

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

\* SUPPLEMENT TO DECLARATION OF COVENANTS  
CONDITIONS AND RESTRICTIONS

FOR

VILLAGE OF RAINTREE

SECTION 1-NPRESENTED  
FOR  
REGISTRATION  
1974 Jul 16 PM 3 57  
CHARLES E. CROWDER  
REGISTER OF DEEDS  
MECKLENBURG CO. N.C.

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THIS SUPPLEMENTARY DECLARATION to the Declaration of Covenants, Conditions and Restrictions for Village of Raintree, Sections 1-A through 1-D and 2-A through 2-E is made this 12th day of July, 1974, by THE ERVIN COMPANY, a Delaware corporation, having a principal place of business in said Mecklenburg County, North Carolina (hereinafter referred to as "Developer").

W I T N E S S E T H :

WHEREAS, Developer is the owner of that certain Subdivision in said Mecklenburg County, North Carolina, commonly known and identified as Village of Raintree, plats thereof having been filed of record in the Mecklenburg Public Registry and as to which sections of said Subdivision a Declaration of Covenants, Conditions and Restrictions (hereinafter referred to as the "Declaration") dated March 26, 1971, has been filed of record in the Office of the Register of Deeds for Mecklenburg County in Book 3282 at Page 205; and

WHEREAS, Article II, Section Two of said Declaration provides that Developer may extend the declaration (and the covenants and restrictions therein contained) to other property by filing of record a supplementary declaration in respect to the property to be subject to said Declaration in order to extend the scheme of said Declaration to other property to be developed as part of Raintree, and thereby bring such additional property within the jurisdiction of Raintree Homeowners Association, Inc., each supplementary declaration to contain such additions or modifications to said Declaration as may be necessary to reflect the different character of the added property, provided, however, any such supplementary declaration shall not revoke or otherwise amend the provisions of said declaration as pertain to Sections 1-A through 1-D and 2-A through 2-E, or any other section for which supplementary declarations have been filed; and

WHEREAS, Developer now intends to so subject additional property to said Declaration of March 26, 1971, and to place such additional or modified covenants, conditions, easements and restrictions thereon as may be necessary to reflect the different character of the properties;

NOW, THEREFORE, in consideration of the premises, Developer hereby declares that the property hereinbelow described shall be held, sold and conveyed subject to said Declaration of Covenants, Conditions and Restrictions for Village of Raintree, Sections 1-A through 1-D and 2-A through 2-E, to the same extent and degree as if said declaration were herein set out in its entirety, except as hereby modified; and further subject to such additional covenants, conditions, easements, restrictions and modifications (hereinafter collectively referred to as "Restrictions") as are herein set forth. The Restrictions shall be

\* This Supplement To Declaration Of Covenants, Conditions And Restrictions (previously recorded in Deed Book 3692, Page 80), has been re-recorded to include the revising of the map of Section 1-N which was previously recorded in map book 17, page 302 and is now recorded in map book 17, page 305.

construed as covenants running with the land and shall be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors or assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

## PROPERTIES SUBJECT TO THIS SUPPLEMENTARY DECLARATION

The property which is hereby made subject to said Declaration of March 26, 1971, and which shall be held, transferred, sold, conveyed and occupied subject to said Declaration, is located in Providence Township, Mecklenburg County, North Carolina, and is more particularly described and shown on a plat showing a revised portion of Raintree, Section 1-N prepared by Charles G. Rust, Professional Engineer, which plat is dated July 12, 1974 and a copy thereof recorded in the Mecklenburg Public Registry in Map Book 17 at page 305.

The above described property shall also be held, transferred, sold, conveyed and occupied subject to such additional and modified restrictions as are hereafter provided.

Only the property shown on said subdivision plat of Raintree as described in this Article I is hereby made subject to this Supplementary Declaration and to said Declaration dated March 26, 1971.

The property shown on the plat hereinabove described shall be divided into Lots, Limited Common Areas and Common Areas by the recording of maps of portions of Section 1-N from time to time and the recording of such maps shall in no way limit, modify or alter the provisions of this Supplemental Declaration.

## ARTICLE II

## MODIFICATIONS TO DECLARATION

The property identified in Article I above, and made subject to said Declaration of March 26, 1971, is hereby made subject to the following modifications to the Declaration:

- A. Article I, Definitions, of the Declaration is amended by adding as subparagraphs 12 and 13 the following definitions:

12. "Committee" shall mean a standing committee of the Association composed of all Owners in Section 1-N, which Committee shall administer and control all of the Limited Common Area in Section 1-N and provide for the maintenance of the Limited Common Area in such section.

13. "Limited Common Area" shall mean and refer to any and all real property owned by the Association, or such other property to which the Association may hold legal title whether in fee or for a term of years, which is designated as "Limited Common Area" on any plat or survey of Raintree or any part thereof which shall be of public record. Limited Common Area shall be subject to reasonable rules and regulations which may be established from time to time by the Association or the Committee for the benefit and enjoyment of the Owners of Lots within the Section of Raintree which contains such Limited Common Area and further subject to the provisions of this Declaration and the By-Laws of the Association.

