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JOHNSON COUNTY RECORDER
IOWA CITY, IOWA

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR THE RESUBDIVISION OF LOT 51 WALDEN HILLS

THIS DECLARATION, made on the date hereinafter set forth by Walden Wood Associates II, L.L.P., hereinafter referred to as the "Declarant",

WITNESSETH:

WHEREAS, Declarant is the owner and the Developer of certain property in Iowa City, Iowa, which is more particularly described on Exhibit "A", attached hereto and by this reference made a part hereof, and known as "The Resubdivision of Lot 51 Walden Hills".

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the properties, and which shall run with, the real property described on Exhibit "A", and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

1. NAME

The subdivision is designated and shall be known as the Resubdivision of Lot 51 Walden Hills located in Iowa City, Johnson County, Iowa.

2. DEFINITIONS

2.1 "Association" shall mean and refer to Lot 51 Walden Hills Homeowners Association, a non-profit corporation to be formed or its successors and assigns.

2.2 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, as defined in Section 2.5, which is a part of the Subdivision, including contract vendees, but excluding those having such interest merely as security for the performance of any obligation such as mortgages.

2.3 "Subdivision" shall mean and refer to the Resubdivision of Lot 51 Walden Hills located on the real estate described on Exhibit "A".

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2.4 "Plat" shall mean and refer to the Subdivision plat or plats of the real estate described in Exhibit "A" recorded in the Office of the Recorder of Johnson County, Iowa, as the same may be hereafter amended or supplemented.

2.5 "Lot" shall mean and refer to any parcel of land shown upon the Plat as recorded in the office of the Recorder of Johnson County, Iowa, except for the Common Areas shown thereon.

2.6 "Building" shall mean and refer to any structure which is constructed on a lot within the Subdivision.

2.7 "Developer" shall mean and refer to Walden Wood Associates II, L.L.P., and its successors and assigns as a Declarant.

2.8 "Board of Directors" shall mean and refer to the Board of Directors of the Association.

2.9 "Common Area" shall mean all real property to be owned by the Association for the common use and enjoyment of Lot Owners and described as Lot 51A in the plat of the Resubdivision of Lot 51 Walden Hills as recorded in the office of the Recorder of Johnson County, Iowa.

2.10 "Votes of Membership". Whenever a vote of membership of the Association is called for herein, such vote shall be the vote of the majority of the members present at a meeting at which the quorum requirements are met.

3. LOTS

3.1 Number of Lots. The Resubdivision of Lot 51 Walden Hills consists of twenty-five (25) residential Lots.

3.2 Land Use. All Lots shall be used exclusively for single family residential purposes. No. trailer, basement, shack, garage, barn or other outbuilding on a lot shall at any time be used as a residence, temporarily or permanently, nor shall any residence of a temporary nature be permitted. No act constituting a nuisance as defined under the provisions of Chapter 657 of the 1997 Code of Iowa, or the Common Law of Iowa, shall be permitted.

3.3 Conveyance of Lots. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the covenants, conditions and restrictions contained herein.

4. PUBLIC IMPROVEMENTS, AND COMMON AREAS

4.1 Developer's Obligation to Install Public Improvements. The Developer shall install public improvements in accordance with the Subdivider's Agreement entered into with the City of Iowa City in connection with the approval of the Final Plat of the Subdivision.

4.2 Developer's Obligation to Improve Common Areas. The Developer shall landscape the common area and install the private drives within the common areas prior to the day on which the Declarant has sold and conveyed 100% of the lots within the Subdivision.

4.3 Transfer of Common Areas to Association. Once the Developer has completed the required improvements to the common areas, the common areas shall be conveyed by the Declarant to the Association after which conveyance the Association shall be responsible for the maintenance of such common areas.

5. ARCHITECTURAL CONTROL AND CONSTRUCTION

5.1 Plan Approval. No building, fence, wall or other structure shall be commenced, erected or maintained within the Subdivision, nor shall any exterior addition to or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved by the Developer as hereinafter provided.

5.2 Contents of Approval Application. Complete plans and specifications for the proposed construction shall be submitted to the Developer or its nominee or assignee for approval. In addition to plans and specifications for proposed structures, the application for approval shall show the location and type of any fences, parking areas, plantings, landscaping, exterior lighting and other relevant matters, including the location on the lot of all proposed improvements, the materials to be used and the color scheme proposed. The application shall also set forth a time schedule for the construction of such improvements, and in no event will an application be approved when the proposed construction will not be commenced within one (1) year from the date of the application.

