

# The Meadows at Cherry Hills

Indenture of Trust and Restrictions

BK-10240 PG-0047

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THE MEADOWS AT CHERRY HILLS  
INDENTURE OF TRUST AND RESTRICTIONS

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
1. Definitions	2
2. Easements and Property Rights	3
3. Creation of Association	5
4. Duration	6
5. Covenant for Maintenance Assessments	7
6. Selection of Directors; Meetings of Owners	11
7. Reservation of Expenditures	15
8. Architectural Control	16
9. Directors' Duties and Powers	16
10. Use Restrictions	20
11. General Provisions	25

BK-10240 PG-0048

THE MEADOWS AT CHERRY HILLS  
INDENTURE OF TRUST AND RESTRICTIONS

J & B JOINT VENTURE NO. ONE, a Missouri general partnership (the "Declarant"), and THE MEADOWS AT CHERRY HILLS HOMEOWNERS' ASSOCIATION, a Missouri not-for-profit corporation (the "Association"), make and enter into this Indenture of Trust and Restrictions ("Indenture") effective as of MAY 3, 1994, ~~1993~~.

WHEREAS, Declarant is the owner of certain real property located in St. Louis County, Missouri, which is more particularly described as:

See Exhibit A attached hereto and incorporated herein.

WHEREAS, Declarant desires to create on the above-described property a planned residential community to be known as "The Meadows at Cherry Hills" with open spaces, streets, roads, walkways and other common ground and facilities ("Community"); and

WHEREAS, Declarant desires to insure compliance with those requirements and the general purposes and objectives upon which the Community has been established; and

WHEREAS, Declarant deems it desirable, for the efficient preservation of the values and amenities in the Community, to form a not-for-profit corporation to which the Common Properties (as hereinafter defined) shall be conveyed, and which shall have the powers of maintaining, operating and administering the Common Properties and facilities and administering and enforcing the covenants and restrictions hereinafter set forth and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has caused to be incorporated under the laws of Missouri as a not-for-profit corporation, The Meadows at Cherry Hills Homeowners' Association, for the purpose of exercising the functions aforesaid; and

WHEREAS, all reservations, limitations, conditions, easements and covenants herein contained (hereinafter sometimes referred to as "covenants and restrictions") are jointly and severally for the benefit of Declarant and all persons who may purchase, hold or own from time to time any of the property covered by this Indenture;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above 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, and which shall run with, the real property 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.

BK-10240 PG-0049

1. DEFINITIONS

The following words when used in this Indenture (unless the context shall prohibit or clearly indicate otherwise) shall have the following meanings:

(a) "Association" shall mean and refer to The Meadows at Cherry Hills Homeowners' Association, a Missouri not-for-profit corporation, and its successors and assigns.

(b) "Board" shall mean the Board of Directors of the Association.

(c) "Properties" shall mean and refer to that certain real property herein described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

(d) "Common Properties" shall mean and refer to those areas of land owned by the Association, and/or the easement, license or other occupancy or use rights which the Association may have in any portion of the Properties, or in other land or properties adjacent thereto whether as an appurtenance thereto or otherwise, and which are intended to be devoted to the common use and enjoyment of the Owners of the Properties, including, without limitation, parks, open spaces, playgrounds, streets, subdivision entrance areas and monuments, street lights, storm water control easement areas and facilities, paths, walkways, and other trail systems, and other facilities for the benefit in common of such Owners.

(e) "Declarant" shall mean and refer to J & B Joint Venture No. One, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development.

(f) "Lot" shall mean and refer to the subdivided parcels of land shown on any final recorded subdivision plat of the Properties (with the exception of the Common Properties as herein defined) to be improved with Single Family Dwellings.

(g) "Single Family Dwelling" shall mean and refer to the building consisting of one dwelling unit to be constructed on each Lot.

(h) "Owner" shall mean and refer to the owner of record, whether one or more persons or entities, of the fee simple title to any Lot, including but not limited to the Declarant where applicable but shall not mean or refer to any Mortgagee unless and until such Mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

(i) "Mortgage" and "Mortgagee" shall mean and refer also to a deed of trust and the trustee and beneficiary under a deed of trust, respectively.

