

47.00
INDENTURE OF TRUST AND RESTRICTIONS FOR
WALNUT CREEK
ST. CHARLES COUNTY, MISSOURI

32121

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THIS INDENTURE, made and entered into this 6th day of August, 1986, by and between Walnut Creek Homes Corporation a Missouri corporation, hereinafter referred to as "First Party," and Alan L. Lieberman, Harold G. Lieberman and David Lieberman, all of St. Louis County, Missouri, hereinafter referred to as "Trustees."

WITNESSETH THAT:

WHEREAS, First Party is the owner of a tract of real property located in St. Charles County, Missouri, as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, First Party desires to develop a planned community consisting of single-family residential structures to be known as "Walnut Creek"; and

WHEREAS, common land for park and recreational areas has been and will be reserved in the various plats of Walnut Creek and there has been and will be designated, established and recited on such plats certain streets, common land and easements which are for the exclusive use and benefit of the residents of Walnut Creek, except those streets or easements which are or may hereafter be dedicated to public bodies and agencies, and which have been provided for the purpose of constructing, maintaining and operating sidewalks, sewers, pipes, poles, wires, storm water drainage, parks and other facilities and public utilities for the use and benefit of the residents of Walnut Creek;

WHEREAS, First Party, being the owner of the entire tract, may desire, from time to time, to encumber and dispose of parts thereof, whether or not such disposition be of any total area of any numbered plat, on the entire tract, as recorded separately; and

WHEREAS, it is the purpose and intention of this Indenture to preserve said tract of land, subdivided as aforesaid, as a restricted neighborhood and to protect the same against certain uses by the adoption of this Indenture, and to apply the plan contained in this Indenture to all of said land described herein, including all common land, and mutually to benefit, guard and restrict future residents of Walnut Creek and to foster their health, welfare and safety; and

WHEREAS, all reservations, limitations, conditions, easements and covenants herein contained, and all of which are sometimes hereafter termed "restrictions," are jointly and severally for the benefit of all persons who may purchase, hold or reside upon the tract covered by this instrument.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements made by the parties hereto each to the other, the parties hereto COVENANT and AGREE to and with each other, collectively and individually, for themselves, their heirs, successors and assigns, and for and upon behalf of all persons who may hereafter derive title to or otherwise hold through them, together with their heirs, successors, or

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STATE OF MISSOURI
COUNTY OF ST. CHARLES
FILED FOR RECORD

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Barbara Hall

RECORDER OF DEEDS

32686/82

Volg Engineering & Surveying, Inc.
10849 Indian Head Industrial Blvd.
St. Louis, Mo. 63132

assigns, any of the living units and parcels of land in Walnut Creek, all as hereinafter set forth:

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ARTICLE I

DEFINITION OF TERMS

The following terms when used in this Indenture (unless the context requires otherwise) shall have the following meanings:

1. "Architectural Control Committee" shall have the meaning set forth in Article VI hereof.
2. "Common Ground" or "Common Land" or "Common Property" (or the plural of any thereof) shall mean and refer to all real property held by the Trustees for the common use and enjoyment of all Owners, including, without limitation, parks, open spaces, lakes, playgrounds, streets, paths, walkways, storm water (including retention basins) and sanitary sewers and drainage facilities, and other such facilities. Nothing hereinabove contained shall be deemed a representation that any of the enumerated facilities are or will be included in Walnut Creek or that any such facilities will be constructed upon Common Ground.
3. "First Party" shall mean and refer to Walnut Creek Homes Corporation, a Missouri corporation, its successors and assigns, including, but not limited to, any builder or developer who purchases all or a substantial portion of the vacant Lots or parcels of land constituting a portion of the Properties for the purpose of building single-family detached residences thereon for sale to third persons.
4. "Indenture" shall mean and refer to this Indenture of Trust and Restrictions for Walnut Creek, as from time to time amended.
5. "Lot" shall mean and refer to any plot of land, with the exception of Common Ground, shown on any recorded subdivision plat of the Properties.
6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interests as security for the performance of an obligation and excluding First Party.
7. "Properties" shall mean and refer to all that certain real property included in the final development plan of Walnut Creek, as recorded in the Office of the Recorder of Deeds for St. Charles County, Missouri, as daily number _____ on the _____ day of _____, 19____, and as further described in the Ordinance.
8. "Trustees" shall mean and refer to those persons designated in the preamble to this Indenture, and their successors and assigns as appointed or elected in accordance with the provisions of Article IV hereof.

ARTICLE II

DURATION OF TRUST

The Indenture of Trust herein created shall continue until such time as all plats of Walnut Creek may be vacated, after which period of time fee simple title to the Common Property

shall vest in the then record Owners of all Lots constituting a part of the Properties, as tenants in common. The rights of said tenants in common shall only be appurtenant to and in conjunction with their ownership of Lots in said plats, and any conveyance or change of ownership of any Lot shall carry with it ownership in Common Property so that none of the Owners of Lots and none of the owners of the Common Property shall have such rights of ownership as to permit them to convey their interest in the Common Property except as is incident to the ownership of a Lot, and any sale of any Lot shall carry with it without specifically mentioning it, all the incidents of ownership of the Common Property; provided, however, that all of the rights, powers and authority conferred upon the Trustees shall continue to be possessed by said Trustees.

ARTICLE III

RESERVATION OF EXPENDITURES

First Party reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided for sewers, gas pipes, water pipes, conduits, poles, wires, street lights, roads, streets, recording fees, subdivision fees, consultation fees, or fees, charges and expenses incurred with respect to the Properties.

ARTICLE IV

DESIGNATION AND SELECTION OF TRUSTEES AND MEETINGS OF LOT OWNERS

1. Original Trustees. The original Trustees shall be Harold G. Lieberman, Alan L. Lieberman, and David Lieberman, who, by their signatures hereto, consent to serve in such capacity until their successors are elected or appointed as hereinafter provided. Should an original Trustee or a successor Trustee appointed by First Party pursuant hereto resign (except pursuant to the provisions of the following paragraph), refuse to act, become disabled, or die, First Party shall have the power to appoint, by duly written, recorded instrument, a successor Trustee who shall serve until his successor is elected by the Lot Owners in the manner hereinafter provided.

2. Election of Trustees. At such time as all of the Lots authorized to be developed in the Properties have been sold and conveyed for residential use, First Party shall cause the resignation of one (1) of the three (3) Trustees then serving hereunder, and the then Owners shall elect a like number of successor Trustees, one (1) of which shall be elected to serve for one (1) year, one (1) of which shall be elected to serve for two (2) years, and one (1) of which shall be elected to serve for three (3) years from the date of election. Thereafter, all Trustees shall be elected for terms of three (3) years each.

