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**DECLARATION OF COVENANTS AND RESTRICTIONS  
OF WALNUT HILLS**

of Walnut Hills

**INSTRUMENT**  
9809846385

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Exhibit "A" Real Estate comprising Walnut Hills

**DECLARATION OF COVENANTS AND RESTRICTIONS OF  
WALNUT HILLS**

THIS DECLARATION made this 14<sup>th</sup> day of August, 1998, by W A S Development Corp., an Indiana corporation ("Declarant").

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner in fee simple title to certain real estate located in Hamilton County, Indiana, more particularly described in the attached Exhibit A, which is incorporated herein by reference (hereinafter referred to as "Tract" or "Walnut Hills").

B. Declarant by execution of this Declaration assures that all properties which are conveyed which are a part of the Tract shall be conveyed subject to the terms and conditions of this Declaration, which shall run with the Tract and be binding upon all parties having any right, title or interest in the Tract, or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

1. **Definitions.** The following terms as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

(a) "Applicable Date" means the date determined pursuant to Paragraph 11 of this Declaration.

(b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

(c) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.

(d) "By-Laws" shall mean the By-Laws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation. The By-Laws are incorporated herein by reference.

(e) "Common Area" means the ground designated as such upon the Final Plat of Walnut Hills.

(f) "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Area, and any other costs or expense incurred by the Corporation for the benefit of the same or the Owners, and all sums lawfully assessed against the Members of the Corporation.

(g) "Corporation" means Walnut Hills Owners Association, Inc., its successors and assigns, an Indiana nonprofit corporation, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 11 of this Declaration; such Corporation being more particularly described in Paragraph 11 of this Declaration.

(h) "Declarant" shall mean and refer to W A S Development Corp., an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to any mortgagee acquiring title to any portion of the Tract pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(i) "Home" means one of the living units located upon a Lot.

(j) "Lakes" shall refer to the separate bodies of water, all of which will be located in the Common Area.

(k) "Lot" means any plot of ground designated as such upon the recorded Final Plat of Walnut Hills, and upon which one (1) Home is constructed, is to be constructed or has existed. When Lot is used it shall be deemed to include the Home, if any, located thereon.

(l) "Member" means a member of the Corporation.

(m) "Mortgagee" means the holder of a first mortgage lien on a Lot.

(n) "Walnut Hills" means the name by which the Tract, as described in Paragraph A above, which is the subject of this Declaration, and which the Corporation manages, shall be known.

(o) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot, including contract sellers.

(p) "Builder" means a purchaser of a platted Lot from the Declarant for purposes of constructing a Home thereon.

(q) "Final Plat" or "Plat" means the Final Plat of Walnut Hills which was recorded on 8-19, 1992, as Instrument Number 946380 in the Office of the Recorder of Hamilton County, Indiana, which is incorporated herein by reference.

(r) "Tract" means the real estate described in Paragraph A above.

2. Declaration. Declarant hereby expressly declares that the Tract shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of Walnut Hills. Walnut Hills consists of ninety-nine (99) Lots numbered 1 through 99, inclusive, together with the Common Area as designated on the Final Plat. The Common Area and the size of the Lots are as designated on the Final Plat. The legal description for each Lot in Walnut Hills shall be as follows:

Lot \_\_\_\_\_ in Walnut Hills, a subdivision in Hamilton County, Indiana, as per plat thereof recorded \_\_\_\_\_, 19\_\_\_\_, as Instrument Number in the Office of the Recorder of Hamilton County, Indiana.

4. **Lot Boundaries.** The boundaries of each Lot in Walnut Hills shall be as shown on the Plat.
5. **Common Area.** Common Area includes all the area designated as such on the recorded Final Plat of Walnut Hills, including but not limited to the lakes, walking paths, parking areas, and recreational areas, if any, but excluding all Lots and dedicated streets.
6. **Ownership of Common Area.** The Common Area shall be conveyed to or owned by the Corporation, and shall be held for the use and enjoyment of the Members, all of whom shall have the right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:
  - (a) The right of the Corporation to charge reasonable admission and other fees for use of any recreational facility, if any.
  - (b) The right of the Corporation to suspend any member from the right to use any recreational facility for any period during which any assessment against such Member's Lot remains unpaid.
  - (c) The right of the Corporation, upon approval by a written instrument signed by two-thirds of all Class A Members, two-thirds of all Class B Members, and by two-thirds of all first mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such Common Area purposes and subject to such conditions as may be agreed by the Corporation.
  - (d) The right of the Corporation or its Board of Directors to determine the time and manner of use of recreational facilities, if any, by the Members through rules and regulations adopted by the Board of Directors.
  - (e) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary.
  - (f) The Common Area in Walnut Hills shall be conveyed to or owned by the Corporation at the time of conveyance of the first Lot in Walnut Hills.
7. **Delegation of Use of the Common Area.** Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment and use of the Common Area to members of his family, his tenants or contract purchasers who reside on any Lot.
8. **Easement for Utilities and Public and Quasi Public Vehicles.** All public and quasi public vehicles including, but not limited to, police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles shall have the right to enter upon the ingress - egress easements and Common Area in the Tract in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement,

repairing and maintaining of such utilities, including but not limited to water, sewers, gas, telephone and electricity on the Tract; provided, however, nothing herein shall permit the installation of sewers, electric lines, water line or other utilities, except as initially designed and approved by Declarant on the Plat or as thereafter may be approved by Declarant or by the Board of Directors. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant and, after the Applicable Date, the Corporation, shall have the right to grant such easement on such Tract, without conflicting with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement on the Tract.

An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area to perform its duties.

9. Corporation: Membership: Voting: Functions.

(a) Membership in Corporation. Declarant, and each Owner of a Lot shall, automatically upon becoming an owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.

(b) Classes and Voting Rights. The Corporation shall have two (2) classes of membership, with the following voting rights:

(i) Class A. Class A Members shall be all Owners except Class B Members. Each Class A Member shall be entitled to one (1) vote for each Lot of which such Member is the owner with respect to each matter submitted to a vote of Members upon which the Class A Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(ii) Class B. Class B Members shall be Declarant and all successors and assigns of Declarant designated by Declarant as Class B Members in a written notice mailed or delivered to the registered agent of the Corporation. Each Class B Member shall be entitled to three (3) votes for each Lot of which it is the Owner on all matters requiring a vote of the Members of the Corporation. For purposes of determining voting rights and duties, it shall be assumed there will be a total of ninety-nine (99) Lots in Walnut Hills and the Declarant shall have the automatic right to plat and record, not to contain in excess of ninety-nine (99) Lots, without the consent or approval of the Corporation or any other person, firm or corporation. The Class B membership shall cease and terminate upon the Applicable Date, which shall be the first to occur of:

(i) the date upon which the written resignation of the Class B Members as such is delivered to the registered agent of the Corporation; or

(ii) sixty (60) days after the date when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership; or

(iii) January 1, 2020.

