

PAMLICO

PLANTATION

TOWN HOMES

BOOK 843 PAGE 80

STATE OF NORTH CAROLINA:

COUNTY OF BEAUFORT:

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made the 19<sup>th</sup> day of DECEMBER, 1984, by Westminster Company, a North Carolina corporation, hereinafter referred to as "Declarant".

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the Long Acre Township, County of Beaufort, State of North Carolina, which is more particularly described as:

Beginning at an iron pipe in the Westerly right of way of a traffic circle, said iron pipe marking a common corner in the 15.09 acre Town House area, and the 4.33 acre Marina area, all as shown on that plat recorded in Plat Cabinet C, Slide 175, of the Beaufort County Registry; running thence from said beginning point with the common line between the Town House area and the Marina area North 88° 31' 07" West 330.05 feet, South 85° 42' 06" West 106.95 feet, North 82° 20' 36" West 76.16 feet, North 75° 33' 12" West 62.91 feet, and North 78° 59' 00" West 93.12 feet to an iron pipe in the edge of Broad Creek; running thence with Broad Creek North 61° 31' 30" West 26.30 feet, North 33° 55' 30" West 71.47 feet, North 16° 30' 55" West 63.97 feet, North 38° 33' West 50.44 feet, North 57° 52' West 39.90 feet, and North 18° 26' 05" West 54.28 feet; thence leaving Broad Creek and running North 88° 58' 52" East 122.20 feet to an iron pipe; thence South 34° 30' 47" East 56.32 feet to an iron pipe; thence South 48° 52' 13" East 120.22 feet to an iron pipe; thence North 83° 32' 31" East 70.97 feet to an iron pipe designated as "A" on the map hereinafter referred to; running thence South 80° 53' 06" East 55.58 feet to an iron pipe; thence North 55° 38' 40" East 35.08 feet to an iron pipe; thence North 32° 23' 33" East 69.68 feet to an iron pipe; thence North 21° 51' 13" East 108.39 feet to an iron pipe; thence North 30° 26' 19" East 52.25 feet to an iron pipe; thence South 22° 40' East 87.21 feet to an iron pipe; thence North 67° 20' East 28.02 feet to an iron pipe; thence North 22° 40' West 8.0 feet to an iron pipe; thence North 67° 20' East 48.34 feet to an iron pipe; thence South 22° 40' East 8.0 feet to an iron pipe; thence North 67° 20' East 28.17 feet to an iron pipe; thence South 22° 40' East 8.0 feet to an iron pipe; thence North 67° 20' East 28.02 feet to an iron pipe; thence North 22° 40' West 115.42 feet to an iron pipe in the Southwestern right of way line of Broad Creek Drive; running thence with said right of way South 59° 33' 41" East 184.76 feet to an iron pipe; running

BOOK 843 PAGE 81

thence South 45° 20' West 85.13 feet to an iron pipe; running thence South 44° 40' East 28.02 feet to an iron pipe; running thence North 45° 20' East 8.0 feet to an iron pipe; running thence South 44° 40' East 48.34 feet to an iron pipe; running thence South 45° 20' West 8.0 feet to an iron pipe; running thence South 44° 40' East 28.02 feet to an iron pipe; running thence North 45° 20' East 95.40 feet to an iron pipe in the Southwestern right of way line of Broad Creek Drive; running thence with Broad Creek Drive along a curve to the right having a radius of 235.0 feet, a delta of 50° 29' 15", a chord direction of South 23° 22' 54" East, and a chord distance of 116.15 feet to the point of tangency in the Southwestern right of way of Broad Creek Drive; continuing with Broad Creek Drive South 9° 04' 26" East 68.86 feet to an iron pipe marking the intersection of the Southwestern right of way line of Broad Creek Drive with the right of way of a traffic circle; running thence with the right of way of said traffic circle, a curve to the left, having a radius of 137.50 feet, and an arc of 160.41 feet, a chord direction of South 34° 54' 10" West, and a chord distance of 151.47 feet to an iron pipe on said traffic circle, the point of beginning, containing 4.857 acres more or less. Being Phase I as shown on plat entitled "Westminster Company Section One-Pamlico Plantation Town Homes (Phase I, II, and III), Long Acre Township, Beaufort County, North Carolina" by Rivers and Associates recorded in Plat Cabinet C Slide 270, Beaufort County Registry.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

## DEFINITIONS

Section 1. "Association" shall mean and refer to Pamlico Plantation Town Home Owners' Association, Inc., its successors and assigns.