5.3 Approval or Disapproval. The Developer or its nominee or assignee shall approve or disapprove the application within a period of thirty (30) days, and in the event of disapproval, shall specify the exact reasons therefore.

5.4 Duration of Approval. In the event any proposed construction is not commenced within one (1) year from the date said construction has been approved by the Developer, said approval shall lapse and it shall be the responsibility of the lot owner to re-apply for approval prior to the commencement of construction. Once commenced, construction shall proceed in a reasonably diligent manner to completion.

5.5 Responsibility for Construction Site. During construction, it shall be the responsibility of each lot owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials and that construction materials are kept in a neat and orderly manner.

5.6 Erosion Control. As a part of the construction, each lot owner shall be responsible to grade and maintain such Owner's lot in such manner so as to minimize damage which might result to other lots or common areas as a result of erosion and surface water drainage.

6. MAINTENANCE

6.1 Maintenance by Owners.

6.1.1. General. The owner of each lot shall be responsible for maintaining such lot free of debris or other waste, and all waste shall be placed in sanitary containers having tight fitting lids. There shall be no open burning within the subdivision.

6.1.2. Restoration of Damage. The owner of any building damaged by fire or other Act of God shall within ninety (90) days after such event, unless an extension of time is granted by the Association, commence restoration of said building and said restoration shall be completed within six (6) months of its commencement. In the event of a total destruction of any building, the owner shall within thirty (30) days after such event, unless an extension of time is granted by the Association, commence removal of the debris and restore the site to a satisfactory condition. Said removal shall be completed within thirty (30) days of its commencement date. If any owner fails to commence removal of any debris within the time specified above, or any extension of such time granted by the Association, the Association shall have the right to enter upon said land and remove the debris, and any expenses incurred may be assessed to the lot owner and shall become a lien upon such lot enforceable in the same manner as liens for Association maintenance.

6.2. Maintenance by Association.

6.2.1. Maintenance of Common Areas. The Association shall be responsible for the repair and maintenance of all common areas within the subdivision including the maintenance and snow removal from private drives constructed in the common area.

6.2.2 Lot Maintenance (Lawn Care and Snow Removal). The Association shall be responsible for the ordinary maintenance and lawn care for each lot within the subdivision including routine lawn mowing. The Association shall also be responsible for snow removal from the driveways and walkways located and serving the dwelling units constructed on the Lots. In order to facilitate the Association's lawn care obligations, an individual lot owner shall not plant trees or shrubs within any side yard or within eight feet (8') of the front or rear of any building located on a lot within the subdivision without the prior written approval of the Association. The Association shall also have the power to make reasonable rules concerning the parking of vehicles in the driveways on each lot and may require that such vehicles be moved if they interfere with the Association's required snow removal activities.

6.2.3. Maintenance Necessitated by Act of Owner. In the event that the need for maintenance or repair is caused through the willful or negligent act of a Lot Owner, his family, guests, or invitees, as determined by the Board of Directors of the Association, and not covered or paid for by insurance, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject.

6.2.4. Maintenance of Stormwater Storage Facility. The Declarant shall be responsible for the maintenance of the stormwater storage facility located on OL#2 Walden Hills Subdivision until the City of Iowa City (City) has accepted such facility as having been completed according to the plans and specifications previously approved by the City. Once the said facility has been accepted by the City, the Association shall then be responsible for a 25/57ths share of the cost of the continued maintenance of such facility unless and until the obligation for the continuing maintenance of such facility is assumed by the City in connection with the City's acceptance of a dedication of said OL#2. Unless and until the maintenance of such facility is assumed by the City and so long as the Declarant is either the Owner of a lot in the Subdivision or the Owner of Lot 52 Walden Hills Subdivision, the Declarant shall have the obligation to contract for required maintenance of said facility 25/57ths of the cost of which maintenance will be billed by the Declarant to the Association and 32/57ths of the cost of which maintenance will either be paid by the Declarant as the Owner of Lot 52 Walden Hills Subdivision or billed by the Declarant to the future Owner or Owners of said Lot 52. At such time as the Declarant owns neither Lot 52