BK-10240 PG-0050

2. EASEMENTS AND PROPERTY RIGHTS

(a) Every Owner and every resident of the Properties subject to this Indenture shall have a right and easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Directors to take such steps as are reasonably necessary to protect the Common Properties against foreclosure; and

(ii) The right of the Directors to promulgate rules and regulations governing the use of Common Properties; and

(iii) The right of the Directors to suspend the voting rights and right to use of the recreational facilities by any members or residents for any period during which any assessment remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations; and

(iv) The right of the Directors to charge reasonable admission and other fees for the use of any recreational facilities situated on the Common Properties and require licenses and license fees where it is deemed necessary by the Directors; and

(v) The right of the Directors to dedicate or transfer all or part of the Common Properties, or grant such easements and rights of way in and to the Common Properties, to any public agency, authority, or utility for such purposes and subject to such conditions as may be reasonably necessary for the development of the Community; provided that, subject to the foregoing exception, no conveyance or transfer of all or any of the Common Properties shall be effective unless an instrument agreeing to such conveyance or transfer signed by two-thirds (2/3) of each class of members has been recorded; and

(vi) The right of the Declarant or other builder-developers to utilize the Common Properties for promotional purposes during periods of development; and

(vii) The right of Owners to perpetual easements over any part of the Common Properties for such portion of their dwelling unit that may overhang any Common Properties, and if ingress or egress is typically provided to a dwelling unit over a particular portion of the Common Properties, then the right of said Owner of ingress and egress over such particular portion of the Common Properties; and

(viii) The right of the Directors to enter into licensing agreements with commercial enterprises for the operation of recreation facilities and related concessions for the benefit of Owners and residents of the Properties; and

BK-10240 PG-0051

(ix) The right of the Directors to annex additional residential and Common Properties to the Community.

(b) The Common Properties shall be for the benefit, use, and enjoyment of the Owners, present and future, of the Community and, at the discretion of the Board of Directors, may also be used by residents outside the Community. If residents outside the Community are permitted to use the Common Properties:

(i) No Owner in the Community shall be denied the use of the Common Properties for any reason related to the extension of such privilege to non-residents of the Community;

(ii) All rules and regulations promulgated pursuant to this Indenture with respect to Owners in the Community shall be applied equally to the Owners;

(iii) All rules and regulations promulgated pursuant to this Indenture with respect to non-residents of the Community shall be applied equally to the non-residents;

(iv) At any time after recording of this Indenture, a majority of the residents of the Community, by election duly called, may elect to allow or disallow usage of the Common Properties by non-residents of the Community.

(c) Every utility easement on each Lot shall constitute an easement for utility purposes to serve any other Lot or Common Properties.

(d) In the event that any utilities and connections therefor serving a Lot are located in part on a Lot other than the Lot being served by such utilities and connections, the utility company, the Owner of a Lot being served, and the contractors and employees of such company or Owner shall have the right and easement to enter upon the Lot in which the utility line or connection is located for the repair, maintenance and replacement of such line or connection.

(e) There shall be and is hereby imposed upon each Lot an easement as shown on the recorded plat thereof for reasonable ingress and egress by or on behalf of the Owner of any adjoining Lot for the purpose of repair, maintenance or replacement of improvements on such adjoining Owner's Lot.

(f) Should any portion of any Single Family Dwelling or other improvement as originally constructed, or any planting or tree, overhang or encroach on an adjacent Lot, the Owner of any such Single Family Dwelling or other improvement, planting or tree shall have a license to enter upon such adjacent Lot for the purpose of necessary repair and maintenance of such overhanging or encroaching portion of such Single Family Dwelling or other improvement or to trim such overhanging or encroaching planting or tree. Should any

BK-10240 PG-0052

portion of any Single Family Dwelling or other improvement as originally constructed overhang or encroach on an adjacent Lot ("Encroachment"), the Directors are hereby appointed as agent and attorney-in-fact for and on behalf of each of the Owners affected by the Encroachment and may petition the proper authorities for a boundary line adjustment or request such variance as may be necessary ("Adjustment/Variance") to allow for said Encroachment and the Directors, as agent and attorney-in-fact, may also execute and file of record such easement or other necessary documents of record on behalf of each Owner to effectuate such Adjustment/Variance granted upon the determination and payment of reasonable compensation, if any, to the Owner affected by such change to be paid from funds assessed against the Owner benefitting therefrom. All Owners shall be bound by any resulting Adjustment/Variance granted.

(g) There have been or may be designated on the subdivision plat or plats subject hereto driveway easements for the joint and mutual use and benefit of the Lots on which they are located and the Lots to which they provide access from a street. Those easements are to be held by the respective Owners of each of those Lots, and their respective heirs, executors, administrators, successors and assigns as appurtenant to the Lot owned by each of those Owners. The Owners of each of those Lots shall be jointly responsible for the maintenance and repair of the driveway improvement located on each such easement and each such Owner shall pay an equal share of the cost of maintenance. In the event that any such driveway improvement is not kept in good repair, upon thirty (30) days' written notice by the Directors to each Owner, the Directors may cause such maintenance or repair to be provided and the reasonable cost thereof shall be a charge and lien against each Lot to which such driveway easement is appurtenant, in the amount of the equal portion of such cost allocated to such Lot. Said charge shall be enforceable in the same manner as herein provided in Section 8 hereof.