3. Manners of Conducting Elections; Meetings of Owners. All elections by Owners shall be preceded by notice signed by the Trustees then in office, or should there be no Trustees, then by three (3) such Owners, sent by mail to or personally served upon all Owners at least ten (10) days before the date fixed for the meeting to be held for the purpose of electing Trustees. The said notice shall specify the time and place of meeting which shall be in St. Charles County. At such meeting or at any adjournment thereof, the majority of the Owners attending such meeting in person or by proxy, shall have the power to elect such Trustees,

who shall thereupon serve until their successors have been duly appointed or elected and qualified. At such meeting, each Owner, whether attending in person or by proxy, shall be entitled to one (1) vote, which, when the Owner constitutes more than one person or entity, shall be cast as they among them shall determine; in no event shall more than one (1) vote be cast with respect to any Lot. The result of any election of Trustees shall be certified by the persons elected as chairman and secretary at such meeting, and their certification shall be acknowledged and recorded. Any business relevant or pertinent to the affairs of the Properties may be transacted at any meeting of Owners called in conformity with the procedure described above. Twenty-five percent (25%) of the Owners entitled to vote as aforesaid shall constitute a quorum for the purpose of electing Trustees and for the purpose of conducting any other business coming before a meeting.

4. Qualification of Trustees. Any Trustee elected under the provisions of this section shall be a Lot Owner in the Properties, or officer or agent of a corporate Owner, and if such Owner sells his or her Lot or resigns, refuses to act, becomes disabled or dies, the remaining Trustees shall appoint an Owner to act as Trustee for the unexpired portion of the term of the Trustee no longer acting.

ARTICLE V

TRUSTEES' DUTIES AND POWERS

The Trustees shall have the rights, powers and authorities described throughout this Indenture and the following rights, powers and authorities:

1. Acquisition of Common Property. To acquire and hold the Common Property in accordance with and pursuant to the provisions of this Indenture, and to deal with any such Common Property as hereinafter set forth.

2. Control of Common Property. To exercise such control over the easements, streets and roads, sidewalks (except for those easements, streets and roads, and sidewalks which are now or may hereafter be dedicated to public bodies or agencies), entrances, lights, gates, park areas, lakes, cul-de-sac islands, medians, entrance markers, shrubbery, storm water sewers, sanitary sewer trunks and lateral lines, pipes, and disposal and treatment facilities constituting Common Property as may be shown on the various recorded plats of the Properties, as is necessary to maintain, repair, rebuild, supervise and insure the proper use of said easements, streets, and roads, etc., by the necessary public utilities and others, including the right (to themselves and others to whom they may grant permission) to construct, operate and maintain on, under and over said easements and streets, sidewalks, sewers, pipes, poles, wires and other facilities and public utilities for services to the Lots, and the right to establish traffic rules and regulations for the usage of driveways, streets and parking lots in the Properties.

retention basins,

3. Maintenance of Common Property. To exercise control over the Common Property and easements for the exclusive use and benefit of residents of the Properties, and to pay real estate taxes and assessments on said Common Property out of the general assessment hereinafter authorized; to maintain and improve the Common Property with shrubbery, vegetation, decorations, buildings, recreational facilities of any kind or description, other structures, and any and all other types of facilities in the interest of health, welfare, safety, morals, recreation, entertainment, education, and general use of the Owners, all in

conformity with applicable laws; and to prescribe by reasonable rules and regulations, the terms and conditions of the use of Common Property, all for the benefit and use of the Owners and according to the discretion of the Trustees.

4. Dedication. To dedicate to public use any private streets constructed or to be constructed in the Properties whenever such dedication would be accepted by a public agency, in the event that the recorded plats do not provide for public use and maintenance.

5. Easements. To grant easements for public streets, sewers and utilities on and over the Common Property.

6. Enforcement. To prevent, as Trustees of an express trust, any infringement and to compel the performance of any restriction set out in this Indenture or established by law, and also any rules and regulations issued by said Trustees governing the use of the Common Property or any matters relating thereto. This provision is intended to be cumulative and not to restrict the right of any Owner to proceed in his own behalf, but the power and authority herein granted to the Trustees is intended to be discretionary and not mandatory.

7. Vacant and Neglected Lots. To clean up rubbish and debris and remove grass and weeds from and to trim, cut back, remove, replace and maintain trees, shrubbery and flowers upon any vacant or neglected Lots or parcels of land in the Properties, and the Owners thereof may be charged with the reasonable expenses so incurred. The Trustees, their agents or employees shall not be deemed guilty or liable for any manners of trespass or any other act or any injury, abatement, removal or planting.

8. Plans and Specifications. As more specifically provided in Article VI hereof, to consider, approve or reject any and all plans and specifications for any and all buildings or structures, fences, detached buildings, outbuildings, accessory buildings, swimming pools or tennis courts proposed for construction and erection on any Lot, proposed additions to such buildings or alterations in the external appearance of buildings already constructed.

9. Deposits. To require a reasonable deposit in connection with the proposed erection of any building or structure, fence, detached building, outbuilding, swimming pool, tennis courts, or other structure in the Properties approved in accordance with Section 8 of this Article V and Article VI of this Indenture, in order to provide that upon completion of the project, all debris shall be removed from the site and from adjacent Lots and parcels, and that any and all damages to subdivision improvements shall be repaired.

10. Insurance. To purchase and maintain in force such insurance as they may deem appropriate, including, but not limited to, property insurance and liability insurance protecting the Trustees and the Owners from any and all claims for personal injuries and property damage arising from use of the Common Property and facilities.

11. Employment. In exercising the rights, powers and privileges granted to them and in discharging the duties imposed upon them by the provisions of this Indenture, from time to time to enter into contracts, employ agents, servants and labor as they may deem necessary or advisable, and to defend suits brought against them individually or collectively in their capacity as Trustees.

12. Condemnation. In the event it shall become necessary for any public agency to acquire all or any part of the Common Property for a public purpose, the Trustees are hereby authorized to negotiate with such public agency for such acquisition and to execute instruments necessary to that purpose. Should acquisition by eminent domain become necessary, only the Trustees need be made parties, and any proceeds received shall be held by the Trustees for the benefit of those entitled to the use of said Common Property.

ARTICLE VI

ARCHITECTURAL AND ENVIRONMENTAL CONTROL

From and after the conveyance of an improved Lot by First Party, no building, fence, wall or other structure, swimming pool or tennis courts shall be commenced, erected or maintained thereon, nor shall any exterior addition to, removal of all or any part thereof, or exterior change or alteration in any improvement thereon be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design, types of materials, colors and location in relation to surrounding structures and topography by the Trustees, or by an architectural committee composed of three (3) or more representatives appointed by the Trustees. Reference herein to "Architectural Control Committee," shall refer either to the aforesaid Committee, if appointed and constituted, or to the Trustees, whichever happens to be acting at the time. In the event the Architectural Control Committee fails to approve or disapprove any design, materials, colors and location within forty-five (45) days after all required plans and specifications have been submitted to it (and fees, if required, have been paid), approval will not be required and this provision will be deemed to have been fully complied with. The Architectural Control Committee is authorized where it deems appropriate to charge a review fee for any submission to defray the costs of reviews it conducts or authorizes.

It is the intent of this Indenture that all buildings and structures within the Properties shall be constructed of attractive exterior materials of high quality. In its review of submissions the Architectural Control Committee shall evaluate the construction standards and building materials for all proposed construction on the Lots to insure that they are in conformance with such objectives. Accessory buildings, enclosures, appurtenant structures to, or extrusions from any building or structure on any Lot shall be of similar or compatible materials, design and construction. Exterior finishes once approved shall not be altered without the express consent of the Architectural Control Committee.

