given. If, after submission of plans, no suit to enjoin the proposed construction or improvements shall have been commenced prior to completion of such, approval will be presumed, and this Article shall be deemed to have been complied with.

ARTICLE IX
MAINTENANCE

1) Detached Lots The Association shall have no obligation or responsibility for any maintenance of lots or any dwellings located thereon.

2) Maintenance by Owner Owners of lots are required to maintain the lots and both exterior and interior of the dwellings thereon in compliance with the then current State of North Carolina Building Code and harmonious with the appearance, standards, and conditions of the dwellings as a whole in Prestwicke. Each owner shall maintain all buildings on his lot in a neat and pleasing manner; and shall keep the lot free and clear of all tall grass, unsightly undergrowth, dead trees and bushes, trash, and rubbish. The owner of each lot shall maintain a grassed lawn area on the shoulders and slopes adjacent to the paved streets in the subdivision; and shall maintain, and replant as needed, all grass, ornamental trees and shrubs which shall be placed on the cleared areas along the streets. Declarant, the Board of Directors of the Association, and any person owning a lot in the subdivision, shall have the right to enforce this provision by specific performance, or, in the alternative, to have the lot and/or building cleaned up and

maintained and to recover all costs incurred in doing so, from the owner, including court costs and attorney's fees.

In cases where either interior or exterior maintenance or repair is required in this Declaration to be done or made by an Owner, and such maintenance or repair has not commenced within sixty (60) days of notice to make such repairs by the Association or person seeking enforcement of these Declarations, or if commenced, is not completed within a reasonable time thereafter, the Association or person seeking enforcement of these Declarations may, upon thirty (30) days written notice to such owner, make or complete such maintenance or repairs, and the cost thereof shall be an additional assessment applicable only to such lot and Owner, and shall be payable together with penalties and interest as determined by the Board of Directors. The Association is authorized to request inspections by the Town of Wake Forest to confirm compliance with the State of North Carolina Building Codes.

ARTICLE X
USE RESTRICTIONS

1) Rules and Regulations The Board of Directors of the Association shall have the power to formulate, publish, amend and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Properties. Such rules and regulations may provide for the imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

2) Use of Properties No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two and one half stories and a private garage for not more than three cars.

No business or trade activity where goods or services are offered to the public shall be carried out on any lot, nor shall anything be done thereon which is or may become a nuisance or annoyance to the neighborhood. Nothing herein shall be interpreted or construed to prevent the use of any structure or portion thereof as a home office, or to prevent the occupant of a house from working at home, provided that goods or services are not offered to the general public on the premises.

No trade materials or inventories (except during construction on the premises) shall be stored or otherwise allowed on the premises. No trucks, tractors or inoperable automobiles may be stored or regularly parked on the premises or upon any street right of way in the subdivision. Such parking or storing on a street right of way shall be deemed a prohibited use of the lot occupied by the person so storing or parking.

3) Dwelling Specifications

A) Minimum Area Each dwelling in Prestwicke shall have a minimum area as follows: i) single story ranch: 1,800 square feet; ii) story and half: 1,900 square feet; and two or more stories: 2,000 square feet. This area shall not include porches, breezeways, steps, and garages. All single story structures shall have a roof pitch of not less than 7/12 and all other structures shall have a roof pitch of not less than 8/12. Roof pitches for contemporary designed houses will be approved on an individual basis by the Architecture Committee. The term "roof pitch" applies to the portion of the roof on the front of the house facing the street, or to the sections of roof forming a gable end on the front of the house facing the street.

Declarant reserves the right to waive minor violations of this provision, namely those which do not exceed fifteen percent (15%).

B) Exterior Finish Material Each dwelling shall have a brick or stone veneer finish on the front elevation; and shall have brick or stone veneer, wood, or fiber/cement paneling on the remaining elevations. All structures in the subdivision shall meet the following criteria: Exterior chimneys

shall be consistent with the exterior siding. Each structure shall have a paved driveway extending no less than 50 feet into the lot. It shall be a minimum of 12 feet wide at the street and may narrow down to no less than 10 feet.

4) **Building Setbacks** No building shall not be located on any lot nearer to the front lot line than thirty-five (35) feet nor nearer to any side street line than twenty-five (25) feet. Side and rear yard setbacks shall be fifteen (15) feet. The Architectural Committee reserves the right to approve deviations from building line restrictions but in all cases the minimum allowable setbacks shall conform with the Town of Wake Forest standards or any variance duly granted by the Town.

