

How For: ROBERT A. BEADY

BOOK 3935 PAGE 880

PRESENTED  
FOR  
REGISTRATION

FEB 4 4 53 PM '87

KENNETH C. WILKINS  
REGISTER OF DEEDS  
WAKE COUNTY

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR PRESTON POINT

STATE OF NORTH CAROLINA §  
§  
COUNTY OF WAKE §

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

W I T N E S S E T H :

WHEREAS, Declarant is the owner of certain property located in Wake County, North Carolina, as more particularly described on Exhibit "A" attached hereto and made a hereof for all purposes (the "Property"); and

WHEREAS, the Property is part of a planned unit development approved by the appropriate governmental authorities of the City of Cary, North Carolina, and now known as "Preston"; and

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

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

NOW, THEREFORE, Declarant hereby subjects the Property to the easements, covenants, conditions and restrictions hereinafter stated and hereby declares that all of the Property shall be held, sold and conveyed subject to the easements, covenants, conditions and restrictions as hereinafter stated, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project. The easements, covenants, conditions and restrictions herein contained shall run with the Property and all parts thereof and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof or interest therein and shall inure to the benefit of each owner of the Property or any part thereof or interest therein.

ARTICLE I

DEFINITIONS

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

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

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

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

## ARTICLE II

### PROPERTY

Section 1. Property Made Subject To Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association and each Owner subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

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

Section 3. Contents of Supplemental Declaration. Each Supplemental Declaration shall set forth the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens to which the Additional Property covered thereby shall be subject. Such controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens may contain additions, deletions and modifications from those contained in this Declaration, as the parties subjecting such Additional Property to the scheme of this Declaration may desire; provided if such party is other than Declarant, as a condition to such party's right to so impose such additions, deletions or modifications, such party must obtain the prior written consent thereto of Declarant and the Association, acting through its Board. In no event, shall such Supplemental Declaration revoke, modify or add to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens established by this Declaration or a previously filed Supplemental Declaration as it applies or they apply to the Property or to previously added Additional Property except as provided in Section 5 of this Article.

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

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

#### ARTICLE IV

##### PROPERTY RIGHTS IN THE COMMON AREA

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Member who resides on a Lot, and each individual who resides with such Member on such Lot shall have a right and easement of use and enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot; PROVIDED, HOWEVER, such easement shall not give such person the right to make alterations, additions or improvements to any part of the Common Area.

Section 2. Title to the Common Area. Declarant shall dedicate and convey (by deed without warranty) the fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default and utility easements, other encumbrances and mineral interests outstanding and of record in Wake County, North Carolina, on or (at Declarant's sole option) prior to December 31, 1999.

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

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

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

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

Section 3. Basis and Amount of Annual Assessment. On or before December 31 of each year during the term hereof, the Board shall set the amount of the annual assessment for the ensuing year for each Lot, taking into consideration, among other things, the then current development and/or maintenance costs, estimated increases in development and/or maintenance costs, and the future needs of the Association. The amount of the annual assessment for each Lot as set by the Board shall be determined by dividing 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), by the number of Lots in the Property, such that the regular annual assessment for each Lot shall be the same.

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 a 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 1987 and annual assessments shall continue thereafter from year to year.

Section 6. Due Date of Assessments. Annual assessments shall be due and payable on a quarterly basis on the fifteenth (15th) day of January, April, July, and October of each year. The first quarterly installment of the annual assessments shall become due and payable on April 1, 1988. 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

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.

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

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

#### ARTICLE VI

##### GENERAL POWERS AND DUTIES OF THE BOARD OF THE ASSOCIATION

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

- a. To improve, maintain or cause to be maintained the Common Area and the Landscaped Rights-of-Way, including, but not limited to, planting, mowing, pruning, fertilizing, preservation and replacement of the landscaping and the upkeep and maintenance of sidewalks and other improvements in the Common Area and the Landscaped Rights-of-Way, and the upkeep and maintenance of sprinklers, sprinkler mains and laterals, sprinkler heads, equipment, water pumps, wells, signs, lighting and planting boxes located in the Common Area and the Landscaped Rights-of-Way;
- b. To enter into agreements with the appropriate governmental authorities to enable the Association to improve and maintain the Common Area and the Landscaped Rights-of-Way or portions of either thereof;
- c. To make reasonable rules and regulations for the use and operation of the Common Area, and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by the Owners of a three-fourths (3/4) majority

