

STATE OF NORTH CAROLINA	:	DECLARATION OF COVENANTS,
	:	CONDITIONS AND RESTRICTIONS
COUNTY OF NEW HANOVER	:	ECHO GREENS TOWNHOUSES
	:	SECTION I

THIS DECLARATION, Made this 18th day of April, 1985 by ECHO GREENS, INC., a North Carolina corporation, hereinafter referred to as "DECLARANT".

WITNESSETH:

WHEREAS, the DECLARANT is the fee simple owner of a certain tract of real property located in the City of Wilmington, New Hanover County, North Carolina, said tract being more particularly described as all of Section I, Echo Greens Townhouses as the same is shown on a map thereof recorded in Map Book 25 at Page 16, of the New Hanover County Registry; and,

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WHEREAS, the DECLARANT desires to establish certain restrictions, covenants and conditions with respect to the use, enjoyment and ownership of the property described above for the purpose of protecting the value and desirability of the property, said restrictions, covenants and conditions to run with the property and to be binding on all parties having any right, title or interest in said property or any parcel thereof, their heirs, successors and assigns for the benefit of both DECLARANT and all owners thereof.

NOW, THEREFORE, with respect to the property described above and for the purposes stated above, DECLARANT does hereby declare that all said property shall henceforth be held, sold and conveyed subject to the following covenants, conditions and restrictions:

ARTICLE I

DEFINITIONS

For the purpose of this instrument, the following definitions shall apply:

1. DECLARANT - ECHO GREENS, INC., a North Carolina corporation, with its principal place of business being in New Hanover County and the State of North Carolina and/or its successors in interest.

2. ASSOCIATION - The Echo Greens Homeowner's Association, a non-profit corporation organized pursuant to the laws of the State of North Carolina with its principal office being located in the County of New Hanover and the State of North Carolina and/or its successors in interest.

3. PROPERTY - All that real property described above, and such additions as may hereafter be brought within the jurisdiction of the Association.

4. LOT - Any one of those parcels of real property subdivided from the property and designated by numbers 1 through 25 upon the map of Section I, Echo Greens Townhouses recorded in Map Book 25, at Page 16, of the New Hanover County Registry, reference to which is hereby made for a more complete description, together with the structure or dwelling constructed thereon which may be referred to as "Townhouse", "Townhouse Unit" or "Unit".

5. OWNER - Any one of those individuals or entities who hereafter are conveyed and/or hold fee simple title to any lot excluding, however, the DECLARANT, a mortgage holder, or any other person or entity acquiring title merely as security for the performance of an obligation.

6. COMMON AREAS - All of the real property shown upon the map of Section I, Echo Greens Townhouse recorded in Map Book 25, at Page 16, of the New Hanover County Registry which is designated as common area and all of the improvements not located on a lot including, but not limited, all drainage and sewer pipes and other such facilities located upon or under the common areas, all utility installations, fixtures and facilities of whatever nature, including, but not limited to, such facilities, fixtures and installations for electricity, lighting and water located upon, under, above or for the benefit of the common areas, and all other apparatus, equipment and installations existing upon, beneath, above or for the benefit of the common elements, of whatever nature or kind, and all roads, driveways and/or parking areas.

7. LIMITED COMMON AREAS AND FACILITIES - Those areas, if any, designated as Limited Common Areas on the aforementioned plat which are reserved for the use of a certain lot or lots to the exclusion of other lots.

3. DEVELOPMENT - The entire planned residential development to be known as "ECHO GREENS TOWNHOUSES" which shall consist of all of the property including lots and common elements and improvements to the common elements and other contiguous property which may hereafter be subjected to this Declaration.

ARTICLE II

ASSOCIATION

1. PURPOSE - The Echo Greens Homeowner's Association shall be a non-profit corporation, the purpose of said association being to establish a private homeowner's association for the owners of the lots and townhouses in the residential development known as "ECHO GREENS TOWNHOUSES" and to provide the essential services necessary to preserve, protect, maintain and care for said development and to regulate the use of the property for the mutual benefit of all owners of lots and townhouses therein, all as outlined herein below and more particularly described in the By-Laws of the Association.

2. MEMBERSHIP - There shall be one membership in the Association for each lot and no others. Each membership shall be appurtenant to the ownership of a lot and townhouse in the development and may not be severed or transferred separate and apart from the transfer of the lot and townhouse to which it is appurtenant. For the purposes of this Article, the DECLARANT shall be deemed an owner so long as it owns any lots or townhouses in the development.

