WAKE COUNTY, NC 330
LAURA M RIDDICK
REGISTER OF DEEDS
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STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

WAKE COUNTY
SPO File Number 92-aaaaax
Prepared by: Office of the Attorney General
Property Control Section
Return to: NC Department of Administration
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT, pursuant to the provisions of N.C. General Statutes Chapter 121, Article 4 and is made this 8th day of August, 2008, by Prestonwood Country Club, Inc., ("**Grantor**"), whose mailing address is 300 Prestonwood Parkway, Cary, NC 27513, to the State of North Carolina, ("**Grantee**"), whose mailing address is State of North Carolina, Department of Administration, State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321 The designations Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context. Grantor and Grantee also may be referred to herein individually as a "party" and together as the "parties".

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Ecosystem Enhancement Program (formerly known as the Wetlands Restoration Program) within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring, enhancing, creating and preserving wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, The State of North Carolina is qualified to be the Grantee of a Conservation Easement pursuant to N.C. Gen. Stat. § 121-35; and

WHEREAS, the Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; and

WHEREAS, the Department of Environment and Natural Resources, the North Carolina Department of Transportation and the United States Army Corps of Engineers, Wilmington District entered into a

Memorandum of Agreement, (MOA) duly executed by all parties in Greensboro, NC on July 22, 2003. This MOA recognizes that the Ecosystem Enhancement Program is to provide for compensatory mitigation by effective protection of the land, water and natural resources of the State by restoring, enhancing and preserving ecosystem functions; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina was granted to the Department of Administration by resolution as approved by the Governor and Council of State adopted at a meeting held in the City of Raleigh, North Carolina, on the 8th day of February 2000; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying, and being in the Town of Morrisville, Wake County, North Carolina, and being more particularly described as all of "Tract B", containing 75.83 acres, more or less, and shown on a plat recorded in the Wake County, North Carolina Registry in Book of Maps 1997, Page 1148, said plat being incorporated by reference as if fully set out herein and being referred to herein as the **"Property"**; and

WHEREAS, Grantor is willing to grant a Conservation Easement over certain portions of the Property as described herein, such portions being referred to herein together as the **"Easement Area"**, thereby restricting and limiting the use of the Easement Area as defined herein to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement over the Easement Area. This Conservation Easement shall be for the protection and benefit of the waters of an unnamed creek as shown on the Plat (as defined herein).

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over the Easement Area, as defined herein, for the benefit of the people of North Carolina The "Easement Area" consists of the following four (4) portions of the Property totaling 9.321 ± acres as shown on a plat entitled "(Revised) Conservation Easement At The Prestonwood Golf Course" and recorded in the Wake County, North Carolina Registry in Book of Maps 2008, Page 1597, said plat being incorporated by reference as if fully set out herein and being referred to as the "Plat" In accordance with the "Legend" shown on the Plat, the Easement Area consists of the following portions of the Property:

"Easement Area 1":	which is shown on the Plat as "Conservation Easement (Periodic Vegetation Maintenance To Maintain Play-Thru Corridors)";
"Easement Area 2":	which is shown on the Plat as "Conservation Easement (To Remain Undisturbed)";
"Easement Area 3":	which is shown on the Plat as "Conservation Easement (Vegetation Shall Be Limited To Low Growing Native Species)"; and
"Swale":	which is shown on the Plat as "25' Swale & Drainage Easement Centered on Existing Storm Structures".

"Native Species" are defined as plants that are native to the same North Carolina region as this restoration project The terms, conditions, restrictions, limitations, and provisions of this Conservation Easement are applicable only to those portions of the Property that are part of the Easement Area.

The purposes of this Conservation Easement are to maintain, restore, enhance, create and preserve wetland and/or riparian resources in the Easement Area that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to

maintain permanently the Easement Area in its natural condition, consistent with these purposes and subject to the terms of this Conservation Easement; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes, subject to the terms of this Conservation Easement. All uses and reserved activities described in this Conservation Easement are subject to all applicable local, state and federal laws and regulations. To achieve these purposes, the following conditions and restrictions are set forth:

I. DURATION OF EASEMENT

Pursuant to law, including the above referenced statutes, this Conservation Easement shall be perpetual and it shall run with, and be a continuing restriction upon the use of, the Easement Area, and it shall be enforceable by the Grantee against the Grantor and against Grantor's heirs, successors and assigns, personal representatives, agents, lessees, and licensees.

