

6394-198

Sherborne.

PRESENTED
FOR

REGISTRATION

SUPPLEMENTARY DECLARATION OF COVENANTS AND RESTRICTIONS
OF PARKWAY COMMUNITY ASSOCIATION, INC. AND
OF PARKWAY UNIT OWNERS ASSOCIATION, INC.

DEC 30 PM 1:11
KENNETH C. WILKINS
REGISTER OF DEEDS

This SUPPLEMENTARY DECLARATION is made this December, 1994 by MIDWAY PROPERTIES, INC., a North Carolina corporation ("Midway") and WESTMINSTER HOMES OF NORTH CAROLINA, INC., a North Carolina corporation ("Westminster"), and PARKWAY COMMUNITY ASSOCIATION, INC. (the "Community Association") and PARKWAY UNIT OWNERS ASSOCIATION, INC. (the "Unit Association") join in the execution of Supplementary Declaration for the purposes hereinafter set forth. The Community Association and the Unit Association are hereinafter collectively referred to as the Associations.

B A C K G R O U N D

PARKWAY ASSOCIATES, a North Carolina partnership ("Developer") and others caused that certain "Master Declaration of Covenants and Restrictions of Parkway Community Association, Inc." to be recorded in Book 4158, Page 268, in the Office of the Register of Deeds, Wake County, North Carolina, and thereafter to be amended by instrument recorded in Book 4166, Page 275, of said Registry (said Declaration, as amended, being hereinafter referred to as the "Community Declaration") and also caused that certain "Declaration of Covenants and Restrictions of Parkway Unit Owners Association, Inc." to be recorded in Book 4202, Page 687, of said Registry (the "Unit Declaration"). The Community Declaration and the Unit Declaration are hereinafter collectively referred to as the Declarations. The Declarations impose the covenants and restrictions therein contained on the property described on Exhibit "A" to the Unit Declaration (the "Properties").

Midway is the successor in interest to the Developer, the Developer having conveyed all of its interest in the Properties to Parkway W/H, a North Carolina partnership which thereafter dissolved and distributed all of its interest in the Properties to Westminster Company, a North Carolina corporation. Subsequently, Westminster Company conveyed all of its interest in the Properties to Westminster Homes, Inc., a North Carolina corporation which recently changed its name to Midway Properties, Inc.

Article II, Section 2 of the Community Declaration provides, in pertinent part as follows:

(a) Additions. During the period of development, which shall by definition extend from the date of this Declaration to January 1, 1995, the Declarants [of which the Company is one], their successors and assigns . . . shall have the right, without further consent of the [Community] Association, by Supplementary Declaration, to bring within the

plan and operation of this Declaration additional property.
. . .

The additions authorized under this and the succeeding subsection shall be made by recording a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the property. The Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants and Restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarants, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modifications shall have no effect upon the Property described in Section 1, Article II above, or upon any other additions to the Properties.

Article II, Section 2 of the Unit Declaration provides, in pertinent part as follows:

(a) Additions. During the period of development, which shall by definition extend from the date of this Declaration to January 1, 1995, the Company, its successors and assigns shall have the right, without further consent of the [Unit] Association, by Supplementary Declaration, to bring within the plan and operation of this Declaration additional property. . . .

The additions authorized under this and the succeeding subsection shall be made by recording a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the property. The Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants and Restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Company, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modifications shall have no effect upon the Property described in Section 1, Article II above, or upon any other additions to the Properties.

Midway, as successor in interest to the Company, and Westminster as the owner of all that real property described on Exhibit "A," attached hereto and incorporated herein by reference (the "Additional Property"), desire hereby to bring the Additional Property within the plans and operations of the Declarations, as modified by the complementary additions and modifications thereto hereinafter set forth.

D E C L A R A T I O N

NOW, THEREFORE, Midway and Westminster hereby declare that the Additional Property shall be held, transferred, sold, conveyed, given, donated, leased, occupied and used subject to the covenants, restrictions, conditions, easements, charges, assessments, affirmative obligations, and liens set forth in the Declarations as modified by the complementary additions and modifications thereto set forth below.