At the Applicable Date, all Class B memberships shall become Class A memberships excepting such Class A memberships shall not be subject to assessment or the lien of assessment until such time as more particularly described hereafter.

(c) **Functions.** The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area, to pay taxes assessed against and payable with respect to the Common Area and to pay any other necessary expenses and costs in connection with the Common Area, and to perform such other functions as may be designated or it to perform under this Declaration.

10. **Board of Directors.**

(a) **Management.** The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner, including a person appointed by Declarant as provided in subparagraph (b) of this Paragraph 10.

(b) **Initial Board of Directors.** The Initial Board of Directors shall be composed of the following persons, to-wit: William Schmadeke, Sr., William Schmadeke II, and Dan Folzenlogel (hereinafter referred to as the "Initial Board"), all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, this Declaration, the Articles or the By-Laws: (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever prior to the Applicable Date, determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Lot, or by acquisition of any interest in a Lot by any type of juridical acts inter vivos or cause mortis, or otherwise, shall be deemed to have appointed Declarant as such owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date, to exercise all of said Owner's right to vote, and to vote as Declarant determines, on all matters as to which Members of the Corporation are entitled to vote under the Declaration, the Articles, the By-Laws or otherwise; provided, however, this right to vote granted to Declarant shall not extend to votes of Members (if a vote is required) on matters of Special Assessments, mortgaging Common Area or merger/consolidation of the Corporation with another corporation. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same. Each person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a Member of the Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board shall be deemed or considered a Member of the Corporation nor an Owner of a Lot for any other purpose (unless he is actually the Owner of a Lot and thereby a Member of the Corporation).

(c) Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or a partner or an officer or trustee shall be eligible to serve on the Board of Directors, except that no single Lot may be represented on the Board of Directors by more than one person at a time.

(d) Term of Office and Vacancy. Subject to the provisions of subparagraph (b) of this Paragraph 12, one (1) member of the Board of Directors shall be elected at each annual meeting of the Corporation. The Initial Board shall be deemed to be elected and reelected as the Board of Directors at each annual meeting until the Applicable Date provided herein. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the first election after the Applicable Date one member of the Board of Directors shall be elected for a three (3) year term, one for a two (2) year term, and one for a one (1) year term so that the terms of one-third (1/3) of the members of the Board shall expire annually. There shall be separate nominations for the office of each member of the Board to be elected at such first election after the Applicable Date. Each Director shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of subparagraph (b) of this Paragraph 12 as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining members of the Board or by vote of the Owners if a Director is removed in accordance with subparagraph (a) of this Paragraph 12. The Director so filling a vacancy shall serve until the next annual meeting of the members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

(e) Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the votes entitled to be cast at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

(f) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Tract, the management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners), and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party upon ninety (90) days written notice to the other party. Any decision not to employ a professional property management agent shall require the prior consent of the Owners of at least sixty-seven percent (67%) of the total number of Lots. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

(i) protection, repair, and replacement of the Common Area, unless the same are otherwise the responsibility or duty of Owners of Lots;



- (ii) procuring the removal of garbage and waste, and snow removal from the streets and Common Area (if necessary);
  - (iii) landscaping, painting, decorating, furnishing, maintenance and upkeep of the Common Area;
  - (iv) surfacing, paving and maintaining any off-street parking spaces constituting a part of the Common Area;
  - (v) procuring private, roving security guards (or equivalent services) for protection and surveillance at such times and intervals as shall be determined by the Board of Directors, but not less than \_\_\_ times daily; provided that any decision not to provide such security service shall require the prior approval of the Owners of at least sixty-seven percent (67%) of the total number of Lots;
  - (vi) preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
  - (vii) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year;
  - (viii) keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage at any time during normal business hours;
  - (ix) procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
  - (x) paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area; and
  - (xi) to furnish, upon request of any Mortgagee, insurer or guarantor of first mortgage, an financial statement for the immediately preceding fiscal year.
- (g) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:
- (i) to employ a Managing Agent to assist the Board in performing its duties;
  - (ii) to purchase, lease or otherwise obtain for the Corporation, to enable it to perform its functions and duties, such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;

(iii) to employ legal counsel, engineers, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;

(iv) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the Board of Directors to perform its duties;

(v) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(vi) to open and maintain a bank account or accounts in the name of the Corporation;

(vii) to promulgate, adopt, revise, amend and alter from time to time such additional rules and regulations with respect to use, occupancy, operation and enjoyment of the Lots and the Common Area (in addition to those set forth in this Declaration) as the Board, in its discretion, deems necessary or advisable; provided, however, that copies of any such additional rules and regulations so adopted by the Board shall be promptly delivered or mailed to all Owners;

(viii) to grant permits, licenses and easements over the Common Area for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of Walnut Hills; and

(h) Limitation on Board Action. After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of the Owners, except that in the following cases such approval shall not be necessary:

(i) contracts for replacing or restoring portions of the Common Area damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(ii) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; however, specific items within the budget need not be approved separately by the Owners at the annual meeting. The Board may also reallocate funds to items in the budget so long as the total budgeted funds are not exceeded and by doing so, the total budget will not be increased; and

(iii) expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

The said \$2,500.00 maximum shall automatically be adjusted every five (5) years from the date of recording of this Declaration to reflect changes in the purchasing power of the dollar, as determined by the most recently published annual GNP Implicit Price deflator or any comparable index.

(i) Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

(j) **Non-Liability of Directors.** The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(k) **Additional Indemnity of Directors.** The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

(l) **Bond.** The Board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation, and, such other officers or directors of the Corporation that handle or are responsible for funds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Lots) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of 'employees' or similar terms or expressions. Such bonds shall provide that they may not be canceled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

11. **Initial Management.** The Board of Directors has entered or will hereafter enter into a management agreement with Declarant or with a corporation or other entity affiliated with Declarant or designated by Declarant for a term not to exceed three (3) years with either party having the right to terminate upon ninety (90) days' notice under which Declarant (or such other corporation or entity as appropriate) will provide supervision, management and maintenance of the Common Area and in general

perform all of the duties and obligations of the Corporation. Such management agreement may be renewed by the parties for additional terms of three (3) or less years or a new management agreement with different parties may be executed under similar terms and conditions. Any management agreement is or will be subject to termination by Declarant (or such other corporation or entity as appropriate) at any time prior to expiration of its term, in which event the Corporation shall thereupon and thereafter resume performance of all of its duties and obligations. Notwithstanding anything to the contrary contained herein, so long as a management agreement between the Corporation and Declarant (or such other corporation or entity as appropriate) is in effect, Declarant (or such other corporation or entity as appropriate) shall have and Declarant hereby reserves to itself (or such other corporation or entity as appropriate), the exclusive right to manage the Tract and perform all the functions of the Corporation.

12. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Tract or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Tract or that part thereof that is assessed as a whole, which shall be the ratio that the square footage in his Lot bears to the total square footage of all the land comprising the Tract or part thereof assessed as a whole, and shall pay his proportionate share of the real estate taxes assessed on the improvements on the Tract or part thereof assessed as a whole based upon the ratio that the square footage of all improved Lots. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

13. Maintenance, Repairs and Replacements of Common Area. Maintenance, repairs, replacements and upkeep of the Common Area shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

Notwithstanding any obligation or duty of the Corporation to repair or maintain the Common Area, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage shall be caused, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

If any Owner shall fail so to maintain and keep his property or any part thereof in a good, clean and sanitary condition, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

14. Home Size, Construction, and Use. All Lots in Walnut Hills shall be known and designated as residential Lots; only the home occupations permitted in the applicable County or municipal ordinance shall be permitted. No structure shall be erected, altered, placed or permitted to remain on any Lot herein other than one (1) detached single family Home not to exceed thirty five feet (35') in height. Any garage shall be of a permanent type of construction and shall conform to the general architecture and appearance

of such Home. The minimum square footage of living space of all Homes constructed shall be 1,800 square feet. The square footage of living space is exclusive of porches, terraces, garages, and basements (excepting finished lower levels such as bi-levels or tri-levels). The finished exterior of every building constructed or placed on any Lot shall be subject to the approval of the Architectural Review Board and shall be of material other than tar paper, rollbrick siding or any other similar material. All driveways must be paved from their point of connection with the abutting street to a point of connection with the garage apron.

15. Additional Builder Obligations.

(a) All grades, lot drainage plans and construction to be done, shall be done, constructed and erected in accordance with any and all Plats of Walnut Hills and the development plan prepared by M.S.E. Corporation, which Plats (whether or not recorded) and plans are on file in the office of the Declarant and shall be available for review by any Builder during normal business hours. All Homes shall be constructed in strict conformity to any conditions, standards and specifications as required by any and all local, county, state or federal codes and conditions. All surface and sub-surface drainage, sanitary sewers and all utilities will strictly adhere to the development plans prepared by M.S.E. Corporation. From time to time, there will be inspections by various agencies concerning these matters. Any discrepancies that may arise due to construction that does not conform to these various codes and conditions that are caused by a Builder or Owner shall be the sole responsibility of said Builder or Owner to correct at their expense.

(b) All Builders (or, in the event of the Builder's failure, the Owner) shall construct or place on each Lot purchased:

- (1) A hard surfaced driveway from the curb to the garage.
- (2) Where required, a sidewalk according to the specifications, location and repair requirements as mandated by governmental authorities.
- (3) A yard light within twenty-five feet (25') of the curb in the front yard of each Lot which said light shall have a photoelectric cell so that it will illuminate from dawn to dusk.
- (4) A mailbox and post in conformity with the specifications provided by Declarant.
- (5) At least two trees no less than two inches (2") in diameter in the front of the Lot, exclusive of shrubbery area, except wooded Lots.
- (6) Sod on the front yard of the Lot and sideyard if on a corner Lot.

(c) A Builder or Owner shall have a period of two (2) years within which he must construct and complete, ready for habitation, a Home on a purchased Lot. This time period begins upon execution of a conditional sales contract or deed conveyance. If a Home is not completed upon a Lot within this prescribed time, the Declarant shall have the option to repurchase such Lot for the original selling price plus the cost of any improvements up to the time of the repurchase.

(d) A Builder, at its expense, shall clean up any and all trash, debris, or dirt from the Lots deeded to a Builder and any other Lots upon which the Builder, its subcontractors, employees or agents have caused to be littered with such trash, debris or dirt. Such clean up must be performed promptly by any Builder creating such condition; however, the Declarant may, at its option, perform such clean up at Builder's expense.

(e) All Builders agree that no Lot shall be sold, assigned or transferred to any other person by Builder without the written consent of Declarant, unless Builder has constructed a dwelling house upon such Lot or unless such transfer is made to a person with whom Builder has entered into firm and binding contract for the construction of a dwelling house upon such Lot. Any deed to a Builder may contain these provisions.

(f) In recognition of the Declarant's development of Walnut Hills as part of a total development plan and that the use and development of each Lot affects the value and use of each other Lot in Walnut Hills, and that any violation of the provisions of this Paragraph 15 will do great and irreparable harm to the Declarant and the remaining Lots and other Homes and Owners of Lots in Walnut Hills, Declarant shall be entitled to (1) commence an action for and receive an injunction against violations hereof, and (2) any and all rights and remedies against a Builder or Owner available at law or in equity. No such remedy shall be exclusive and the failure of the Declarant to exercise or enforce any right or remedies at any time or from time to time shall not be construed to be a waiver of such rights or remedies at any subsequent time or upon any subsequent default or violation. Upon any default hereunder or violation hereof, the Builder's rights to purchase Lots shall, at Declarant's option, promptly terminate.

16. Architectural Control

(a) The Architectural Review Board. As a standing committee of the Corporation, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more persons as may, from time to time, be provided in the By-Laws. Until the last Lot in Walnut Hills is conveyed to a homeowner-purchaser, the Architectural Review Board shall be the Initial Board of Directors. After such time, the Architectural Review Board shall be appointed by the Board of Directors. The chairperson of the Architectural Committee shall be a member of the Board of Directors.

(b) Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Real Estate and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Conditions. No improvements, alterations, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Lot or the improvements located thereon shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration. No building, fence, walls, Home, or other structure or improvement shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within sixty (60) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval will be deemed granted by the Architectural Review Board. The approvals of the Architectural Review Board required hereunder shall be in addition to, and not in lieu of, any approvals as to such matters required to be obtained from any other persons or governmental agencies pursuant to the terms of any subdivision plat, statute, law, ordinance, other governmental regulation or otherwise.

(e) Maintenance of Architectural Control. The Corporation may not waive or abandon the procedure for regulating and enforcing the architectural design or exterior appearance of the Lots nor for maintaining the Common Area without the prior written approval of all Owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

17. Assessments

(a) Annual Accounting. Annually, after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) Proposed Annual Budget. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget shall include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Hamilton County, Indiana selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based upon an amount up to and including one hundred ten percent (110%) of such last approved budget.

(c) Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot.

Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance on or before March 1st of each year, unless otherwise directed by the Board of Directors. Payment of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors.

