

O+I
lots

1905

BOOK 1787 PAGE 136

Prepared By/Mail To: Hinton, Hewett & Wood, P.A.
P.O. Drawer 449
Smithfield, N.C. 27576

NORTH CAROLINA
JOHNSTON COUNTY

RESTRICTIVE COVENANTS
WALNUT CREEK II PHASE I

**Note - These Restrictive Covenants apply to all lots in the subdivision LESS AND EXCEPTING LOTS 7, 8, 9, 10, 87, 88, and 89 as set forth hereinbelow.

THIS DECLARATION OF RESTRICTIVE COVENANTS made on the 22nd day of ~~JANUARY~~, 1999, by MILBAR, INC. a North Carolina Corporation having an address of P.O. Box 595, Selma, North Carolina, hereinafter referred to as "DECLARANT" and being the owners and developers of Walnut Creek II, Phase I, hereinafter referred to as "Park";

WITNESSETH:

THAT WHEREAS, the Declarant is the owner of the Park identified as that real property located in Johnston County, North Carolina, and more fully described as Walnut Creek II, Phase I as set forth in Plat Book 53 at Pages 278-279 of the Johnston County Registry and being identified on a plat prepared by Southwind Surveying and Engineering, Inc. and being dated 18 December 1998. Said recorded plat is incorporated into this declaration fully by reference; and

WHEREAS, the Declarant does hereby subject all Lots as set forth in Plat Book 53 at Pages 278-279 of the Johnston County Registry; LESS AND EXCEPTING LOTS 7, 8, 9, 10, 87, 88, and 89. all being zoned by the Town of Clayton as Office and Institutional (O-1) to those Restrictive Covenants for the mutual benefit and protection of all present and future owners and lessees of property within the Park to insure the proper use, appropriate development and improvement of such property; to protect against the construction of improvements and structures built of improper or unsuited materials; to insure compliance of all applicable zoning ordinances, building codes, environmental laws and regulations; to provide for the maintenance and continued improvements of the common area and the facilities as appurtenant to such property; to provide for the construction and development of superior quality improvements on the property, all designed to protect against depreciation in property value by insuring that the Park will always be an attractive setting for business and industry with high quality improvements.

NOW, THEREFORE, in consideration of the premises and of mutual benefits and duties herein contained, the Declarant hereby declares that the parcels of real property hereinafter described shall be held, sold, and conveyed subject to the following covenants, easements, conditions and restrictions, all of which are for the purpose of protecting the value and desirability of the property and which shall run with the land, the real estate described, and be binding by all parties having a right, title or interest therein, along with heirs, successors and assigns and which shall inure to the benefit to each owner thereof.

ARTICLE I

DEFINITIONS

1.1 Declarant shall mean MILBAR, INC. along with its heirs, executors, successors, and assigns.

1.2 Park shall mean Walnut Creek II, Phase I as set forth in Plat Book 53 at Pages 278-279 of the Johnston County Registry and being identified on a plat prepared by Southwind Surveying and Engineering, Inc. and being dated 18 December 1998. The Park shall consist of all Lots as set forth in Plat Book 53 at Pages 278-279 of the Johnston County Registry; LESS AND EXCEPTING LOTS 7, 8, 9, 10, 87, 88, and 89, which are not zoned O-I.

1.3 Owner shall mean and refer to the purchaser of any lot or lots in the Park and being the record owner of the property as set forth in the Johnston County Registry and consisting of the fee simple title to the property as sold to Owner by Declarant.

1.4 Lessee shall mean any person, firm, partnership or corporation legally possessing a leasehold interest in any portion of the property or the improvements in the Park.

1.5 Building Site shall mean any lot or lots sold by declarant to Owner in the Park where improvements are to be made.

1.6 Properties shall mean the real estate in the Park described as Walnut Creek II, Phase I as set forth in Plat Book 53 at Pages 278-279 of the Johnston County Registry and being identified on a plat prepared by Southwind Surveying and Engineering, Inc. and being dated 18 December 1998. The Park shall consist of all Lots as set forth in Plat Book 53 at Pages 278-279 of the Johnston County Registry; LESS AND EXCEPTING LOTS 7, 8, 9, 10, 87, 88, and 89, which are not zoned O-I.