3. OWNERSHIP - The Association shall be conveyed by the DECLARANT and shall own in fee all of the common areas of the property and all of the improvements thereon.

4. MANAGEMENT AND CONTROL - Subject to the provisions of Article III of this Declaration, the affairs of the Association shall be

governed, managed and controlled by the Board of Directors, elected by the membership as provided in the Association's By-Laws, the terms and provisions of which are incorporated herein as if fully set forth.

5. POWERS, PRIVILEGES, RIGHTS AND OBLIGATIONS - The Association, in order to fulfill the purposes for which it has been formed, shall have and possess and shall perform and exercise the following powers, privileges, rights and duties:

a. RULEMAKING - The Association shall, from time to time, make and amend, pursuant to the provisions of its By-Laws, reasonable rules and regulations governing the owners' use and enjoyment of their townhouses, lots, the common areas and the improvements thereon;

b. MAINTENANCE - The Association shall be responsible for the upkeep, maintenance, protection, preservation, repairs, reconstruction and/or replacement of (i) the Common Areas, (ii) all improvements and any additions to the Common Areas, (iii) the roofs of the townhouses, and (iv) ~~the exterior and appointments to the townhouses,~~ such improvements to include but not limited to the painting, repairing, replacing and care of roofs, gutters, downspouts, exterior building surfaces, decks, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces. In the event that any of the above is necessitated by the willful act or active or passive negligence of any owner, his family, guests, invitees, or tenants, then the cost of the same shall legally be the personal obligation of said owner and if not paid to the Association upon demand, may be added to the annual assessment levied against said owner's lot and townhouse, as said assessment is defined below;

c. INSURANCE - The Association shall obtain and maintain, to the extent obtainable, the following:

(1) Fire insurance with extended coverage, vandalism and malicious mischief endorsements, insuring all improvements upon the common areas and all lots (including the bathroom and kitchen fixtures initially installed therein by the DECLARANT, but not including furniture,

furnishings, or other personal property supplied or installed by owners or tenants of owners) and covering the interest of the Association, the Board of Directors and all owners and their mortgagees or beneficiaries under deeds of trust, as their respective interest may appear;

(2) Public liability insurance in such limits as the Board of Directors of the Association may, from time to time, determine necessary covering each member of the Board of Directors, each officer of the Association, the Association and each owner of a lot, such public liability insurance to also cover cross liability claims of one insured against another;

(3) Such other insurance as the Board of Directors may determine is necessary for the protection of the development, the Association, its directors, officers and members;

(4) The owners of lots shall not be prohibited from carrying other insurance for their own benefit provided that such policy shall contain waivers of subrogation and further provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance obtained by any owner of a townhouse and lot in the development.

5. All insurance policy premiums on the property for the benefit of the Association purchased by the Board of Directors or its designee and any deductibles payable by the Association upon loss shall be a common expense and the Association shall levy against the owners an additional annual assessment or include within the normal annual assessment an amount sufficient to pay the annual cost of insurance premiums.

6. All insurance policies purchased pursuant to these provisions shall provide that all proceeds thereof shall be payable to the Board as insurance trustee or to such attorney-at-law or institution with trust powers as may be approved by the Board. Proceeds of the insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner: (i) First to all reasonable expenses of

the Insurance Trustee; (ii) The remaining proceeds shall be used to defray the cost of repairs for the damage or reconstruction for which proceeds are paid; (iii) Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such common expenses or purposes as the Board shall determine.

d. MISCELLANEOUS - The Association shall have, in addition to all of the above, any and all powers, privileges, rights and duties as set forth in its By-Laws and the general laws of the State of North Carolina pertaining to non-profit corporations, and any and all incidental or necessary powers, privileges, rights and duties necessary to fulfill the purposes for which the Association has been formed and to provide for the mutual needs of the owners of the townhouses and lots within the development to insure the protection of the value and desirability of all of the property and improvements thereon of the development.

ARTICLE III

ASSESSMENTS

1. OBLIGATION FOR ASSESSMENTS - The DECLARANT hereby covenants and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges and special assessments for capital improvements as hereinafter provided. Such assessments, together with interest, cost and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment together with interest, cost and reasonable attorney's fees shall also be a personal obligation of the person who is the owner of such property at the time when the assessment fell due. Personal obligation for delinquent assessments shall not pass to said owner's successors in title unless expressly assumed by them.