- B. Article III, Association Membership and Voting Rights, is amended by adding thereto Sections Three and Four as follows:

Section Three. Committee Membership.

1. Every person or entity who is the Owner of record of a fee interest in any Lot or who is purchasing one or more Lots under a contract or purchase agreement within Section 1-N shall be a member of the Committee, subject to and bound by the Associations Articles of Incorporation, By-Laws and rules and regulations of the Committee adopted by the Committee. The foregoing is not intended to include persons or entities who hold an interest in any Lot in Section 1-N merely as security for the performance of an obligation. Ownership of such Lot shall be the sole qualification for membership. When any Lot is owned or record in joint tenancy or tenancy in common or by some other legal entity, or when two or more persons or other legal entity is purchasing one or more Lots under a contract or agreement of purchase, the membership as to such Lot(s) shall be joint and the right of such membership (including the voting power arising therefrom) shall be exercised only as stipulated in Section Four hereinbelow.

2. During any period in which a member shall be in default in the payment of any annual, special or other periodic assessment levied by the Committee, the voting rights and right to the use of the Limited Common Areas or

any other facilities which the Committee may provide shall be suspended by the Committee until such assessment is paid. In the event of violation by a member of any rules or regulations established by the Committee, such member's voting and use rights may be suspended by the Executive Board of the Committee after a hearing at which the general requirements of due process requirements shall be observed. Such hearing shall only be held by the Executive Board of the Committee after giving member ten (10) days prior written notice specifying each alleged violation and setting the time, place and date of the hearing. Determination of violation shall be made by a majority vote of the Executive Board.

3. No membership or initiation fee shall be charged, nor shall Members be required to pay at any time any amount to carry on the business of the Committee except to pay when due the charges, assessments and special assessments levied upon each Member's Lot as specified in the Declaration, the By-Laws, this Supplemental Declaration or as the Members of the Committee may from time to time hereafter adopt.

#### Section Four. Voting and Voting Rights.

1. The voting rights of the membership of the Committee shall be appurtenant to the ownership of the Lot. There shall be two classes of Lots with respect to voting rights:

(a) Class A. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. Each Lot in Section 1-N which is designated as a Class A Lot shall have one (1) vote per Lot.

When two or more persons hold an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised by one of such persons as proxy and nominee for all persons holding an interest in a Lot and in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. Class B Lots shall be all Lots owned by Developer which have not been converted to Class A Lots as provided in (1) or (2) below. Developer shall be entitled to three (3) votes for each Class B Lot reserved and designated for the development of a single-family attached dwelling unit (including condominium units). The Class B Lots shall cease to exist and shall be converted to Class A Lots on the happening of either of the following events, whichever first occurs:

(1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots; or

(2) Ten (10) years from the execution of this Supplemental Declaration. In the case of additional memberships being created by annexation of additional land and the platting of same, the tests of (1) and (2) above shall be applied separately to each portion of the annexed lands and the test under (2) shall be ten (10) years from the time Developer records a supplementary declaration annexing such lands.

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2. Any Member who is delinquent in the payment of any charges duly levied by the Committee against a Lot owned by such Member shall not be entitled to vote until all such charges, together with such reasonable penalties as the Committee may impose, have been paid.

3. Members shall vote in person or by proxy executed in writing by the Member. No proxy shall be valid after eleven (11) months from the date of its execution or upon conveyance by the Member of his Lot. A corporate Member's vote shall be cast by the President or a Vice President of the Member corporation or by any other officer or proxy appointed by the President or designated by the Board of Directors of such corporation.

4. Voting on all matters except the election of the Executive Board shall be by voice vote or by show of hands unless a majority of the Members of each Class present at the meeting shall, prior to voting on any matter, demand a ballot vote on that particular matter. Where the Executive Board is to be elected by the Members, the solicitation of proxies for such elections may be conducted by mail.

- C. Article IV, Common Area Property Rights, is amended by adding after Section One thereof the following and renumbering Sections Two and Three as Three and Four respectively:

Section Two. Every Owner in a Section of the Properties containing Limited Common Area shall have a non-exclusive right and easement of enjoyment in and to the Limited Common Area within that Section which shall be appurtenant to and shall pass with the title for every Lot in that Section subject to the provisions of this Declaration and the Charter and By-Laws of the Association, including but not limited to the following:

1. The right of the Committee to limit the use of the Limited Common Area to Owners within that Section, their families, and guests;

2. The right of the Committee to suspend the voting and enjoyment rights with respect to the Limited Common Area of an Owner for any period during which any assessment against his Lot remains unpaid, or for any infraction of rules and regulations as adopted by the Committee pursuant to the By-Laws.

