Prepared by RAMSEY, HILL,
SMART, RAMSEY & PRATT, P.A.
By: Gayle E. Ramsey

294 216

SUPPLEMENTAL DECLARATION
OF
RESTRICTIVE COVENANTS
OF
WALNUT HILLS DEVELOPMENT
PHASE I, LOTS 1, 2, 4, 5, 6, 7,
202 and 401 - 406
* * * * * * * * * * * * * * *

THIS SUPPLEMENTAL DECLARATION is made this 29th day of April, 1987, by WARREN FRANK STEPHAN and his wife, WANDA M. STEPHAN (hereinafter referred to as Declarant).

W I T N E S S E T H:

THAT WHEREAS Declarant has recorded on the 29th day of April, 1987, in the office of the Register of Deeds for Transylvania County, North Carolina, in Deed Book 294, page 205, a certain Declaration of Restrictive Covenants for Walnut Hills Development (the Development) which subjects the Development to the provisions thereof pursuant to an incremental plan of development and improvement; and

WHEREAS, Declarant desires to subject to the land hereinafter described to the terms of said declaration of restrictive covenants and to include said land within the Development.

NOW, THEREFORE, Declarant declares that:

1. The Development includes all the real property shown and described on the plat of Phase I, Lots 1, 2, 4, 5, 6, 7, 202 and 401 - 406 of Walnut Hills Development recorded in the office of the Register of Deeds for Transylvania County, North Carolina, in Plat File 3, Slide 83.

2. All the real property shown on said plat is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the provisions of the declaration hereinabove referred to, as, for and to the extent applicable, the provisions of said declaration being incorporated herein by reference as fully as if written out verbatim herein.

3. Pursuant to the provisions of the Declaration of Restrictive Covenants all of the lots hereinabove referred to are designated single-family residential as to use. The minimum total number of square feet of the fully enclosed floor area (exclusive of any roofed or unroofed porch, terrace, garage or carport) of the single-family dwelling which may be constructed, erected or situated on any lot shall be not less than 1800 square feet, and the minimum number of square feet of enclosed floor area on the first floor shall be not less than 1000 square feet. Except with the express approval of Developer, in determining the amount of square footage contained within the enclosed floor area of a dwelling, there shall not be taken into consideration any area which is wholly or substantially below ground level.

Notwithstanding anything hereinabove set forth to the contrary, no one-story residence shall be constructed, erected or situated on any lot if such residence does not have a fully enclosed floor area (exclusive of any roofed or unroofed porch, terrace, garage or carport), containing less than 1,800 square feet. Except with the express approval of Developer, in determining the amount of square footage contained within the enclosed floor area of any one-story residence, there shall not be taken into consideration any area which is wholly or substantially below ground level.

IN WITNESS WHEREOF, Declarant has executed this Supplemental Declaration, this the day and year first above written.

Warren Frank Stephan (SEAL)
Warren Frank Stephan, Declarant

Wanda M. Stephan (SEAL)
Wanda M. Stephan, Declarant

STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA.

I, Sandra G. Crowe, a Notary Public of said State and County, do hereby certify that WARREN FRANK STEPHAN and wife, WANDA M. STEPHAN, personally appeared before me this day and acknowledged the due execution by them as Declarant of the foregoing Supplemental Declaration of Restrictive Covenants for Walnut Hills Development.

WITNESS my hand and Notarial Seal, this the 29th day of April, 1987.

Sandra G. Crowe
Notary Public

My Commission Expires: June 21, 1988.

STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA.

The foregoing certificate of Sandra G. Crowe, a Notary Public, is certified to be correct. This instrument was presented for registration and was duly recorded in this office in Book 294, page 216, Record of Deeds.

This the 29 day of April, 1987, at 4:30 o'clock P.M.