(d) Special Assessments. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is represented, and further provided that the Declarant shall not be any Owner's agent, attorney-in-fact or proxy in this vote pursuant to the third sentence of Paragraph 10(b) of this Declaration, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

(e) Regular Assessments Prior to the Applicable Date; Commencement; Declarant's Liability. During the period that Declarant or a Builder is constructing Homes within the Tract, it is difficult to accurately allocate the Common Expenses to the individual Lots. The purpose of this section is to provide the method for the payment of the Common Expenses during the period prior to the Applicable Date to enable the Corporation to perform its duties and functions. Accordingly, and notwithstanding any other provision contained in the Declaration, the Articles or the By-Laws or otherwise, prior to the Applicable Date, the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without any meeting or concurrence of the Owners; provided, however, the Regular Assessments shall be determined in accordance with the provisions contained in this Paragraph 15(e).

The Corporation will enter into a management agreement with Declarant (or a corporation or other entity designated by Declarant) (hereinafter referred to as "Management Agent" or "Managing Agent") in accordance with the provisions of Paragraph 11 of this Declaration. So long as such management agreement (or similar agreement) remains in effect, the Common Expenses and Regular Assessments shall be paid by Owners to Management Agent. Declarant shall guarantee that until the earlier of (1) the termination of said management agreement or (2) one year after the date of execution of this Declaration, the annual Regular Assessment shall not exceed Two Hundred Fifty Dollars (\$250.00) (the "Guaranteed Charge"). After this date (assuming that said management agreement or similar agreement is still in effect) and so long thereafter as said management agreement (or similar agreement) remains in effect and Management Agent continues to perform such functions, Declarant guarantees that the monthly Regular Assessment shall not exceed the amount of the Guaranteed Charge plus a maximum of a twenty percent (20%) increase in the Guaranteed Charge for each year. Such adjustments to the Guaranteed Charge (up to a twenty percent (20%) increase as determined by the Board) shall be made annually on January 1 of each year so long as said management agreement remains in effect and Management Agent continues to



perform such functions. Such monthly charge shall during such guaranteed period entirely defray the Owner's obligation for his share of Common Expenses or shall be the Owner's entire Regular Assessment. Declarant shall be responsible for any deficit during such guarantee period; provided, however, that this guarantee is not intended to include, and does not include, major physical alterations or other unusual expenditures not ordinarily anticipated in normal maintenance operations. (Such expenditures would be covered through Special Assessments, or, if sufficient, the replacement reserve fund, if any such fund exists.) Furthermore, if Declarant funds any deficits of the Corporation during the guarantee period, the Declarant shall be reimbursed by the Corporation for such amounts, together with interest at eight percent (8%) per annum until so reimbursed, from available surpluses in later years or through a Special Assessment at the time of transfer of control of the Corporation to Owners. Thereafter, such deficit may be recouped either by inclusion in the budget for Regular Assessments or by the making of one or more Special Assessments for such purpose, at the option of the Corporation.

Payment of the full rate of Regular Assessments prior to the Applicable Date with respect to each Lot (that is not owned by Declarant or a Builder) shall commence on the date of conveyance by Declarant or a Builder to such new homeowner. The first payment shall be payable on the date of conveyance prorated to the first day of the calendar month next ensuing. Thereafter, payment of the Regular Assessment shall be paid the first day of each calendar month during the period prior to the Applicable Date.

NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY HEREIN, BOTH BEFORE AND AFTER THE APPLICABLE DATE, THE DECLARANT AS OWNER OF PLATTED LOTS SHALL BE EXEMPT FROM ANY AND ALL REGULAR ASSESSMENTS OR SPECIAL ASSESSMENTS, BUT DECLARANT SHALL PAY ANY DEFICITS IN USUAL OR ORDINARY EXPENSE UNTIL SUCH TIME AS REGULAR ASSESSMENTS UPON LOTS WITH HOMES THEREON IS SUFFICIENT TO MEET SUCH EXPENSE. FURTHER, BEFORE AND AFTER THE APPLICABLE DATE, BUILDERS SHALL PAY FIFTY PERCENT (50%) OF THE REGULAR ASSESSMENTS COMMENCING ON THE DATE THEY TAKE TITLE UNTIL SUCH TIME AS A HOME IS SUBSTANTIALLY COMPLETED AS DETERMINED BY DECLARANT. AFTER SUBSTANTIAL COMPLETION, A BUILDER SHALL PAY THE FULL AMOUNT (100%) OF REGULAR ASSESSMENTS OR SPECIAL ASSESSMENTS.

Each Owner hereby authorizes the Corporation and the Board of Directors and its officers to enter into the aforesaid management agreement described in Paragraph 11 of this Declaration and to adhere to and abide by the same.

(f) Failure of Owner to Pay Assessments. No Owner may exempt himself or herself from paying Regular or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Lot belonging to such Owner. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular or Special Assessments when due, the lien for such assessment on the Owner's Lot may be foreclosed by the Board for and on behalf of the Corporation as provided by law. Upon the failure of an Owner to make payments

of any Regular or Special Assessments within ten (10) days after such are due, the Board, in its discretion, may:

- (1) impose a late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board of up to twenty-five percent (25%) of the amount of the Assessment;
- (2) accelerate the entire balance of the unpaid Assessments for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary;
- (3) suspend such Owner's right to use the recreational facilities within Walnut Hills, if any, as provided in the Indiana Nonprofit Corporation Act of 1991, as amended; and
- (4) suspend such Owner's right to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended.

In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular or Special Assessments without foreclosing or waiving the lien securing the same. In any action to recover a Regular or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover collection costs and expenses of such action incurred, including but not limited to reasonable attorney's fees, from the Owner of the respective Lot.

(g) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular Assessment or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot and Home or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular Assessments or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular Assessments or Special Assessments, the lien for which has been divested as aforesaid, shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

18. Mortgages.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws

or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

(b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Paragraph 19 hereof.

(c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any Mortgagee making such payment shall be owed immediate reimbursement by the Corporation.

(d) Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation loss which affects a material portion of Walnut Hills or any Home. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.

(e) Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

19. Insurance.

(a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance for the Common Area in an amount consonant with the full replacement value of the improvements which in whole or in part, comprise the Common Area. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the

insurance required above. Such insurance coverage shall be for the benefit of each Owner, and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation as provided in the By-Laws shall specifically include protection for any insurance proceeds so received.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Mortgagees and at least ten (10) days prior written notice to the Corporation.

(b) **Public Liability Insurance.** The Corporation shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time but not less than \$2,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Tract, all Owners of Lots and all other persons entitled to occupy any Lot or Home. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be canceled or substantially modified without at least ten (10) days written notice to the Corporation.

(c) **Other Insurance.** The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to workers' compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

(d) **General Provisions and Condemnation.** The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses.