3. The right of the Committee to dedicate or transfer all or any part of the Limited Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless the Owners entitled to at least two-thirds (2/3) of the votes appurtenant to Class A Lots and Class B Lots within that Section agree to such dedication or transfer. In such case the Association shall execute and deliver such documents necessary to effectuate such dedication or transfer. This paragraph shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage, utilities and drainage facilities upon, over, under and across the Limited Common Area without the assent of the membership when such easements are requisite for the convenient use and enjoyment of the Properties.

- D. Article IV, Common Area Property Rights, Section Two (now Section Three) of the Declaration is amended as follows:

Section Three. The right and easement of enjoyment granted to every Owner in Section One and Two of this Article may be exercised by members of the Owner's family, and an Owner may delegate his rights of enjoyment in the Common Area or Limited Common Area to his tenants or contract purchasers who occupy the residence of the Owner within the Properties.

- E. Article V, Covenant For Maintenance Assessments, of the Declaration is amended by deleting Sections One, Two, Five and Six and substituting therefore the following:

Section One. Annual assessment for maintenance fund.

1. For each Lot owned within the Properties, every Owner covenants, and each subsequent Owner of any such Lot, by acceptance of a deed therefore, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges for the creation and continuation of a maintenance fund for Common Areas in the amount hereinafter set forth, which fund is hereinafter called "Common Area Maintenance Fund".

(b) Special assessments as approved by the members, to be established and collected as hereinafter provided.

2. For each Lot owned within Section 1-N in addition to the assessments provided for in subparagraphs 1 (a) and (b) of Section One of this Article V, every Owner of any such Lot covenants, and every subsequent Owner of any such Lot, by acceptance of a deed therefore, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay to the Association for the benefit of the Committee:

(a) Annual assessments or charges for the creation and continuance of a maintenance fund in the amounts hereinafter set forth to provide maintenance of the Limited Common Area as set forth in Article III of this Supplemental Declaration, which fund is hereinafter called "Limited Common Area Maintenance Fund".

(b) Special assessments as approved by the Committee, to be established and collected as hereinafter provided.

Section Two. Purpose of Assessments.

1. The assessments levied by the Association shall be used to provide funds for such purposes as the Association may determine are for the benefit of its Members, which purposes may include maintenance, landscaping and beautification of the Common Areas. Funds may also be used to provide other services for the Association Members to promote the health, safety and welfare of the residents of the community and in particular for the acquisition, improvement and maintenance of properties, services and facilities related to the use and enjoyment of the Common Area, including but not limited to, the cost of repair, replacement and additions thereto; the cost of labor, equipment, materials, management and supervision thereof; the payment of taxes assessed against the Common Area; the procurement and maintenance of insurance; the employment of attorneys; accountants and other professionals to represent the Association when necessary or useful; the employment of security personnel to provide any service which is not readily available from any governmental authority; and such other needs as may arise.

2. The assessments levied by the Committee shall be used to establish the Limited Common Area Maintenance Fund which fund shall be used by the Committee only for the purposes of maintaining the Limited Common Area, and other purposes as authorized and allowed by the provisions of this Supplemental Declaration.

Section Five. Annual Maintenance Assessment.

1. At the time of the filing hereof, the annual assessment levied by the Association for the Common Area Maintenance Fund (excluding any sum an Owner may be obligated to pay to the operator of Raintree Country Club [whether such operator is the Association or a lessee from the Association] as provided for in Article IX of this Declaration) is \$90.00 per Lot (subject to the modifications of such rate as set out in Section Seven of this Article).

2. At the date of the filing of this Supplemental Declaration, the maximum annual assessment levied by the Committee for the Limited Common Area Maintenance Fund shall be \$210.00 per Lot for the property identified in Article I hereof, except that the maximum annual assessment for the Limited Common Area Maintenance Fund for each Lot owned by Developer in Section 1-N shall be \$140.00 per Lot.

(a) After the date of filing hereof, the maximum annual assessments levied in accordance with Subsection 1 of this Section Five may be increased or decreased effective January 1 of each year without a vote of the membership in conformance with the rise or decline, if any, of the Consumer Price Index as published by the U.S. Department of Labor for the Charlotte, North Carolina area. The initial index from which adjustments to future assessments shall be computed shall be the index figure published by the Department of Labor nearest January 1, 1971, and thereafter adjustments shall be computed on the basis of the latest index figure nearest to January 1 of each consecutive year. If the publication of the Consumer Price Index is discontinued, the Association shall use comparable statistics on the cost of living in Charlotte as computed and published by an agency of the United States or by a financial periodical of recognized authority then to be selected by the Association Board of Directors. The Consumer Price Index figure to be utilized is the index figure for all items.

(b) After the date of filing hereof, the annual assessment for the Common Area Maintenance Fund may be increased by the Association Board of Directors to an amount which will be sufficient, in the judgment of the Board, to provide funds required by the Association in carrying out its stated purposes and functions for the ensuing calendar year; provided, however, in no event shall the annual assessment as adjusted by the Board exceed 125 percent of the amount of the annual assessment for the immediately preceding calendar year without the consent and assenting vote of two-thirds of each class of the Association members.