Fred H. Israel
Register of Deeds

By: _____
Deputy Register of Deeds

Prepared by RAMSEY, HILL,
SMART, RAMSEY & PRATT, P.A.
By: Gayle E. Ramsey

DECLARATION 294 205
OF
RESTRICTIVE COVENANTS
OF
WALNUT HILLS DEVELOPMENT
* * * * * * * * * * * * *

KNOW ALL MEN BY THESE PRESENTS, that WARREN FRANK STEPHAN and his wife, WANDA M. STEPHAN (hereinafter referred to as Developer), are the owners and developers of that certain property situate, lying and being in Dunns Rock Township, Transylvania County, North Carolina, known as Walnut Hills Development (the Development), described in the Supplemental Declaration attached hereto, designated as Exhibit "A" and made a part hereof by reference.

Developer intends to sell and convey the lots and parcels situated within the Development and before doing so, desires to impose upon them mutual and beneficial restrictions, covenants, equitable servitudes and charges under a general plan or scheme of improvements for the benefit of all of the lots and parcels in the Development and the owners and future owners thereof.

NOW, THEREFORE, Developer declares that all of the lots and parcels in the Development are held and shall be held, conveyed, and hypothecated or encumbered, leased, rented, used, occupied and improved, subject to the provisions of this Declaration, all of which are declared and agreed to be in furtherance of a plan for the development, improvement and sale of said lots and parcels and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The provisions of this Declaration are intended to create mutual equitable servitudes upon each of said lots and parcels in favor of each and all other lots and parcels; to create reciprocal rights between the respective owners of all such lots and parcels; to create privity of contract and estate between the grantees of such lots, their heirs, successors and assigns; and shall, as to the owner of each such lot or parcel, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other such lots and parcels in the Development and their respective owners, present and future.

ARTICLE I
LAND USE AND STRUCTURE TYPE

Lots and parcels in the Development shall be designated in the Supplemental Declaration as to their permissible uses and shall thereupon become subject to the restrictive or other provisions of this Declaration relating to such uses. In the event a use is designated for which no such provision is contained herein (for example, commercial, recreational, etc.), then the same may be set forth in such Supplemental Declaration.

A. SINGLE-FAMILY RESIDENTIAL. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot designated as a single-family residential lot other than one (1) detached, single-family dwelling, not to exceed two and one-half (2-1/2) stories in height, together with a porch, terrace and a private garage or carport for not more than three (3) cars. The following restrictions shall apply specifically to lots designated as single-family residential:

1. Minimum Cost and Area. Each dwelling constructed, erected or situated thereon shall have fully enclosed floor area (exclusive of any roofed or unroofed porch, terrace, garage, carport or other areas not enclosed by the main structure) which shall cost not less than the minimum cost, if any, established in the Supplemental Declaration which designates the use of the lot and shall contain not less than the minimum number of square feet established in the Supplemental Declaration which designates the use of the lot.

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2. Set Backs. Each such dwelling shall be at least:

(a) Thirty (30) feet from all road right-of-way lines and sixty (60) feet from all front lot lines which run along the center of roads;

(b) Twenty-five (25) feet from the rear lot line;

(c) Twelve (12) feet from interior lot lines;

However, Developer, in Developer's sole discretion, may grant variances from these requirements, insofar as road set backs are concerned, when in Developer's judgment the size and topography of a lot and the location of road right-of-way lines across such lot make it impractical or impossible to construct on such lot a building which conforms to the road set back requirements set out herein.

3. Utility Yards. Any detached outbuilding must be maintained within a utility yard shielded by a wall, hedge or fence which must screen such outbuilding in such a manner as to prevent its being visible from any other lot in the Development or from any road shown on any recorded plat of the Development. Likewise, any detached heating or air conditioning equipment, wells or pump not enclosed within a single family dwelling must be located within a utility yard and shielded by a wall, hedge or fence which must screen such heating or air conditioning equipment, well or pump in such a manner as to prevent its being visible from any other lot in the Development or from any road shown on any recorded plat of the Development. All outdoor drying of clothes shall be conducted within the confines of a utility yard and the clothes and other items being dried therein must not be visible from any location in the Development outside of the boundaries of the lot on which such activities are conducted.