5) **Easements** for installation and maintenance of utilities and drainage facilities are reserved on the front 20 feet of each lot abutting the street and as shown on any recorded map defining the lots in Prestwicke. Easements twenty (20) feet in width, lying ten (10) feet on either side of the lot line are reserved for installation and maintenance of utilities and drainage facilities.

6) **Quiet Enjoyment** No noxious or offensive activity shall be carried out upon any lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood.

7) **Temporary Structures** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently.

8) **Signs** No commercial signs, with the exception of one "For Sale" or "For Rent" sign having an area not more than six (6) square feet. No other signs shall be displayed without prior written approval of the Architecture Committee.

9) **Animals** No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for any commercial purposes and further provided they do not constitute a nuisance or annoyance to the neighborhood. No dog pens or dog runs shall be allowed. Nothing herein shall preclude any owner from fencing a substantial portion of the rear yard of any lot for the purpose of containing one or more dogs, **PROVIDED** that approval for such fence shall be granted by the Architectural Committee.

10) **Trash** No lot shall be used or maintained as a dumping ground for rubbish or trash. Garbage or other waste shall not be kept except in sanitary containers. No garbage, trash, debris, leaves or other materials shall be burned on any lot subject to these Declarations.

11) **Miscellaneous Ancillary Uses** All recreational and playground equipment, including, but not limited to, swings, swing sets, merry-go-rounds, play pens, and sandboxes, toys, etc., shall be located in the rear yard of the home and must be kept in neat order. No television or radio antennas of any type are permitted. Satellite dishes must be less than 24 inches in diameter and must not be visible from the street. Outside clotheslines are expressly prohibited. The Board of Directors, in their sole discretion, may, by written approval, allow a variance from this restriction.

12) **Above Ground Swimming Pools** are expressly prohibited.

13) **Parking** No inoperable or unlicensed motor vehicles shall be parked on any lot or dedicated Subdivision Street. Residents shall not park personal vehicles in the streets of Prestwicke; and no boats, trailers, recreational vehicles or vehicles other than cars and pickup shall be parked in Prestwicke so as to be visible from the street. Any such vehicles shall be parked inside a garage or in an area screened from view of anyone on the streets in Prestwicke.

14) **Excepted Uses** No provision herein shall be applied or construed to prohibit

A. The location and operation of sewage pump station by the Town of Wake Forest or other public utility.

B. The location of a public greenway corridor along Horse Creek by any public entity authorized to do so.

C. The location of a gazebo or other ornamental or recreational structure on open space owned by the Association.

15) **Horse Creek Greenway Corridor** Declarant expressly acknowledges that it will convey a portion of the property subject to these Covenants to the Town of Wake Forest for use as a public greenway. Such greenway use expressly anticipates and contemplates future inclusion of the property in a larger greenway system to be installed and maintained by Wake County, the City of Raleigh, the Town of Wake Forest, or any other entity charged with installing and maintaining such greenway as part of a larger public greenway system.

The Common Properties are hereby subjected to any needed rights of way for ingress, egress, and regress to and from the public streets in Prestwicke to and from all such greenway property by the shortest or most reasonable distance. There shall be no charge or fee for the use of such rights of way; PROVIDED that the entity installing, operating, and maintaining the Greenway shall bear the full expense of creating such rights of way, operating and maintaining them, and the cost restoring any areas damaged in the process of installation and operation, which areas are not used permanently for right of way purposes.

No portion of the cost of installing, maintaining, and operating any such public greenway shall be paid from Member Assessments, and there shall be no charge or other cost exacted from Members for such public greenway purposes.

ARTICLE XI
IMPERVIOUS SURFACE RESTRICTIONS

1. **Allocation of Impervious Surface Area** Prestwicke Subdivision contains 83.018 acres which will be divided into 83 single family building lots containing no less than 20,000 square feet each with the remaining land to be dedicated to open space and public right of way uses. Current watershed regulations restrict the coverage of ground surface by material impervious to the absorption of water upon an area no greater than 24% of the gross area in a development, yielding a maximum impervious surface area of 19.92 acres (867,908 square feet) for the 83.018 acres in the Subdivision. This impervious surface area shall be apportioned between the streets and development generated impervious surfaces, open space areas, and the residential lots as follows:

- A. To the residential lots: 617,988 square feet, with 7,450 square feet allotted to each individual lot.
- B. To the streets and development generated impervious surfaced improvements: 249,920 square feet.
- C. To the open space: 1,000 square feet.