3. After the date of the filing hereof, the annual assessment for the Common Area Maintenance Fund may be increased above the maximum provided in subparagraphs (a) and (b) above and without limitation upon such increase if approved by no less than two-thirds (2/3) of the votes of each Class of membership cast in person or by proxy, at a meeting duly called for this purpose.

4. From and after the date of this Supplemental Declaration, the annual assessment for the Limited Common Area Maintenance Fund may be increased by the Committee to an amount which will be sufficient, in the judgment of the Committee, to provide funds required by the Committee in carrying out its stated purposes and functions for the ensuing calendar year, as set forth in its budget which shall be approved by a majority of the lot owners in Section 1-N and under procedures set forth in the By-Laws.

**Section Six. Special Assessments.**

1. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only, provided that any such assessment shall have the same assent of the members as provided in Section Five 3. of this Article.

2. In addition to the annual assessments authorized above, the Committee may levy, in any assessment year, special assessments applicable to that year only. The Committee shall have the right to levy special assessments without the consent and assenting vote of the Owners in the event of maintenance or repairs to the Limited Common Area of an extraordinary nature requiring the expenditure of moneys in excess of the Limited Common Area Maintenance Fund then available, provided, however, that such special assessments shall not exceed the amount of such extraordinary expenses.

F. Article V, Section Seven, Assessment Rate, subparagraph 2 of the Declaration shall be amended as follows:

2. Single-family Attached Dwelling Units (including Condominiums). Each Lot designated as a Lot on which a condominium unit, single-family attached townhouse or patio house is or may be constructed shall be assessed at a rate of seventy-five (75%) percent of any annual or special Common Area Maintenance Fund assessment as may be fixed or levied by the Association and one hundred (100%) percent of any annual or special Limited Common Area Maintenance Fund assessment as may be fixed or levied by the Committee.

G. The following shall be added to Article V of the Declaration as Section Twelve:

Section Twelve. Powers of Committee. The rights, powers, duties and obligations contained in Sections Nine, Ten and Eleven hereof shall be exercised by the Association for the benefit of the Committee as they relate to the assessments levied or fixed by the Committee under authority contained herein or in the By-Laws.

- H. It is understood and agreed that any reference to "Committee" contained in Article VI of the Declaration, as modified hereby, shall mean the Architectural Committee of the Association and not the Committee as defined in Article II A of this Supplemental Declaration.
- I. Article VI, Section Four, Improvement, Set Back and Use Restrictions, subparagraph 3 of the Declaration is hereby modified as it applies to each Lot upon which a party wall as hereinafter defined is located by eliminating the minimum square footage area of any dwelling constructed thereon, regardless of the number of floor levels in the dwelling.
- J. Article VI, Section Four, subparagraph 4 of the Declaration is deleted and the following shall be substituted therefor:
4. Except as provided in subparagraph 19 hereof, no boundary walls or hedges shall be constructed or grown on any Lot in Section 1-N except as constructed or planted as a part of the original construction by Developer. Screening fences not attached to the dwelling structure must be located not more than five feet (5') from the rear edge of the concrete patio on a line parallel to the rear wall of the dwelling. Screening fences attached to the rear corner of the dwelling structure must be located on a line parallel to the rear wall of the dwelling and may be located more than five feet (5') from the rear edge of the concrete patio. All screening fences shall be constructed of natural wood materials and shall be painted to match the exterior color of the dwelling structure. No screening fence shall exceed six feet (6') in height. Plans for the location, materials and design of all screening fences must be submitted to and approved by the Committee prior to construction.
- K. Article VI, Section Four, subparagraph 19 of the Declaration is deleted and the following shall be substituted therefor:
19. No house trailer, boat, boat trailer or camper, or any other such vehicle, trailer or vessel shall be permitted on any Lot unless screened from the view of adjoining Lots, streets, common areas and Limited Common Areas. Plans for all such screens and walls must be approved by the Committee prior to construction.
- L. The following shall be added as subparagraph 22 of Article VI, Section Four of the Declaration:
22. No tent, shack, garage, storage shed, storage house, storage trailer, garden utility shed or any other outbuilding, whether temporary or permanent in nature, shall be constructed or placed on any Lot.
- M. Article VI, Section Five, Maintenance, subparagraph 1 of the Declaration is deleted and the following shall be substituted therefor:
1. All Lots, together with the exterior of all improvements located thereon, shall be maintained in a neat and attractive condition by each respective Owner. Such maintenance shall include, but shall not be limited to painting, staining and varnishing building surfaces; replacing, repairing and caring for roof surfaces, gutters and downspouts (if any), trees, shrubs, walks, glass surfaces, doors, screen doors, window screens, and all other exterior improvements; grass cutting; trash pickup and repairing and caring for surface water drainage systems located on any Lot. In order to preserve the natural integrity and harmonious design of the improvements in Section 1-N, any exterior maintenance, improvement or alteration which would result in a change in the nature, kind, shape, quality, basic finish or color of the exterior materials of any improvement from that originally constructed by Developer must be approved by the Committee prior to the commencement of construction by Owner. In the event an Owner shall fail to maintain his Lot and