4. Garages and Carports. Garages and carports shall open from the side or rear of residences and shall be kept closed at all times other than when vehicles are being driven in or out so that the interior portions thereof cannot be seen from adjoining lots or from any road shown on any recorded plat of the development.

5. Outdoor Lighting. All outdoor lighting, including the location, intensity and duration of such lighting, must be approved by Developer who shall have the right at any time to prohibit the use of any outdoor light which unreasonably interferes with the privacy of any other lot owner and such other lot owner's use and enjoyment of his lot at any time.

6. Signs. No signs shall be allowed on any lot without the permission of Developer.

B. COMMON AREAS. All lots or parcels in the Development designated as common areas are and shall remain private property and Developer's recordation of a plat shall not be construed as a dedication to the public of any such common areas located therein, however, Developer reserves the right, at any time after twenty (20) lots in the Development have been sold and conveyed, to convey all or any portion of those areas in the Development which have been designated as common areas to the Walnut Hills Property Owners Association (hereinafter referred to as the Association), and Developer also reserves the right at any time after twenty (20) lots in the Development have

been sold and conveyed, to transfer to the Association the responsibility for maintaining all or any portion of said common areas, together with the responsibility for paying the cost of maintaining those portions of said common areas so transferred.

ARTICLE II
ARCHITECTURAL CONTROL

A. Activities either Prohibited or Requiring Developer's Approval.

No single-family dwelling, porch, terrace, private garage, carport, shed, fence or other structure authorized under the provisions of this Declaration or any Amendment or Supplemental Declaration thereto shall be constructed, erected, situated or altered on any lot until the construction plans and specifications, and a plan showing its location on the lot have been approved by Developer as to quality of workmanship and materials, harmony of external design and external color with existing structures and the natural environment, and as to location with respect to topography, its effect on the view from structures already constructed in the Development and finish grade elevation. Unless similarly approved, no trees or natural vegetation shall be cut or removed from any lot nor shall any portion of any lot be cleared or graded or any mailbox, newspaper receptacle, fence or wall be erected, placed or altered on any lot. In no event shall any metal roofing be placed on a building or any building containing exposed cement or cinder block be erected on any lot, however, subject to the approval of Developer, paint or stucco will be acceptable on foundations. No TV antenna dish shall be located on any lot until a plan showing its location on the lot has been approved by Developer as to location with respect to topography, finish grade elevation and structures on other lots and the view from other lots, and in no event shall any TV antenna dish be visible from any of the roads in the Development shown on recorded plats. No garage may be erected on any lot which has an entrance or exit which is visible from any road in the development shown on a recorded plat. Natural drainage shall not be changed without the approval of Developer. Developer shall not be responsible for any drainage problems affecting any lot.

B. Procedure.

Developer's approval or disapproval as required by this Article of these covenants shall be in writing. In the event Developer fails to approve or disapprove within thirty (30) days after plans and specifications have been submitted to Developer, or in any event, if no suit to enjoin any construction for which Developer's approval is required under this Article has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with provided that the required plans and specifications were submitted to Developer at least thirty (30) days prior to the commencement of such construction.

C. Architectural Control Committee.

Developer reserves the right at any time, and for any period of time, to delegate to an architectural control committee to be composed of three individuals who shall be appointed by Developer the rights reserved by Developer to approve or disapprove herein provided for in this article of these covenants.

ARTICLE III
TEMPORARY STRUCTURES

No structures of a temporary character, trailer, basement, tent, shack, garage, carport, barn, shed or other outbuilding shall be used on any lot at any time as a residence, either temporarily or permanently, nor shall any trailer, tent, shack or type of structure, whether temporary or permanent, not specifically authorized by these covenants or any Amendment or Supplemental Declaration thereto to be placed on any lot at any time.