II. GRANTOR RESERVED USES AND RESTRICTED ACTIVITES

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved herein, any activity in, or use of, the Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights in and to the Easement Area not expressly reserved hereunder by the Grantor have been acquired by the Grantee. The following specific uses in the Easement Area are prohibited, restricted, or reserved as indicated:

A. General Recreational Uses. Grantor expressly reserves the right to use the Easement Area for undeveloped recreational uses, including hiking, bird watching, hunting and fishing, and access to the Easement Area for the purposes thereof. Except as otherwise provided herein, usage of motorized vehicles in Easement Area 1, Easement Area 2, and Easement Area 3 is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and on existing trails, paths or roads.

B. Golf Course Uses. The Easement Area is part of the Prestonwood Country Club Golf Course owned by the Grantor, referred to herein as the "Golf Course", and, at the time of the execution of this Conservation Easement, contains a portion of 8 golf holes that are operated, used, and maintained by the Grantor as part of its Golf Course, and are used by members, guests and other permittees of the Grantor. Grantor, for itself, its members, guests, employees, agents, and other permittees of the Grantor, expressly reserves the right to use the Easement Area in connection with the operation, use, and maintenance of the Golf Course, subject to the following terms and conditions (each of the following also may be referred to herein individually as a "Golf Course Use" and collectively as "Golf Course Uses"):

1. The 8 golf holes may be used by the members, guests, employees, agents, and other permittees of the Grantor. Golf activities within the Easement Area shall be in compliance with the conditions of this Conservation Easement.

2. At any time and from time to time, Grantor may cut, prune, or trim live vegetation ("vegetation", for the purposes of this Conservation Easement, includes plants, grasses, trees, bushes, shrubs, and other types of vegetative materials) located in any part of Easement Area 1, and may remove any dead or obviously dying vegetation located in any part of Easement Area 1, as reasonably necessary to maintain for persons playing golf clear and unobstructed views from the portion of the Property on either side of any part of Easement Area 1 to the portion of the Property on the other side of that part of Easement Area 1. Provided, however, no vegetation in Easement Area 1 shall be cut, pruned, or trimmed to a height of less than two (2) feet above ground level outside of any stream channel. With

respect to vegetation that is in any stream channel within Easement Area 1, the two (2) foot height is measured from the top of the bank of the stream channel. Within Easement Area 1, Grantor may replace vegetation at or above the top of the bank with native North Carolina Piedmont plants

3. Grantee shall plant in Easement Area 3 only Low Growing Native Species. "Low Growing" refers to vegetation that will not exceed a height that would obstruct the view of persons playing golf from the portion of the Property on any side of Easement Area 3 to the portion of the Property on the other side of Easement Area 3. With respect to any vegetation in Easement Area 3 that obstructs the views of golfers, at any time and from time to time Grantor may cut, prune, or live vegetation located in any part of Easement Area 3, and may remove any dead or obviously dying vegetation located in any part of Easement Area 3, as reasonably necessary to maintain for persons playing golf clear and unobstructed views from the portion of the Property on either side of Easement Area 3 to the portion of the Property on the other side of Easement Area 3 Provided, however, no vegetation in Easement Area 3 shall be cut, pruned, or trimmed to a height of less than five (5) feet above ground level outside of any stream channel With respect to vegetation that is in any stream channel within Easement Area 3, the five (5) foot height is measured from the top of the bank of the stream channel. Any replacement vegetation planted by the Grantee also shall be Low Growing Native Species. Upon consultation with Grantee to determine whether or not any particular vegetation in Easement Area 3 is Low Growing Native Species vegetation, Grantor may remove from Easement Area 3 vegetation that is not Low Growing Native Species vegetation.