the improvements thereon in a manner satisfactory to the Committee, or shall perform exterior maintenance, improvements or alterations without obtaining prior approval from the Committee as herein provided, after approval by two-thirds (2/3) vote of the Board of Directors, the Association shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the improvements thereon to its original condition as constructed by Developer. The cost of such exterior maintenance shall be added to and become a part of the assessment to which such Lot is subject and Owner shall be personally liable to the Association for the costs of such maintenance, and the costs, until paid, shall be a permanent charge and lien upon such Lot, enforceable to the same extent and collectible as provided in Article V, entitled "Covenant for Maintenance Assessments." Owner of each Lot upon which a party wall is located shall acquire title to such property subject to the irrevocable right of the Association, its agents and representatives, to have access to such Lot and the improvements thereon, said right of access solely for the purpose of performing maintenance as provided in this Article VI, Section Five. The right of entry for such purpose shall be effective only after the giving of written notice by the Association to Owner of Owner's failure to comply with the provisions of this Article and Owner's failure or refusal to so comply within 10 days after receipt of said notice. Entry by the Association for such purpose shall be limited to the hours of 7:00 a.m. to 6:00 p.m. on any day except Sunday. Such entry as herein provided shall not be a trespass nor shall the Association be liable for doing anything reasonable necessary or appropriate in connection with carrying out these provisions.

## ARTICLE III

## ADDITIONAL RESTRICTIONS

The property identified in Article I above and made subject to said Declaration of March 26, 1971, is hereby made subject to the following additional covenants, conditions, easements, restrictions and modifications as follows:

## 1. PARTY WALLS

Section One. Declaration.

Each wall which is built as a part of the original construction of the improvements made on those certain residential Lots (defined in said Declaration of March 26, 1971) shown and described on the recorded plat of portion of Raintree identified in Article I above and which is placed on the dividing line between any two Lots shall be deemed a party wall for the benefit of the Owner(s) (defined in said Declaration of March 26, 1971) of said Lots and shall be used for the joint purpose of the buildings separated thereby.

Section Two. Ownership and Maintenance.

The conveyance of each Lot separated wholly or partially from any other Lot by a party wall shall include an undivided interest in so much of the width of the entire length of said party wall separating such Lot from the adjoining Lot as is located on said lot together with a grant of easement of lateral support for such part of said wall as is situated on the adjoining Lot; and there shall be reserved in the conveyance of each of such Lots a like easement of lateral support. The cost of reasonable repair and maintenance of the party wall shall be shared by the Owners who make use of the wall in proportion to such use. Whenever a party wall or any part thereof shall be rebuilt, it shall be constructed on the same site and shall be of the same size and of the same or similar materials of like quality as the party wall prior to such repair or reconstruction.

Section Three. Destruction by Fire or Other Casualty.

If a party wall is destroyed or damaged by fire or other casualty, each Owner who has used the wall shall contribute to the cost of restoration thereof in proportion to such use.

Section Four. Weatherproofing.

Notwithstanding any other provision of these restrictions, an Owner who 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 Five. Right of Contribution Runs with the Land.

The party walls constructed on the above described Lot(s) shall be and shall remain party walls for the perpetual use and benefit of the Owners of the Lots burdened by such party walls and said Lots shall be conveyed subject to the covenants, restrictions, reservations and servitudes set forth herein. The right of any Owner to contribution from any other Owner under these restrictions shall be appurtenant to the land and shall pass to such Owner's successors in title.

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Section Six. Applicable Law.

The Law of the State of North Carolina regarding party walls and of liability for property damage due to negligence of willful acts or omissions shall apply.

## 2. USE OF LOT; MAINTENANCE; ACCESS

Section One. Declaration.

Each Owner of a Lot upon which a party wall is located shall be entitled to the exclusive ownership and possession of his Lot as shown and described on the recorded plat of the property identified in Article I above, provided Owner shall not do any work which would jeopardize the soundness of safety of the party wall, reduce the value of the adjoining attached dwelling or impair any easement or other right of the adjoining Lot Owner(s) without in every such case the prior approval and consent of the adjoining Lot Owner affected by such work.

Owner shall also enjoy a non-exclusive easement and the right to the use and benefit of Limited Common Areas including cul-de-sacs and parking areas providing access to Owner's Lot from the nearest dedicated public street, provided, however, Owner's use thereof shall be in accordance with the purpose for which such Limited Common Area improvements were intended - to provide ingress and egress to Owner's Lot - without hindering or encroaching upon the lawful rights of other Owners of the property described in Article I above and the common driveway(s) and cul-de-sacs between Owner's Lot and such dedicated public street shall be used only by Owners of Lots served by such connecting driveway(s) and cul-de-sacs.

Section Two. Maintenance of Limited Common Areas.