ARTICLE IV
NUISANCES

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. Construction of improvements on any lot, once commenced, shall be completed within twelve (12) months. Improvements not so completed or upon which construction has ceased for ninety (90) consecutive days or which have been partially or totally destroyed and not rebuilt within ninety (90) days, shall be deemed nuisances. Developer may remove any such nuisances or repair or complete the same at the expense of the owner, the cost of which shall be levied as an assessment against the owner's lot.

ARTICLE V
MAINTENANCE OF LOTS

All lots and parcels, whether occupied or unoccupied, and any improvements placed thereon, shall at all times be maintained in such manner as to prevent them from becoming unsightly, unsanitary or a hazard to health. If not so maintained, Developer shall have the right, through Developer's agents, employees and contractors to do so, the cost of which shall be levied as an assessment against the owner of the lot. Neither Developer, nor any of Developer's agents, employees or contractors shall be liable for any damage which may result from any such maintenance work.

ARTICLE VI
LIVESTOCK AND POULTRY

No animal, livestock or poultry of any kind shall be raised, bred or kept on any lot except that dogs, cats or other household pets may be kept, provided, that they are not bred or maintained for commercial purposes and that they are kept within a fence or restrained by a leash at all times.

ARTICLE VII
GARBAGE AND REFUSE DISPOSAL

No owner may accumulate on his lot any litter, refuse or garbage, except in receptacles provided for such purposes, nor shall any junked, untagged, or inoperative vehicles be placed or accumulated on any lot. Each lot owner shall provide closed sanitary receptacles for garbage and shall install and maintain said receptacles in such a manner as not to be visible from any road shown on a recorded plat of any portion of the Development or from any common area within the Development except at the times when refuse collections are made. No open burning of any kind shall be done before the lot owner has obtained the written permission of Developer, and has also obtained a permit from the proper authorities when required by law.

ARTICLE VIII
WATER SYSTEM

In the event that Developer, after having obtained the approval of the appropriate governmental agencies, should construct or cause the construction of a waterworks system in the Development, said waterworks system shall be owned and operated by a privately owned public utility authorized by a Certificate of Public Convenience and Necessity issued by the North Carolina Utilities Commission in accordance with the provisions of Article 1 of Chapter 62 of the General Statutes of North Carolina, as now or hereafter amended, revised or superseded, to acquire, maintain and/or operate a waterworks system and conduct a public utility business in the area occupying the Development.

In consideration therefor, the owners of each lot not then already served by a well or private waterworks system agree not to dig or drill a well or install a private waterworks system of their own on any lot, and they further agree to tap on to the waterworks system referred to hereinabove in the preceding

paragraph, and to pay to said privately owned public utility, its successors, assigns, lessees and/or licensees, an AVAILABILITY CHARGE which, at the option of Developer, shall be payable monthly, quarterly, semi-annually, or annually, for water, water service and the accomodations afforded said owners by said waterworks system, said availability charge to commence upon the approval of said waterworks system and said availability charge by the North Carolina Utilities Commission and upon availability of water in a waterworks system distribution main provided for the lot and continuing thereafter so long as water is available for use whether or not tap or connection is made to a waterworks distribution main and whether or not said owners actually use or take water. Said availability charge and a reasonable tap fee shall and will be charged for each lot of each said owner and will be the only charges for water except as otherwise herein provided. The aforesaid amount of said availability charges, including special provisions for said availability charges with respect to contiguous lots of the same owner, times and methods of payment thereof by said owners and other matters shall be provided in schedules of rates and rules, regulations and conditions of service for water services filed and published by said public utility with said North Carolina Utilities Commission or any successor regulatory body in the State of North Carolina in accordance with law and passed to file or formally approved by said Commission as the then effective schedule of rates and rules, regulations and conditions of service of said public utility. Upon any lot owner's making a written request therefor, and paying said public utility in cash such reasonable initial tap fee in accordance with said rules, regulations and conditions of service for water service, or such other amount as is approved or passed to file thereor by the North Carolina Utilities Commission or its successor, a tap to a waterworks system distribution main in connection to said owner's lot line will be installed. The amount of said availability charges and other charges are subject to change hereafter by order of the North Carolina Utilities Commission or its successor in accordance with then existing law, and the structure of said availability charges are likewise and in the same manner subject to change from availability rates to another type of rate or rates. Unpaid charges shall become a lien upon the lot or lots to which they are applicable as the date the same become due. Nothing in this paragraph set forth shall be construed as a limitation on the rights of any public utility to sell and assign in accordance with law its property and assets to a North Carolina municipal corporation or to a governmental subdivision of the State of North Carolina.