1.7 Improvements shall mean and include, but not be limited to, all buildings, parking ares, loading spaces, fences, walls, hedges, landscaping, poles, signs, and any structures of any type and kind.

1.8 O-I- shall mean "Office and Institutional" as defined by the Town of Clayton zoning ordinances.

1.9 Architectural Review Committee shall consist of the members of the Declarant, or its appointed designee. The Committee shall not exceed three (3) individuals. The initial Committee shall consist of Donald Millard and Larry K. Barefoot. The Committee shall cease to exist after the completion of construction or improvements made to the last lot in the Park.

ARTICLE II

ALLOWED USES

2.1 The allowed uses shall be any permissible use as defined in the O-I zoning district for the Town of Clayton, North Carolina.

2.2 No obnoxious or offensive trades, services or activities shall be conducted in the Park nor shall anything be done thereon that may be or become an annoyance or nuisance to the owners, tenants or occupants of other improvements within the Park by reason or unsightliness or the obsessive omission of fumes, odors, glare, vibrations, gasses, radiation, dust, liquid waste, smoke or noise.

ARTICLE III

REGULATION OF IMPROVEMENTS

3.1 Improvements. No improvements shall be constructed, erected, placed, altered, maintained or permitted on any parcel within the Park until the plans and specifications thereof have been approved by the Architectural Review Committee as more fully set forth in Article IV of these covenants.

The exterior walls of any building shall be of precast concrete; stucco; wood; vinyl; composite siding; or masonry construction. If concrete masonry units are used in other applications, they must have a stucco finish or some other approved textured finish and color. The use of architectural metal and/or wood for canopies or decorative features may be considered by Declarant. Any variance from the above stated standards must be granted in writing by the Architectural Review Committee.

3.2 Setbacks. No building or structure shall be erected on any building site within the following setback lines:

- (a) Front street - 20 feet.
- (b) Side street - 10 feet.
- (c) Rear line - 20 feet.

Any variance from the above requires the prior written approval of the Architectural Review Committee, unless the variance is governed by the Clayton Planning Department.

3.3 Off Street Parking.

(a) No parking shall be permitted on any street or at any other place other than the paved parking spaces or other surfaces provided for in the building site plan.

(b) All off street parking, access drives, and loading areas shall be constructed of asphalt or concrete and properly graded to insure proper drainage. Appropriate landscaping and property visual screening must be provided between any parking lot and any street or adjacent property in accordance with the Town of Clayton landscaping standards.

(c) Adequate off street parking shall be provided by each owner, invitee and tenant for customers and visitors with the location, number and size of the parking spaces subject to prior written approval of the Architectural Review Committee, pursuant to Article IV, Section 4.2 and 4.3, herein, and approved by the Town of Clayton or the Municipality having appropriate jurisdiction.

3.4 Construction. The construction of all improvements will require the prior approval of the Architectural Review Committee.

3.5 Signs. All signs to be installed at the Park shall first be approved by the Architectural Review Committee. All signs must also comply with all sign ordinances for the Town of Clayton, North Carolina.

3.6 Mailboxes. All mail boxes shall be of a common type. The required mail boxes are being provided and installed by the Declarant or its appointed designee for \$200.00 and all shall be a black receptacle box located on a painted white post as defined and determined by the Architectural Review Committee. In the event the mail box is damaged, destroyed or removed for any reason, it shall be replaced to match all other existing mail boxes in the Park. The type and style of the mailbox shall be approved by the Architectural Review Committee.