- m. To employ a manager or firm to manage the affairs and property of the Association, to employ independent contractors, or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;
- n. To retain the services of legal and accounting firms;
- o. To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and/or, in its discretion, seek damages or other relief from any Owner for violation of such provisions or rules;
- p. To contract with any third party or any Owner (including, without limitation, Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be at competitive rates and otherwise upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association;
- q. To take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its obligations hereunder, for the operational protection of the Association or for the enforcement of the controls, covenants, conditions, restrictions and development standards contained herein; and
- r. To set the assessments, whether annual or special, described in this Declaration.

Section 2. Liability Limitations. Neither Declarant, nor any Member nor the Board nor any 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

- b. Fidelity bond for all officers and employees of the Association having control over the receipt or disbursement of Association funds; and
- c. Worker's compensation insurance to the extent necessary to comply with applicable laws.

Section 2. Insurances Proceeds. Subject to any limitations imposed by any applicable financing documents, the Association shall use the net proceeds of casualty insurance recovered to repair and/or replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of casualty insurance paid to the Association, as required in this Article, remaining after satisfactory completion of repair and replacement, shall be retained by the Association as part of the general reserve fund for repair and replacement of the Common Area and/or Landscaped Rights-of-Way.

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

#### ARTICLE VIII

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

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

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

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

Section 3. Restricted Actions by Owners. No Owner shall permit anything to be done or kept on his Lot or in the Common Area which will result in the cancellation of or increase of cost of any insurance carried by the Association, or which would be in violation of any law. No waste shall be committed in the Common Area. Each Owner shall comply with all laws, regulations,

Section 12. Floor Areas, Stories. The total floor area of the main dwelling house on each Lot, exclusive of porches, terraces, garages and outbuildings, shall contain not less than 1,350 square feet of space and the ground floor of each such main dwelling house, exclusive of porches, terraces, garages and outbuildings, shall contain not less than 675 square feet of space. No Improvements, as hereinafter defined, may be constructed or maintained on any Lot which exceed two (2) stories (plus a finished or unfinished attic) in height.

Section 13. Exterior Finish; Roof Materials. The exterior of each building (exclusive of windows) erected on a Lot shall consist of brick, stone or other masonry and/or wood or wood type siding or such other first class materials as the Architectural Control Committee may approve. Attached or detached garages shall be of the same construction and exterior, non-brick, finish as the main dwelling house thereon. Detached accessory buildings shall be of the same construction and material as listed in this Section. All roofs on all improvements (including, without limitation, Improvements) constructed on each Lot shall be of wood shingle, clay tile or heavy weight (at least 235 pounds) self-seal composition shingles or such other materials as may be specifically approved in writing by the Architectural Control Committee.

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

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

Section 16. Limitation of Truck Parking and Other Vehicles. Trucks with tonnage in excess of one ton shall not be permitted to park overnight on the streets, driveways or otherwise within the Property. No vehicle of any size which transports inflammatory or explosive cargo may be kept in the Property at any time. No vehicles that are not in a condition to be normally operated may be stored or situated on any Lot for more than thirty (30) days unless stored in an enclosed garage. The Owner of each Lot will be responsible for providing on such Lot sufficient parking area for all vehicles normally parked and/or situated on or in regard to such Lot such that on street parking will be restricted to no more than one (1) vehicle for each Lot.

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

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

evaporative cooler shall be installed on the front wall or the side wall (unless screened to the satisfaction of the Architectural Control Committee) of a residence on a Lot.

