

DECLARATION OF COVENANTS AND RESTRICTIONS  
OF ECHO HILL SOUTH, AMHERST, MASSACHUSETTS  
(Retyped in its entirety from original in March 1995)

Renewed by the Association members in 1996 for an additional 20 years through 2017.

THIS DECLARATION, made this ninth day of January A.D., 1967, by WILLIAM E. AUBIN and SOPHIE T. AUBIN, husband and wife, of Amherst, Hampshire county, Massachusetts, hereinafter called the Developers, which expression shall include their heirs and the assignees of the rights hereunder where the context so admits,

WITNESSETH:

WHEREAS, Developers are the owners of the real property described in Article II of this declaration and desire to create thereon a residential community with permanent parks, playgrounds, open spaces and other common facilities for the benefit of the said community, and

WHEREAS, Developers desire to provide for the preservation of the values and amenities in said community and for the maintenance of said parks, playgrounds, open spaces and other common facilities; and , to this end, desire to subject the real property described in Appendix A together with such additions as may hereafter be made thereto (as provided in Article II) to the covenants, restrictions, easements, charges and liens, thereafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Developers have deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developers have incorporated under the provision of Chapter 180 of the General Laws of the State of Massachusetts, as a non-profit corporation, THE ECHO HILL SOUTH ASSOCIATION, INC., for the purpose of exercising the functions aforesaid;

NOW, THEREFOR, the Developers declare that the real property described in Appendix A, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens, (sometimes referred to as "covenants and restrictions") hereinafter set forth.

ARTICLE I  
DEFINITIONS

Section 1. The following words when used in this Declaration or any supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to The Echo Hill South Association, Inc.

(b) "The Properties" shall mean and refer to all such existing properties, and additions thereto, as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II, hereof.

(c) "Common Properties" shall mean and refer to those areas of land shown on a subdivision plat of The Properties recorded in Hampshire County Registry of Deeds, Plan Book, Page upon which plan the common properties are specifically designated and intended to be devoted to the common use and enjoyment of the owners of the Properties.

(d) "Lot" shall mean and refer to any plot of land or subdivision thereof shown upon any recorded subdivision map of The Properties with the exception of Common Properties as heretofore defined.

(e) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or dwelling unit situated upon The Properties, but, notwithstanding any applicable theory of the mortgage, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(f) "Member" shall mean and refer to all those Owners who are members of the Association as provided in Article III, Section I, hereof.

ARTICLE II  
PROPERTY SUBJECT TO THE DECLARATION  
ADDITIONS THERETO

Section 1. Existing Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Amherst, Hampshire County, Massachusetts, and is more particularly described in Appendix A hereto attached.

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Additions in Accordance with a General Plan of Development. The developers, their heirs and assigns, shall have the right to bring within the scheme of this Declaration additional properties in future stages of the development, provided that such additions are in accord with a General Plan of Development prepared prior to the sale of any Lot in such development and made known to every purchaser (which may be done by brochure delivered to each purchaser) prior to such sale, and provided further that the Association shall first approve each such addition at a meeting of the membership called for the purpose, two-thirds (2/3) of the Class A members voting concurring therein.

Such General Plan of Development shall show the proposed addition to the existing property and contain: (1) a general indication of size and location of additional development stages and proposed land uses in each; (2) the approximate size and location of common properties proposed for each stage; (3) the general nature of proposed common facilities and improvements; (4) a statement that the proposed additions, if made, will become subject to assessment for their just share of Association expenses; and (5) a schedule for termination of the Developer's right under the provisions of this sub-section to bring additional development stages within the scheme. Unless otherwise stated therein, such General Plan shall not bind the Developers, their heirs and assigns, to make the proposed additions or to adhere to the Plan in any subsequent development of the land shown thereon and the General Plan shall contain a conspicuous statement to this effect.

The additions authorized under this and the succeeding sub-section, shall be made by filing of record in the Hampshire County Registry of Deeds, a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the scheme of the covenants and restrictions of this Declaration to such property.

Such Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added properties and as are not inconsistent with the scheme of this Declaration. In no event, however, shall such Supplementary Declaration revoke, modify or add to the covenants established by this Declaration within the Existing Property.

(b) Other Additions. Upon approval in writing of the Association pursuant to a two-third (2/3) vote of its Class A members and as provided in its Articles of Incorporation, the owner of any adjacent or contiguous lot who desires to add it to the scheme of this Declaration and to subject it to the jurisdiction of the Association, may file of record in the Hampshire County Registry of Deeds a Supplementary Declaration of Covenants and Restrictions, as described in sub-section (a) hereof.