4. Except as otherwise provided herein, Grantor shall not plant vegetation within Easement Area 1, Easement Area 2, or Easement Area 3 without prior written approval of the Grantee

5. The Swale is part of one or more golf holes in the Property. The Swale is distinguished from the other portions of the Easement Area because it is part of the fairway of one or more golf holes in the Property. Easement Area 1, Easement Area 2, and Easement Area 3 all are hazard areas or out of bounds areas of the Golf Course. Notwithstanding anything to the contrary herein, Grantor reserves the right to use the **Swale** as part of the Golf Course, including fairway use, and to use and maintain the Swale in the same manner as it uses and maintains the other portions of the Golf Course, including, without limitation, any one or more of the following (the following list is not exhaustive and does not preclude other activities relating to use and maintenance of the Golf Course): use as part of one or more golf holes; planting, fertilization, watering, mowing, cutting, trimming, pruning, and other maintenance of grass and other vegetation; aeration and other maintenance of soil; installation, use, maintenance, repair, replacement, and removal of irrigation lines and equipment; installation, maintenance, removal and replacement of soil and grass; application of pesticides, herbicides, insecticides, fertilizers or other man-made soil, flora or fauna additives; installation, use, maintenance, repair, replacement, and removal of paved or unpaved golf cart paths; use of golf carts, trucks, lawn mowers (both hand operated and motorized), and other motorized vehicles and equipment; and installation, use, maintenance, repair, replacement, and removal of sand traps, grassed swales and other vegetation, and other golf hole design features; and installation, use, maintenance, repair, replacement, and removal of golf ball washers, tee markers, yardage markers, golf hole number signs and descriptions, directional signs, poles and rope to mark ground under repair and other unplayable areas and to control the direction and flow of golfers and golf carts Grantee shall not plant or maintain any vegetation in the Swale, nor shall Grantee use the Swale or any portion thereof in any way without the prior written consent of Grantor, which consent may be given or denied in the sole discretion of Grantor. Insofar as reasonably possible, lightweight vehicles shall be used to carry out all allowable activities within the Swale to avoid damaging the buried pipes.

6. Grantor reserves the right to install, use, maintain, repair, replace, and remove along the edge of the Easement Area poles, ropes, signs, and paint to mark the boundaries of those portions of the

Easement Area that are out of bounds, water hazards or lateral water hazards for the Golf Course. Grantor also reserves the right to place install, use, maintain, repair, replace, and remove signs along the edge of the Easement Area to identify portions of the Easement Area as wetlands or conservation areas. Grantee reserves the right to mark the easement boundaries to prevent unintended encroachment.

7. Easement Area 1, Easement Area 2, and Easement Area 3 are part of the Golf Course and may be treated as out of bounds areas, water hazard areas, and/or lateral water hazard areas under the applicable rules of golf and as set up from time to time by Grantor. Accordingly, Grantor reserves the right for golfers and other persons authorized by the Grantor to enter Easement Area 1, Easement Area 2, and Easement Area 3 for the limited purpose of retrieving golf balls. Grantor further reserves the right for golfers to play golf shots from Easement Area 1, Easement Area 2, and Easement Area 3 in the same manner that golfers are allowed to play shots under the applicable rules of golf from other areas that are out of bounds, water hazards, or lateral water hazards. Except as reasonably necessary for the exercise by Grantor of its reserved rights and easements herein for Golf Course maintenance, Bridge maintenance, and Easement Area maintenance, all motorized vehicles or golf carts must remain on existing paths or roads while in Easement Area 1, Easement Area 2, and Easement Area 3 There are three "Bridge" areas shown on the Plat that are located between, and are not part of, various portions of Easement Area 1, Easement Area 2, and Easement Area 3.

8 Grantor reserves the right and easement for storm water and irrigation/fertilization water drainage from the Property into Easement Area 1, Easement Area 2, and Easement Area 3, both from the surface of the Property and through storm water drainage pipes and other facilities that exist on the date of execution by Grantor of this Conservation Easement. Grantor also reserves the right and easement to use and maintain such existing storm water drainage pipes and other facilities, including rights to maintain, repair, replace, remove, or alter same as reasonably necessary to handle such water drainage from the Property Following the completion of each exercise of this easement, Grantor shall restore any portion of the applicable Easement Area 1, Easement Area 2, or Easement Area 3 damaged as a result of such exercise of this easement to substantially the same condition as it was in immediately prior to the commencement of the exercise of the easement. All drainage into Easement Area 1, Easement Area 2, and Easement Area 3 shall be in compliance with local, state and federal regulations.