ARTICLE VII

SEWERS AND DRAINAGE FACILITIES

The maintenance, repair and replacement of the sewers and drainage facilities shall be assumed, undertaken and allocated in the following manner:

1. Trustees' Responsibility. The Trustees shall be responsible for the maintenance, repair and replacement of the private sanitary and storm sewers, if any, any retention basins, and any other sanitary or storm sewers or other drainage facilities located on and servicing any Common Property or improvements thereon in the Properties.

2. Owners' Responsibility. Each Owner shall be responsible for the maintenance, repair and replacement of the lateral sewage line or lines servicing such Owner's Lot.

ARTICLE VIII

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ASSESSMENTS

1. General. First Party, for each Lot within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay (i) annual assessments or charges; and (ii) special assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The annual and special assessments together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the property against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

2. Purpose. The assessments levied under this Article shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Properties and in particular for the rendering of services in the furtherance of such purposes, including the carrying out of all functions herein authorized, and for the acquisition, improvements, maintenance and operation of the Common Property (but not the Limited Common Property) and all facilities thereon, including, but not limited to, the payment of taxes and insurance thereon, and repair, maintenance, replacements and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, and for such other needs as may arise.

3. Annual Assessments. The maximum annual assessment shall, until increased as herein authorized, be Five Hundred Dollars (\$500.00) per Lot; provided, however, that the Trustees may increase such assessment for any assessment year by an amount which is equal to the increase in the Consumer Price Index - United States All Items Figure as published by the United States Department of Labor Statistics as indicated by the last available Index published prior to the assessment year over the corresponding last available Index published prior to commencement of the first assessment year hereunder. If such Index be discontinued, the Trustees shall utilize a successor index, determined by the Trustees in their sole judgment, to be most similar to the discontinued Index.

The Trustees may, after consideration of current maintenance costs and future costs and needs, fix the actual assessment for any year at a lesser amount. The Trustees may change the basis and maximum of assessments provided for herein upon the approval of a majority of the Trustees and the assent of a majority of the votes of Owners who are voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall have been sent to all Owners at least thirty (30) days in advance and shall set forth the purpose of the meetings.

Each annual assessment shall be levied prior to or during the year for which it is levied, notice thereof being given by first

class mail addressed to the last known or usual post office address of each Owner and deposited in the United States mail with postage prepaid, or by posting of a notice of the assessment upon the Lot against which it applies. Each annual assessment shall be due on the date which is thirty (30) days after such mailing or posting and shall become delinquent if not paid within thirty (30) days following such due date.

4. Recreational Facilities. In addition to the uniform annual assessment authorized in Section 3 hereof, the Trustees may, should a recreation facility and/or a swimming pool be located in the Properties or available for use by the residents of the Properties, levy a uniform annual assessment against each Lot for maintenance and operation of such recreational facility and/or swimming pool, PROVIDED, HOWEVER, that no such assessment shall be levied until the facility and/or pool have been completed and no part of such assessment shall be expended in payment for the original construction. All Lots shall be liable for the aforesaid assessment, and non-use of said recreational facilities by the Owner of any such Lot shall not excuse or exempt said Lot from payment of such assessment.

5. Storm Water Facilities. In addition to the foregoing, the Trustees are authorized to make separate annual assessments upon and against each Lot for the purpose of maintaining or repairing retention basins, disposal or sewer facilities located within the Properties; PROVIDED, HOWEVER, the separate power granted to the Trustees by this Section 5 shall expire with the calendar year following the acceptance of any such storm water facilities for maintenance by a public or another appropriate governmental body or public utility. Any assessment made under authority granted in this, Section 5, shall be assessed and collected in the same manner as the assessments under Section 3 above, and the Trustees shall have the same powers of collection and lien rights against the Lots as provided in said Section 3.

6. Special Assessments. If at any time the Trustees consider it necessary to make any expenditure requiring an assessment additional to the annual assessment they shall submit a written outline of the contemplated project and the amount of the assessment required to the then Lot Owners. If such assessment is approved, either at a meeting of the Lot Owners called by the Trustees, by a majority of the votes cast in person and by proxy, or on written consent of a majority of the total votes entitled to vote thereon, the Trustees shall notify all Lot Owners of the additional assessment; PROVIDED, HOWEVER, that in determining such required majority, each Lot Owner shall be entitled to one (1) full vote, except, that only those who have paid all assessments theretofore made shall be entitled to vote. The limit of the annual assessments for general purposes as set forth in Section 3 hereof shall not apply to any assessment made under the provisions of this Section 6. Notice of any special assessment hereunder shall be given in the same manner as notices of annual assessments are given, with such assessment becoming delinquent thirty (30) days after the date of such notice.

7. Prorations. Should a Lot become subject to assessments after January 1 in any year, and should an annual or special assessment have been levied for that year, then such assessment shall be adjusted so that such Lot shall be charged with a portion of the assessment prorated for the balance of that year.

8. Interest and Liens. All assessments shall bear interest at the rate of one percent (1%) over the from time-to-time floating rate of prime interest charged by Mercantile Bank, N.A., St. Louis, Missouri, to its best and most creditworthy customers from the date of delinquency and such assessment, together with interest and costs of collection, shall constitute a lien upon the Lot

against which it is assessed until the amount, together with the interest and charges, is fully paid. As an assessment becomes delinquent, the Trustees may execute and acknowledge an instrument reciting the levy of the assessment and cause the same to be recorded in the Recorder's Office of St. Charles County, Missouri, and thereafter institute any appropriate legal action to enforce such lien. Should an Owner pay an assessment after the recording of a notice thereof, as herein provided, the Trustees shall cause to be executed and recorded (at the expense of the Owner of the affected Lot) a release of said lien.

The lien of the assessments provided for herein shall be subordinate to the lien of any institutional (bank, savings and loan association, pension or retirement fund, insurance company or federally insured mortgage) first mortgage now or hereafter placed upon any Lot with respect to which assessments have become due and payable prior to a sale or transfer of such Lot pursuant to foreclosure or transfer in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. The term "mortgage" or "mortgages" shall include deed or deeds of trust.

9. Exemptions. The following properties subject to this Indenture shall be exempt from the assessments, charges and liens created herein:

(i) All Common Property as defined in Article I hereof.

(ii) All properties exempted from taxation under the laws of the State of Missouri.

(iii) All Lots owned by First Party before title to the Lot has been transferred to the first purchaser thereof at retail (as distinguished from sales in bulk or at wholesale to others for development or resale).

10. Keeping of Funds. The Trustees shall deposit the funds coming into their hands as Trustees in a bank protected by the Federal Deposit Insurance Corporation or in a savings and loan association protected by the Federal Savings and Loan Insurance Corporation, the treasurer being bonded for the proper performance of his duties in an amount fixed by the Trustees.