(c) Mergers. Upon a merger or consolidation of the Association with another association as provided in its Articles of Incorporation, its properties, rights and obligations, may by operation of law, be transferred to another surviving or consolidated association or alternatively, the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall effect any revocation,

change or addition to the covenants established by this Declaration within the Existing Property except as hereafter provided.

ARTICLE III  
MEMBERSHIP AND VOTING RIGHTS  
IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any lot or dwelling unit which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be a member.

Section 2. Voting Rights. The Association shall have two classes of voting membership.

Class A. Class A shall be all those owners as defined in Article I, Section 1. (3) with the exception of the Developers as to those lots whereon no dwelling unit has been constructed until such time as a dwelling unit is constructed. Class A members shall be entitled to one vote for each dwelling unit in which they hold the interests required for membership by Section 1 of this Article. When more than one person holds such interest or interests in any Lot or dwelling unit all such persons shall be members, and the vote for such Lot or dwelling unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or dwelling unit.

Class B. Class B Members shall be the Developers as to all lots upon which no dwelling unit has been erected. The Class B member shall be entitled to one vote for each Lot or dwelling unit in which they hold the interest required for membership by Section 1.

Any owner or the Developer shall have the right to vote by proxy or in person, provided that where such vote is by proxy such proxy shall be in writing signed by the owner and delivered to the Secretary of the Association at the meeting for which such proxy is to be exercised.

ARTICLE IV  
PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3, every member shall have a right and easement of enjoyment in and to the common Properties and such easement shall be appurtenant to and shall pass with the title to every Lot or dwelling unit.

Section 2. Title to Common Properties. The Developers may retain the legal title to the Common Properties until such time as they have completed improvements thereon and until such time, as in the opinion of the Developers, the Association is able to maintain the same but, notwithstanding any provision herein the Developers hereby covenant, for themselves, their heirs and assigns, that they shall convey the common Properties to the Association, not later than January 1, 1975 or when the Class A votes equal the Class B votes, whichever is the earlier; and in the meantime the Developers shall lease the said common properties to the Association giving it full control of the premises, the rent thereof to equal the local real estate tax for each year thereof. Such conveyance shall contain the restriction running in favor of the properties that no building other than a club house for the use of the members shall ever be erected upon the premises.

Section 3. Extent of Members' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) the right of the Developers and of the Association, in accordance with its Articles and By-laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said common properties; and
- (b) the right of the Association to take such steps as are reasonably necessary to protect the above-described common properties against foreclosure; and

- (c) the right of the Association, as provided in its Articles and By-Laws, to suspend the enjoyment rights of any Member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations, and
- (d) the right of the Association to charge its Members reasonable admission and other fees for the use of the Common Properties; and
- (e) the right of the Association to dedicate or transfer all or any part of the common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least ninety (90) days in advance of any action taken.

## ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot or dwelling unit within the properties by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. Notwithstanding the foregoing; the Developers shall not be required to pay such annual or special assessments nor shall any owner be required to pay any such annual or special assessment for any calendar year during which no partially or fully completed dwelling exists on such lot.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in The Properties and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the dwelling units situated upon The Properties, including, but not limited to the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management, and supervision thereof.

Section 3. Basis and Maximum of Annual Assessments. Until the year beginning January 1970, the annual assessment shall not be more than \$50.00 per dwelling unit. From and after January 1, 1970, the maximum annual assessment may be increased by vote of the Members, as hereinafter provided, for the next succeeding three years and at the end of each such period of three years.

The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount.

Section 4. Special Assessment for Capital Improvements. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy in any assessment year a special assessment, not to exceed three (3) times the annual assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting

duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

Section 5. Change in Basis and Maximum of Annual Assessments. Subject to the limitations of Section 3, hereof, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by section 3 hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting, provided further that the limitations of Section 3 hereof shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation and under Article II, Section 2 hereof.

Section 6. Quorum for any Action Authorized Under Sections 4 and 5. The quorum required for any action authorized by Sections 4 and 5 hereof shall be as follows:

At the first meeting called, as provided in Sections 4 and 5 hereof, the presence at the meeting of Members, or of proxies, entitled to cast sixty (60) per cent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth in Sections 4 and 5, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month fixed by the Board of directors of the Association to be the date of commencement.