In the event of condemnation of all or any part of the Common Area, the Corporation, as owner of the Common Area, shall represent the Owners in any negotiation or settlement regarding such condemnation. No Owners or any other party shall have priority over any rights of a Mortgagee pursuant to its mortgage in the case of distribution to such owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area. Notwithstanding the foregoing, under no circumstances shall any distribution of condemnation awards be made by the Corporation to any Owners or Mortgagees, if to do so would be in violation of the Indiana Nonprofit Corporation Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

(e) Insurance by Owners. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

20. Casualty and Restoration of Common Area. In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction.

In the event the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction of the Common Area, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Common Area so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be assessed by the Corporation against all of the Owners in equal shares. Any such amounts assessed against the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

For purposes of this provision, repair, reconstruction and restoration shall mean construction or rebuilding the Common Area to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

21. Covenants and Restrictions. The following covenants and restrictions on the use and enjoyment of the Lots, Homes and Common Area shall be in addition to any other covenants or restrictions contained herein and in the Final Plat, and all such covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation shall be entitled to injunctive relief against any violation or attempted violation of any such covenants and restrictions, and shall, in addition, be entitled to damages for any injuries or losses resulting from any violations thereof, but there shall be no right of reversion or forfeiture resulting from such violation. These covenants and restrictions are as follows:

(a) All Lots and Homes shall be used exclusively for residential purposes as proscribed by any municipal or state laws, regulations or ordinances.

(b) Nothing shall be done or kept in any Home, or on any Lot, or on the Common Area which will cause an increase in the rate of insurance on any Home or the contents thereof or on any Common Area.

No Owner shall permit anything to be done or kept in his Home or on his Lot or on any of the Common Area which will result in a cancellation of insurance on any part of the Common Area, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(c) No nuisance shall be permitted and no waste shall be committed in any Home, the Common Area or on any Lot. No noxious or offensive activities shall be permitted on any Lot. Nothing shall be done on any Lot that shall become, or be, an unreasonable annoyance or nuisance to any Owner of another Lot in the Tract.

(d) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows of his Home or placed on the outside walls of any building, and no sign, awning, canopy, shutter or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any building without the prior consent of the Architectural Review Board. The placement, installation, and maintenance of antennas, including satellite dishes, shall be subject to rules and regulations promulgated by the Board of Directors.

(e) No animals shall be kept or maintained on any Lot in Walnut Hills except the usual and customary household pets, and, in such case, such household pets shall be kept reasonably confined so as not to become a nuisance. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time.

(f) All clotheslines, equipment, garbage cans, woodpiles or storage piles shall be kept from view of neighboring homes and streets. All rubbish, trash or garbage shall be stored in closed sanitary containers within the garage except at the time when refuse collections are being made, shall be regularly removed from the premises, and shall not be allowed to accumulate on any part of the Tract. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Area or any other Lot. The Common Area shall be kept free and clear of rubbish, debris and other unsightly materials.

(g) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Tract; provided, however, that an Owner may maintain an office or home business in the Home if: (1) such office or business generates no significant number of visits or unreasonable parking usage (both as determined by the Board of Directors) by clients, customers or other persons related to the business; (2) no equipment or other items related to the business are stored, parked or otherwise kept outside such Owner's Home; (3) there are no employees or independent contractors within the Home other than the Owner or other resident; (4) such Owner has obtained approvals or licenses for such use as may be required by the appropriate local and state governmental agencies; and (5) the Owner in all other respects complies with any federal, state, or local laws, regulations and ordinances, including but not limited to any municipal home occupations ordinance. The Board may require the Owner to pay any increase in the rate of insurance or any other costs or expenses to the Corporation which may result from such use.

(h) All Owners and members of their families, their guests, or invitees, and all occupants of any Home or other persons entitled to use the same and to use and enjoy the Common Area or any part

thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Area.

(i) No boats, campers, trailers of any kind, buses, motor or mobile homes, recreational vehicles, trucks (larger than 3/4 ton), or similar vehicles (excepting temporary construction trailers being used in conjunction with work in progress) shall be parked or stored on any street or Lot within Walnut Hills for a period of more than forty-eight (48) hours unless such vehicle is stored within a garage.

(j) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Area, except with express permission from the Board.

(k) Common Area shall be used and enjoyed only for the purposes for which it is designed and intended, and shall be used subject to the rules and regulations from time to time adopted by the Board.

(l) No motorized boating shall be permitted on the Lakes.

(m) No swimming shall be permitted in the Lakes.

(n) Any Owner who leases a Home shall lease the entire Home and shall have a written lease which shall provide that the lease is subject to the provisions of the Declaration and any failure of the lessee to comply with the terms of the Declaration, shall be a default under the lease.

(o) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the streets shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting points 25 feet from the intersection of said street lines. No trees shall be permitted to remain within said distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

(p) No Owner of a Lot shall burn or permit the burning out of doors of garbage or other refuse, nor shall any such Owner accumulate or permit the accumulation out of doors of such refuse on his Lot (including any compost pile that becomes an annoyance or nuisance to any other residents in Walnut Hills), except as may be permitted in the subparagraph (q) immediately following. All Homes shall be equipped with a garbage disposal.

(q) Except for standard and ordinary sized "L-P" tanks for gas grills, every tank for the storage of fuel that is installed outside any building in the Tract shall be buried below the surface of the ground or entirely screened from view of surrounding properties and public street frontages. Every outdoor receptacle for ashes, trash, rubbish and/or garbage shall be installed underground, or shall be so placed and kept as not to be visible from any street within the Tract at any time, except at times when refuse collections are being made.

(r) No outside toilets shall be permitted on any Lot in Walnut Hills (except port-o-lets or like structures during construction).

(s) No Owner of any Lot shall build or permit the building upon said Lot of any Home that is to be used as a model home or exhibit house without permission to do so from the Declarant.

(t) No temporary house, trailer, tent, garage or other temporary outbuilding (except construction trailers) shall be placed, erected, or allowed on any Lot. No overnight camping shall be permitted on any Lot.

(u) No accessory outbuildings, or "mini barns", shall be erected on any of the Lots.

Notwithstanding anything to the contrary contained herein or in the Articles or By-Laws, including, but not limited to, any covenants and restrictions set forth herein or otherwise, Declarant shall have the right to use and maintain any Lots and Homes owned by Declarant and other portions of the Tract (other than individual Homes and Lots owned by persons other than Declarant), all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction of Homes and the sale of Lots and Homes or for the conducting of any business or activity attendant thereto, including, but not limited to, model Homes, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Area, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Tract at any time.

## 22. Amendment of Declaration.

(a) Generally. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(i) Notice. Notice of the subject matter of any proposed amendment shall be included in the notice of the meeting at which the proposed amendment is to be considered.

(ii) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors, or Owners having in the aggregate at least a majority of the votes of all Owners.

(iii) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

(iv) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the votes of all Owners. In the event any Lot is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions hereof.