11. Ordinance Compliance. Notwithstanding any other conditions herein, the Trustees shall make suitable provisions for compliance with all subdivision and other ordinances, rules and regulations of St. Charles County or any municipality of which the Properties may become a part, including, but not limited to, street lights, and for such purposes shall not be limited to the maximum assessment provided for herein.

ARTICLE IX

RESTRICTIONS

1. Building Use. No building or structure shall be used for a purpose other than that for which the building or structure was originally designed, without the approval of the Architectural Control Committee.

2. Resubdivision. No Lot shall be resubdivided nor shall a fractional part of any Lot, be sold without the consent of the Trustees, which consent shall not be unreasonably withheld. In the event either of the foregoing is approved, then the assessment attributable to the Lot so subdivided shall be pro-rated between the resulting Lots.

3. Commercial Use. No commercial activities of any kind shall be conducted on any Lot, but nothing herein shall prohibit the maintenance of such facilities as are incident to the carrying on of promotional activities by First Party, nor the conduct of a home occupation in strict accordance with the provisions of the applicable zoning ordinances.

4. Nuisances. No noxious or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood. No exterior lighting shall be directed outside the boundaries of a Lot or other parcel.

5. Maintenance. Each Owner shall maintain and keep his Lot in good order and repair, and shall do nothing which would be in violation of law.

6. Obstructions. There shall be no obstruction of any portion of the Common Property or any storage or construction or planting thereon by an Owner. No clothes, laundry or other articles or equipment shall be placed, hung, exposed or stored in any portion of the Common Property or in any portion of the exterior or yard area of any Lot or on or about the exterior of any building.

7. Animals. No animals, reptiles, birds, horses, rabbits, fowl, poultry, cattle or livestock of any kind shall be brought onto or kept on the Properties, except that no more than two dogs, cats, or other household pets (except house pets with vicious propensities) may be kept or maintained on any Lot, provided that such pets are not kept for any commercial purpose and provided that such pets are at all times leashed and no "runs" or other outside structures are erected or installed therefore. The keeping of any pet which by reason of its noisiness or other factor is a nuisance (as determined by the Trustees in their sole judgment) or annoyance to the neighborhood is prohibited.

8. Trucks, Boats, Etc. No trucks or commercial vehicles, boats, motorcycles, campers, house trailers, boat trailers and trailers of any other description shall be permitted to be parked or stored on any Lot unless they are parked or stored in an enclosed garage or in such other enclosure (open or otherwise) approved by the Architectural Control Committee, except only during periods of approved construction on the Lot.

9. Abandoned Vehicles. No abandoned cars, motorcycles, jeeps, trucks or motor vehicles of any kind whatsoever that are unable to move under their own power may be stored or suffered to remain upon any of the Common Property or on any Lot. If any such motor vehicle is so stored or remains on the aforesaid premises, the Trustees shall take the necessary steps to remove the same at the Owner's expense.

10. Vehicular Sight Lines. No fence, wall, tree, hedge or shrub planting shall be maintained in such manner as to obstruct sight lines for vehicular traffic. Except as may be required to comply with the prior sentence, no live tree shall be removed without the approval of the Architectural Control Committee.

11. Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, barn or other out buildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

12. Signs. No signs, advertisements, billboards, or advertising structures of any kind may be erected, maintained or displayed on any Lot; provided, however, that nothing herein shall prohibit signs erected or displayed by First Party in connection with the development of the Properties and the sale of homes therein.

13. Garbage. No rubbish, trash or garbage receptacle shall be placed on the exterior of a Lot except on the day of regularly scheduled collection, unless such receptacle is completely recessed into the ground and equipped with a permanent cover, or unless an above-ground receptacle is approved by the Architectural Control Committee.

14. Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

15. Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or portion of the Properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot or portion of the Properties. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or portion of the Properties.

16. Cul-De-Sac, Etc. No above-ground structure, other than required street lights, may be erected upon a cul-de-sac, divided street entry island, or median strip, without the written approval of St. Charles County.

17. Fences. No fences or screening of any kind shall be erected or maintained on any Lot between the building set back lines and the street which such Lot fronts. Fences may be maintained on other portions of the Lots only with written consent of the Architectural Control Committee as to location, material and height, and the decision of such committee to approve or reject a fence shall be conclusive. Nothing herein contained shall prevent placement of fences by the Trustees on the Common Ground.

18. Television Antennae. No exterior television or radio antennae, towers, satellite dishes, or similar structures will be allowed on any Lot in the Properties without the prior written consent of the Trustees, which consent shall not be given without unanimous approval of the Trustees.

ARTICLE X

GENERAL PROVISIONS

These general provisions shall apply to the foregoing Indenture for the Properties:

1. Enforcement. Enforcement of any of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any such covenants and may be brought to restrain any such violation and/or to recover damages therefor together with reasonable attorney's fees and court costs.

2. Actions by Trustees. The Trustees are authorized to act through a representative, provided, however, that all acts of the Trustees shall be agreed upon by at least a majority of said Trustees. No Trustee shall be held personally responsible for his wrongful acts, and no Trustees shall be held responsible for the wrongful acts of others. No Trustee shall be held personally liable for injury or damage to persons or property by reason of any act or failure to act of the Trustees, collectively or individually. The Trustees from time to time serving hereunder, shall not be entitled to any compensation or fee for services performed pursuant to this Indenture.

3. Adjoining Tracts. The Trustees named hereunder shall be the Trustees of the Properties and are authorized and empowered to cooperate and contract with Trustees of adjoining or nearby tracts in the development and maintenance of facilities inuring to the benefit and general welfare of the inhabitants of the entire area.

4. Amendments. The provisions hereof may be amended, modified or changed from time to time by First Party by recording an instrument of amendment in the Office of the Recorder of Deeds for St. Charles County, Missouri, provided that any amendment, modification or change so adopted prior to completion of the development shall be reviewed and approved by the Director of Planning of St. Charles County, Missouri. Thereafter, the provisions herein may be amended, modified or changed by the written consent of two-thirds (2/3rds) of all the Owners, with any such amendment, modification or change being recorded in the Office of the Recorder of Deeds for St. Charles County, Missouri. No amendment, modification or change shall reduce or modify the obligations or right granted to or imposed upon the Trustees or eliminate the requirement that there be Trustees unless some person or entity is substituted for the Trustees with their responsibilities and duties in a manner approved by the Director of Planning of St. Charles County.

6. Severability, Etc. All covenants and agreements herein are expressly declared to be independent and not interdependent. No laches, waiver, estoppel, condemnation or failure of title as to any part of the Properties or any Lot in the Properties shall be of any effect to modify, invalidate or annul any grant, covenant or agreement herein with respect to the remainder of the Properties, saving always the right to amendment, modification or repeal as hereinabove expressly provided.

7. Invalidation. Invalidation of any one of the covenants of this Indenture shall in no way affect any other provision hereof.

8. Assignment of First Party Rights. The rights, powers and obligations granted to First Party may be assigned or transferred by First Party, in whole or in part, to any other person or entity to whom First Party sells, transfers or assigns any of the Lots in the Properties.

