

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

82 PRESENTED
FOR
REGISTRATION

1972 Dec 19 PM 3 13

SUPPLEMENT TO DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS

CHARLES E. CROWDER
REGISTER OF DEEDS
MECKLENBURG CO. N.C.

FOR

VILLAGE OF RAINTREE

SECTION 2-J

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 18th day of December, 1972, 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; and

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

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, and further subject to such additional covenants, conditions, easements and restrictions (hereinafter collectively referred to as "Restrictions") as are herein set forth. The Restrictions shall be 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 additional 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 portion of Raintree, Section 2-J, prepared by Robert A. Burns, N.C.R.L.S., which plat is dated September 1972 and a copy thereof recorded in the Mecklenburg Public Registry in Map Book at page .

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

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

ARTICLE II

ADDITIONAL RESTRICTIONS

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

Section Six. Applicable Law.

The general rules of the state in which the above described Lots are situated regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

2. USE OF LOT; 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 or 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 common areas providing access to Owner's Lot from the nearest dedicated public street shown

on any recorded plat of the property, provided, however, Owner's use thereof shall be in accordance with the purpose for which such 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 and the common driveway(s) between Owner's Lot and such dedicated public street shall be used only by Owners of Lots served by such connecting driveway(s).

Section Two. Maintenance.

The Owner of each Lot upon which any portion of a common driveway is located shall, at Owner's sole expense, maintain and repair that portion of the roadway as may be located upon the Lot. Any part of a common driveway which is not located upon a Lot shall be deemed a Common Area as defined in said Declaration of March 26, 1971, and shall be the responsibility of the Association.

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 and 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 interior lot line of Owner as shown on the recorded map thereof and to encroach 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 Common Area, or if any such encroachment shall occur hereafter as a result of (1) repair, alteration or reconstruction of the Common Area made by or with the consent of the Association; (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 Association 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 Common Area adjoining a Lot upon which a dwelling having a party wall as part of the original construction of the improvements made by Developer upon such Lot except as may be approved and permitted by the Association Board of Directors. It is Developer's intent that the use and enjoyment of all open space shall inure to the mutual benefit of all Owners within the property and shall be subject to the Association's control.

5. UTILITY EASEMENT(S)

Each Owner of a Lot upon which a party wall as hereinabove defined is located shall have an easement in common with the adjoining Lot Owner(s) to use all pipes, wires, ducts, flues, cables, conduits, and similar public utility lines, if any, located on such adjoining lot and serving Owner's residential dwelling. Each such Lot shall also be subject to an easement in favor of the Owner of any other Lot to use the pipes, wires, ducts, flues, cables, conduits, and similar public utility lines, if any, serving such other Owner's dwelling and located on such Lot.

Each Owner of such Lot upon which a party wall as above described is located shall also have and enjoy the benefit of an easement appurtenant to said Lot through and under that portion or strip of land within the Common Area shown on the recorded map of the property subject hereto or any other recorded map of the subdivision, said easement for the installation and maintenance of storm drainage system and utility lines and laterals serving Owner's Lot. Developer hereby modifies or extinguishes the utility and drainage easements along Owner's Lot lines reserved in said Declaration of March 26, 1971, to the extent that adequate reserved easements are otherwise herein available to Owner. Provided, however, maintenance of all utility lines and laterals serving Owner's Lot shall be at Owner's sole cost and expense whether located on Owner's Lot or within the Common Area.

6. RIGHT OF ACCESS

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 Board of Directors, or its representatives, to have access to such Lot and the dwelling thereon, said right of access solely for the purpose of making emergency repairs or taking such action as may be necessary and required to prevent damage to the Common Area or to another Owner's Lot or dwelling.

7. HAZARD INSURANCE

Each Owner of a Lot upon which a party wall as hereinabove defined is located covenants to secure and maintain in full force and effect at Owner's expense one or more insurance policies containing waivers of subrogation and of any defense based on co-insurance or of invalidity arising from any

act(s) of the insured endorsements insuring Owner's Lot and the improvements thereon for the full replacement cost thereof, exclusive of excavation and foundation costs, against loss or damage from all hazards and risks normally covered by a standard "extended coverage" policy, including fire and lightning, vandalism and malicious mischief. The amount of insurance to be obtained by Owner shall be determined by an annual appraisal by Owner's insurance carrier of the replacement cost of the dwelling located upon Owner's Lot without regard to depreciation, provided, however, the policy may provide that an amount not to exceed \$250.00 shall be deductible from any indemnity payable on account of a single loss. Owner shall provide the Association with satisfactory evidence that such insurance as herein required is in full force and effect and that the Association will be given thirty (30) days 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 hereinabove described for Owner's benefit, and the cost or expense thereof shall be deemed a special assessment levied by the Association against Owner in accordance with Article V, Section Six of said Declaration dated March 26, 1971, and Owner covenants and agrees to pay to the Association such special assessment upon demand.