The Committee shall provide, subject to the assessments provided for herein, maintenance of the Limited Common Area in Section 1-N. Such maintenance shall include, but shall not be limited to, grass cutting of all grassed areas, removal of trash, debris and other unsightly materials, repairing and repaving of sidewalks, parking, areas and other paved surfaces, repairing and caring for all utility lines as hereinafter provided in Article 5 hereof and surface water drainage systems within the Limited Common Area and such other maintenance and repairs necessary to keep the Limited Common Areas in a neat and attractive condition.

Water and sewer service to Section 1-N is currently provided through a master meter and the Committee shall pay for such water and sewer service from the Limited Common Area Maintenance Fund. If, in the future, water and sewer service should be individually metered to each lot, the Owner of each Lot shall bear the cost of his individual charge for water and sewer service and the Limited Common Area Maintenance Assessment shall be reduced by an amount equal to the cost of water and sewer service previously allocated to each Lot as a part of the Limited Common Area Maintenance Assessment.

The Committee shall have the irrevocable right, to be exercised by the members thereof, their agents, employees and designees, to have access to each lot from time to time during reasonable hours as may be necessary for making emergency repairs therein necessary to prevent damage to the Limited Common Area or to another residential dwelling. In the event that a majority of the Committee shall determine that the need for maintenance or repairs by the Committee to the Limited Common Area is caused through the willful or negligent act of an Owner, his family, guests or invitees, then the costs, both direct and indirect of such maintenance and repairs shall be added to and become a part of the Limited Common Area assessment to which such Lot is subject.

Such maintenance, upkeep and repairs, if any, as may be performed by the Committee, hereunder shall be without liability to the Association or the Committee, or their respective officers, directors, agents or employees.

### 3. ENCROACHMENT

#### Section One. Declaration.

Each Owner of a Lot upon which a party wall is located shall acquire title to such Lot subject to the right and reciprocal easement of the adjoining Lot Owner(s) to have the building or any part thereof as originally constructed by Developer on the adjoining Lot to remain standing. Owner shall be deemed to consent, grant and to secure unto the adjoining Lot Owner(s) the right to have any part of the improvements built as part of the original construction on the adjoining Lot to overlap and extend beyond the lot line of Owner as shown on the recorded map thereof and to encroach under, over and above Owner's Lot to the same extent and in the same manner as the improvements overlap and encroach upon Owner's Lot upon completion of initial construction by Developer.

If any portion of the Common Area now encroaches upon any Lot subject hereto, or if any building improvement upon a Lot now encroaches upon any other Lot or upon any portion of the Limited Common Area, or if any such encroachment shall occur hereafter as a result of (1) repair, alteration or reconstruction of the Limited Common Area, made by or with the consent of the Committee; (2) repair or reconstruction of a residential dwelling or dwellings upon one or more Lots following damage by fire or other casualty; or (3) condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Committee shall approve of same and the property described in Article I above shall remain subject hereto.

#### Section Two. Non-Disturbance.

Each Owner of a Lot over which the adjoining Lot Owner's building encroaches covenants and agrees for himself, his heirs, executors, administrators and assigns that Owner will not break, cut, disturb, destroy or remove any part of the improvement overlapping and encroaching upon or over his Lot so long as the improvement remains standing and is similar in materials and appearance to the original construction of improvements made by Developer. Owner further covenants that the provisions hereof shall operate as covenants running with the Lot and the covenants herein contained shall remain in force as long as improvements upon the adjoining Lot are substantially the same as originally constructed by Developer.

## 4. USE OF COMMON AREAS ADJOINING LOT

No planting or gardening shall be done upon any Limited Common Area adjoining a Lot except as may be approved and permitted by the Committee. It is Developer's intent that the use and enjoyment of all Limited Common Area shall inure to the mutual benefit of all Owners within the property described in Article I above and shall be subject to the Committee's control.

## 5. EASEMENT(S)

Each Owner of a Lot shall have an easement in common with adjoining Lot Owners to use all pipes, wires, ducts, flues, cables and conduits (herein "lines") located in a party wall separating Owner's residential dwelling from any other residential dwelling. Each Lot shall also be subject to an easement in favor of the Owner of any other Lot to use such lines serving any other Owner's residential dwelling and located in a party wall. No Owner may damage or interfere in any way with such lines in such a manner as to obstruct, hinder or impede the use of said lines by the Owners of Lots served thereby.

Each Owner of a Lot shall have and enjoy the benefit of an easement appurtenant to said Lot through and under that portion or strip of land within the Limited Common Area designated as an easement area on any recorded plat of the property subject hereto, said easement for the installation and maintenance of storm drainage systems, water lines, sewer lines, gas lines and any other utilities serving any Owner's Lot. Each Owner of a Lot shall also have and enjoy the benefit of an easement appurtenant to said Lot for the use of all such utility lines shown on any recorded plat of the property whether or not said utility lines are indicated to be in areas reserved as easements. Each Lot shall also be subject to an easement for the benefit of all other Lots for the use of all such utility lines as shown on any recorded plat of the property. No Owner may damage or interfere in any way with any utility lines in such a manner as to obstruct, hinder or impede the use of said utility lines by the Owners of Lots served thereby. Furthermore, each Owner of a Lot shall have an easement in common with all other Lot Owners to use all utility lines actually located on any Lot and serving any Owner's residential dwelling but not shown on a recorded plat of the property subject hereto. Each Lot shall be subject to an easement for the benefit of all other Lots for the use of all such utility lines actually located on the Lot but not shown on a recorded plat of the property subject hereto.