3.7 Landscaping. All building sites shall be thoroughly landscaped in accordance with a plan submitted to and approved in writing by the Architectural Review Committee and the Town of Clayton Landscape Standards prior to any development of a building site. Such landscaping plans should include formation regarding the type of sodding, the type of seeding, the type of trees, hedges and shrubs and information regarding customary landscape treatment for the entire site including fences, walls and screening. It will be the responsibility of Owner to landscape and maintain the area

between the lot lines of said owners building site and the curb of any public road way adjacent to such building site. All landscaping must be undertaken and completed in accordance with such approved plan and said plan may not be altered, amended or revised without submitting the revised landscaping plan for prior written approval of the Architectural Review Committee. All landscaping required hereunder or otherwise to be provided on any building site shall be completed within sixty (60) days after the substantial completion of construction of any building to be constructed on the building site; provided, however, if weather conditions do not at such time permit completion; then such landscaping may be completed as soon thereafter as weather conditions permit. If any Owner fails to complete the landscaping within the time limit previously set forth herein, the Declarant may, at its option, after giving the Owner ten (10) days written notice forwarded to the Owner's last known address, undertake to complete the landscaping of the building site in accordance with the landscaping plan. If the Declarant undertakes and completes such landscaping because of the failure of the Owner to complete the same, the cost of such landscaping shall be assessed against the Owner, and if said assessment is not paid within thirty (30) days after written notice of such assessment from Declarant, said assessment shall constitute a lien on the building site and may be enforced as a mechanics or materialman's lien on the property, as by law provided.

3.8 Utilities. All utilities must be located underground, unless otherwise specified by the Town of Clayton, C.P. & L. or power company supplying the utility and Declarant reserves the right to grant easements for the construction, operation, and maintenance of all utility lines in the Park.

3.9 Outside Storage. Outside storage is permitted with the prior approval of the Declarant and must be screened from all streets and adjacent property, except during construction of improvements. Screening shall be by means of landscaping or other acceptable method approved by the Declarant or Architectural Review Committee.

3.10 Exterior Lighting. All exterior lighting must receive prior approval of the Architectural Review Committee and must conform to the Park's central lighting plan established by the Architectural Review Committee.

3.11 Nuisances. Annoying noises, smoke, odors, vibrations, or other nuisances which in any way might adversely affect the high standards of the Park or be objectionable by any property owner shall not be permitted.

3.12 Maintenance. The owner of a building site shall keep its buildings and improvements thereon in a safe, clean, well maintained, neat, wholesome condition and shall comply with all aspects of governmental statutes, ordinances, regulations, health, police, and fire requirements. Each such owner, tenant, or

occupant shall remove, at his own expense, any rubbish or trash of any character that may accumulate on its building site. Rubbish, trash, garbage, and other waste shall be kept only in sanitary containers. All equipment for the storage and disposal of such material shall be kept in a clean and sanitary condition and shall be screened from all streets, buildings, parking areas, and adjacent property.

3.13 Excavation and Drilling. Only such excavation and drilling as are necessary for construction of improvements will be allowed, and all excavated or drilled areas, not covered by buildings or parking areas, shall be filled and landscaped upon completion of construction.

3.14 Subdivision of Lot. No owner may subdivide any lot without the express written consent of the Declarant.

3.15 Hazardous Materials. Lot Owners shall ensure that no hazardous materials are stored, located or disposed of on any lot. Owners shall be totally responsible for any environmental hazard or problem on the lot and Owners shall indemnify and hold the Declarant harmless from any and all environmental defects, hazards or problems caused by the Owner, or their agents and assigns.

3.16 Reservation of Easement. There is hereby reserved to the Declarant and its Assignees a blanket easement upon, across, above and under all property within the Park for access, ingress, egress, installation, repairing, and maintaining all utilities serving the Park or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, cable television system, or security system which the Declarant might decide to have installed for either of themselves or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining or to authorize the installation, repairing, replacing and maintaining of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party requesting such utility or service, request a specific license or easement by separate recordable document, the Declarant shall have the right to grant such easement.