9. Grantor shall have the right and easement at all times to irrigate any part or all of the Property, including irrigation with recycled waste water (sometimes referred to as "gray water"), and including installation, use, maintenance, repair, replacement, and removal of all pipes, equipment and facilities necessary for such irrigation purposes, provided that the activity is in compliance with local, state, and federal regulations, and provided that the irrigation lines within Easement Area 1, Easement Area 2, and Easement Area 3 are located as shown on the attached "Map of Irrigation Lines" or in other locations agreeable to the Grantee. Following the completion of each exercise of this easement, Grantor shall restore any portion of the applicable Easement Area 1, 2, or 3 damaged as a result of such exercise of this easement to substantially the same condition as it was in immediately prior to the commencement of the exercise of this easement.

10 Neither the inadvertent or occasional runoff, overflow or overspray into Easement Area 1, Easement Area 2, or Easement Area 3 of soil, sand, water, grass seed, fertilizer, pesticides, and herbicides applied to any other portion of the Property that constitutes part of the Golf Course, nor the runoff of such items into any of those portions of the Easement Area as a result of rain or other precipitation or other natural occurrences beyond the control of Grantor, shall constitute a violation of this Conservation Easement by Grantor, provided that all fertilizers, pesticides, and herbicides are used in compliance with local, state, and federal regulations.

11. The 3 bridges shown on the Plat are used in conjunction with the use and maintenance of the Golf Course, and each bridge is located between portions of the Easement Area. Grantor reserves a perpetual easement for temporary work space, ten (10) feet in width on each side of each bridge as reasonably necessary from time to time for use, repair, maintenance, replacement, and removal of the bridge. Following the completion of each exercise of this easement, Grantor shall restore any portion of the applicable Easement Area damaged as a result of such exercise of this easement to substantially the same condition as it was in immediately prior to the commencement of the exercise of the easement.

12. In connection with exercise of all of the rights reserved for Golf Course Uses, Grantor shall have access to the Easement Area.

13. If there is any conflict between any provision in this Section II.B of this Conservation Easement and any other provision of this Conservation Easement, this Section II.B. shall control.

14. Grantor reserves the perpetual right and easement, at any time and from time to time, to withdraw (including pumping) water from any creek, stream, or pond in Easement Area 1, Easement Area 2, and Easement Area 3 to the "**Pond**" located in the southeast portion of the Property as shown on the Plat. Grantor shall exercise this right in a manner that reasonably is likely to cause minimal interference with or damage to the applicable Easement Area, for example, by using a removable, flexible pipe through which to withdraw (including pumping) water from the applicable Easement Area to the Pond. Following any exercise of this right, Grantor shall restore any portion of the applicable Easement Area damaged as a result of such exercise of this easement to substantially the same condition as it was in immediately prior to the commencement of this easement.

All provisions in this Conservation Easement are subject to all applicable rules and laws governing such activities.

C. Educational Uses. The Grantor reserves the right to engage in and permit others to engage in educational uses in the Easement Area not inconsistent with this Conservation Easement, and the right of access to the Easement Area for such purposes including organized educational activities such as site visits and observations. Educational uses of the property shall not alter vegetation, hydrology or topography of the site.

D. Vegetation Cutting. Except as related to the removal of non-native plants, diseased or damaged trees, and vegetation that obstructs, destabilizes or renders unsafe the Easement Area to persons or natural habitat, and except as provided in Section II.B. of this Conservation Easement with respect to Golf Course Uses, all cutting, removal, mowing, harming, or destruction of any trees or other vegetation in Easement Area 1, Easement Area 2, or Easement Area 3 is prohibited

E. Industrial, Residential and Commercial Uses. All industrial, residential, and commercial uses are prohibited in the Easement Area. Golf Course Uses as described herein are recreational uses.