ARTICLE IX
SEWAGE DISPOSAL

No sewerage system shall be permitted on any lot except such system as is located, constructed, and equipped in accordance with the minimum requirements of the State Board of Health. Approval of such system shall be obtained from the health authority having jurisdiction. In the event that Developer or some other person, firm or corporation authorized by Developer provides a public sewerage system, sewage disposal shall, at the earliest possible time, be by such public sewerage system.

ARTICLE X
LIMITED ACCESS

There shall be no access to any lot on the perimeter of the Development except from designated streets or roads within the Development as shown on the recorded plats of the Development without the express written consent of Developer which must be recorded in the Office of the Register of Deeds for Transylvania County, North Carolina.

ARTICLE XI
RESUBDIVISION OF LOTS

No lot or parcel, with the exception of those lots or parcels owned by Developer, shall be further divided, however, Developer shall have the absolute right, in Developer's sole

discretion, to combine and divide or redivide any lots or parcels owned by Developer and to place on record plats of any such combined, divided or redivided lots or parcels and to submit or withdraw said lots or parcels from the provisions of these covenants without the consent or joinder of the owners of the other lots and parcels in the Development.

ARTICLE XII
DRILLING AND MINING

No drilling, refining, quarrying or mining operations of any kind shall be permitted on any lot.

ARTICLE XIII
EASEMENTS

The following easements over each lot or parcel and the right to ingress and egress to the extent reasonably necessary to exercise such easements, are reserved to Developer, Developer's successors, assigns or licensees:

A. UTILITIES. A five (5) foot wide strip running along the inside of all lot lines, however, where lot lines run along the center of roads or along road right-of-way lines, such strips shall, at the option of Developer, be ten (10) feet in width and run along either the inside or the outside of the road right-of-way line, but Developer, after having located said ten-foot wide strip on a particular lot, may not thereafter relocate said strip on said lot without the express written consent of the owner of said lot. Said strips shall be used for the installation, maintenance and operation of utilities, including radio and television transmission cables, and the accessory right to locate guy wires, braces or anchors or to cut, trim or remove trees and plantings wherever necessary upon such lots in connection with such installation, maintenance and operation.

B. ROADS. An easement on, over and under all roads in the Development for the purpose of installing, maintaining and operating utilities thereon or thereunder; for purposes of drainage control; for access to any lot or parcel; and for the purposes of maintenance of said roads.

C. SIGHT EASEMENTS. Such sight easements, if any, of the sizes and locations as may be shown on recorded plats of portions of the Development are reserved for the purpose of ensuring that visibility at road intersections shall be unimpeded. No fence, wall, hedge, tree or shrub which obstructs sight lines at elevations between two (2) and eight (8) feet above roadways shall be placed or permitted to remain within sight easements.

D. OTHER EASEMENTS. Any other easements shown on recorded plats of portions of the Development.

E. USE OF AND MAINTENANCE BY OWNERS. The areas of any lots affected by the easements reserved herein shall be maintained continuously by the owners of such lots, but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken thereon which may damage or interfere with the use of said easements for the purposes herein set forth. Improvements within such areas shall be maintained by the owners of said improvements except those for which a public authority or public authority or utility company is responsible.