1. Notwithstanding anything to the contrary contained in the Declarations, Westminster hereby reserves the right, without obtaining the consent of the Company, Midway, the Declarants, the Architectural Review Boards of either of the Associations (the Architectural Review Boards), the Owners, as defined in either of the Declarations (the "Owners"), the Associations or their Members, to subdivide all or any portion of the Additional Property by recording in the Office of the Register of Deeds, Wake County, North Carolina one or more metes and bounds subdivision plats and thereby to create additional Residential Lots, as defined in either of the Declarations (the "Residential Lots"). Westminster hereby further reserves the right to reconfigure, from time to time and without the consent of the Company, Midway, the Declarants, the Architectural Review Boards, the Owners, the Associations or their Members, the boundaries of any Residential Lots or Family Dwelling Units, as defined in the Unit Declaration (the "Family Dwelling Units") owned by Westminster and located within the Additional Property; provided, however, in no event shall the Additional Property contain a greater number of Residential Lots or Family Dwelling Units than the number from time to time permitted by, nor shall any Residential Lot or Family Dwelling Unit within the Properties have a lot area or width less than that from time to time required by the Cary Town Council or other appropriate governmental authority. If Westminster elects to exercise its right to revise the boundaries of one or more Residential Lots or Family Dwelling Units owned by Westminster, Westminster shall record a revised plat of the affected Residential Lot(s) or Family Dwelling Unit(s). Upon the recording by Westminster of such a revised plat, each lot shown on the previously recorded plat or plats, the boundaries of which are revised by the revised plat, shall cease to be a "Residential Lot" or "Family Dwelling Unit" and each newly configured lot shown on the revised plat shall be a "Residential Lot" or "Family Dwelling Unit."

2. Notwithstanding anything contained in the Declarations to the contrary, including, without limitation, the provisions of Article VII of each of the Declarations entitled "ARCHITECTURAL CONTROL," neither Westminster, nor any person or entity (a "Builder") to whom or which Westminster has conveyed a Residential Lot within the Additional Property for the purpose of constructing a dwelling thereon and immediately thereafter selling or offering

to sell such property, shall be required to seek or obtain the approval of the Company, Midway, the Declarants the Architectural Review Board, the Owners, the Associations or their Members, in order to erect or place improvements or to alter existing improvements on any portion of the Additional Property (including, without limitation any Residential Lot or Family Dwelling Unit located within the Additional Property) owned by Westminster or a Builder at the time such improvements are commenced or on any portion of the Additional Property previously dedicated by Westminster or a Builder for public use. In addition, notwithstanding anything contained in the Declarations to the contrary, Westminster shall have the right to maintain one or more sales offices and/or model homes on Residential Lots or in Family Dwelling Units owned by Westminster for the promotion and sales of Residential Lots and Family Dwelling Units within the Additional Properties and Westminster, as well as its agents, employees and contractors, may maintain trailers and other temporary structures on portions of the Additional Property owned by it to facilitate the development and improvement of the Additional Property.

3. Westminster hereby conveys to the Unit Association the easements described on Exhibit "B," attached hereto and incorporated herein by reference (the "Additional Common Properties"), which easements are to be held by the Unit Association as Common Properties, as defined in the Unit Declaration (the "Common Properties"); TO HAVE AND TO HOLD the aforesaid easements and all privileges and appurtenances thereto belonging to the Unit Association forever. The Additional Common Properties include an Easement for the maintenance of a natural buffer and a fence as more particularly described on Exhibit "B" (the "Buffer Area"). The Associations join in the execution of this Supplementary Declaration for the purpose of consenting to the terms and conditions herein contained and the Unit Association also joins in the execution of this Supplementary Declaration for the purpose of agreeing to hold, maintain and repair the Additional Common Properties as Common Properties in accordance with the terms and conditions of the Unit Declaration, and specifically to hold, maintain and repair the Buffer Area and the fence now or hereafter constructed thereon in accordance with the provisions of that certain Agreement recorded in Book 5659, Page 708 of the Wake County, Registry (the "Buffer Agreement"). The cost of all such maintenance and repair of the Additional Common Properties shall be part of the common expenses of the Unit Association, payable by the Owners as set out in Article V of the Unit Declaration. In the event the Unit Association is dissolved or otherwise defaults on its obligation to maintain the Buffer Area or the fence now or hereafter constructed thereon, Westminster, for each Residential Lot or Family Dwelling Unit existing or hereafter created within the Additional Properties, hereby covenants, and each Owner of any Residential Lot or Family Dwelling Unit within the Additional Properties, 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 a pro rata share of the cost of the maintenance of such

Buffer Area and fence in accordance with the Buffer Agreement (the "Buffer Agreement"). Westminster reserves an easement on, over and upon the Buffer Area for the purpose of erecting the fence and landscaping described in the Buffer Agreement. The Buffer Area shall hereafter be held, sold, transferred and conveyed subject to the covenants and restrictions set forth in the Buffer Agreement.