All such hazard insurance policies covering such Lot (and the dwelling thereon) separated from an adjoining Lot by a party wall built as part of the original construction of improvements made thereon by Developer shall be written in the name of Owner with endorsement naming the Association Board of Directors as additional insured and Trustee for Owner with stipulation that proceeds from such policies for loss or damage to the property be payable to said Board of Directors, its successor or other 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 proceeds to be applied or distributed in accordance with the provision hereinafter set forth and the By-Laws of the Association. Provided, however, no mortgagee of any such Lot(s) or any dwelling located upon such Lot(s), shall have any right to determine or participate in the determination as to whether or not such Lot and the improvements thereon shall be repaired, replaced or reconstructed.

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(s) of such Lot(s) from carrying other insurance for Owners' benefit provided such policies contain waivers of subrogation and further provided that the liability of the insurance carriers under policies procured by any other Lot Owner(s) shall not be affected or diminished by reason of Owners' other insurance.

8. REPAIR AND RESTORATION

In the event of fire or other disaster to a Lot upon which a party wall as hereinabove defined is located, the proceeds from any insurance obtained by Owner, the Association Board of Directors, its successor or other designee, or such other Trustee as may come into possession

of such proceeds in accordance with the provisions herein or By-Laws of the Association, shall, except as may otherwise be provided herein or in the By-Laws of the Association, be applied to the repair, replacement or reconstruction, as the case may be, of the improvements built as part of the original construction of the dwelling on the Lot by Developer. If insurance proceeds are in excess of the cost of repair, replacement or reconstruction, then such excess proceeds shall be paid and distributed by Trustee to Owner and to Owner's mortgagee or mortgagees, as their respective interests may appear. If such proceeds covering the loss or damage are not sufficient to pay for the repair, replacement or reconstruction of the improvements upon such Lot, the uncovered portion of the rebuilding costs shall be paid by Owner. In case of fire or other disaster to the improvements on any such Lot, Owner shall cooperate with the Association Board of Directors and shall join in the execution of any document reasonably required to obtain insurance proceeds from Owner's insurer and cause same to be applied to the rebuilding of the dwelling upon Owner's Lot.

9. IMPROVEMENT RESTRICTION

Article VI, Section Four, Improvement, Setback and Use Restrictions, Subparagraph 3 of said Declaration dated March 26, 1971, is hereby modified as it applies to each Lot upon which a party wall as hereinabove defined is located by changing the minimum square foot area of any dwelling constructed thereon from 2,000 square feet to 1,350 square feet, regardless of the number of floor levels in the dwelling. Otherwise, the restriction as set forth in said Declaration of March 26, 1971, shall remain in full force and effect.

10. 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 Developer's general plan of development and the dwellings constructed on the property are substantially similar in value to the dwellings constructed on the property subject hereto.

11. 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, as either 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 Board of Directors on behalf of the Association, their successor or designee, or in a proper case, by an aggrieved Owner.

ARTICLE III

RATIFICATION OF DECLARATION

Except with respect to the additional property hereby made subject to said Declaration of March 26, 1971, and the modification to the minimum number of square feet to be contained in any dwelling located on a Lot upon which a party wall as hereinabove defined is located, Developer hereby ratifies and confirms said Declaration and all amendments and supplementary declarations applicable to Village of Raintree previously filed of record in said Mecklenburg County Public Registry.

ARTICLE IV

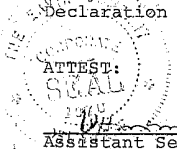
BINDING EFFECT

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 18th day of December, 1972.

ATTEST:

THE ERVIN COMPANY



William H. Cannon
Assistant Secretary

By: William H. Cannon
Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 18th day of December, 1972, personally came before me, William H. Cannon 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 18th day of December, 1972.

My Commission Expires:
November 16, 1975

Sue H. Edwards
Notary Public

STATE OF NORTH CAROLINA The foregoing
COUNTY OF MECKLENBURG certificate(s)

or Sue H. Edwards,

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a Notary Public of said County and State
is ~~also~~ certified to be correct.
This 19th day of December 1972

Recorded in Book _____ Page _____ and Verified.
CHARLES E. CROWDER, Register of Deeds

By Wanda B. Adams
Deputy