ARTICLE XIV
ROAD MAINTENANCE

A. ANNUAL ROAD MAINTENANCE FEE. There are existing roads in the Development. Developer, for Developer, Developer's successors or assigns, reserves from all conveyances of land in the Development a right-of-way for road purposes over and along all roads shown on recorded plats of the Development which may be conveyed to the Association, or to the North Carolina Department of Transportation or any successor department or agency thereto

and also specifically over and along all of the areas reserved and dedicated as roads on the recorded plats of the Development or portions thereof. Developer, for Developer and Developer's successors or assigns, also reserves the right until said roads are taken over for maintenance by the North Carolina Department of Transportation, or any successor agency thereto, in the event that said roads should be conveyed to said department or any successor agency thereto, to levy an annual road maintenance assessment on each lot in the Development for that lot's pro rata share of the annual cost of repairing and maintaining the roads in the Development and the roads which connect the Development with the public road, with each lot's share of the annual cost of repairing and maintaining the roads in the Development to be the fractional portion which that lot is of the total number of platted lots in the Development at the beginning of the year for which a particular annual assessment is made and each lot's share of the annual cost of repairing and maintaining the roads which connect the Development with the public road to be the fractional portion which that lot is of the total number of platted lots or tracts of land whose owners are required to share in the costs of repairing and maintaining said roads.

B. RIGHT OF DEVELOPER TO TRANSFER MANAGEMENT RESPONSIBILITY. Developer reserves the right to turn over to the Association at any time after ten (10) lots in the Development have been sold and conveyed the responsibility of overseeing the maintenance of the roads in the Development and levying the annual road maintenance assessments.

ARTICLE XV
WALNUT HILLS PROPERTY OWNERS ASSOCIATION

At such time as Developer shall have sold and conveyed ten (10) lots in the Development, all of the then owners of lots situated in the Development shall be immediately obligated to: (1) join the Association after it has been organized and incorporated by Developer, (2) participate in the activities of the Association on a one (1) vote per lot basis, (3) pay their pro rata share of the cost of incorporating, organizing and operating the Association, and (4) pay all assessments thereafter levied by the Association. Each subsequent owner of a lot situated in the Development shall upon acquiring such ownership be immediately obligated to: (1) join the Association, (2) participate in the activities of the Association on a one (1) vote per lot basis, and (3) pay his/her/its pro rata share of the cost of operating the Association and all assessments levied by the Association in connection therewith including his/her/its pro rata share of those assessments levied during the year in which he/she/it acquire(s) title to his/her/its lot.

ARTICLE XVI
ASSESSMENTS

A. General. The Developer, until such time as the Association has been organized and incorporated by Developer, and thereafter, the Association, shall have the power on an annual basis to levy base assessments against all lots and improvements assessments against all improved lots. Provided, however, the total amount assessed against an improved lot shall not exceed 150% of the amount charged as the base assessment in the same fiscal year. Notwithstanding the foregoing, without Developer's consent, no assessment shall be levied against any lots or parcels owned by Developer. The amount of each assessment levied by any party or party authorized by this Declaration to levy assessments shall constitute a personal obligation of the owner of the lot against which any such assessment is levied and shall be paid to the party making such levy on or before the date or dates specified by the party levying such assessment.

B. LIEN AND ENFORCEMENT OF LIENS. In the event that a lot owner has not paid an assessment levied by Developer, or by the Association, or by a privately owned public utility established under the provisions of Article VIII of these covenants, within thirty days after said assessment is levied, said levy shall constitute a lien against such lot owner's lot from the date of the filing of a notice of assessment and lien in the office of the Register of Deeds for Transylvania County. All liens levied