(v) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the applicable share of an Owner's liability for the Common Expenses, or the method of determining the same, or (2) the provisions of Paragraph 17 of this Declaration with respect to casualty insurance or fidelity bonds to be maintained by the Corporation, or (3) the provisions of Paragraph 18 of this



Declaration with respect to reconstruction or repair of the Common Area in the event of fire or any other casualty or disaster, or (4) the provisions of Paragraph 14 of this Declaration establishing the Architectural Review Board and providing for its functions, or (5) the provisions of Paragraph 15 of this Declaration with respect to the commencement of assessments on any Lot, without, in each and any of such circumstances, the unanimous approval of all Owners and of all Mortgagees whose mortgage interest have been made known to the Board of Directors in accordance with the provisions of this Declaration.

(vi) Additional Special Amendments. No amendment to this Declaration shall be adopted which imposes a right to first refusal or similar restriction or which changes (1) the method of voting, or (2) reserves for and responsibility for maintenance, repair and replacement of the Common Area, or (3) right to use the Common Area, or (4) annexation of property to Walnut Hills, or (5) the boundaries of any Lot, or (6) the leasing of Homes, or (7) termination of the applicability of this Declaration, or (8) any provisions which are for the express benefit of Mortgagees without the consent of at least ninety percent (90%) of the votes of the Owners for the first twenty (20) years after recording of this Declaration and thereafter at least seventy-five percent (75%) of the votes of Owners, and the consent of Mortgagees holding mortgages on at least fifty percent (50%) of the Homes subject to mortgages.

(vii) Amendments Requiring Approval. As long as there is a Class B membership, the following action will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration.

(viii) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation and shall be recorded in the office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

(ix) Failure of Mortgagee to Respond. Any Mortgagee who receives a written request to approve an amendment and fails to give a negative response within thirty (30) days after receiving such request shall be deemed to have approved such request.

(b) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein or in any other documents, the Declarant shall have and hereby reserves the right and power acting alone and without the consent or approval of the Owners, the Corporation, the Board of Directors, any Mortgagees or any other person to amend or supplement this Declaration at any time and from time to time if such amendment or supplement is made (a) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (b) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lots and Homes, (c) to bring this Declaration into compliance with any statutory requirements or (d) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any amendment thereto. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 20 on behalf of each owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of

obligation, or other instrument affecting a Lot or Home and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendments. The right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 20 shall terminate at such time as the Declarant no longer hold or controls title to any part or portion of the Tract.

(c) Amendment Prior to the Applicable Date. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration prior to the Applicable Date without the consent and approval of Declarant.

23. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Lots shall be subject to and shall comply with the provisions of this Declaration, the Articles of Incorporation, and the By-Laws incorporated herein by reference, and the rules and regulations as adopted by the Board of Directors as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Lot shall constitute an agreement that the provisions of this Declaration, the Articles of Incorporation, the By-Laws, and rules and regulations, as each may be amended or supplemented from time to time, are accepted and ratified by such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall be binding on any person having at any time any interest or estate in a Lot or the Tract as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Lot or Lots or any part of the Tract in any manner shall be subject to the Declaration, the Articles of Incorporation, the By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

24. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of this Declaration, the Articles of Incorporation, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Corporation shall be entitled to recover its reasonable attorneys' fees and expenses incurred in connection with such default or failure.

25. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration, the Articles or the By-Laws, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, the Articles, or the By-Laws, and each shall be enforced to the greatest extent permitted by law.

26. Pronouns. Any reference to the masculine, feminine or neuter gender herein shall, unless the context clearly requires to the contrary, be deemed to refer to and include all genders. And the singular shall include and refer to the plural and vice versa as appropriate.

27. The Plat. The Final Plat of Walnut Hills is incorporated into this Declaration by reference.

28. Easements; Construction Standards; Additional Restrictions and Provisions.

(a) Streets: All streets shown on the Plat and not heretofore dedicated, are hereby dedicated to the public for its use.

(b) Easements for Drainage, Sewer and Utilities: Lots are subject to drainage easements, sewer easements and utility easements, either separately or in combination of the three, as shown on the Plat, which are reserved for the use of the Lot Owners, public utility companies and governmental agencies as follows:

1. Drainage Easements (D.E.) are created to provide paths and courses for area and local storm drainage, either overland or in adequate underground conduit, to serve the needs of the Tract and adjoining ground and/or public drainage system; and it shall be the individual responsibility of the Lot Owner to maintain the drainage across his or her own Lot. Under no circumstances shall said easements be blocked in any manner by the construction or reconstruction of any improvement, nor shall any grading restrict the water flow in any manner. Said areas are subject to construction or reconstruction to any extent necessary to obtain adequate drainage at any time by any governmental authority having jurisdiction over drainage or by the Declarant or the Corporation.

2. Sewer Easements (S.E.) are created for the use of the local government agency having jurisdiction over the storm and sanitary waste disposal system of said city and/or county designated to serve the Tract for the purposes of installation and maintenance of sewers that are a part of said system. Each Owner of a Lot must connect with any public sanitary sewer available.

3. Utility Easements (U.E.) are created for the use of public utility companies, not including transportation companies, for the installation of pipes, mains, ducts and cables as well as for the uses specified in the case of sewer easements.

4. The Owners of all Lots in the Tract shall take title subject to the rights of public utilities, governmental agencies, and the right of the other Owners in the Tract to said easements herein granted for ingress and egress in, along, and through the strips of ground for the purposes herein stated.

(c) Residential Setback Requirements: Setback requirements, including front yard, side yard and rear yard, shall be as set forth in the Plat.

(d) Heating Plants and Garages: Every Home in the Tract must contain a heating plant installed in compliance with the required codes and capable of providing adequate heat for year-round human habitation of the Home. Every Home in the Tract must have at least an attached two-car garage.

(e) Diligence in Construction: Every building whose construction or placement on any Lot in the Tract is begun shall be completed within twelve (12) months after the beginning of such construction or placement. No improvement which has partially or totally been destroyed by fire or otherwise, shall be allowed to remain in such state for more than six (6) months from the time of such destruction or damage. Failure to move or repair same within the time allotted may be undertaken by the Declarant or the Corporation and the cost thereof shall be assessed against the Owner of such Lot and become a continuing lien upon the land in the same manner and enforceable by the same means and charges as the levying and collection of Regular Assessments as set forth above.

(f) Time in Which to Build Structures: The time or times in which Owners must construct and complete, ready for habitation, Homes on their Lot after their purchase of the Lot will be designated on the recorded Plat of the section within the Tract if any. If a Home is not completed upon a Lot within

the prescribed time, the Declarant shall have the right to repurchase such Lot for a price, in cash, equal to the Owner's cost basis in the Lot, including the cost of improvements until the time that a Home is completed upon such Lot in the manner set out in this document.

(g) **Prohibition of Used Structures:** All structures constructed or placed on any numbered Lot in the Tract shall be constructed with substantially all new materials, and no used structures shall be relocated or placed on any such Lot.