3.17 Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, rules and regulations, use restrictions, and any amendments to any of the foregoing, Declarant hereby expressly reserves unto itself and its successors and assigns a non-exclusive, perpetual right, privilege, and easement with respect to the Park for the benefit of Declarant, its successors, and assigns, over, under, in and/or on the Park, without obligation and without charge to Declarant, for the purposes of taking all actions related to or connected with construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Park and any other property now owned.

The reserved easement shall constitute a burden on the title to the community and specifically includes, but is not limited to:

a. the right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on or in the Park; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities constructed or installed in, on, under, and/or over the Park; and

b. the right to construct, install, replace, relocate, maintain, repair, use, and enjoy signs;

c. no rights, privileges, and easements granted or reserved herein shall be merged into the title of any property, including, without limitation, the Park, but shall be held independent of such title, and no such right, privilege or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quit-claim deed from Declarant releasing such right, privilege, or easement by express reference thereto.

3.18 Location of Improvements on Building Site. All building sites for Lots 49 - 64 as depicted in Plat Book 53 at Pages 278-279 of the Johnston County Registry shall have the building constructed on the Lot with the front of the building facing North Carolina Highway 42. The front of the building shall be determined, defined, and approved by the Architectural Review Committee.

3.19 Minimum Size of Building on Property. No building shall be permitted on any lot which has a ground floor area of the main structure of less than 1,200 square feet for a one-story dwelling, nor less than 1,400 square feet for a dwelling of more than one story. The minimum square footage for any building shall be determined, defined, and approved by the Architectural Review Committee.

ARTICLE IV

ARCHITECTURAL REVIEW COMMITTEE

4.1 The Declarant shall appoint an Architectural Review Committee consisting of no more than three members, appointed by the Declarant. The Architectural Review Committee shall serve at the pleasure of Declarant. Declarant shall have the exclusive right to remove, replace or appoint the Architectural Review Committee.

4.2 No improvements shall be constructed, erected, placed, altered, amended or permitted on any building site until the plans and specifications with respect thereto in matter and form satisfactory to the Architectural Review Committee and the Town of

Clayton, as required, showing the proposed improvements, plot layout and all exterior evaluation, material and colors, signs and landscaping, traffic engineered, number, size and layout of the parking spaces, grading, easements and utilities, proposed building use and number of employees and such other information as may be requested by said committee, has been submitted to and approved in writing by the Architectural Review Committee. Such plans and specifications shall be submitted in writing over the signature of the owner of the building site or the owner's authorized agent and shall be forwarded to the Declarant, or its designated representative of the Architectural Review Committee before or at the same time as site plans are forwarded to the Town of Clayton or municipality having proper jurisdiction.

4.3 Approval shall be based, among other things, on adequacy of building site dimensions, conformity, and harmony of exterior design with neighboring structures, effective location and use of improvements on neighboring building sites, operations and uses; relation of topography, grade and finished ground elevation of building sites being improved to that of neighboring building sites; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of these restrictions. The Architectural Review Committee shall not arbitrarily or unreasonably withhold approval of such plans and specifications.

4.4 If the Architectural Review Committee fails either to approve or disapprove such plans and specifications (including resubmission of disapproved plans and specifications which have been revised) within thirty (30) days after the same have been submitted to (provided that all required information has been submitted), it shall be conclusively presumed that said plans and specifications have been approved, subject, however, to the restrictions contained in Article III hereof and approval by the Town of Clayton. The Architectural Review Committee shall notify the owner, in writing, upon receipt of all required plans and specifications and the aforesaid 30 day period shall commence on the date of such notification.

4.5 Neither the Architectural Review Committee, Declarant, or their respective successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any owner of land affected by this declaration, by reason of mistake in judgement, negligence, or nonfeasance arising out of or in connection with the approval or failure to approve any such plans and specifications. Any person who submits plans to the Architectural Review Committee for approval agrees and stipulates, by submission of such plans and specifications, that every owner or tenant of any of said building sites agrees, by acquiring title thereto or an interest therein, that it will not bring any action or suit against the Architectural Review Committee or Declarant to recover any such damages. Approval by the Architectural Review Committee or Declarant will not condone any non-conformity or failure to comply with the Building Code requirements or zoning

ordinances of the Town of Clayton or the Municipality having appropriate jurisdiction.