Section 2. "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 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

BOOK 843 PAGE 82

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

That portion of the 4.857 acre Phase I parcel above described containing 4.270 acres; but not including Lots 5, 6, 7 and 8, in Block "B"; Lots 9, 10, 11, 12, 13 and 14, in Block "C"; and Lots 15, 16, 17, 18, 19 and 20, in Block "D"; all as shown on Plat entitled "Westminster Company Section One-Pamlico Plantation Town Homes (Phase I, II, and III), Long Acre Township, Beaufort County, North Carolina" by Rivers and Associates, Inc. recorded in Plat Cabinet C, Slide 270, Beaufort County Registry.

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. "Declarant" shall mean and refer to Westminster Company, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

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 signed by two-thirds (2/3) of each class of members agreeing

BOOK 843 PAGE 83

to such dedication or transfer has been recorded.

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 among themselves 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 Class A membership equal the total votes outstanding in the Class B membership, or
- (b) Upon five (5) years after the date of this Declaration.

ARTICLE IV

COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within 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 agree to pay to the Association: (a) annual assessments or charges, and (b) 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

BOOK 843 PAGE 84

reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each 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 of the Properties and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the exterior maintenance of the homes situated upon the Properties or for the use and enjoyment of the Common Area, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws, the payment of charges for water furnished and water and sewer services rendered to the Properties, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

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 four hundred eighty and No/100 dollars (\$480.00) per lot.

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

(d) Any portion of the annual assessments fixed and levied hereunder to defray water and sewer charges shall, when collected, be segregated from the remaining annual assessment funds and shall be retained in a separate bank account until expended on the water and sewer charges. Any funds remaining in such bank account at the end of a calendar year shall be used to defray water and sewer charges for the next succeeding year.

BOOK 843 PAGE 85

In addition to the above assessments, there shall be additional annual and special assessments for each owner of town homes as provided in Section I of that declaration dated December 6, 1983 by Weyerhaeuser Real Estate Company, recorded in Book 831, page 73, Beaufort County Registry. Said declaration establishes the Pamlico Plantation Property Owners' Association and provides that buyers of town homes will be members of the Association.

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 and the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

Section 6. Both annual and special assessments must be fixed at a uniform rate for all lots within the same class and may be collected at a uniform rate from all lots within the same class and may be collected on a monthly basis. All lots owned by the Class B member, which is the Declarant, shall be assessed for both annual and/or special assessments at one-half or fifty percent (50%) of the assessment for lots owned by Class A members, but such fifty percent (50%) ratio shall terminate immediately upon the transfer of any lot from the Class B member to a Class A member.

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

BOOK **843** PAGE **86**

and the Board of Directors shall have the authority to require the assessments to be paid in pro-rata monthly installments. 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.

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 six percent (6%) 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 alteration 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

## 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

BOOK 843 PAGE 87

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 of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter made 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 rules of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the 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 VII

##### EXTERIOR MAINTENANCE

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, replace and care of roofs, decks, steps, 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, repair, or replacement is caused through the willful, or negligent act of the Owner, his family,

## BOOK 843 PAGE 88

guests, or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which the lot is subject. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article.

## ARTICLE VIII

## USE RESTRICTION

Section 1. Land Use and Building Type. No Lot shall be used except for residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one single family town house dwelling not to exceed three and one-half stories in height. Any building erected, altered, placed, or permitted to remain on any Lot shall be subject to the provisions of Article V of this Declaration of Covenants, Conditions and Restrictions relating to architectural control.

Section 2. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Temporary Structures. No structures of a temporary character, trailer, basement, tend, shack, garage, barn or other outbuilding shall be used on any lot at any time as a residence either temporarily or permanently.