2. **Restrictions on Present and Future Land Use in Prestwicke** The use of the premises hereinabove described shall be restricted by the following limitations:

- A. There shall be no more than 83 detached, single family lots.
- B. Upon completion of the development improvements there shall be no additional impervious surfaces located upon the street rights of way and open space areas.
- C. Nothing herein shall prohibit the addition of impervious surface areas anywhere in Prestwicke under circumstances where the maximum impervious surface area is expanded by the

use of properly engineered and approved mitigation devices, or where such use is properly approved by the appropriate regulatory entity.

ARTICLE XII
GENERAL PROVISIONS

1) **Duration and Amendments** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded after which time all covenants shall be automatically extended for successive periods of ten (10) years unless two thirds (2/3) of the members of the Homeowners Association at a duly called meeting approves a change in the covenants and restrictions. The covenants may be amended at any time if two thirds (2/3) of the members of the Homeowners' Association approves the proposed amendment.

2) **Notices** Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice given, when mailed, postpaid, to the last known address of the person who appears as member upon the Association's membership roll or owner on the records of the Association at the time of such mailing. Notice to one of two or more co-owners of a lot shall constitute notice to all co-owners. It shall be the obligation of every member to notify immediately the Secretary of the Association in writing of any changes of address and it shall be the responsibility of any new member to notify immediately the Association of the date of the transfer of ownership.

3) **Enforcement** of these Covenants shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these Covenants, and failure by the Association or any owner or the Declarant to enforce any Covenant herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

4) **Severability** Should any Covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase, or term of this Declaration be declared to be void, or unenforceable, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

5) **Dissolution or Insolvency of the Association** The Association shall be dissolved upon the termination of this Declaration, or upon the written assent given in writing and signed by not less than two thirds (2/3) of the Members of each class of membership, or upon such more restrictive or additional conditions and in such manner as otherwise provided by the laws of the State of North Carolina. Upon dissolution or insolvency of the Association or upon loss of the ownership of the Common Properties (once such ownership has been acquired) by the Association for any reason whatsoever (except for exchange or dedication or conveyance of any part or all of the common Properties as allowed by this Declaration or by reason of merger and/or consolidation with any other association as allowed by this Declaration), any portion of the Common Properties not under the jurisdiction of and being maintained by another association substantially similar to the Association, together with all other assets of the Association, shall be offered to the Town of Wake Forest, North Carolina, or to some other appropriate governmental entity or public agency (as determined by the Board) to be dedicated for public use for purposes similar to those to which the Common Properties and assets were required to be devoted by the Association. If the Town of Wake Forest or other appropriate governmental entity or public agency accepts the offer of dedication, such portion of the Common Properties and assets shall be conveyed to by the Association to the Town or other appropriate governmental entity or public agency, subject to the

superior right of the Owner of each Lot to an easement (if necessary) for reasonable ingress and egress to and from such Owner's Lot and the public or private street(s) on which such Lot is located, and subject to all other applicable rights of way and easements, and subject to ad valorem property taxes subsequent to the date of such conveyance.

If the Town of Wake Forest or other appropriate governmental entity or public agency refuses the offer of dedication and conveyance, the Association may transfer and convey the Common Properties and assets to any nonprofit corporation, association, trust or other entity which is or shall be devoted to purposes and uses that would most nearly conform to the purposes and uses to which the Common Properties were required to be devoted by this Declaration, and such conveyance to be made subject to the rights of Owners and all other matters set forth in the next preceding paragraph.

IN WITNESS WHEREOF, **Prestwicke Property Owners Association, Inc.** after appropriate action duly taken its President has executed this instrument in its name and as its act and deed on the day and year first above written.

Prestwicke Property Owners Association, Inc.
By: Edward Moore
Edward Moore, President

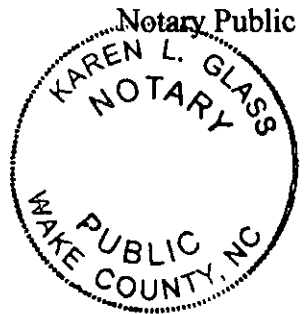
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WAKE COUNTY

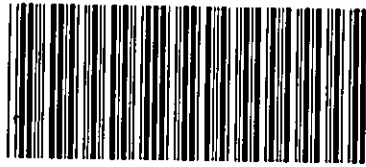
The undersigned Notary Public certifies that Edward Moore personally appeared before me this day and acknowledged that he is President of **Prestwicke Property Owners Association, Inc.** and that he executed the foregoing instrument as the act and deed of Wellesley Associates, LLC.

Witness my hand official stamp or seal, this 11th day of November, 2010.

Karen L. Glass

My Commission Expires: 2/14/13





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**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

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