4.6 Upon completion of the improvements on the last lot or lots sold in the Park to Owner, the Architectural Review Committee shall cease to exist and the Committee will have no further obligations imposed by these covenants.

ARTICLE V

DURATION, AMENDMENTS AND TERMINATION

5.1 Duration. These Covenants shall become effective on the date they are recorded in the Johnston County Register of Deeds Office and shall continue for a period of twenty (20) from the date of recordation. The covenants shall be extended as set forth in Article VII, Section 7.1, unless they are otherwise amended or terminated, pursuant to this article.

5.2 Amendments. These Covenants may be amended by Declarant for any reason, prior to the sale of any Lot in the Park. After lots are sold, these covenants may be amended by Declarant and a simple majority of Owners in the Park. Every owner, including Declarant, shall have one (1) vote for each lot owned. Once the amendment is approved, it shall be recorded in the Johnston County Register of Deeds Office by Declarant.

5.3 Termination. These Covenants or any one covenant may be terminated prior to the sale of any Lot by Declarant for any reason. After the sale of lots in the Park, any covenant may be terminated by Declarant and a simple majority of Owners in the Park. Every owner, including Declarant, shall have one (1) vote for each lot owned. Once the termination is approved, it shall be recorded in the Johnston County Register of Deeds Office by Declarant.

ARTICLE VI

CONFLICT WITH TOWN ORDINANCE

6.1 If these Covenants, at the time any Article herein is applicable, are more restrictive than the Town of Clayton Ordinances, or any municipality having appropriate jurisdiction, then these Covenants shall apply.

6.2 If these Covenants, at the time any Article herein is applicable, are less restrictive than the Town of Clayton Ordinances, or any municipality having appropriate jurisdiction, then the Town of Clayton Ordinances, or the municipality having proper jurisdiction, shall apply.

ARTICLE VII

MISCELLANEOUS PROVISIONS

7.1 Duration. This Declaration and the Covenants, restrictions, charges and liens set out herein shall run with and bind the land and inure to the benefit of and be enforceable by the Declarant, and every owner of any part of real property in the Plaza, including the Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years, from the date of recordation in the Johnston County Register of Deeds Office. Said Covenants will be automatically extended for successive periods of five (5) years, unless otherwise terminated or amended as provided for in Article V.

7.2 Enforcement. The Declarant or any owner of real property in the Park, shall have the right to enforce any of the Covenants and restrictions set out in any declaration herein. Enforcement of the Covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages against the land, to enforce any lien created by these covenants; and failure of the Declarant or any owner to enforce any such covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter. The Declarant or Lot Owner that prevails in an action at law or in equity shall be entitled to recover reasonable attorney fees as by law provided.

7.3 Severability of Provisions. If any paragraph, section, sentence, clause, or phase of this declaration shall be or become illegal, null, or void for any reason or shall be held by any Court of competent jurisdiction to be illegal, null or void the remaining paragraph, section, sentences, clauses or phrases of this Declaration shall continue in full force and effect and shall not be affected thereby.

7.4 Notice. Wherever written notice to an Owner is permitted or required hereunder, such shall be given by mailing of such to the Owner at the last known address of such Owner appearing on the records of the Johnston County Register of Deeds or Tax Office, unless such Owner has given written notice to the Declarant of a different address, in which event such notice shall be sent to the Owner at the address so designated. In any event such notice shall conclusively be deemed to have been given by the Declarant by placing the same in the United States Mail to the last known address of Owner, whether received by the addressee (Owner) or not.