9. Term. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Indenture shall run with and bind the Properties for a term which is the longer of: (i) thirty (30) years from the date of recordation of this Indenture, after which the said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then Owners of two-thirds (2/3) of the Lots subject hereto has been recorded, agreeing to terminate this Indenture as of the end of any such ten (10) year period, but in no event

prior to the vacation of all plats of the Properties by the County of St. Charles, Missouri, or its successors; (ii) as to any subdivision of the Properties, for the duration of the subdivision encumbered hereby unless continued in effect by the vote of two-thirds (2/3) of the Lots in such subdivision by an appropriate instrument filed of record prior to the vacation of the plats of such subdivision as aforesaid. No such agreement of termination shall be effective unless made and recorded one (1) year in advance of the effective date of such termination, and unless written notice of the proposed agreement of termination is sent to every Owner at least ninety (90) days in advance of any action taken.

IN WITNESS WHEREOF, First Party has executed this Indenture this 24th day of July, 1987.

WALNUT CREEK HOMES CORPORATION

BY Alan L. Lieberman
Alan L. Lieberman Its President

Alan L. Lieberman
Alan L. Lieberman

Harold G. Lieberman
Harold G. Lieberman

David Lieberman
"Trustees" David Lieberman

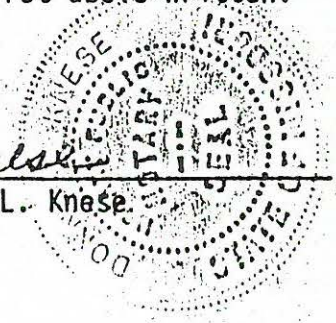


STATE OF MISSOURI)
COUNTY OF ST. LOUIS) SS

On this 24th day of July, 1987, before me appeared ALAN L. LIEBERMAN, to me personally known, who, being by me duly sworn, did say that he is the President of Walnut Creek Homes Corporation, a Corporation of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said Corporation, and that said instrument was signed and sealed in behalf of said Corporation, by authority of its Board of Directors; and said President acknowledged said instrument to be the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Donna L. Knese
Notary Public Donna L. Knese



My Commission Expires:
October 24, 1987

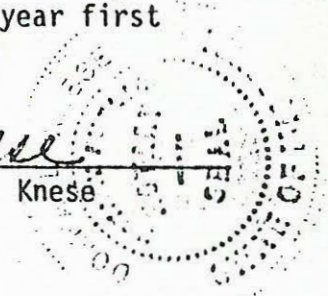
STATE OF MISSOURI)
COUNTY OF ST. LOUIS) SS

BOOK 1169 PAGE 1299

On this 24th day of July, 1987, before me personally appeared Alan L. Lieberman, Harold G. Lieberman, and David Lieberman, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Donna L. Knesel
Notary Public Donna L. Knesel



My Commission Expires:

October 24, 1987

STATE OF MISSOURI)
COUNTY OF ST. CHARLES) SS

I, the undersigned Recorder of Deeds for said County and State do hereby certify that the foregoing and annexed instrument of writing was filed for record in my office on the 24th day of July, A.D. 1987 at 10 o'clock AM and is truly recorded in Book 1169 Page 1299.
Witness my hand and official seal on the day and year aforesaid.

Deputy

Recorder of Deeds

L

VOLZ ENGINEERING & SURVEYING, INC.

10849 INDIAN HEAD INDUSTRIAL BLVD.
ST. LOUIS, MISSOURI 63132

1169 1300

ROBERT N. VOLZ
GLENN E. BORGARD
CARL F. LUEKER

PHONE (314) 426-6212

EXHIBIT "A"

December 11, 1986

TWO

RE: Gutermuth Tract
Outboundary
86-2278

A tract of land in U.S. Survey 1669, Township 46 North - Range 3 East, St. Charles County, Missouri, and being more particularly described as:

Beginning at the intersection of the South line of Gutermuth Road, 20 feet from centerline, with the East line of said U.S. Survey 1669, being also the West line of U.S. Survey 57; thence South 27 degrees 33 minutes 51 seconds East 1,470.39 feet along said East line of U.S. Survey 1669, the West line of U.S. Survey 57, being also the West line of "Teal Wood Estates", a subdivision according to the plat thereof recorded as Yearly No. 475 on January 19, 1970 in the St. Charles County Records to the Southwest corner of said U.S. Survey 57, being also the Northwest corner of U.S. Survey 1787; thence South 27 degrees 08 minutes 55 seconds East 353.44 feet along said East line of U.S. Survey 1669 and the West line of said U.S. Survey 1787 to the Northeast corner of property conveyed to Schuman Employee Profit Sharing Plan, Etal. by deed recorded in Book 867, Page 1776 of the St. Charles County Records; thence South 63 degrees 53 minutes 08 seconds West 1,548.40 feet along the North line of said Schuman Employee Profit Sharing Plan, Etal. property, the North line of property conveyed to Theodore A. Kienstra, Etal. by deed recorded in Book 801, Page 228 of the St. Charles County Records and the North line of property conveyed to Dave Kolb and wife by deed recorded in Book 867, Page 1581 of the St. Charles County Records to the East line of Lot 8 of Coalter's Howell Prairie Tract, being also the East line of property conveyed to Wellington Farm, Inc. by deed recorded in Book 1036, Page 1266 of the St. Charles County Records; thence North 27 degrees 30 minutes 00 seconds West 1,342.43 feet along said East line of Lot 8 of Coalter's Howell Prairie Tract to said South line of Gutermuth Road; thence Eastwardly along said South line of Gutermuth Road the following courses and distances: along a curve to the left whose radius point bears North 48 degrees 37 minutes 08 seconds West 245.00 feet from the last mentioned point, a distance of 81.40 feet, North 22 degrees 20 minutes 45 seconds East 169.04 feet, and North 38 degrees 33 minutes 28 seconds East 623.47 feet to the West line of property conveyed to Lee Charles Gibbs and wife by deed recorded in Book 718, Page 1241 of the St. Charles County Records; thence South 27 degrees 28 minutes 45 seconds East 359.09 feet along said West line of Gibbs property to the Southwest corner thereof; thence North 56 degrees 06 minutes 21 seconds East 250.00 feet along the South line of said Gibbs property to the Southeast corner thereof; thence North 27 degrees 28 minutes 45 seconds West 359.52 feet along the East line of said Gibbs property to said South line of Gutermuth Road; thence North 56 degrees 17 minutes 33 seconds East 1.09 feet and North 61 degrees 10 minutes 34 seconds East 530.34 feet along said South line of Gutermuth Road to the point of beginning and containing 58.024 acres according to survey by Volz Engineering & Surveying, Inc. on December 11, 1986.

END OF DOCUMENT

ELBRING SURVEYING COMPANY A SUBSIDIARY (314) 426-1530

**AMENDMENT TO INDENTURE OF TRUST AND RESTRICTIONS
FOR
WALNUT CREEK
ST. CHARLES COUNTY, MISSOURI**

THIS AMENDMENT, is made and entered into this 11th day of March, 1992, by and between Marquette Homes, Inc., a Missouri corporation, hereinafter referred to as "First Party", and Kenneth G. Solomon, Tom Moorehead, and Robert L. Brown, all of St. Charles County, Missouri, hereinafter referred to as "Trustees".