(h) **Maintenance of Lots and Improvements:** The Owner of any Lot shall at all times maintain the Lot and any improvements situated thereon in such a manner as to prevent the Lot or improvements from becoming unsightly. Specifically, such Owner shall:

1. Mow the Lot at such times as may be reasonably required in order to prevent the unsightly growth of vegetation and noxious weeds.
2. Remove all debris and rubbish.
3. Cut down and remove dead trees.
4. Prevent the existence of any other condition that reasonably tends to detract from, or diminish, the aesthetic appearance of the Tract.
5. Keep the exterior of all improvements in such a state of repair or maintenance as to avoid their becoming unsightly.

(i) **Declarant's and Corporation's Right to Perform Certain Maintenance:** In the event that the Owner of any Lot shall fail to maintain his Lot and any improvements situated thereon in accordance with the provisions of this Declaration, the Declarant or the Corporation shall have the right (after fifteen (15) days written notice to said Owner), by and through its agents, employees or contractors, to enter upon said Lot and repair, mow, clean or perform such other acts as may be reasonably necessary to make such Lot and improvements situated thereon, if any, conform to the requirements of these restrictions. The cost therefor to the Declarant or the Association, including but not limited to all attorneys fees and court costs, shall be invoiced to the Owner of said Lot due and payable within 30 days. Said invoice shall be subject to the same remedies as payment of the Regular Assessment. Neither the Declarant nor the Corporation, their agents, employees or contractors shall be liable for any damage which may result from any maintenance work performed hereunder.

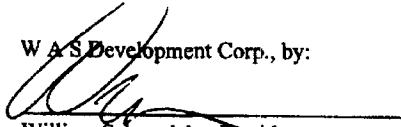
(j) **Ditches and Swales:** It shall be the duty of every Owner of every Lot on which any part of an open storm drainage ditch or swale is situated to keep such portion thereof as may be situated on his Lot continuously unobstructed, mowed and in good repair, and to provide for the installation of such culverts upon said Lot as may be reasonably necessary to accomplish the purposes of this provision. All Owners, if necessary, shall install drive culverts between the road rights-of-way and their Lots in conformity with specifications and recommendations of the applicable municipality or other governmental agency such as the Town of Fishers.

(k) **Utility Services:** No utility services shall be installed under finished streets except by jacking, drilling or boring. Any damage caused therefor shall be repaired to as good or better condition by the Owner, his agents or contractors, and the enforcement of this provision may be undertaken by the Declarant or the Corporation in the same manner as the levying and collection of Regular Assessments.

(l) **Construction of Sewage Lines:** All sanitary sewage lines on the Lots shall be designed and constructed in accordance with the provisions and requirements of the applicable municipality or other governmental agency such as the Town of Fishers.

29. **Common Fencing.** In addition to having the right to install fences in the Common Area, the Declarant shall have the further right, but not the obligation, to install fences on individual Lots to serve as, for example, perimeter fencing. Although the initial cost of installing such fences shall be at the Declarant's expense, the costs of maintenance, repair and replacement shall be a Common Expense of the Corporation as part of its duties. There is hereby created a nonexclusive easement on Lots \_\_\_ through \_\_\_ for the purpose of such installation, maintenance, repair and replacement for the benefit of the Declarant and the Corporation. Unless otherwise designated on the Plat, such easement shall be five feet (5') in width measured from: (1) the rear property lines of such Lots and (2) such other property lines of such Lots which form a part of the perimeter of the Tract.

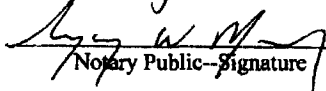
IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first written above.

W A S Development Corp., by:  
  
William Schmadeke, President

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared William Schmadeke, by me known to be the President of W A S Development Corp., an Indiana corporation, who acknowledged the execution of the foregoing Declaration of Covenants and Restrictions of Walnut Hills, on behalf of said corporation and who, having been duly sworn, stated that the representations contained herein are true.

WITNESS my hand and Notarial Seal this 14 day of August, 1998.

  
Notary Public—Signature

GREGORY W MURRAY  
Printed



My Commission Expires:

April 15 2000

Residence County: MARION

This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., EADS & MURRAY, P.C., Attorneys at Law, 7351 Shadelanc. Station, Suite 185, Indianapolis, IN 46256. (317) 842-8550.

**LAND DESCRIPTION**

Part of the Northeast Quarter and part of the Southeast Quarter both in Section 6, Township 17 North, Range 5 East, Hamilton County, Indiana, being described as follows:

Beginning at the Northeast corner of said Southeast Quarter Section; thence South 00 degrees 20 minutes 47 seconds West along the East line of said Southeast quarter section 419.66 feet to the Northeast corner of a tract of land as described in Deed Record 145, page 111, in the Office of the Recorder of Hamilton County, Indiana, said corner being North 01 degrees 20 minutes 47 seconds East 900.00 feet from the Southeast corner of the Northeast Quarter of said Southeast Quarter Section; thence North 89 degrees 17 minutes 56 seconds West along the North line of said tract, 1318.37 feet to the West line of the Northeast Quarter of said Southeast Quarter Section; thence North 00 degrees 15 minutes 18 seconds East along said West line 419.89 feet to the Northwest corner thereof; thence North 00 degrees 11 minutes 47 seconds East along the West line of the Southeast Quarter of said Northeast Quarter Section, 1046.00 feet to the Southwest corner of a tract of land as described in Deed Record 265, page 279, in said Recorder's Office; thence South 89 degrees 28 minutes 08 seconds East along the South line of said tract, 829.87 feet to its intersection with the approximate centerline of Sand Creek; thence, the next four courses being along said centerline, South 14 degrees 29 minutes 27 seconds West 93.38 feet, South 04 degrees 28 minutes 25 seconds West 232.03 feet, South 04 degrees 47 minutes 20 seconds East 135.75 feet, South 09 degrees 29 minutes 30 seconds East 132.68 feet to a 5/8 inch diameter 30 inch long iron rod with a yellow plastic cap stamped "FIRM #0001"; thence, leaving said centerline, South 89 degrees 37 minutes 32 seconds East 495.92 feet to a P.K. nail set on the East line of said Northeast Quarter Section; thence South 00 degrees 15 minutes 49 seconds West along said East line, 465.54 feet to the POINT of BEGINNING, containing 37.561 Acres, more or less.

**EXHIBIT A**  
**OF THE RESTRICTIONS FOR**  
**WALNUT HILLS SUBDIVISION**

16.00  
④  
1.00  
NONE

**AMENDMENTS TO THE DECLARATION OF  
COVENANTS AND RESTRICTIONS  
OF WALNUT HILLS**

These Amendments to the Declaration of Covenants and Restrictions of Walnut Hills were executed this 9<sup>th</sup> day of July, 1999.