F. Agricultural Use. Except as provided in Section II.B. of this Conservation Easement with respect to Golf Course Uses, all agricultural uses within the Easement Area including any use for cropland, waste lagoons, or pastureland are prohibited

G. New Construction. There shall be no building, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area

H. Roads and Trails. Except as otherwise allowed by Section II.B with respect to Golf Course Uses, there shall be no construction of roads, trails, walkways, or paving in the Easement Area. Existing roads or trails located in the Easement Area may be maintained by Grantor in order to minimize runoff, sedimentation

and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Easement Area. Existing roads, trails or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces, and golf cart paths and bridges may be operated, used, and maintained in the same manner as they are maintained in other portions of the Golf Course

I. **Signs.** Except as otherwise provided in Section II.B. with respect to Golf Course Uses, no signs shall be permitted in the Easement Area except for the following: interpretive signs describing restoration activities and the conservation values of the Easement Area; signs identifying the owner of the Property and the holder of the Conservation Easement; signs giving directions; or signs prescribing rules and regulations for the use of the Easement Area.

J. **Dumping or Storing.** Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material in the Easement Area is prohibited.

K. **Grading, Mineral Use, Excavation, Dredging.** Except as otherwise provided in Section II.B. with respect to Golf Course Uses, there shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials

L. **Water Quality and Drainage Patterns.** Except as otherwise provided in Section II.B with respect to Golf Course Uses: there shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water; no altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns; and all removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. Except as otherwise provided in Section II B. with respect to Golf Course Uses, only in the event of an emergency interruption or shortage of all other water sources, may water from within the Easement Area be used for good cause shown as needed for the survival of livestock and agricultural production, and such use shall be temporary and shall end when the emergency situation no longer exists.

M. **Subdivision and Conveyance.** Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying fee that is subject to this Conservation Easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee for the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future transfer of the fee simple shall be subject to this Conservation Easement. Any transfer of the fee is subject to the Grantee's right of ingress and egress over and across the Property to the Easement Area for the purposes set forth herein.

N. **Development Rights.** Except as otherwise provided in Section II B. with respect to Golf Course Uses, all development rights are removed from the Easement Area and shall not be transferred.

O. **Disturbance of Natural Features**. Except as otherwise provided in Section II.B. with respect to Golf Course Uses, any change, disturbance, alteration or impairment of the natural features of the Easement Area or any intentional introduction of non-native plants, trees and/or animal species by Grantor is prohibited.

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the N C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652

III. GRANTEE RESERVED USES

A. Ingress, Egress, and Inspection. The Grantee, its employees and agents, successors and assigns, receive the perpetual right of ingress and egress to the Easement Area over the Property at reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area, in accordance with restoration activities or a long-term management plan. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

B. Restoration Activities. These activities in the Easement Area include planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the hydrology of the site, and installation of natural and manmade materials as needed to direct in-stream, above ground, and subterraneous water flow.

To the extent permitted by Chapter 143, Article 31, of the North Carolina General Statutes, the State will indemnify and hold Grantor harmless, from and against any and all claims arising from any one or more of the following condition(s) to the extent such condition(s) was (were) caused by the negligent or intentional act(s) or omission(s) of the State, or its agents, contractors or employees: conduct, management, operation or work done within the Easement Area or on the Property. As to third parties, the State of North Carolina is an immune sovereign and is not ordinarily subject to suit. However, the State has enacted the North Carolina Tort Claims Act, pursuant to which the State may be liable for the torts of its officers and employees, within the terms of the Act. Accordingly, the State will be primarily liable for any claims within the coverage of the North Carolina Tort Claims Act.

The rights granted by these Sections III.A. and III.B at all times shall be exercised in a manner that causes the least amount of interference to the use of the Property as part of the Golf Course or for any other lawful use of the Property. None of such rights shall be exercised by Grantee in the Swale without the express permission of the Grantor. Grantee, on behalf of itself and its employees and agents, and any person on or in the Property or Easement Area with the express or implied permission of the Grantee, acknowledges and assumes the risks associated with persons who are not playing golf being present on a Golf Course during times when golf is being played, or maintenance of the Golf Course is being performed, or Grantor is exercising any other rights of Grantor pursuant to this Conservation Easement.