WITNESSETH:

WHEREAS, the Indenture of Trust and Restrictions for Walnut Creek, St. Charles County, Missouri ("Indenture") were recorded at Book 1169 page 1286 of the St. Charles County Records on July 24, 1987; and

WHEREAS, First Party is the successor to Walnut Creek Homes Corporation, the original first party, and is a builder and developer which purchased a substantial portion of the vacant lots and parcels of land constituting a portion of the properties for the purpose of building single-family detached residences thereon for sale to third persons as required by the Indenture; and

WHEREAS, First Party and Trustees believe that certain amendments, modifications or changes should be made to the Indenture in accordance with Article X, paragraph 4.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements made by the parties hereto each to each other, and in accordance with the Indenture, the parties hereto covenant and agree to and with each other, collectively and individually, and for themselves, their heirs, successors and assigns, and for and on behalf of all persons who currently reside in Walnut Creek and who may hereafter derive title to any lot or parcel of land within Walnut Creek, and all persons who may hereafter derive title to or otherwise hold through them, together with their heirs, successors, or assigns, any of the living units and parcels of land in Walnut Creek, all as hereinafter set forth:

1. Paragraph 3 of ARTICLE I shall be amended to read as follows:

3. "First Party" shall mean and refer to Marquette Homes, Inc., a Missouri corporation, and upon such time as Marquette Homes, Inc. shall have sold all of the lots owned by Marquette Homes, Inc. there shall be no further First Party, and Article IV, paragraph 2 Election of Trustees shall control.

2. Paragraph 2 of ARTICLE IV shall be amended to read as follows:

2. Election of Trustees. At such time as all of the Lots authorized to be developed in the Properties and owned by Marquette Homes, Inc. have been sold and conveyed for residential use, First Party shall cause the resignation of all of the three (3) Trustees then serving hereunder, and the then Owners shall elect three (3) successor Trustees, from amongst the Owners. The individual receiving the most votes shall be elected to serve for three (3) years from the date of election. The individual receiving the next most votes shall be elected to serve for two (2) years from the

Shannon & Mitchell

date of election. The individual receiving the next most votes shall be elected to serve for one (1) year from the date of election. Thereafter, all Trustees shall be elected for the term of three (3) years each.

3. Paragraph 4 of ARTICLE IV shall be amended to read as follows:

4. Qualification of Trustees. Any Trustee elected under the provisions of this section shall be an owner of a Lot in Walnut Creek which is fully developed with a residential home, and if such Owner sells his or her Lot or resigns, refuses to act, becomes legally incapacitated or dies, the remaining Trustees shall appoint an Owner to act as Trustee for the unexpired portion of the term of the Trustee no longer acting.

4. ARTICLE VI shall be amended to read as follows;

ARTICLE VI
ARCHITECTURAL AND ENVIRONMENTAL CONTROL

From the date this Amendment is recorded, no building, including the primary residential structure intended to be constructed on any Lot, nor any fence, wall or other structure, swimming pool or tennis courts shall be commenced, erected or maintained thereon, nor shall any exterior addition to, removal of all or any part thereof or exterior change or alteration in any improvement thereon be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design, types of materials, colors and location in relation to surrounding structures and topography by the Trustees, or by an architectural committee composed of three (3) or more representatives appointed by the Trustees. Reference herein to the "Architectural Control Committee," shall refer either to the aforesaid architectural committee, if appointed and constituted by the Trustees, or to the Trustees, if no said committee is appointed, whichever happens to be acting at the time. In the event the Architectural Control Committee fails to approve or disapprove any of the above referenced buildings or structures within forty-five (45) days after all required plans and specifications have been submitted to it and all fees, if any are required, have been fully paid, express approval shall not be required and this provision will be deemed to have been fully complied with. The Architectural Control Committee is authorized where it deems appropriate to charge a review fee for any submission to defray the costs of review it conducts or authorizes.

Fences

It is the intent of this Indenture that all buildings and structures within the Properties shall be constructed of attractive exterior materials of high quality, be in conformance with the general quality of the surrounding homes, and not be likely to reduce the values of the homes of Walnut Creek. In its review of submissions the Architectural Control Committee shall evaluate the construction standards and building materials for all proposed construction on the Lots to ensure that they are in conformance with such objectives. Accessory buildings, enclosures, appurtenant structures to, or extrusions from any building or structure on any Lot shall be of similar compatible materials, design, and construction to that of

the residence. Exterior finishes, once approved, shall not be altered without the express consent of the Architectural Control Committee. The following constitute minimum guidelines which the Trustees shall follow with regard to any future construction of residential homes on vacant lots:

- (a) Single story ranch homes shall be at least 1,420 square feet of living area, and two story homes shall be at least 1,880 square feet of living area.
- (b) All residential homes shall have two car garages, the square footage of which shall not be included within the calculations set forth in (a) above.
- (c) The exterior shall be in a color approved as above set forth, and be vinyl or hardboard siding, brick or brick veneer, or other similar exterior finish approved by the Architectural Control Committee, but tin or aluminum siding shall not be permitted.
- (d) All homes shall have basements under the entire living area of the home.
- (e) All walls shall have insulation to at least an R-19 rating, and all attics shall be insulated to at least an R-30 rating.
- (f) All windows shall be double pane insulated glass.
- (g) All basements shall have a sump and interior drain tile.
- (h) All construction of residential houses shall be completed within 180 days following breaking of ground for the foundation, with reasonable extensions due to inclement weather granted at the discretion of the Trustees.

The Architectural Control Committee may require more stringent standards than the above guidelines, and shall not be restricted only to approval of those items specifically listed in (a) through (h) above, but shall have full right to approve any and all aspects of said structure as set forth in the first paragraph of this Article VI.

If an Architectural Control Committee is established separate and apart from the Trustees, all approvals, along with all submitted plans, shall be delivered to the chairman of the Board of Trustees within 7 days after said approval. If the chairman of the Board of Trustees so determines, the approval may be appealed to the Trustees for final determination. In addition, if any Owner is denied approval, said Owner may appeal that decision to the Trustees. On any matters appealed by the chairman of the Board of Trustees or any Lot Owner, the Board of Trustees shall have the authority to overturn the decision of the Architectural Control Committee. The Board of Trustees may deny review of any decision appealed to it by either the chairman of the Board of Trustees or any Lot Owner. Decisions to overturn the Architectural Control Committee's decision, or to refuse to hear the appeal, shall be by majority vote.

Any Owner who is delinquent in the payment of any subdivision assessments shall not be entitled to approval of any structure under this Article VI until said subdivision assessments are fully paid.

5. The second paragraph of paragraph 8 of Article VIII shall be deleted in its entirety and replaced with the following:

The lien of the assessments provided for herein shall be binding upon the successors and assigns of the Owners of the Lot against which the lien is recorded. Each assessment lien shall be prior to all subsequent liens from whatever source in accordance with the laws of the State of Missouri.