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

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

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

#### ARTICLE IX

##### ARCHITECTURAL CONTROL

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

Section 2. Composition. Until December 31, 1999, Declarant shall annually appoint the members of the Architectural Control Committee which will be composed of three (3) individuals, each generally familiar with residential and community development design matters and knowledgeable about the Declarant's concern for a high level of taste and design standards within the Project. In the event of the death or resignation of any member of the Architectural Control Committee, Declarant, for so long as it has the authority to appoint the members of the Architectural Control Committee, and thereafter, the remaining members of the Architectural Control Committee, shall have full authority to designate and appoint a successor. No member of the Architectural Control Committee shall be liable for claims, causes of action or damages (except where occasioned by gross negligence or willful misconduct of such member) arising out of services performed pursuant to this Declaration. Subsequent to December 31, 1999, the Board shall appoint the members of the Architectural Control Committee on an annual basis. At any time

(on the other hand). Such bulletins shall supplement these covenants, conditions and restrictions and are incorporated herein by reference.

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

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

Section 6. Definition of "Improvement." The term "Improvement" shall mean and include all buildings, storage sheds or areas, roofed structures, parking areas, loading areas, trackage, fences, walls, hedges, mass plantings, poles, driveways, ponds, lakes, changes in grade or slope, site preparation, clothesline installation, swimming pools, tennis courts, signs, exterior illumination, changes in any exterior color or shape and any new exterior construction or exterior improvement exceeding \$1,000.00 in cost which may not be included in any of the foregoing. The definition of Improvements does not include garden shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expensed in accounting practice and which does not change exterior colors or exterior appearances. The definition of Improvements does include both original Improvements and all later changes to Improvements.

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

Section 8. Limitation of Liability. Neither the Architectural Control Committee nor the members thereof nor Declarant shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment,

Owner must notify the Owner of the adjacent Lot of his intent to do any construction or maintenance upon the zero setback line wall at least twenty-four (24) hours before any work is started, with the hours that such access easement may be utilized being restricted to between the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, and 9:00 a.m. to 6:00 p.m. on Saturdays.

## ARTICLE XI

### MAINTENANCE

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

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

Section 2. Enforcement. If any such Owner or occupant has failed in any of the duties or responsibilities of such Owner as set forth in this Declaration, then the Board or Declarant may give such person written notice of such failure and such person must within ten (10) days after receiving such notice (which notice shall be deemed to have been received upon deposit in an official depository of the United States mail, addressed to the party to whom it is intended to be delivered, and sent by certified mail, return receipt requested), perform the care and maintenance required or otherwise perform the duties and responsibilities of such Owner. Should any such person fail to fulfill this duty and responsibility within such period, then the Association, acting through its authorized agent or agents, or the Declarant, acting through its authorized agent or agents, shall have the right and power to enter onto the premises and

for record in the Deed Records of Wake County, North Carolina, with the signatures of the requisite number of Owners (and the signature of Declarant, if such amendment or modification is to be effected prior to December 31, 1999). The foregoing shall not limit the rights of Declarant under Article II, Section 5 above. In addition to the foregoing rights, Declarant may (at Declarant's option) amend and modify this Declaration and any Supplemental Declaration without obtaining the consent or approval of any other person or entity if such amendment or modification is necessary to cause this Declaration or any such Supplemental Declaration to comply with the requirements of FHA, VA, Fannie Mae and other similar agency.

Section 3. OBLIGATION TO IMPROVE PROPERTY AND WAIVER THEREOF. IF ANY OWNER (OR ITS SUCCESSORS OR ASSIGNS) OF A LOT DOES NOT, WITHIN FOUR (4) YEARS AFTER CONVEYANCE OF TITLE TO SUCH LOT FROM DECLARANT BEGIN THE CONSTRUCTION OF A PERMANENT RESIDENCE ON SUCH LOT AND WHICH IS APPROVED BY THE ARCHITECTURAL CONTROL COMMITTEE, DECLARANT SHALL HAVE AN OPTION (BUT NOT AN OBLIGATION) TO REPURCHASE SUCH LOT FOR A CASH PURCHASE PRICE EQUAL TO THE PURCHASE PRICE PAID TO DECLARANT FOR SUCH LOT. THIS OPTION TO REPURCHASE MUST BE EXERCISED IN WRITING WITHIN SIX (6) MONTHS AFTER THE EXPIRATION OF THE ABOVE-REFERENCED FOUR (4) YEAR PERIOD. CLOSING OF THE REPURCHASE SHALL TAKE PLACE WITHIN NINETY (90) DAYS AFTER THE EXERCISE OF THE OPTION TO REPURCHASE AND SHALL BE HELD AT THE OFFICE OF DECLARANT. THE SUBJECT LOT SHALL BE RECONVEYED TO DECLARANT BY GENERAL WARRANTY DEED SUBJECT ONLY TO THE EXCEPTIONS TO TITLE INCLUDED IN THE DEED FROM DECLARANT TO THE PURCHASER OF SUCH LOT FROM DECLARANT AND SUCH OTHER EXCEPTIONS, IF ANY, AS DECLARANT MAY SPECIFICALLY APPROVE IN WRITING AT THE CLOSING OF SUCH SALE.