Following completion of each exercise of the rights or easements granted to Grantee in this Conservation Easement, Grantee shall restore any portion of the Property damaged as a result of such exercise of such rights or easements, including the Swale, to substantially the same condition as it was in immediately prior to the commencement of the exercise of those rights or easements.

Grantee shall confer with Grantor regarding timing and locations of repair activities in the stream and riparian area. In cases where such repair activities affect the portions of the Property that are outside of the Easement Area, the condition of those portions of the Property shall be restored to a condition that is agreed upon by both parties, subject to budget constraints.

IV. ENFORCEMENT AND REMEDIES

A. Enforcement. To accomplish the purposes of this Conservation Easement, and subject to the provisions hereof, Grantee is allowed to prevent any activity within the Easement Area that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this

Conservation Easement by Grantor, their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor, their successors or assigns in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Property; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunctive or other appropriate relief if the breach of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement.

B. Inspection. The Grantee, its employees and agents, successors and assigns, have the right, after giving reasonable notice to the Grantor, to enter the Easement Area over the Property at reasonable times for the purpose of inspection to determine whether the Grantor, their successors or assigns are complying with the terms, conditions and restrictions of this Conservation Easement. The exercise of this right at all times shall be done in a manner that results in the least interference with the use of the Golf Course portion of the Property as part of the Golf Course. Except in cases of emergency or if the Grantee has reason to believe that a violation of the terms of this Conservation Easement has occurred or is about to occur, the Grantee, its employees and agents, successors and assigns, do not have the right to enter the Easement Area without first having given reasonable notice to the Grantor.

C. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor, their successors or assigns, for any injury or change in the Easement Area caused by third parties, resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes.

D. Costs of Enforcement. Beyond regular and typical monitoring, any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, their successors or assigns, including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.

E. No Waiver. Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance, delay or omission by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be construed to be a waiver by Grantee.

V. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in only those uses of the Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Easement Area, and the right of quiet enjoyment of the Easement Area.

VI. MISCELLANEOUS

A. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of the Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby. By the recording of this Conservation Easement in the Wake County, North Carolina Registry, the Grantee is deemed to have accepted all of the terms and conditions of this Conservation Easement as set forth herein.

B. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other address(es) as either party establishes in writing upon notification to the other

C Nothing in this Conservation Easement shall limit the right of Grantor, its successors or assigns to sell, grant, transfer, convey, lease, or otherwise dispose of an ownership or possessory interest in any part or all of the Property, provided that any such sale, grant, transfer, conveyance, lease or other disposition shall be under and subject to this Conservation Easement. Grantor shall notify Grantee in writing of the name and address and any party to whom the Property or any part thereof or possessory interest therein is to be transferred at or prior to the time said transfer is made Grantor further agrees to make any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed subject to the Conservation Easement herein created

D The Grantor and Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interests in the Property or any portion thereof

E. This Conservation Easement may be amended, but only in writing signed by all parties hereto, and provided such amendment does not affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, and is consistent with the purposes of the Conservation Easement.

F. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable provided, however, that the Grantee hereby covenants and agrees, that in the event it transfers or assigns this Conservation Easement, the organization receiving the interest will be a qualified holder under N.C. Gen. Stat. § 121-34 et seq. and § 170(h) of the Internal Revenue Code, and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue in perpetuity the conservation purposes described in this document.

G. The rights and easements reserved for the Grantor herein are reserved for Prestonwood Country Club, Inc and any successor owner of any part or all of the Property.

H. The recitals to this Conservation Easement, and all recorded maps referred to herein and all maps attached hereto, are hereby incorporated into and made a part hereof.

I. The captions of any paragraphs or sections of this Conservation Easement are for convenience and reference only, and in no way define, extend or limit the scope or intent of any provision hereof.

J. The provisions of this Conservation Easement shall be governed by and construed pursuant to the laws of the State of North Carolina

K. As used herein, the singular shall include the plural and one gender shall include all, unless otherwise clearly indicated.

L. This Conservation Easement may be executed in one or more counterparts, each of which shall be an original, but all of such counterparts together shall constitute one and the same instrument.

