

*For Amend to Cov + Restrict filed 4-5-85 See Bk 820 Pg 781
For Submission of Addl Residential Property + Common Areas
to Declaration filed 3-23-88 See Bk 874 Pg 644*

INDEXED

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
OF
WESTMINISTER TOWNHOMES
818 PAGE 595

THIS DECLARATION, made this 14th day of February, 1985 by Westminister-Heritage, Inc., hereinafter referred to as the "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property located in Kinston Township, Lenoir County, North Carolina, which is more particularly described on Exhibit A attached hereto and incorporated herein by reference; and,

WHEREAS, Declarant wishes to subject said property to the covenants, conditions and restrictions herein contained.

NOW, THEREFORE, Declarant hereby declares that all of the properties described on Exhibit A attached hereto and incorporated herein by reference shall be held, sold, transferred and conveyed, subject to the following easements, covenants, conditions and restrictions, which said easements, covenants, conditions and restrictions are for the purpose of promoting the value and use of the property described, and which shall run with said property and be binding upon all parties having any right, title or interest therein, and shall inure to the benefit of each and all owners thereof.

ARTICLE I
DEFINITIONS

Section 1. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 2. "Declarant" shall mean and refer to Westminister-Heritage, Inc., its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

Section 3. "Association" shall mean and refer to Westminster Townhomes Owners Association, its successors and assigns.

Section 4. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners.

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;

(c) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

(d) ownership of each Lot shall entitle the owner or owners thereof to the use of not less than two (2) automobile parking spaces, which shall be as near and convenient to said Lot as

reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall permanently assign not less than two (2) vehicle parking spaces for each dwelling.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a Lot which is subject to assessment shall 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.

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

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) on January 1, 1990.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by the properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is

deemed to covenant and agrees to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and of the homes situated upon the property.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Six Hundred and No/100ths Dollars (\$600.00) per Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance to the first Lot to an Owner, the maximum annual assessment may be increased above 5% 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.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment

applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ($\frac{1}{2}$) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alternation therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

EXTERIOR MAINTENANCE AND GROUNDS

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its owner, or through the willful or negligent acts of the family, guests or invitees of the owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which said Lot is subject.

The care and grooming of the grounds of each Lot shall be the responsibility of the Association. Provided, however, the Association may delegate that responsibility to the individual Lot owner under such terms as they shall mutually agree.

ARTICLE VII

PARTY WALLS

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

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

Section 3. Destruction by Fire and Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners

thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

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

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

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first

818 PAGE 603

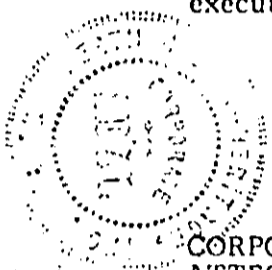
twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five (75%) of the Lot Owners. Any amendment must be recorded.

Section 4. Annexation. Additional residential properties and Common Areas adjacent to the property described herein or adjacent to property having been previously annexed hereto may be annexed to the "Properties" by the Declarant anytime prior to January 1, 1990.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration as of the day and year first above written.

WESTMINISTER-HERITAGE, INC.

By: [Signature]
Declarant, President



CORPORATE SEAL

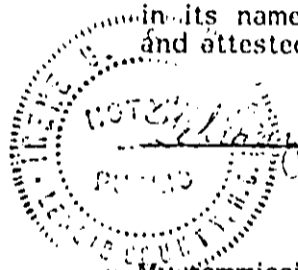
ATTEST:

[Signature]
Secretary

NORTH CAROLINA

LENOIR COUNTY

[Signature] a Notary Public, certify that [Signature] personally came before me this day and acknowledged that she is the Secretary of WESTMINISTER-HERITAGE, INC., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by me self as its Secretary.



Witness my hand and notarial seal, this 15th day of February, 1985.

[Signature]
Notary Public

My commission expires: 2/14/90

JAHir/bmp

NORTH CAROLINA: Lenoir County
The foregoing certificate of [Signature] N. P. of Lenoir Co

are certified to be correct.
Filed for registration at 10:30 o'clock A M this 15 day of February 1985
Gwynn House, Register of Deeds

Kinston Printing Co.

By: [Signature]

EXHIBIT A . . . S18 PAGE 604

Attachment to Declaration of Covenants,
Conditions and Restrictions of Westminister Townhomes,
Dated February 14, 1985

BEGINNING at a point designated as "P.O.B." located in the center of Westminister Lane graphically depicted on a Map entitled "Map For Record, Westminister Place, Phase I - Part I," dated December 12, 1984, prepared by Stroud Land Surveying Co., appearing in Plat Cabinet 2, Slide 100, Page 199, Lenoir County Registry, reference to which is here made for a more definite location of said beginning point; and running thence from said beginning point so located North 15 degrees 43 minutes 29 seconds West 25 feet; thence it runs North 75 degrees 28 minutes 23 seconds East 72.35 feet; thence it runs North 48 degrees 29 minutes 52 seconds East 71.97 feet; thence it runs North 06 degrees 45 minutes West 113.21 feet; thence it runs North 85 degrees 17 minutes 30 seconds East 471.28 feet; thence it runs South 04 degrees 42 minutes 30 seconds East 47.5 feet; thence it runs South 49 degrees 11 minutes 15 seconds West 39.96 feet; thence it runs South 26 degrees 35 minutes West 109 feet; thence it runs North 63 degrees 25 minutes West 51.96 feet; thence it runs South 83 degrees 15 minutes West 128.33 feet; thence it runs South 48 degrees 29 minutes 52 seconds West 101.92 feet; thence it runs South 75 degrees 28 minutes 23 seconds West 87 feet; thence it runs North 15 degrees 43 minutes 29 seconds West 25 feet to the point or place of beginning and being a portion of those lands graphically depicted on the map referred to hereinabove.