2. PURPOSE OF ASSESSMENTS - The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the property and for the improvements and maintenance of the common area and of the townhouses situated upon the properties.

3. BUDGET - The Board of Directors shall be responsible for annually preparing a budget for the Association determining therein the projected annual cost to the Association for performing all of its duties. Once said budget has been approved by the membership of the Association as outlined in its By-Laws, the Association shall thereafter fix assessments at a uniform rate for all lots within the development, said assessments to be paid monthly, quarterly or annually, at the discretion of the Board.

4. ASSESSMENTS FOR CAPITAL IMPROVEMENTS - In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to the year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of the members of the Association who are voting in person or by proxy at a meeting duly called for this purpose.

5. COMMENCEMENT OF ASSESSMENTS - The annual assessments provided for herein shall commence as to all lots on the first day of the month following the conveyance of the common area to the Association by the DECLARANT, except that annual assessments shall not commence for any lot until a certificate of occupancy has been issued for such lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each lot at least thirty days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every owner subject thereto. The due date

shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessment to be paid in prorata monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific lot have been paid.

6. EFFECT OF NONPAYMENT - Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate twelve per cent per annum. The Association may, at its option, bring an action against the owner personally obligated to pay the assessment or may foreclose the lien provided herein against the lot by way of judicial foreclosure as provided by the laws of the State of North Carolina for judicial foreclosure of mortgages and deeds of trust.

7. SUBORDINATION TO MORTGAGES - The lien for unpaid assessments provided for herein shall be subordinated to the lien of any first mortgage or first deed of trust against any lot.

8. WORKING CAPITAL RESERVE - At the time title is conveyed to an owner, each owner shall contribute to the Association, as a working capital reserve, an amount equal to two months estimated assessments. Such funds shall be used solely for initial operating and capital expenses of the Association, such as prepaid insurance, supplies for the Association and upkeep of the common areas and facilities. Amounts paid in to the working capital fund are not to be considered an advance payment of regular assessments. Any working capital funds remaining at the end of the first full year of operation shall be transferred to and become part of the general funds of the Association, in the discretion of the Board of Directors.

ARTICLE IV

OWNERS

Every owner of fee simple title to a lot and townhouse within the development shall be deemed to own, possess and have accepted the following:

a. Membership in the Association, appurtenant to his lot and townhouse;

b. An easement of enjoyment, equal to that of all other owners, in and to the common areas, subject to the following:

(1) The right of the Association to suspend the voting rights and the right to use any of the common areas by any owner for any period during which any assessment against his lot remains unpaid;

(2) The right of the Association to dedicate or transfer all or any part of the common areas to any public agency, authority, or utility for such purposes and subject to such conditions as the Association may determine, acting by and pursuant to the provisions of its duly enacted By-Laws;

(3) The right of the Association to enact reasonable rules and regulations governing the use and enjoyment of the common areas and the improvements thereto;

(4) The right of any owner to delegate, in accordance with the By-Laws of the Association, a right of enjoyment to the common areas and their facilities to members of his family, his tenants or to contract purchasers who reside on the property.

c. The duty of complying with and abiding by all of the provisions of these Articles, the By-Laws of the Association and the rules and regulations of the Association.

ARTICLE V

DECLARANT

In addition to all other rights, powers and privileges reserved herein to the DECLARANT, the DECLARANT further reserves the following rights:

a. The right and power to appoint or designate the members of the Board of Directors of the Association until the first of the following occurs:

(1) The date on which 100% of the lots within the development have been sold by the DECLARANT and paid for; or

(2) December 31, 1985.

Until said date occurs, the DECLARANT, acting by and through its appointees or designees, shall have absolute control of the Association and its affairs, and no action taken by the membership of the Association pursuant to this Declaration or the By-Laws of the Association shall have any effect whatsoever without the prior written approval of the DECLARANT, acting by and through its appointees or designees. Upon either of the above referenced dates, the president of the Association shall follow the procedures outlined in the By-Laws of the Association for the transition of control of the Association from DECLARANT to the membership of the Association.

b. The right to change, alter, or redesignate the allotted, planned, platted or recorded use or designation of any of the property (so long as the DECLARANT retains title to said property) including, but not limited, the right to change, alter, or redesignate roads, utility and drainage facilities and easements, and to change, alter or redesignate such other present proposed amenities or facilities as may, in its sole judgment and discretion of the DECLARANT, be necessary or desirable.

c. A perpetual, alienable and releasable easement and right of way, over and under the ground, to erect, maintain, and use electric and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone, television and cable facilities, gas, sewer, water or other public conveniences or utilities on, in or over any of the property. These easements and rights expressly include the right to cut any trees, bushes or other shrubbery, make any gradings of the soil, or to take any other similar actions reasonably necessary in the opinion of the DECLARANT to provide economical and safe utility installations.

d. The right to subject the property to contracts with electric, telephone, cable, television and other utilities for the installation of under ground cables, wires, pipes or other necessary conduits for utilities.