M. The parties acknowledge that each of them has been represented by legal counsel, or has had the opportunity to be represented by legal counsel in connection with the negotiation of the terms and the preparation of this Conservation Easement, that Grantor's counsel and Grantee's counsel each has performed the actual drafting of this Conservation Easement and that each party has had a sufficient and reasonable opportunity to review the final draft prior to execution of this Conservation Easement. Accordingly, each party agrees that in any proceeding in which the terms of this Conservation Easement are questioned, construed or interpreted, there shall be no presumptions in favor of or against either party because of the drafting services provided by either party's counsel.

N. Any waiver by a party of the other party's breach of this Agreement, or any waiver by a party of a condition set forth herein, or any failure by a party to exercise any right or remedy granted to that party hereunder, shall not constitute a subsequent waiver or failure to exercise such right or remedy.

O. The liabilities, and indemnities set forth herein (i) with respect to the Grantor are applicable to the person or legal entity who owns the Property or applicable portion thereof at the time of the occurrence of the applicable event, and (ii) with respect to the Grantee, are applicable to the legal entity to whom this Conservation Easement runs at the time of the occurrence of the applicable event.

P. This Conservation Easement may be enforced only by the parties hereto, and their respective successors and assigns (which, with respect to the Grantor, includes successor owners of any part or all of the Property), and, with the exception of the N.C. Division of Water Quality and the U.S. Army Corps of Engineers, no third party beneficiary rights, including but not limited to third party rights of enforcement, are created hereby

Q. By its execution of this Conservation Agreement Grantor agrees, and by its recording of this Conservation Easement in the Wake County, North Carolina Registry Grantee agrees, that the Plat supersedes in all respects the plat recorded in the Wake County, North Carolina Registry in Book of Maps 2003, Page 2241.

R. All rights and easements granted to the Grantee by this Conservation Easement are subject to all existing plats, easements, and rights of way recorded in the Wake County, North Carolina Registry prior to the recording of this Conservation Easement, and Grantee acknowledges and agrees that those persons or legal entities who have pre-existing easements and rights are not subject to the terms of this Conservation Easement.

S As used herein, the words "maintain", "maintenance", and other similar words include all of the following, as the context requires: construction, re-construction, installation, maintenance, inspection, examination, upkeep, cleaning, renewal, alteration, repair, replacement, repainting, remodeling, restoration, removal, improvement, administration, operation, use, planting, landscaping, mowing, cutting, trimming, pruning, fertilizing, application of herbicides and pesticides, watering, preservation, and any other activities related to operation, use, and maintenance allowed by this Conservation Easement

TO HAVE AND TO HOLD the said rights and easements perpetually unto the State of North Carolina for the aforesaid purposes.

AND Grantor covenants that Grantor has done nothing to impair such title to the Property as Grantor received and that Grantor will warrant and defend such title to the same against the claims of all persons claiming by, under or through Grantor, except for the following exceptions: all rights of way and easements affecting the Property that are recorded in the Wake County, North Carolina Registry.

(execution page follows)

IN TESTIMONY WHEREOF, Grantor and Grantee each have caused this instrument to be executed by its duly authorized official, on the date indicated in the acknowledgment of such execution, the later date of which is the date of execution of this Conservation Easement

Prestonwood Country Club, Inc.

By: Donald R Parker
Title: Treasurer

Wake **COUNTY, NORTH CAROLINA**

I certify that the following person personally appeared before me this day and acknowledged to me that he or she signed the foregoing document: Donald R. Parker.

Date: 8.8.08

MICHELE M. CRAIG
NOTARY
PUBLIC
WAKE COUNTY, N.C.