Walden Hills Subdivision nor any Lots in the Subdivision, it shall then be the obligation of the Association to contract for the required facility maintenance and to recover 32/57ths of the cost thereof from the future owner of Lot 52 Walden Hills Subdivision. The Declarant represents that it is the present owner of Lot 52 Walden Hills Subdivision and that it will prior to any conveyance of said Lot 52 by covenant obligate the future Owner or Owners of said Lot 52 for 32/57ths of the cost of the continuing maintenance of the stormwater management facility located on OL51 Walden Hills Subdivision unless and until the maintenance of such facility is assumed by the City.

7. PETS

7.1 **General.** No animals, livestock or poultry shall be raised or kept within the subdivision, except for usual household pets, provided that such household pets shall not be kept or maintained for commercial purposes. Pets shall be managed in such a way that they do not interfere with the quiet enjoyment of the property of other lot owners. Pets which continue to make loud noises, damage shrubs or other flora, attack other pets or persons shall be considered a nuisance.

8. INSURANCE

8.1 **Liability Insurance.** The Association shall 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. Such comprehensive public liability insurance policy shall cover the Association, its Board of Directors, any committee or organ of the Association or Board of Directors, all persons acting or who may come to act as agents or employees of any of the foregoing.

8.2 **Other Insurance.** The Association shall also obtain any other insurance required by law to be maintained, including but not limited to workers compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate.

9. EASEMENTS

9.1 **Utility Easements.** There are strips of ground marked "Proposed 35.0' wide Access Utility, Water and Sanitary Sewer Easement", "existing 15.0' Utility Easement", "30.0' wide Access Utility and Sanitary Sewer Easement", "existing 15.0' Sanitary Sewer Easement", "existing 30.0' Sanitary and Storm Sewer Easement" and "existing 15.0' Utility and Storm Sewer Easement" shown on the Plat which are hereby reserved for public utilities, for the installation and maintenance of mains, sewers, drains, ducts, lines, wires and the like. The

Owners of Lots shall take title subject to the easements hereby created and subject at all times to the rights of proper authorities to service the utilities and the easements hereby created. No permanent structure of any kind, including fences, shall be built, erected or maintained on said utility easements except walkways and driveways.

10. ACCESS RIGHTS OF ASSOCIATION

10.1 Utility Maintenance. Certain utility lines, water line and other facilities and other improvements located on one Lot may serve other Lots. The Association and any member thereof whose enjoyment of the use and occupancy of such Member's Lot is affected thereby shall have an easement therefor and shall have the right, at reasonable times and at any time in case of emergency, to go upon any other Lot for the purpose of maintaining or causing to be maintained or repaired utility lines, water lines or other facilities which serve more than one Lot.

10.2 General. The Association shall have an easement for access to all Lots for ingress and egress as reasonably required by its officers, directors, employees, and their agents and independent contractors, in order to perform its obligations and duties as set forth in this Declaration. These easements are also reserved for the benefit of Declarant so long as Declarant owns any Lot.

11. ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

11.1 Association Membership. Every owner of a Lot within the Subdivision shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

11.2 Association Board of Directors. The Owners shall elect a Board of Directors of the Association as prescribed by the Association's By-Laws. The Board of Directors shall manage the affairs of the Association. When any action is required to be taken by the Association herein, it shall be taken by the Board of Directors of the Association, acting for the Association.

11.3 Voting Rights. The Association shall have two classes of voting membership:

11.3.1. Class A Membership. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

11.3.2. Class B Membership. The Class B member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the earlier of either of the following events:

(a) when the total votes outstanding in the Class A membership equal or exceed the total votes outstanding in the Class B membership, or

(b) On January 1, 2001.

12. COVENANT FOR MAINTENANCE ASSESSMENTS

12.1 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Subdivision, hereby covenants, and each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) monthly assessments or charges; (2) special assessments for capital improvements and operating deficits; and (3) special assessments as provided in Article 10, such assessments to be established and collected as hereinafter provided. The monthly and special assessments, together with interest, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property or Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the owner of such property at the time when the assessment falls due. The personal obligation for delinquent assessments shall not pass to any successors in title unless expressly assumed by such successor, but the lien therefore shall remain until foreclosed or released.