Each Owner shall be obligated to maintain and repair any damage which occurs on his Lot to any utility lines which serve exclusively his dwelling. The Committee shall be responsible to maintain and repair any damage to any utility lines which occurs in the Limited Common Area or which occurs within a Lot to any utility line which serves more than one Lot. The Committee shall have the irrevocable right, to be exercised by the members thereof, their agents, employees and designees, to have access to each Lot from time to time at any reasonable hours as may be necessary for the purpose of performing maintenance and making repairs to any utility lines located thereon as hereinabove required. Such maintenance and repairs as may

be performed by the Committee as herein provided shall be without liability to the Association or the Committee, or their respective officers, directors, agents or employees except that the Committee shall be responsible for restoring the landscaping of the repaired utility line area to a neat and attractive condition. In the event that a majority of the Committee shall determine that the need for maintenance or repairs by the Committee to any utility line is caused through the willful or negligent act of an Owner, his family, guests or invitees, then the costs, both direct and indirect of such maintenance and repairs shall be added to and become a part of the Limited Common Area assessment to which such Lot is subject.

The existing topography of Section 1-N is such that proper surface water drainage of each Lot depends upon preserving the existing topography of all Lots and the Limited Common Area in Section 1-N. Further, the existing topography is such that surface water drains from one or more Lots onto other Lots in undefined areas. Therefore, each Owner of a Lot in Section 1-N shall have and enjoy the benefit of an easement across each Lot in Section 1-N for the drainage of surface water. Each Lot in Section 1-N shall further be subject to an easement for the benefit of all other Lots in Section 1-N to accept surface water drainage from said Lots in whatever location the surface water enters and flows across each Lot. No Lot shall be used or improved in a way which will interfere with the surface water run-off of the Lot or an adjoining Lot and no catch basin or yard inlet located on any Lot shall be altered, closed, fenced, or otherwise obstructed in any way by any Owner of a Lot.

#### 6. HAZARD INSURANCE

Each Owner of a Lot upon which a party wall, as hereinabove defined, is located covenants and agrees to secure and maintain in full force and effect at Owner's expense one or more casualty insurance policies insuring Owner's Lot and the improvements thereon for the full replacement cost thereof, exclusive of foundation and excavation costs, against loss or damage from all hazards and risks normally covered by a standard "extended coverage" policy, including fire, lightning, vandalism and malicious mischief with wind-storm endorsements. Such policy shall contain waivers of subrogation and endorsements waiving any defense based on co-insurance or of invalidity arising from any act(s) of the insured. By acceptance of a deed or other conveyance of any interest in or to a Lot subject to this Declaration, whether or not it shall be so expressed in such deed or other conveyance, every Owner shall be deemed to waive any and all rights as to any claims against the adjoining Lot Owner who shares a party wall with the Owner for loss or damage by fire or other hazard covered by the hazard insurance hereinabove required to be maintained by each Owner. Each hazard insurance policy maintained by each Owner shall contain a full replacement cost rider which shall require the insurance carrier to periodically revise and adjust the amount of the insurance coverage to equal the full replacement costs of the insured improvements.



Each Owner shall provide the Association with duplicate originals of the required hazard insurance policies and each such policy shall contain a provision that the Association will be given thirty (30) days written notice prior to the expiration or cancellation of Owner's insurance coverage. In the event Owner fails or refuses to maintain such insurance coverage as herein required, the Association may, but shall not be obligated to, through its agent or representative, secure and maintain such insurance coverage as hereinabove described for Owner's benefit, and the cost or expense thereof shall be deemed a special assessment levied against Owner by the Association and shall constitute a lien on Owner's Lot and Owner covenants and agrees to pay to the Association such special assessment upon demand.

All such hazard insurance policies covering any Lot (and the Improvements thereon) separated from an adjoining Lot by a party wall built as part of the original construction of the improvements made thereon by Developer shall be written in the name of Owner with the Association named as additional insured and Trustee for Owner with a stipulation that proceeds from such policies for loss or damage to the insured property be payable to the Association, its successor or designee, and such proceeds shall be held for the use and benefit of Owner and adjoining Lot Owners, their respective mortgagees, and the Association, as their interests may appear, such insurance proceeds to be applied and distributed in accordance with the provisions hereinafter set forth. Provided, however, that no mortgagee of any Lot(s) or any dwelling located upon any Lot(s) shall have any right to participate in the determination as to whether or not the insurance proceeds shall be applied to the repair, replacement or reconstruction of the improvements on any Lot(s), it being understood that no mortgagee shall have any claim against such insurance proceeds for application to reduction of the debt of the Owner of any Lot. The Association may cause a copy of this Article to be delivered to any mortgagee of record of a Lot subject hereto.