The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The assessments for any year, after the first year, shall become due and payable on the first day of March of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof as the remaining number of months in that year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against each dwelling unit for each assessment period of at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner or the Developers.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid on the date when due (being the dates

specified in Section 7 hereof) then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representative and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of six per cent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property or both, and there shall be added to the amount of such assessment the costs of such proceedings and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the cost of the action.

Section 10. Subordination of the Lien to Mortgagees. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, a foreclosure sale under a power of sale contained in such mortgage, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due nor from the lien of any such subsequent assessment, such liability and lien always being subordinate to any subsequent first mortgage.

Section 11. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein: (a) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; (b) all Common Properties as defined in Article 1, Section 1 hereof; (c) all properties exempted from taxation by the laws of the Commonwealth of Massachusetts upon the terms and to the extent of such legal exemption, and (d) all land owned by the Developers upon which no dwelling has been constructed.

Notwithstanding any provisions herein, no land or improvement devoted to dwelling use shall be exempt from said assessments, charges or liens.

## ARTICLE VI USE RESTRICTIONS

The Restrictive Covenants to which we and each of us do make and declare the said Lots within the existing property to be subject, such restrictive covenants to bind each and every Lot within the existing property and to run in favor of each and every other such Lot within the said existing property.

1. Land Use and Building Type: No Lot shall be used except for residential purposes and such purposes as may be permitted by the Zoning Board of Amherst acting pursuant to the Amherst Zoning By-Laws.
2. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.
3. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack or garage shall be used on any lot at any time as a residence either temporarily or permanently and no house trailer shall be stored or kept upon any lot.
4. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any lot, except that dogs, cats or small household pets may be kept, provided that they are not kept, bred or maintained for any commercial purpose.
5. Vehicles. No vehicle other than those designed or used primarily for the transportation of nine (9) or less human beings shall be stored or parked on any lot. For the purposes of this paragraph, panel trucks and pickup trucks of not more than three-quarter (3/4) ton capacity shall be deemed to be designed and used primarily for the transportation of human beings, provided that not more than one (1) such truck shall be parked or stored upon any lot at a given time. Nothing in this

paragraph shall be construed as prohibiting the temporary presence of delivery trucks, moving vans, and the like upon any lot while actually making a pickup or delivery thereon.

6. Storage. Only such property as may be used in a manner accessory to the dwelling uses shall be stored upon any lot, but none other. No fuel oil storage tank shall be maintained outside any buildings unless the same shall be buried. No garbage can shall be kept on a lot outside of any building unless the same shall be maintained out of view in a receptacle approved by the Architectural Committee.
7. Sale of Wares. No lot shall be used for the public display nor sale of goods, wares, or merchandise of any kind, including those made upon the premises. Nothing in this paragraph or in these restrictions generally shall be interpreted as precluding the rendering of professional services upon any lot.
8. No tree in excess of six (6) inch diameter upon any lot shall be cut down except by the Developer or by order of the tree warden of the Town of Amherst in the performance of his official duties or approval of the Architectural Committee.
9. No signs shall be displayed upon any lot except a temporary sign not in excess of six (6) square feet in area indicating that the premises are for sale or rent or a professional sign permitted by the Amherst Zoning By-Law.

## ARTICLE VII ARCHITECTURAL COMMITTEE

Section 1. Review by Committee. No building, fence, wall or other structure shall be commenced, erected or maintained upon The Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, or in any event, if no suit to enjoin the addition, alteration or change has been commenced prior to the completion thereof, approval will not be required and this Article will be deemed to have been fully complied with. The provisions of this Article shall not apply to the Developers and Builders to whom the Developers assign this right.

## ARTICLE VIII GENERAL PROVISIONS

Section 1 Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or by the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be extended for successive periods of twenty (20) years each provided that in the case of each such twenty (20) year extension an instrument signed by the then Owners of at least fifty (50) per cent of restricted area including the Common Properties, agreeing to so extend said covenants and restrictions in whole or in part. Said instrument extending said restrictions may also contain an agreement to change said restriction, provided the same shall contain the signatures of at least two-thirds (2/3) of the then Owners and provided, however, that no such agreement to change shall be effective unless made and recorded three (3) years in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, post-paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien

created by these covenants, and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF the Developers and the undersigned Owners have hereunto set their hands and seals respectively on the date and year first above written.