ARTICLE VI

NATURE OF OWNERSHIP

Each of the lots shall be improved by the DECLARANT by the construction thereon of a townhouse, each townhouse being a separate and independent dwelling, except that it shall share and enjoy a common roof and party wall which shall extend down and along the dividing line between the lots, with one inch of continual air space existing from roof to slab between the interfacing outer fire walls of each townhouse. The common areas with the improvements constructed thereon by the DECLARANT, shall be conveyed to and owned by the Association. The development shall be a private residential community and all property, and all improvements thereon, shall be private property and nothing in these Articles, or in the recording of any map or deed pursuant hereto, shall dedicate (or be deemed to dedicate) to public use, any of the property, or the improvements thereon unless done by action of the DECLARANT or by action of the Board of Directors as provided in the By-Laws.

ARTICLE VII

EASEMENTS

1. EASEMENT FOR EXTERIOR MAINTENANCE - The Association, acting through its duly appointed agents, shall have the right to unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance called for herein.

2. EASEMENT FOR ENCROACHMENTS - Easements are reserved over those portions of the common area, limited common areas, and facilities that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the common areas or limited common areas or the air and light space above such common areas. In addition, each lot and the property included in the common area shall be subject to an easement for encroachments created by construction, settling and overhangs for all buildings constructed by the DECLARANT. A valid easement for said encroachments and for the

maintenance of the same, so long as such encroachments stand, shall and does exist. In the event any structure containing two or more townhouses partially or totally destroyed and then rebuilt, the owners of the townhouses so affected agree that minor encroachments of parts of the adjacent townhouse units or common areas due to construction shall be permitted and that a valid easement for said encroachments and the maintenance thereof shall exist.

3. EASEMENTS FOR INGRESS AND EGRESS - Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks and lanes as the same from time to time may exist upon the common areas and facilities, and for vehicular traffic over, through and across all streets, as from time to time may be paved and intended for such purposes for all lot owners in the development, their guests, family, invitees and lessees, the Association, DECLARANT, and its successors and assigns. The DECLARANT hereby reserves an licensable easements over all streets and common areas as necessary to provide access for future development by the DECLARANT, its successors and assigns of any properties adjoining the project.

4. EASEMENTS RUNNING WITH THE LAND - All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding upon the DECLARANT, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or in any part or portion thereof, regardless of whether or not reference to said easement is made and the respective deeds of conveyance, or in any mortgage or deed of trust or other evidence of obligation, to the easements and rights described in this Declaration.

ARTICLE VIII

PARTY WALLS

1. GENERAL RULES - Each wall which is built as a part of the original construction of the house upon the property and placed on the dividing line between the lots shall constitute a party wall and, to the

extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

2. REPAIR AND MAINTENANCE - The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.

3. DESTRUCTION BY FIRE OR OTHER CASUALTY - If a party wall is destroyed or damaged by fire or other casualty, any owner who has used the wall may restore it, and if the other owners make use of the wall, they shall contribute to the cost of restoration thereof in proportion to use such without prejudice, however, to the rights of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligence or willful acts or omissions.

4. NEGLIGENCE OR DAMAGE BY OWNER - Notwithstanding any other provisions of this Article, an owner who, by his negligence 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.

5. RIGHT TO CONTRIBUTION - The right of any owner to contribution from any other owner under this Article shall be appurtenant to the land and shall pass to such owners successors in title.

6. ARBITRATION - In the event any dispute arises concerning a party wall or under the provisions of this Article, the dispute shall be settled by arbitration in accordance with the Uniform Arbitration Act as enacted by the State of North Carolina.