pursuant to the provisions of these covenants shall include the amount of any unpaid assessment, plus any other charges thereon, including a late charge of $25.00 to cover administrative expenses, interest at one and one-half percent (1½%) per month from the date of delinquency and costs of collection, including attorney's fees. Each notice of assessment and lien shall state the amount of such assessment and such other charges and a description of the lot which has been assessed. Each notice of assessment and lien shall be signed by Developer or such other person or legal entity to whom Developer has assigned the authority to file notices of assessments and liens pursuant to a document filed in the office of the Register of Deeds for Transylvania County, or by an officer or agent of the Association, in the event that said notice of assessment and lien is filed by the Association, or by an officer or agent of the privately owned public utility, in the event that said notice of assessment and lien is filed by the privately owned public utility. Such lien shall be prior to all other liens recorded subsequent to the filing of such notice of assessment and lien. Each owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Developer or other such person or legal entity to whom the Developer has assigned the authority to file notices of assessments and liens pursuant to a document filed in the office of the Register of Deeds for Transylvania County, and in the Association or its agents, and in any privately owned utility established under the provisions of Article VIII of these covenants or its agents, the right and power to bring all actions against him/her/it, personally for the collection of such charges set out in said notice of assessment and lien as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this article shall be in favor of the party filing such lien and, if filed by the association or its agents, shall be for the benefit of all other owners. The party filing such lien (and if filed by the Association or its agents, the Association acting on behalf of the owners) shall have the power to bid on the lot in any foreclosure or to acquire, hold, lease, mortgage or convey the lot or unit. No owner may waive or otherwise except liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the lot. All payments shall be applied first to costs and attorney's fees, then to late charges, then to interest, then to delinquent assessments, then to any unpaid installments of the annual assessments or special assessments which are not the subject matter of suit in the order of their coming due, and then to any unpaid installments of the annual assessment or special assessments which are the subject matter of suit in the order of their coming due. Upon payment of all assessments and other charges, costs and fees provided for in a particular notice of assessment and lien, or other satisfaction thereof, the party filing said lien shall cause to be recorded a further notice stating satisfaction and the release of the lien thereof.

C. PROOF OF PAYMENT. Upon the request of any lot owner, the Association shall furnish to such lot owner, or to any lending institution, attorney, or real estate salesperson designated by such lot owner, a statement certifying that all assessments then due from said lot owner have been paid or indicating the amount then due.

D. SUSPENSION. The Association shall not be required to transfer membership on its books or to allow the exercise of any rights or privileges of membership, including, but not limited to, the use of all common areas, common property and other real or personal property owned by the Association, to any owner or to any persons claiming under such owner unless or until all assessments and charges to which such owner is subject have been paid.

E. USE OF FEES. The membership fees levied by the Association as annual assessments shall be used for the maintenance, improvement, care, operation, upkeep, preservation, and protection of the common areas, common properties, and other real, personal, or intangible properties owned by the Association and, furthermore, may be used to advance, protect and secure,

through any means authorized by the Board of Directors of the Association, the interests of the Association, to include payment of ad valorem taxes and the costs of insurance, repair, replacement, renovation and improvement of all common areas, common property and other real, personal, or intangible property owned by the Association and all legal expenses, accounting expenses, staff expenses, fees for management and supervision of the Association's affairs, office expenses, and overhead, security and utility charges in connection with the property not separately metered or charged to individual members, and the establishment and maintenance of a reasonable operating reserve fund to cover unforeseen contingencies and deferred expenses.

ARTICLE XVII
STREAMS

No lot owner shall pollute any stream or lake in the Development nor shall any lot owner cause or allow any stream in the Development which may flow across his lot to be diverted in part or in whole from its natural direction and course of flow. No solid or liquid waste of any kind shall be drained, dumped or disposed of in any way into open ditches or water courses. No lot owner shall pump water from any stream or lake in the Development for any purposes.

ARTICLE XVIII
ANNEXATION

A. PROPERTY TO BE ANNEXED. Developer may from time to time and in Developer's sole discretion, annex to the Development any other real property owned by Developer which is contiguous or adjacent to or in the immediate vicinity of the Development.