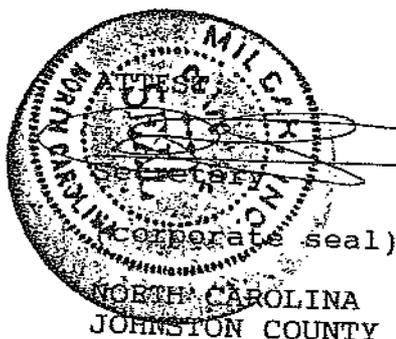
7.5 Jurisdiction. These covenants shall be interpreted pursuant to the laws of the State of North Carolina and any action at law or in equity filed for any reason regarding these covenants shall be filed in the Superior Court of Johnston County, North Carolina.

7.6 Titles. The titles, headings, and captions, which have been used throughout this Declaration are for convenience only and are not to be used in construing this Declaration or any part thereof.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed in its corporate name by its duly authorized officers and its corporate seal affixed hereto by authority of its board of directors, this day and year first above written.

MILBAR, INC. (DECLARANT)

By: Larry K. Burefoot
President



I, Brandy P. Adams, a Notary Public in and for said County and State, do hereby certify that on the 22nd day of January, 1999, before me personally came Larry K. Burefoot with whom I am personally acquainted, who, being by me duly sworn, says that Larry K. Burefoot is the President and that Famelle Mulcaid is the Secretary of Milbar, Inc., the corporation described in and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal; and the name of the corporation was subscribed thereby by said Larry K. Burefoot President, and that the said Larry K. Burefoot President and Famelle Mulcaid Secretary subscribed their names thereto, and said common seal was affixed, all by order of the Board of Directors of said corporation; and that said instrument is the act and deed of said corporation.

Witness my hand and notarial seal, this the 22nd day of January, 1999.

Brandy P. Adams
Notary Public

My commission expires: April 24, 2001

NORTH CAROLINA - JOHNSTON COUNTY
The foregoing certificate/s of Brandy P. Adams
Notary Public/Notaries Public is/are certified to be correct.
Filed for registration and recorded in this office in Book 1787, Page 136
on 22 day of Jan, 1999 at 3:40 o'clock P. M.
Cheryl Wood By _____
Register of Deeds Act / Deputy Register of Deeds



RECORDED VERIFIED
& INDEXED

Architectural Review Committee or Declarant will not condone any non-conformity or failure to comply with the Building Code requirements or zoning ordinances of the Town of Clayton or the Municipality having appropriate jurisdiction.

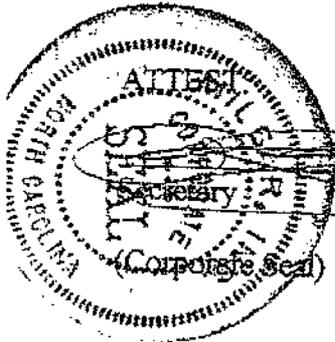
3.5. Upon completion of the improvements on the last lot or lots sold in Walnut Creek, the Architectural Review Committee shall cease to exist and the Committee will have no further obligations imposed by these covenants.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals, this 15th day of October 1999.

DECLARANT:

MILBAR, INC.

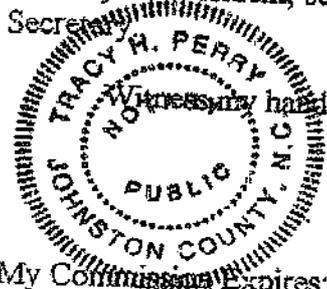
BY: [Signature] (SEAL)



NORTH CAROLINA

JOHNSTON COUNTY

I, Tracy H. Perry, a Notary Public of the County and State aforesaid, certify that Pamela J. Millard personally came before me this day and acknowledged that she/he is Secretary of Milbar, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by her/him as its Assistant Secretary.



Witness my hand and official stamp or seal, this 15th day of October, 1999.

[Signature]
NOTARY PUBLIC

My Commission Expires: 8-2-2000

NORTH CAROLINA — JOHNSTON COUNTY
The foregoing certificate/s of Tracy H. Perry
Notary Public/Notaries Public is/are certified to be correct.
Filed for registration and recorded in this office in Book 1878 Page 398