4. Westminster hereby reserves such easements on, over, under and upon the Additional Properties as shall be reasonably necessary for the exercise by Westminster of any right herein reserved, including, without limitation, Westminster's right to develop and improve the Additional Property.

5. The Additional Property shall be developed and known as "Sherborne." Easements for the erection and maintenance of signs identifying the Additional Property as Sherborne and landscaping, decorative fencing and lighting surrounding same are reserved by Westminster, for the benefit of itself and the Unit Association, on, under and over those portions of the Additional Property designated "SIGN EASEMENT" on plats now or hereafter recorded. The cost of all maintenance, repair and replacement of such signs, fencing, landscaping and lighting shall be part of the common expenses of the Unit Association, payable by the Owners as set out in Article V of the Unit Declaration. Notwithstanding anything contained in the Declarations to the contrary, including, without limitation, the provisions of Article VII, Section 2(d), Westminster shall have the right to erect within any sign easement area located within the Additional Properties, and on any Residential Lot or Family Dwelling Unit owned by Westminster, signs identifying Sherborne and/or advertising the sale and promotion of lots or dwellings in Sherborne.

6. Easements for the installation and maintenance of utilities (including cable television service) and drainage facilities are reserved as indicated on plats of the Additional Properties now or hereafter recorded. In addition, Westminster reserves, for itself and on behalf of the Unit Association, additional easements and rights-of-way for the installation and maintenance of utilities (including cable television service) and drainage facilities over the rear TEN (10) feet of any Lot and over each side FIVE (5) feet of any Lot. Within these easements no structures, 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 drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

7. In order to implement effective and adequate erosion control, the Unit Association and Westminster (for so long as Westminster shall own any portion of the Additional Properties) shall have the right to enter upon any portion of the Additional Properties before and after improvements have been constructed

thereon for the purpose of performing any grading or constructing and maintaining erosion prevention devices; provided, however, no such activities shall interfere with any permanent improvements constructed on the Properties.

8. The Residential Lots and Dwelling Units within the Additional Property shall be held, sold, transferred and conveyed subject to the following additional protective covenants:

LAND USE AND BUILDING TYPE: No Residential Lot or Dwelling Unit shall be used except for residential, street, and park purposes. No building shall be erected, altered, placed, or permitted to remain on any Residential Lot or Dwelling Unit other than one detached single family dwelling and a private garage. Notwithstanding the foregoing, Westminster shall have the right to maintain one or more sales offices and/or model homes in Dwelling Units owned by Westminster for the promotion of sales of lots and dwellings within the Additional Property.

METAL STORAGE BUILDINGS, MOBILE HOMES, MANUFACTURED HOMES, TEMPORARY STRUCTURES, ETC.: No metal storage building of a temporary or permanent character shall be permitted on any Residential Lot or Dwelling Unit within the Additional Property. No mobile home, manufactured home, trailer or other like structure shall be located on any Residential Lot or Dwelling Unit within the Additional Property. No structure of a temporary character, recreational vehicle, trailer, tent, shack, garage, barn or other out building shall be used on any Residential Lot or Dwelling Unit at any time as a residence either temporarily or permanently. Notwithstanding anything contained herein to the contrary, Westminster, its agents, employees and contractors, may maintain trailers and other temporary structures on portions of the Additional Property owned by it to facilitate the development and improvement of the Additional Property.

PARKING: Each Dwelling Unit shall contain sufficient off-street paved parking space for at least two (2) automobiles. No automobiles, trucks, motorcycles, recreational vehicles or boats shall be parked on any street within the Properties for a period in excess of 24 hours. No boats, trailers, vans, recreational vehicles, campers and other equipment or vehicles, except for vehicle mini-vans, shall be parked or stored in any area on a Residential Lot or Dwelling Unit except inside an enclosed building or behind screening erected in accordance with the terms and provisions of this Supplementary Declaration.

9. The rights and easements herein reserved to Westminster shall inure to its successors and assigns, if Westminster shall make an express conveyance of its rights as developer hereunder to

such successor or assign.

IN WITNESS WHEREOF, Midway, Westminster and the Associations have caused this Supplementary Declaration to be executed and their respective seals affixed, all as of the day and year first above mentioned.