Section 4. Enforcement. Enforcement of the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens for which provision is made in this Declaration shall be by any proceeding at law or in equity (or otherwise, as provided in this Declaration) against any person or persons violating or attempting to violate any such control, covenant, condition, restriction, easement, development guideline, charge or lien either to restrain violation or to recover damages, and against the land, to enforce any lien created by these covenants; and failure by the Association, Declarant or any Owner to enforce any such control, covenant, condition, restriction, easement, development guideline, charges or lien shall in no event be deemed a waiver of the right to do so thereafter or of any other or future violation of any thereof.

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

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

THE STATE OF N.C. §  
COUNTY OF Wake §

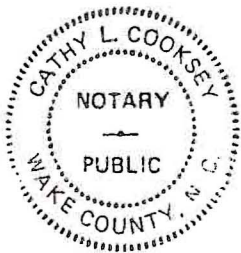
BEFORE ME, the undersigned authority, on this day personally appeared DAVID C. MEEK, Vice President of PRESTONWOOD, INC., known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration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

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 4<sup>th</sup> day of February, 1987.

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

My commission expires:

11/19/89



NORTH CAROLINA — WAKE COUNTY

The foregoing certificate \_\_\_\_\_ of

Cathy L. Cooksey

\_\_\_\_\_, Notar(y)(ies) Public is

(are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

KENNETH C. WILKINS, Register of Deeds

By

Kenneth C. Smith  
Asst./Deputy Register of Deeds

BOOK 3935 PAGE 906

EXHIBIT 8

Site Plan A and Site Plan B - Preston Point, dated December 5, 1986, revised December 23, 1986 - First T.O.C. comments, and January 12, 1987, second review, prepared by William G. Daniel & Assoc., approved by Town Council, Town of Cary, North Carolina.

BK4163PG0273

In witness whereof, Declarant has caused this Amendment to be executed the day and year first above written.

SUNSTAR HOMES (a sole proprietorship)

BY: SOLARIS DEVELOPMENT CORPORATION (Proprietor)

BY:

David K. Schmidt  
DAVID K. SCHMIDT, President

ATTEST:

Lanold W. Caldwell  
LANOLD W. CALDWELL, Secretary

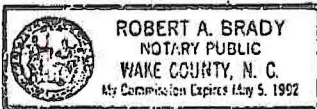
STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, a Notary Public of the County and State aforesaid, certify that Lanold W. Caldwell personally came before me this day and acknowledged that he is Secretary of Solaris Development Corporation a Texas Corporation, and that by authority duly given and as the act of the corporation as the sole proprietor of Sunstar Homes, a sole proprietorship, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary as the act of and on behalf of Sunstar Homes.

Witness my hand and official stamp or seal this the 4 day of Dec, 1987.

My commission expires: \_\_\_\_\_

Robert A. Brady  
Notary Public



DY, SCHILAWSKI  
and EARLS  
ATTORNEYS AT LAW  
P.O. BOX 5620  
DURHAM, NORTH CAROLINA 27511

NORTH CAROLINA — WAKE COUNTY

The foregoing certificate \_\_\_\_\_ of \_\_\_\_\_

Robert A. Brady  
Notary Public is

(are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

KENNETH C. WILKINS, Register of Deeds

By

Kirkland D. Bullock  
Deputy Register of Deeds