**WITNESSETH:**

WHEREAS, the Walnut Hills subdivision located in Hamilton County was established by a certain "Declaration of Covenants and Restrictions of Walnut Hills" which was recorded on August 19, 1998, as Instrument No. 9809846385 in the Office of the Recorder of Hamilton County, Indiana (hereafter, "Declaration"), together with a certain Plat or Plats; and

WHEREAS, the legal description for Walnut Hills is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, unless otherwise indicated herein, the definitions and terms, as defined and used in the Declaration, shall have the same meaning in these Amendments to the Declaration, and reference is specifically made to Paragraph 1 of the Declaration containing definitions for terms; and

WHEREAS, Paragraph 22(b) of the Declaration states that the Declarant has the power to amend the same; and

WHEREAS, W A S Development Corp., as the Declarant, desires to amend certain provisions of the Declaration in the manner as set forth below; and

NOW, THEREFORE, the Declaration which is applicable to all Owners within Walnut Hills is hereby amended as follows:

1. Paragraph 28(b)(2) on page 25 of the Declaration is hereby deleted in its entirety and replaced with the following:

**2. Sewer Easements (S.E.) are created for the use of the local government agency and/or public utility company having jurisdiction over the storm and/or sanitary waste disposal system of said city, county and/or utility designated to serve the Tract for the purposes of installation and maintenance of sewers that are a part of said system. Each Owner of a Lot must connect with any public sanitary sewer available.**

199909946777  
Filed for Record in  
HAMILTON COUNTY, INDIANA  
MARY L CLARK  
On 08-09-1999 At 11:19 am.  
AMEND DECL 16.00



2. Paragraph 28(k) on page 27 of the Declaration is hereby deleted in its entirety and replaced with the following:

(k) **Utility Services:** No utility services shall be installed under finished streets except by jacking, drilling or boring. Any damage caused therefor shall be repaired to as good or better condition by the Owner, his agents or contractors, and the enforcement of this provision may be undertaken by the Declarant or the Corporation in the same manner as the levying and collection of Regular Assessments. Notwithstanding the foregoing, a public utility company shall be permitted to open cut the pavement while installing, constructing, maintaining and repairing the sanitary sewer infrastructure so long as all damages is repaired to as good or better condition by the public utility company.

3. Paragraph 28(l) on page 27 of the Declaration is hereby deleted in its entirety and replaced with the following:

(l) **Construction of Sewage Lines:** All sanitary sewage lines on the Lots shall be designed and constructed in accordance with the provisions and requirements of Hamilton Southeastern Utilities, Inc. or its successors, and the applicable municipality or other governmental agency such as the Town of Fishers.

4. **Acceptance and Ratification.** The acceptance of a deed of conveyance or the act of occupancy of any one Lot shall constitute a ratification of these Amendments, together with the Declaration, the Articles of Incorporation, the By-Laws, and any rules or regulations adopted pursuant thereto, and all such provisions shall be covenants running with the land and shall bind any person having at any time having any interest or estate in a Lot or the Tract as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease.

5. **Certification.** The undersigned person hereby represents and certifies that all requirements for and conditions precedent to the Amendments of the Declaration have been fulfilled and satisfied.

Executed this 9<sup>th</sup> day of July, 1999.

W A S Development Corp., by:

  
\_\_\_\_\_  
William Schmadeke, President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF Marion )

Before me, a Notary Public in and for said County and State, personally appeared William Schmadeke, by me known to be the President of W A S Development Corp., an Indiana corporation, who acknowledged the execution of the foregoing Amendments to the Declaration of Covenants and Restrictions of Walnut Hills, on behalf of said corporation and who, having been duly sworn, stated that the representations contained herein are true.

WITNESS my hand and Notarial Seal this 2<sup>th</sup> day of July, 1999.

[Signature]  
Notary Public - Signature  
David M. Patzsch  
Printed

My Commission Expires:

9-07-01

Residence County: Marion



This instrument prepared by, and should be returned to, P. Thomas Murray, Jr., BADS & MURRAY, P.C., Attorneys at Law, 7351 Shadeland Station, Suite 185, Indianapolis, IN 46256. (317) 842-8550.

EXHIBIT A

**LAND DESCRIPTION**

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Beginning of the Northeast corner of said Southeast Quarter Section; thence South 00 degrees 20 minutes 47 seconds West along the East line of said Southeast quarter section 419.68 feet to the Northeast corner of a tract of land as described in Deed Record 145, page 111, in the Office of the Recorder of Hamilton County, Indiana, said corner being North 30 degrees 20 minutes 47 seconds East 900.00 feet from the Southeast corner of the Northeast Quarter of said Southeast Quarter Section; thence North 89 degrees 17 minutes 56 seconds West along the North line of said tract, 1318.37 feet to the West line of the Northeast Quarter of said Southeast Quarter Section; thence North 00 degrees 15 minutes 18 seconds East along said West line 419.89 feet to the Northwest corner thereof; thence North 00 degrees 11 minutes 47 seconds East along the West line of the Southeast Quarter of said Northeast Quarter Section, 1048.00 feet to the Southwest corner of a tract of land as described in Deed Record 265, page 279, in said Recorder's Office; thence South 89 degrees 28 minutes 08 seconds East along the South line of said tract, 829.87 feet to its intersection with the approximate centerline of Sand Creek; thence, the next four courses being along said centerline, South 14 degrees 29 minutes 27 seconds West 93.36 feet, South 04 degrees 28 minutes 25 seconds West 232.03 feet, South 04 degrees 47 minutes 20 seconds East 135.75 feet, South 09 degrees 29 minutes 30 seconds East 132.68 feet to a 5/8 inch diameter 30 inch long iron rod with a yellow plastic cap stamped "FIRM #0001"; thence, leaving said centerline, South 89 degrees 37 minutes 32 seconds East 495.92 feet to a P.X. nail set on the East line of said Northeast Quarter Section; thence South 00 degrees 15 minutes 49 seconds West along said East line, 465.54 feet to the POINT of BEGINNING, containing 37.561 Acres, more or less.

THIS SUBDIVISION CONSISTS OF 99 LOTS NUMBERED 1 THROUGH 99, TOGETHER WITH STREETS, COMMON AREAS, EASEMENTS AND PUBLIC WAYS AS SHOWN ON THE WITHIN PLAT.

THE SIZE OF LOTS AND COMMON AREAS AND WIDTHS OF STREETS AND EASEMENTS ARE SHOWN IN FIGURES DENOTING FEET AND DECIMAL PARTS THEREOF.

This plat amends the original plat for Walnut Hills, previously recorded on August 19, 1998 as Instrument Number 98-46386. The amendment consists of the reduction of easements affecting lots 3, 4, 12, 13, 20, 21, 37, 38, 66, 67 and 89-92.