ARTICLE IX

USE RESTRICTIONS

1. LAND USE - All lots shall be used for residential purposes except that so long as the DECLARANT shall retain ownership of any lots, it may utilize any such lots for sales or rental offices, models or other usage for the purpose of selling or renting lots within said project. The DECLARANT may assign this limited commercial usage right to any other person or entities as it may choose, provided, however,

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that when all lots have been sold, this right of commercial usage by the DECLARANT, its successors and assigns shall immediately cease.

2. NUISANCES - No noxious or offensive activity shall be carried upon any lot nor shall any thing be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

3. JUNK VEHICLES - No inoperable vehicle or vehicle without current registration and insurance will be permitted on the premises. The Association shall have the right to have all such vehicles towed away and stored at the owner's expense.

4. TEMPORARY STRUCTURES - No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any lot at any time as a residence either temporarily or permanently.

5. ANIMALS - No animals, livestock or poultry of any kind shall be kept or maintained on any lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes and provided further that they are not allowed to run free and are at all times properly leashed and personally escorted; and subject to such further regulation as may be adopted by the Association.

6. OUTSIDE ANTENNAS - No outside antennas, radio or television antennas shall be erected on any lot or dwelling unit within the properties unless and until permission for the same has been granted by the Board of Directors of the Association.

7. RECREATIONAL VEHICLES - No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicles shall be permitted to remain on any lot or in parking spaces at any time unless by consent of the Association.

ARTICLE X

DEVELOPMENT IN PHASES

The DECLARANT intends to develop the property contiguous to the property described herein in phases. Each additional phase shall be

subject to the terms and conditions of this Declaration upon the recordation of a plat showing additional lots and the recordation of a document executed by the DECLARANT evidencing its intention that the new phase shall be subject to this Declaration. The development of additional tracts shall be in accordance with the same general scheme of development as Section I, as shown on the map of Section 1, Echo Greens Townhouses.

ARTICLE XI

GENERAL PROVISIONS

1. ENFORCEMENT - The Association, the DECLARANT, or any owner, shall have the right to enforce, by any proceeding, at law or in equity, all of the conditions, covenants and restrictions of these Articles and any and all liens hereinafter imposed pursuant to the provisions of these Articles. Failure by the Association, the DECLARANT or any owner to enforce any of the above shall in no event be deemed a waiver of the right to do so thereafter. In addition to the foregoing, the DECLARANT shall have the right, whenever there shall have been built on any lot any structure which is in violation of these Articles, the By-Laws or the Rules and Regulations of the Association, to enter upon said lot where such violations exist, and summarily abate or remove the same at the expense of the owner, if, after 30 days written notice of such violation, it shall have not been corrected by the owner, and any such entry and abatement or removal shall not be deemed trespass.

2. INVALIDATION - The invalidation of any one or more of these covenants, conditions or restrictions contained in these Articles by any Court, agency or legislature shall in no way affect any of the other covenants, conditions or restrictions contained in these Articles, and they shall remain in full force and effect notwithstanding such invalidation.

3. DURATION AND AMENDMENT - All covenants, conditions or restrictions set forth within these Articles shall run with the property, and all portions thereof, and shall be binding upon all parties having any right, title or interest in the property, or any portion thereof,

their personal representatives, heir devisees, successors and assigns, and shall inure to the benefit of the same, for a period of 20 years, commencing with the date these Articles are recorded in the New Hanover County Registry. After such term, these Articles shall be automatically extended for successive periods of 10 years unless 60% of the then owners agree to revoke or amend the same and do so by an instrument signed by 60% of the then owners and recorded in the New Hanover County Registry. In like manner, these Articles may be amended during the first 20 years by an instrument signed by not less than 75% of the owners and recorded in the New Hanover County Registry. As used in this paragraph, the word "owner" includes the DECLARANT as well as the owners of the lots and townhouses, but not those having an interest in any of the property for the purpose of securing the performance of any obligation.

4. GENDER - The use of the masculine gender in these Articles shall be deemed to include the feminine gender and the neuter gender and the use of the singular shall be deemed to include plural whenever the context so requires.

5. CAPTIONS - The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of these Articles or the intent of any provision hereof.

6. INCORPORATION - All of the powers, duties, privileges, obligations and rights of the Association, its Board of Directors, its officers, its members, the DECLARANT and all others who may hereafter own, hold or have any right, title or interest in or to the property or any portion thereof all as set forth the duly enacted By-Laws and Rules and Regulations and all duly adopted amendments, modifications and repeals thereof, of the Association are incorporated by reference and made a part hereof as if fully stated herein.