MIDWAY PROPERTIES, a North Carolina
corporation

By: [Signature]
S. Vice President

WESTMINSTER HOMES OF NORTH CAROLINA,
INC., a North Carolina corporation

By: [Signature]
VICE-President

PARKWAY COMMUNITY ASSOCIATION, INC., a
North Carolina nonprofit corporation

(Corporate Seal)

Attest:

[Signature]
Secretary

By: [Signature]
President

PARKWAY UNIT OWNERS ASSOCIATION, INC.,
a North Carolina nonprofit corporation

(Corporate Seal)

Attest:

[Signature]
Secretary

By: [Signature]
President

NORTH CAROLINA

Rockingham COUNTY

I, the undersigned Notary Public, do hereby certify that Kathryn O. Hughes personally appeared before me this day and acknowledged that she is the ASST Secretary of Midway Properties, a North Carolina corporation, 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 its corporate seal, and attested by herself as its ASST Secretary.

WITNESS my hand and official seal this 27 day of December, 1994.

Caroline McCollum
Notary Public

My Commission Expires:

6/23/97

NORTH CAROLINA

Rockingham COUNTY

I, the undersigned Notary Public, do hereby certify that J. Gary Hill personally appeared before me this day and acknowledged that he is the ASST Secretary of Westminster Homes of North Carolina, Inc., a North Carolina corporation, and that by authority duly given, and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal, and attested by himself as its ASST Secretary.

WITNESS my hand and official seal this 27 day of December, 1994.

Caroline McCollum
Notary Public

My Commission Expires:

6/23/97

NORTH CAROLINA

Wake COUNTY

I, the undersigned Notary Public, do hereby certify that Stephen J. Ashland personally appeared before me this day and acknowledged that he is the Secretary of Parkway Community Association, Inc., a North Carolina nonprofit corporation, and that by authority duly given, and as the act of the corporation, the foregoing instrument was signed in its name by its ASSOCIATION President, sealed with its corporate seal, and attested by Stephen J. Ashland as its ASSOCIATION Secretary.

WITNESS my hand and official seal this 23rd day of December, 1994.

Walter W. Whitfield
Notary Public

My Commission Expires:

7-15-96

NORTH CAROLINA

Wake COUNTY

I, the undersigned Notary Public, do hereby certify that Sidney B. Johnson personally appeared before me this day and acknowledged that he is the Secretary of Parkway Unit Owners Association, Inc., a North Carolina nonprofit corporation, and that by authority duly given, and as the act of the corporation, the foregoing instrument was signed in its name by its ASSOCIATION President, sealed with its corporate seal, and attested by Sidney B. Johnson as its ASSOCIATION Secretary.

WITNESS my hand and official seal this 23rd day of December, 1994.

Walter W. Whitfield
Notary Public

My Commission Expires:

7-15-96

Exhibit "A"

The Additional Property

Lying and being situated in Wake County, North Carolina, and more particularly described as follows:

Being all of that tract or parcel of land designated as "IP-B Parkway Trade Center" containing 51.068 acres according to map entitled "IP-B Parkway Trade Center MacArthur Park" dated May 17, 1989, prepared by Kenneth Close, Inc., Land Surveying and recorded in Book of Maps 1990, Page 26, Wake County Registry.

Exhibit "B"

The Additional Common Properties

The Buffer Area:

A perpetual, non-exclusive easement on, over, under and upon the following described property for the purpose of erecting and maintaining the fence and landscaping described in the Agreement recorded in Book 5659, Page 708, in the Office of the Register of Deeds, Wake County, North Carolina:

Beginning at a point in the northern line of the Washington Homes of N.C. Inc. property as described in Deed Book 6156, page 355 and recorded in Book of Maps 1992, page 258, said point being located N 88°30'32" W 63.84 feet from the northeast corner of said tract, thence from said POINT OF BEGINNING and with the northern line of said tract N 88°30'32" W 297.75 feet to a point thence N 88°21'44" W 250.01 feet to a point, thence N 88°21'51" W 629.90 feet to a point in said line, thence leaving said line and with a new line S 01°38'09" W 50.00 feet to a point, a new corner, thence with a new line S 88°21'51" E 629.90 feet, S 88°21'44" E 250.07 feet, thence S 88°30'32" E 297.82 to a point, a new corner thence with a new line N 01°29'28" E 50.00 feet to the POINT OF BEGINNING containing 1.3518 acres more or less.

The Sign Easement Areas:

A perpetual, non-exclusive easement on, over, under and upon the following described property for the purpose of erecting and maintaining signs identifying the Additional Property as Sherborne and landscaping, decorative fencing and lighting surrounding same:

All that property designated "SIGN EASEMENT" and shown on the map of "Sherborne Subdivision, Section 1" or the map of "Sherborne Subdivision, Section 3" to be hereafter recorded in the Office of the Register of Deeds, Wake County, North Carolina, including, without limitation, the sign easements located at the intersection of Breckenwood Drive and Waldo Rood Boulevard.