Nothing herein contained shall be construed to prohibit Owner of such a Lot from carrying other insurance for Owner's benefit provided such policies contain waivers of subrogation and endorsements waiving any defenses based on co-insurance and further provided that the liability of the insurance carriers under policies procured by any other Lot Owners shall not be affected or diminished by reason of Owner's additional insurance.

#### 7. REPAIR AND RESTORATION

In the event of fire or other disaster resulting in loss or damage to the improvements on a Lot on which a party wall is located, the proceeds from any insurance paid to Owner, the Association, its successor or designee, shall be applied to the repair, replacement or reconstruction, as the case may be, of the improvements built by Developer as part of the original construction of the dwelling on the Lot, including so much of the party wall separating Owner's Lot from the adjoining Lot as is located on such adjoining Lot. Such repair, replacement or reconstruction shall encompass and include repair and replacement of the structure as originally constructed

by Developer and all fixtures and appliances originally installed in a dwelling by Developer or equivalent replacements thereof installed by any subsequent Owner. If the insurance proceeds are in excess of the cost of repair, replacement or reconstruction, then such excess proceeds shall be paid and distributed by the Association to Owner and to Owner's mortgagee, as their respective interests may appear. If, based upon reliable and detailed estimates obtained by the Association from competent and qualified parties, it appears that the hazard insurance proceeds are not sufficient to pay for the repair, replacement or restoration of the improvements on the Lot, or that the insurance proceeds when collected will not be sufficient, then in such event the Association shall levy and promptly collect a special assessment from Owner, the assessment so levied and collected to be in an amount sufficient to pay in full for the repair, restoration or reconstruction of the improvements on Owner's Lot. Each Owner covenants and agrees to promptly pay to the Association any such special assessment levied in accordance with this Article. Each Owner shall cooperate with the Association and shall join in the execution of any documents reasonably required to obtain insurance proceeds from Owner's insurance carrier and cause the same to be applied to the rebuilding of the improvements on Owner's Lot.

#### 8. ADDITIONAL PROPERTY

Developer hereby reserves the right, exercisable at any time, to subject other real property to the restrictions set forth herein in order to extend the scheme of this Supplementary Declaration to other property to be developed as part of Village of Raintree provided that the annexation of such additional property is in accord with applicable zoning ordinances and Developer's general plan of development pursuant thereto.

#### 9. MISCELLANEOUS

##### A. Severability.

The provisions of this Supplementary Declaration are severable and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder hereof.

##### B. Compliance.

Each Owner shall comply strictly with the Association By-Laws and the rules and regulations adopted pursuant thereto, and the rules and regulations of the Committee, as any of the same may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth herein or in the deed to the Lot of such Owner. Failure to comply with any of the same shall be ground for an action to recover sums due, or damages or injunctive relief, or both, maintainable by the Association on behalf of the Committee, their successor or designee, or in a proper case, by an aggrieved Owner.

### ARTICLE IV

#### RATIFICATION OR DECLARATION

Except with respect to the property described in Article I hereof which is hereby made subject to said Declaration of March 26, 1971, and the modifications and additions herein contained, Developer hereby ratifies and confirms said Declaration, and the Declaration shall continue in full force and effect.

ARTICLE V  
BINDING EFFECT

This Supplementary Declaration shall be binding upon and inure to the benefit of the respective heirs, executors, successors and assigns of Developer and all persons, firms, or corporations claiming by, through or under Developer.

IN WITNESS WHEREOF, Developer has caused this Supplementary Declaration to be duly signed, this 12th day of July, 1974.

ATTEST:

[Signature]  
Assistant Secretary

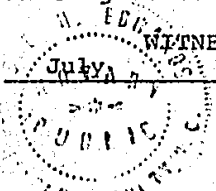
THE ERVIN COMPANY

By [Signature]  
Vice President

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

This 12th day of July, 1974, personally came before me Wm S. Michael who, being by me duly sworn, says he is the Vice President of The Ervin Company and that the seal affixed to the foregoing instrument in writing is the corporate seal of the Company, and that said writing was signed and sealed by him, in behalf of said Corporation, by its authority, duly given. And the said Vice President acknowledged the said writing to be the act and deed of said Corporation.

WITNESS my hand and notarial seal, this 12th day of July, 1974.



[Signature]  
NOTARY PUBLIC

My Commission Expires: 11-16-75

State of North Carolina, County of Mecklenburg  
The foregoing certificate(x) of Sue H. Edwards,

a Notary Public of said County and State  
is ~~not~~ certified to be correct. This 16th day of July, 19 74  
Charles E. Crowder, Register of Deeds, By: Wanda B. Adams  
DEPUTY

MAIL TO:  
R. A. Burns  
The Ervin Company  
P.O. Box 25608  
Charlotte, N.C.  
DRAWN BY: 28212

Atty. R. WORTH MANGUM