6. Paragraph 7 of Article IX shall be amended by adding the following:

This paragraph is not intended to apply to pets such as fish, white mice, gerbils, guinea pigs, and the like, and, except as specifically modified, shall be subject to all of the other provisions of this paragraph 7.

7. Paragraph 8 of Article IX shall be amended by adding the following sentence:

This paragraph 8 shall not apply to pickup trucks or vans not used for commercial purposes. At the discretion of the Trustees, the Trustees may permit pickup trucks and vans used for commercial purposes but which are clean, attractive and well maintained. Said approval may be overturned at any time by the Trustees if a written complaint by any Owner is received with regard to said vehicle, and is shown by that Owner to be unsightly or inappropriate for the neighborhood. No vehicles may be parked on the street overnight. To the extent possible all vehicles shall be parked in garages.

8. Paragraph 10 of Article IX is hereby amended by the deletion of the final sentence thereof.

9. Paragraph 12 of Article IX shall be amended to read as follows:

12. Signs. No signs, advertisements, billboards, or advertising structures of any kind may be erected, maintained or displayed on any Lot; provided, however, that temporary "for sale" or "election" type signs no larger than 2' x 4', and being no higher than 4' above the ground at the highest point shall be permitted.

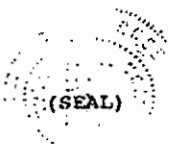
10. Paragraph 18 of Article IX shall be revised by changing the word "unanimous" to the word "majority".

11. Except as specifically amended herein, all other provisions of the Indenture shall remain as written. Any internal inconsistencies created by this Amendment shall be interpreted and enforced with the spirit and intentions of the terms of this Amendment taken into account. All terms defined in the Indenture shall have the same meaning when used herein, unless specifically amended by this Amendment.

IN WITNESS WHEREOF, First Party has executed this Amendment to the Indenture this 14 day of March, 1992.

MARQUETTE HOMES, INC.

By Thomas Moorehead
Thomas Moorehead, President



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Robt M. Hercher

Notary Public
ROBE M. HERCHER
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. JAN. 29, 1993

(SEAL)

My Commission Expires:
STATE OF MISSOURI
COUNTY OF ST. CHARLES

BOOK 1431 PAGE 795

On this 11th day of March, 1992, before me personally appeared Robert L. Brown, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Robt M. Hercher

Notary Public
ROBE M. HERCHER
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. JAN. 29, 1993

(SEAL)

My Commission Expires:
STATE OF MISSOURI
COUNTY OF ST. CHARLES

On this 11th day of March, 1992, before me personally appeared Kenneth G. Solomon, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Robt M. Hercher

Notary Public
ROBE M. HERCHER
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. JAN. 29, 1993

(SEAL)

My Commission Expires:

STATE OF MISSOURI)
COUNTY OF ST. CHARLES)

REC-1431 PART 796

On this 12th day of March, 1992, before me personally appeared Steve Lauer, to me personally known, who, being by me duly sworn, did say that he is the Director of Planning, St. Charles County, Missouri; and said Steve Lauer acknowledged said instrument to be his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



Yvonne J. Lewis
Notary Public

YVONNE J. LEWIS
NOTARY PUBLIC - STATE OF MISSOURI
ST. CHARLES COUNTY
MY COMMISSION EXPIRES JUNE 30, 1998 #

My Commission Expires:

STATE OF MISSOURI
COUNTY OF ST. CHARLES
FILED FOR RECORD

1992 MAR 12 AM 10:56

Barbara Hall
RECORDER OF DEEDS

END OF DOCUMENT

6-27-80

SECOND
AMENDMENT TO INDENTURE OF TRUST AND RESTRICTIONS
FOR
WALNUT CREEK
ST. CHARLES COUNTY, MISSOURI

THIS AMENDMENT, is made and entered into this 10th day of July, 1992, to be deemed effective retroactive to March 12, 1992, by and between Marquette Homes, Inc., a Missouri corporation, hereinafter referred to as "First Party", and Kenneth G. Solomon, Tom Morehead, and Robert L. Brown, all of St. Charles County, Missouri, hereinafter referred to as "Trustees."

WITNESSETH:

WHEREAS, the Indenture of Trust and Restrictions for Walnut Creek, St. Charles County, Missouri (the "Indenture") were recorded at Book 1169 page 1286 of the St. Charles County Records on July 24, 1987; and

WHEREAS, First Party is the successor to Walnut Creek Homes Corporation, the original first party, and is a builder and developer which purchased a substantial portion of the vacant lots and parcels of land constituting a portion of the properties for the purpose of building single-family detached residences thereon for sale to third persons as required by the Indenture; and

WHEREAS, the Indenture was amended by that certain Amendment to Indenture of Trust and Restrictions for Walnut Creek, St. Charles County, Missouri (the "First Amendment"), dated as of March 11, 1992 and recorded at Book 1431 Page 797 of the St. Charles County Records on March 12, 1992; and

WHEREAS, subsequent to recording of the First Amendment, certain builders acquired lots in Walnut Creek from Mark Twain Bank, and have received approvals from the Trustees to construct homes on said lots; and

WHEREAS, First Party and Trustees believe that certain amendments, modifications or changes should be made to the Indenture in accordance with Article X, paragraph 4 to correct portions of the First Amendment retroactive to the date it was recorded.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements made by the parties hereto each to each other, and in accordance with the Indenture, the parties hereto covenant and agree to and with each other, collectively and individually, and for themselves, their heirs, successors and assigns, and for and on behalf of all persons who currently reside in Walnut Creek and who may hereafter derive title to any lot or parcel of land within Walnut Creek, and all persons who may hereafter derive title to or otherwise hold through them, together with their heirs, successors, or assigns, any of the living units and parcels of land in Walnut Creek, all as hereinafter set forth:

1. First Party and Trustees hereby confirm, ratify, and restate in its entirety that certain Amendment to Indenture of Trust and Restrictions for Walnut Creek, St. Charles County, Missouri (the "First Amendment") in all respects as if fully incorporated herein, except that ARTICLE VI amended in paragraph 4 of the First Amendment shall be further amended to read as follows:

466 1297

ARTICLE VI
ARCHITECTURAL AND ENVIRONMENTAL CONTROL

From the date this Amendment is recorded, no building, including the primary residential structure intended to be constructed on any Lot, nor any fence, wall or other structure, swimming pool or tennis courts shall be commenced, erected or maintained thereon, nor shall any exterior addition to, removal of all or any part thereof or exterior change or alteration in any improvement thereon be made until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design, types of materials, colors and location in relation to surrounding structures and topography by the Trustees, or by an architectural committee composed of three (3) or more representatives appointed by the Trustees. Reference herein to the "Architectural Control Committee," shall refer either to the aforesaid architectural committee, if appointed and constituted by the Trustees, or to the Trustees, if no said committee is appointed, whichever happens to be acting at the time. In the event the Architectural Control Committee fails to approve or disapprove any of the above referenced buildings or structures within forty-five (45) days after all required plans and specifications have been submitted to it and all fees, if any are required, have been fully paid, express approval shall not be required and this provision will be deemed to have been fully complied with. The Architectural Control Committee is authorized where it deems appropriate to charge a review fee for any submission to defray the costs of review it conducts or authorizes.