B. MANNER OF ANNEXATION. Developer shall effect such annexation by recording a plat of the real property to be annexed and by recording a Supplemental Declaration which shall:

1. Describe the real property being annexed and designate the permissible uses thereof;

2. Set forth any new or modified restrictions or covenants which may be applicable to such annexed property, including limited or restrictive uses of common areas; and

3. Declare that such annexed property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the provisions of this Declaration. Upon the recording of such plat and Supplemental Declaration, the annexed area shall become a part of the Development as fully as if such area were part of the Development on the date of recording of this Declaration.

ARTICLE XIX
AMENDMENT

This Declaration may be amended unilaterally at any time and from time to time by Developer (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statue, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any owner's lot unless any such lot owner shall consent thereto in writing. Further, so long as Developer owns any property which is subject to this Declaration, Developer may unilaterally amend this Declaration for any other purpose; provided, however, that any

such amendment shall not materially adversely affect the substantive rights of any lot owner hereunder, nor shall it adversely affect title to any lot without the consent of the affected lot owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of a least a majority of the members of Walnut Hills Property Owners Association and the consent of Developer, so long as Developer owns any property which is subject to this Declaration. Amendments to the Declaration shall become effective upon recordation in the Transylvania County, North Carolina, records unless a later effective date is specified therein.

ARTICLE XX
TERM

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots in the Development has been recorded, agreeing to change said covenants in whole or in part.

ARTICLE XXI
GRANTEE'S ACCEPTANCE

Each grantee or purchaser of any lot or parcel shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase thereof, whether from Developer or a subsequent owner of such lot or parcel, accept such deed or contract upon and subject to each and all of the provisions of this Declaration and all amendments and supplemental declarations thereto, and to the jurisdiction, rights, powers, privileges and immunities of Developer, the Association and the private utility company hereinabove provided for. By such acceptance such grantee or purchaser shall for himself, his heirs, devisees, personal representatives, grantees, successors and assigns, lessees and/or lessors, covenant, consent and agree to and with Developer and the grantee or purchaser of each other lot or parcel to keep, observe, comply with and perform the covenants, conditions and restrictions contained in this Declaration, and all amendments and supplemental declarations thereto.

ARTICLE XXII
SUSPENSION OF RESTRICTIONS

The provisions of improvements, use and occupancy set forth herein shall be suspended as to any lot, parcel or other area while and so long as the same is owned by or leased to the State of North Carolina or any governmental agency, public or private utility, whenever and to the extent, but only to the extent, that such provisions shall prevent the reasonable use of such lot, parcel or area for the purposes for which it was acquired or leased. On cessation of such use, such provisions shall become applicable again in their entirety. While owning or leasing and using, such owner shall have no rights as a member of the Association nor shall it be liable for any Association assessments.

ARTICLE XXIII
ENFORCEMENT

These covenants may be enforced by Developer, by the Association, or by the owners or lessees of any lots which are subject to the provisions of these covenants. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation, or to recover damages, or both.

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ARTICLE XXIV
SEVERABILITY

Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions, which shall remain in full force and effect.

ARTICLE XXV
ASSIGNMENT OF DEVELOPER'S RIGHTS

Developer's rights under this Declaration may be assigned at any time, in whole or in part, to any other person, persons or legal entity including, but not limited to, the Association.

IN WITNESS WHEREOF, Declarant has executed this Declaration, this 29thday of April, 1987.

Warren Frank Stephan (SEAL)

Wanda M. Stephan (SEAL)

STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA.

I, Sandra G. Crowe, a Notary Public of said State and County, do hereby certify that WARREN FRANK STEPHAN and wife, WANDA M. STEPHAN, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and Notarial Seal, this the 29th day of April, 1987.

Notary Public

My Commission Expires: June 21, 1988.

STATE OF NORTH CAROLINA, COUNTY OF TRANSYLVANIA.

The foregoing certificate of Sandra G. Crowe, a Notary Public, is certified to be correct. This instrument was presented for registration and was duly recorded in this office in Book 494, page 205, Record of Deeds.

This the 29 day of April, 1987, at 4:30 o'clock P.M.

Register of Deeds

By: Deputy Register of Deeds