## ARTICLE IX

## EASEMENTS

A water main easement as shown on a plat in Plat Cabinet C, Slide 270 is reserved. Easements for installation and maintenance of utilities and drainage facilities within the common area are reserved, the location of which may be designated by vote of the Board of Directors. The Board may authorize the officers to execute written easements over the common area for utilities and drainage. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

BOOK 843 PAGE 89

## ARTICLE X

## ANNEXATION OF ADDITIONAL PROPERTIES

Section 1. If within ten years of the date of incorporation of this Association, the Declarant shall develop additional lands within the area described as the "Townhouse Area" as shown on map recorded in Plat Cabinet C, Slide 175, of the Beaufort County Register of Deeds Office, and containing 15.09 acres, such additional lands may be annexed to said Properties without the assent of the Class A members.

Section 2. Annexation of additional property other than as set forth in Section 1 shall require the consent of two-thirds (2/3) of the Class A members and two-thirds (2/3) of the Class B members, if any, at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirements set forth above, and the required quorum at each subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat.

## ARTICLE XI

## WATER SYSTEM

Simultaneously with the conveyance of the "Common Area" as herein described, Declarant will convey to the Association as additional common area, property and easements upon which is located a water system including wells, pumps, system lines and related equipment. The Association will operate said water system for the use of its members and shall contract with Pamlico Plantation Property Owners Association to furnish water to the marina area adjoining the Town Homes property. Pamlico Plantation Property Owner's Association will pay a prorata share of the operating and maintenance expenses of the water system. The Association may enter into such contracts as it deems advisable for the maintenance, repair and operation of the water system.

BOOK 843 PAGE 90

## ARTICLE XII

## 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 wise affect any other provisions which shall remain in full force or effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective heirs, successors and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants and restrictions of this Declaration may be amended during the first 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 percent (75%) of the Lot Owners, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded.

Section 4. The Association acting through its officers, agents, servants, and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance called for in Article VII of this Declaration.

## ARTICLE XIII

## PARKING

Section 1. Parking Rights. Ownership of each described Lot in the Plat entitled "Westminster Company Section One-Pamlico Plantation Town Homes (Phase I, II, and III), Long Acre Township, Beaufort County,

North Carolina" as recorded in Plat Cabinet C, Slide 270, Beaufort County Registry shall entitle the Owner or Owners thereof to the exclusive use of not more than two automobile parking spaces, which shall be as near and convenient to the Lot as reasonably possible, together with the right of ingress and egress in and upon said parking area. The Association shall permanently assign one vehicle parking space for each dwelling.

IN WITNESS WHEREOF, Westminster Company, the Declarant herein, has caused this Declaration to be signed in its corporate name by its Senior Vice President and attested by its Asst. Secretary and sealed with its corporate seal, all on the day and year first above written.

WESTMINSTER COMPANY

BY: George A. Thomer  
Senior Vice-President



ATTEST: James E. Maides  
Assistant Secretary

STATE OF NORTH CAROLINA

COUNTY OF ONSLOW

I, Patricia J. Jackson, a Notary Public in and for the State and County aforesaid, certify that James E. Maides, personally came before me this day and acknowledged that he is Assistant Secretary of Westminster Company, a North Carolina Corporation with its principal office in Guilford County, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its Sr. Vice-President, sealed with the Corporate Seal, and attested by him as its Assistant Secretary.

WITNESS my hand and Notarial Seal, this the 19th day of December 19 84.

Patricia J. Jackson  
NOTARY PUBLIC



My commission expires: 8-17-85

NORTH CAROLINA: BEAUFORT COUNTY  
The foregoing certificate of Patricia J. Jackson  
Notary Public/Notaries Public is/are certified to be correct.  
Filed for registration and recorded in this office in Book 843 Page 84  
This 20 day of Dec, 19 84 at 4:17 o'clock P. M.  
JOHN I. MORGAN, Register of Deeds By John I. Morgan  
Deputy Register of Deeds.

21.50 PD. Put To Archive