It is the intent of this Indenture that all buildings and structures within the Properties shall be constructed of attractive exterior materials of high quality, be in conformance with the general quality of the surrounding homes, and not be likely to reduce the values of the homes of Walnut Creek. In its review of submissions the Architectural Control Committee shall evaluate the construction standards and building materials for all proposed construction on the Lots to ensure that they are in conformance with such objectives. Accessory buildings, enclosures, appurtenant structures to, or extrusions from any building or structure on any Lot shall be of similar compatible materials, design, and construction to that of the residence. Exterior finishes, once approved, shall not be altered without the express consent of the Architectural Control Committee. The following constitute minimum guidelines which the Trustees shall follow with regard to any future construction of residential homes on vacant lots:

(a) Single story ranch homes shall be at least 1,150 square feet of living area, and two story homes shall be at least 1,880 square feet of living area.

(b) All residential homes shall have two car garages, the square footage of which shall not be included within the calculations set forth in (a) above.

(c) The exterior shall be in a color approved as above set forth, and be vinyl or hardboard siding, brick or brick veneer, or other similar exterior finish approved by the Architectural Control Committee, but tin or aluminum siding shall not be permitted.

(d) All homes shall have basements under the entire living area of the home.

(e) All walls shall have insulation to at least an R-19 rating, and all attics shall be insulated to at least an R-30 rating.

(f) All windows shall be double pane insulated glass.

(g) All basements shall have a sump and interior drain tile.

(h) All construction of residential houses shall be completed within 180 days following breaking of ground for the foundation, with reasonable extensions due to inclement weather granted at the discretion of the Trustees.

The Architectural Control Committee may uniformly require more stringent standards than the above guidelines, and shall not be restricted only to approval of those items specifically listed in (a) through (h) above, but shall have full right to approve any and all aspects of said structure as set forth in the first paragraph of this Article VI.

If an Architectural Control Committee is established separate and apart from the Trustees, all approvals, along with all submitted plans, shall be delivered to the chairman of the Board of Trustees within five (5) days after said approval. If the chairman of the Board of Trustees so determines, the approval may be appealed to the Trustees for final determination. In addition, if any Owner is denied approval, said Owner may appeal that decision to the Trustees. The chairman of the Board of Trustees or Owner shall provide written notice to all Trustees of intent to appeal said decision, including grounds for overturning the decision of the Architectural Control Committee, which notice shall be delivered within ten (10) days of the date of the decision of the Committee. On any matters timely appealed by the chairman of the Board of Trustees or any Owner, the Board of Trustees shall have the authority to overturn the decision of the Architectural Control Committee. The Board of Trustees shall within twenty one (21) days of receiving notice of appeal either deny review of any decision appealed to it, or hold a hearing to review said decision and either uphold or overturn the Committee's decision. If no action is taken, the decision of the Architectural Control Committee shall be deemed upheld. Decisions to uphold overturn the Architectural Control Committee's decision, or to refuse to hear the appeal, shall be by majority vote.

Any Owner who is delinquent in the payment of any subdivision assessments shall not be entitled to approval of any structure under this Article VI until said subdivision assessments are fully paid.

2. Paragraph 9 of ARTICLE VIII shall be amended to read as follows:

9. Exemptions. The following properties subject to this Indenture shall be exempt from the assessments, charges and liens created herein:

(i) All Common Property as defined in ARTICLE I hereof.

(ii) All properties exempted from taxation under the laws of the State of Missouri.

(iii) All Lots owned by First Party or those owned by those certain builders acquiring said lots from Mark Twain Bank, before the first of the following has occurred:

- (a) title to the Lot has been transferred to the first purchaser thereof regardless of whether said purchaser acquires one or more Lots, and regardless of whether said Lots are developed or undeveloped when sold; or
- (b) said Lot has been leased by First Party or any Builder for residential occupancy; or
- (c) a home has been constructed on said Lot and said home is occupied as a residence by First Party or any Builder or any shareholder, director, officer, or employee of First Party or a Builder, or by any other person without lease or transfer of title to said Lot.

4. Except as specifically amended herein, all other provisions of the Indenture and First Amendment shall remain as written. Any internal inconsistencies created by this Amendment shall be interpreted and enforced with the spirit and intentions of the terms of this Amendment taken into account. All terms defined in the Indenture shall have the same meaning when used herein, unless specifically amended by this Amendment.

IN WITNESS WHEREOF, First Party and Trustees have executed this Amendment to the Indenture this 10th day of July, 1992.

MARQUETTE HOMES, INC.

BY [Signature]
Thomas Morehead, President

(SEAL)

ACCEPTED:

TRUSTEES:

[Signature]
Thomas Morehead

[Signature]
Robert L. Brown

[Signature]
Kenneth G. Solomon

APPROVED:

[Signature]
Steve Lauer, Director of Planning
St. Charles County

STATE OF MISSOURI)
COUNTY OF ST. CHARLES)

On this 12th day of July, 1992, before me personally appeared Thomas Morehead, to me personally known, who, being by me duly sworn, did say that he is the President of Marquette Homes, Inc., a Missouri corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and said Thomas Morehead acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Rose M. Hercher

Notary Public

ROSE M. HERCHER
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. JAN. 29, 1993



My Commission Expires:

STATE OF MISSOURI)
COUNTY OF ST. CHARLES)

On this 10th day of July, 1992, before me personally appeared Thomas Morehead, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Rose M. Hercher

Notary Public

ROSE M. HERCHER
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. JAN. 29, 1993



My Commission Expires:

STATE OF MISSOURI)
COUNTY OF ST. CHARLES)

On this 10th day of July, 1992, before me personally appeared Robert L. Brown, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Rose M. Hercher

Notary Public

ROSE M. HERCHER
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. JAN. 29, 1993



My Commission Expires:

STATE OF MISSOURI)

1466 1301

COUNTY OF ST. CHARLES)

On this 10th day of July, 1992, before me personally appeared Kenneth G. Solomon, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Rob M. Hercher

Notary Public



ROBE M. HERCHER
NOTARY PUBLIC STATE OF MISSOURI
ST. LOUIS COUNTY
MY COMMISSION EXP. JAN. 29, 1993

My Commission Expires:

STATE OF MISSOURI)

COUNTY OF ST. CHARLES)

On this 28th day of July, 1992, before me personally appeared Steve Lauer, to me personally known, who, being by me duly sworn, did say that he is the Director of Planning, St. Charles County, Missouri; and said Steve Lauer acknowledged said instrument to be his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Yvonne J. Lewis

Notary Public



YVONNE J. LEWIS
NOTARY PUBLIC - STATE OF MISSOURI
ST. CHARLES COUNTY
MY COMMISSION EXPIRES JUNE 30, 1994

My Commission Expires:

June 30, 1994

STATE OF MISSOURI
COUNTY OF ST. CHARLES
FILED FOR RECORD

1992 JUL 28 PH 2:42

Barbara J. Hall

RECORDED BY DEEDS

END OF DOCUMENT