12.2 Purpose of Assessments. The assessments levied by the Association shall be used to promote the health, safety, and welfare of the residents in the Properties and to enable the Association to pay costs incurred in meeting its maintenance obligation as set forth in Paragraph 6 hereof.

12.3 Monthly Assessments.

12.3.1 The initial monthly assessment, through the period ending December 31, 1999, shall be Fifty Dollars (\$50.00) per lot for each lot in the subdivision conveyed by the Declarant and shall commence as provided in Section 12.6 hereof.

12.3.2 From and after January 1, 2000, the monthly assessment shall be set annually by the Board of Directors of the Association.

12.4 Special Assessments for Capital Improvements and Operating Deficits. In addition to the monthly assessments authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement or to cover operating deficits from prior or current periods. Provided, however, that operating deficits occurring prior to the initial conveyance by the Declarant of 100% of the Lots in the Subdivision shall be paid by the Declarant.

12.5 Uniform Rate of Assessment. Both monthly and special assessments for capital improvements and operating deficits must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

12.6 Date of Commencement of Monthly Assessments: Due Dates. The monthly assessment provided for herein shall commence with respect to each Lot on the 1st day of the month following the first conveyance of said Lot by Declarant. The Board of Directors shall fix any increase in the amount of the monthly assessment at least thirty (30) days in advance of the effective date of such increase. Written notice of special assessments and such other assessment notices as the Board of Directors shall deem appropriate shall be sent to every owner subject thereto. The due dates for all assessments shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate in recordable form signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate from the Association regarding the status of assessments for any Lot shall be binding upon the Association as of the date of its issuance.

12.7 Effect of Nonpayment of Assessments: Remedies of the Association. If any assessment (or monthly installment of such assessment, if applicable) is not paid on the date when due (pursuant to Section 12.6 hereof), then the entire unpaid assessment shall become delinquent and shall become, together with such interest thereon and cost of collection thereof as hereinafter provided, a continuing lien on such Lot, binding upon the then owner, his heirs, devisees, successors and assigns. The personal obligation of the then owner to pay such assessments, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum; and the Association

may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, or both, and in the event a judgment is obtained such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action.

No owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

12.8 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. Provided, however, the sale or transfer of any Lot pursuant to the foreclosure of any first mortgage on such Lot (without the necessity of joining the Association in any such foreclosure action) or any proceedings or deed in lieu thereof shall extinguish the lien of all assessments becoming due prior to the date of such sale or transfer.

13. GENERAL PROVISIONS

13.1 Right of Enforcement. In the event of a violation, or threatened violation, of any of the covenants, conditions and restrictions herein enumerated, Declarant, the persons in ownership from time to time of the Lots and all parties claiming under them shall have the right to enforce the covenants, conditions and restrictions contained herein, and pursue any and all remedies, at law or in equity, available under applicable Iowa law, with or without proving any actual damages, including the right to secure injunctive relief or secure removal by due process of any structure not in compliance with the covenants, conditions and restrictions contained herein, and shall be entitled to recover reasonable attorneys' fees and the costs and expenses incurred as a result thereof.

13.2 Amendment. This Declaration may be amended or changed at any time within three (3) years following the date of recordation by an instrument recorded in the Office of the Recorder of Johnson County, Iowa, signed by at least a majority of the then Owners and thereafter by a similar recorded instrument signed by at least seventy-five percent (75%) of such Owners; provided, however, none of the rights of Declarant reserved hereunder may be amended or changed without Declarant's prior written approval. This Declaration shall run with the land and shall be binding upon all parties claiming under them for a period of twenty-one (21) years from the date of recordation in the Office of the Recorder of Johnson County, Iowa. These covenants may be thereafter extended for successive twenty-one (21) year periods as provided in Sections 614.24 and 614.25 of the 1997 Code of Iowa as amended. Invalidation of any of the covenants, conditions and restrictions of this Declaration by

judgment or decree shall in no way affect any of the other provisions hereof, but the same shall remain in full force and effect.

IN WITNESS WHEREOF, Walden Wood Associates II L.L.P. has caused this Declaration to be executed this 29th day of June, 1998.

WALDEN WOOD ASSOCIATES II L.L.P.