(affix seal or stamp here)

Michele M. Craig
Notary Public
Printed/Typed Name: Michele M. Craig

My commission expires: 3.30.09

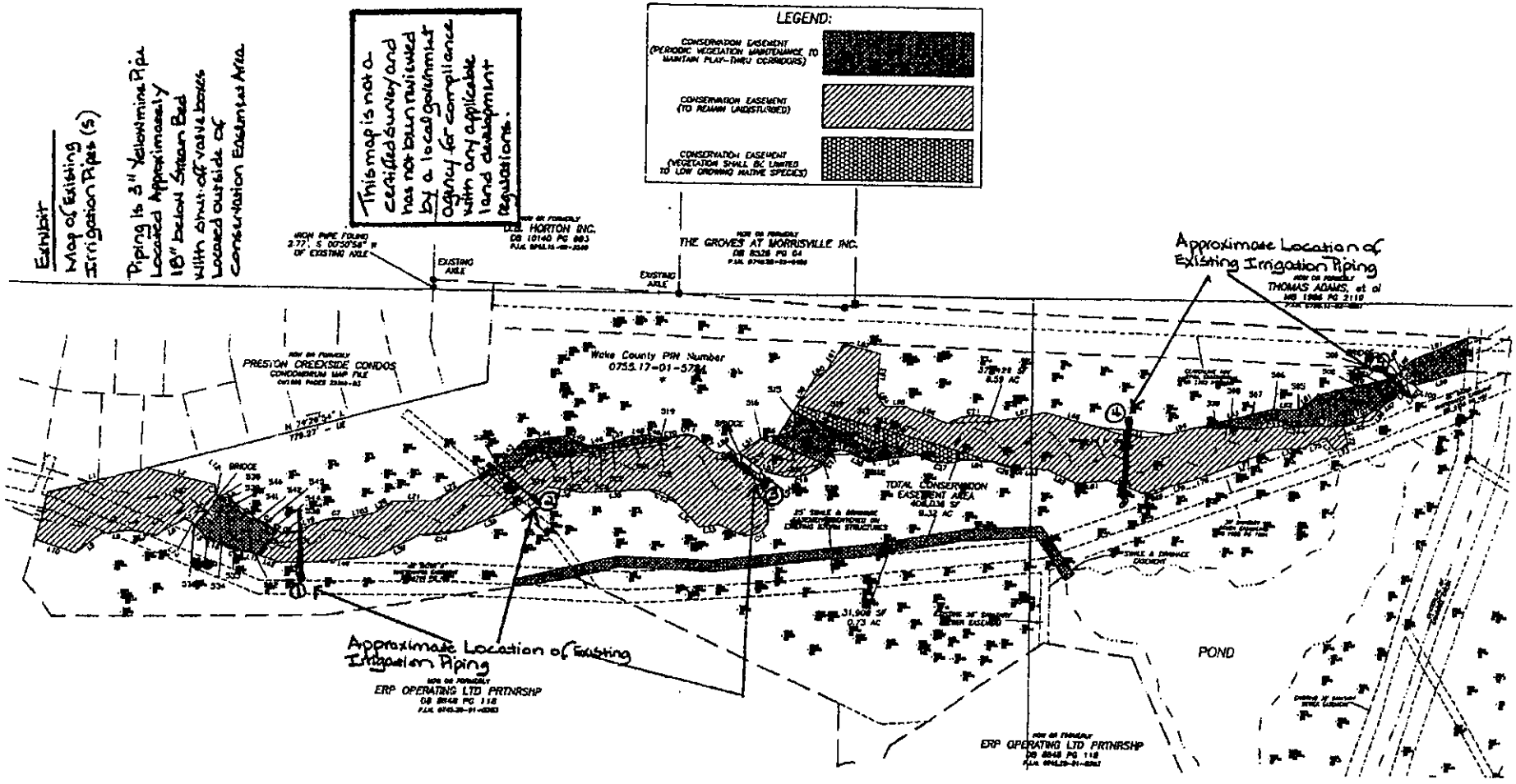
MAP OF IRRIGATION LINES

The following "Map Of Irrigation Lines" is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.

Also, the attached Map Of Irrigation Lines was prepared prior to completion of the Plat (as defined in the Conservation Easement). Accordingly, on the Map Of Irrigation Lines, the "Swale" (as defined in the Conservation Easement) is shown as part of what is defined in the Conservation Easement as "Easement Area 3".

MAP OF IRRIGATION LINES

NOTE: THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY LAND DEVELOPMENT REGULATIONS.



BOOK:013218 PAGE:00594 - 00609

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.

WAKE COUNTY NORTH CAROLINA

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

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
16 # of Pages

22.004-1/20/06