By: Southgate Development Company, Inc.
General Partner

By: [Signature]
Myles N. Braverman, President

By: [Signature]
Gary Miller, General Partner



By: RAYMOND J. HAPPEL TRUST NO. 2
General Partner

By: [Signature]
Bill Happel, Co-Trustee

By: MERCHANTILE BANK OF
CEDAR RAPIDS, CO-TRUSTEE

By: [Signature]
Stephen C. Wade VP

By: [Signature]
Susan M. Pence Trust Officer

No
seal

000313

STATE OF IOWA)
)
COUNTY OF JOHNSON)

ss:

On this 29th day of June, 1998, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Myles N. Braverman to me personally known, who, being by me duly sworn, did say that he is the President of Southgate Development Company, Inc., a General Partner of Walden Wood Associates II, L.L.P., an Iowa General Partnership, executing the foregoing instrument, that the seal affixed thereto is the seal of the corporation; that the instrument was signed and sealed on behalf of the corporation as a General Partner of Walden Wood Associates II, L.L.P., an Iowa General Partnership, by authority of the corporation's Board of Directors; and that the said Myles N. Braverman as such officer acknowledged execution of the instrument to be the voluntary act and deed of the corporation and General Partnership by it and by him voluntarily executed.



Teresa L. Morrow

Notary Public in and for said State

STATE OF IOWA)
)
COUNTY OF JOHNSON)

ss:

On this 29th day of June, 1998, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Gary Miller to me personally known, who, being by me duly sworn, did say that he is a General Partner of Walden Wood Associates II, L.L.P., an Iowa General Partnership, executing the foregoing instrument, and that the foregoing instrument was signed on behalf of the partnership by authority of the partners; and that the partners acknowledged the execution of the instrument to be the voluntary act and deed of the partnership by it and by him voluntarily executed.



Teresa L. Morrow

Notary Public in and for said State

000314

STATE OF IOWA)
)
COUNTY OF JOHNSON) ss:

On this 18 day of June, 1998, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Bill Happel to me personally known, who being by me duly sworn did say that he is a Co-Trustee of the Raymond J. Happel Trust No. 2, that said trust is one of the General Partners of Walden Wood Associates II, L.L.P., a General Partnership, that the foregoing instrument was signed in his fiduciary capacity on behalf of the partnership by authority of the partners and he acknowledged the execution of the instrument as such fiduciary to be the voluntary act and deed of Walden Wood Associates II, L.L.P. by it and by him voluntarily executed.



Stefanie Bersland
Notary Public in and for said State

STATE OF IOWA)
)
COUNTY OF IOWA) ss:

On this 16TH day of JUNE, 1998, before me, the undersigned a Notary Public, in and for the State of Iowa, personally appeared STEPHEN C WADE and SUSAN M. FENCE to me personally known, who, being by me duly sworn did say that they are the V. P. and TRUST OFFICER of Mercantile Bank of Cedar Rapids; that the seal affixed thereto is the seal of said corporation; that the foregoing instrument was executed by said corporation in its capacity as a Co-Trustee of the Raymond J. Happel Trust No. 2 in said trust's capacity as a General Partner of Walden Wood Associates II, L.L.P. ; that the instrument was signed and sealed on behalf of the corporation in its fiduciary capacity as a General Partner of Walden Wood Associates II, L.L.P. by authority of the Corporation's Board of Directors and they as such officers acknowledged the execution of the instrument as such fiduciary to be the voluntary act and deed of the corporation and Walden Wood Associates II, L.L.P. by it and by them voluntarily executed.

Jacqueline A. Houlahan
Notary Public in and for said State

NOTARIAL SEAL

000315

EXHIBIT "A"

Beginning at the Southeast corner of the Fractional Southwest Quarter of Section 7, Township 79 North, Range 6 West of the Fifth Principal Meridian, thence S 89° 07' 30" W, a recorded bearing, along the South line of said Southwest Quarter 332.62 feet; thence N 04° 28' 07" E, 413.56 feet; thence N 25° 31' 41" W, 723.64 feet; thence N 57° 16' 06" E, 739.34 feet to a point on the East line of the Fractional Southwest Quarter of said Section 7; thence S 00° 22' 54" W, along said East line, 1460.02 feet to the point of beginning. Said tract of land contains 12.74 acres, more or less and is subject to easements and restrictions of record.

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