(h) There shall be and hereby is imposed a non-exclusive perpetual easement ten (10) feet in width along the rear lot line of all Lots for the construction and placement of a sight-proof privacy fence not to exceed six (6) feet in height as may be deemed necessary by the respective Declarant of said Lot for privacy screening and aesthetic improvement to the Community.

### 3. CREATION OF ASSOCIATION

(a) Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

(b) The Association shall have two classes of voting memberships:

BK-10240 PG-0053

(i) Class A: 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 determine, but in no event shall more than one vote be cast with respect to any Lot.

(ii) Class B: The Class B member(s) 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 either of the following events, whichever occurs earlier:

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

(b) December 31, 1998

#### 4. DURATION

The covenants and restrictions established by this Indenture shall run with the land and continue and be binding upon Declarant and the Directors and upon their successors and assigns for the longer of the following: (i) for the duration of the subdivision, or (ii) for a period of twenty (20) years from the date this Indenture is recorded, and shall automatically be continued thereafter for successive periods of fifteen (15) years each; provided, however, that the fee simple record Owners of the Lots now subject and hereafter made subject to this Indenture, by vote of two-thirds (2/3) of the Lot Owners entitled to vote, may terminate the Indenture or release all of the Properties restricted thereby at the end of said twenty (20) year period or any fifteen (15) year period thereafter, by executing and acknowledging an appropriate agreement or agreements in writing for such purposes and filing same for record in the office of the Recorder of Deeds of St. Louis County, Missouri, at least one (1) year prior to the expiration of said twenty (20) year period or of any fifteen (15) year period thereafter.

In the event the subdivision is vacated, this Indenture shall terminate and the Board shall convey fee simple title to the Common Properties to the then Lot Owners as tenants in common and shall dissolve the Association pursuant to the vote of the members as provided above. The rights of the tenants in common shall be exercisable appurtenant to and in conjunction with their Lot ownership. Any conveyance or change in ownership of any Lot shall convey with it ownership in the Common Properties, and no interest in the Common Properties shall be conveyed by an Owner except in conjunction with the sale of a Lot. The sale of any Lot shall carry with it all the incidents of ownership of the Common Properties



BK-10240 PG-0055

the cost of labor, equipment, materials, management and supervision thereof and for such other needs as may arise and for maintenance of reserves for the benefit of the Association.

(d) (i) In addition to the annual assessment herein authorized, there may be levied in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement within or upon the Common Properties or any easement, street, drive, walkway or other right-of-way provided for the benefit of the Lots subject hereto, and including the provision of necessary fixtures or personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the vote of each class of members 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 members not less than thirty (30) days nor more than sixty (60) days in advance and shall set forth the purpose of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

(ii) In addition to other special assessments authorized by this Subsection (d), the Directors may make a separate special assessment, without a vote of the members, for the operation and maintenance of sewer systems and creeks and other storm water control easements and facilities including, but not limited to, retention and detention ponds. The assessment provided for by this paragraph of Subsection (d) shall be allowed and applicable until the operation and maintenance of such sewer systems and such creeks and other storm water control easements and facilities have been accepted for maintenance by an appropriate public body, agency or utility company. The Directors may also make a separate special assessment pursuant to this paragraph of Subsection (d) as necessary for compliance with all subdivision and other ordinances, rules and regulations of all governmental or quasi-governmental authorities maintaining jurisdiction and control in and to the Properties. Specifically, but not by way of limitation, the Board of Directors may make provisions for the maintenance and operation of all street lights, roadways, easements and utilities.

(iii) The provisions of this Section 5 with respect to the establishment of due dates, effect of non-payment and remedies for enforcement shall be applicable to any special assessment levied as hereinabove authorized.

BK-10240 PG-0054

although such is not expressly mentioned in the deed of conveyance; provided, however, that no right or power conferred upon the Directors shall be abrogated.

5. COVENANT FOR MAINTENANCE ASSESSMENTS

(a) Except as set forth in Subsection 5(h), the Declarant, 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 their conveyance, shall be deemed to covenant and agree to pay to the Association (i) annual assessments or charges, and (ii) special assessments or charges, with such assessments or charges to be fixed, established and collected from time to time as hereinafter provided, including, but not limited to, any charges or assessments created pursuant to Section 5(e) below.

(b) Any and all annual and special assessments, and charges as provided in this Section 5 together with such interest thereon and costs of collection thereof, shall be a charge against the title of each Lot and shall be a continuing lien upon the Lot against which such assessment or charge is made, which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns without the need or requirement of filing any additional documentation with respect to such lien. Recording of this Indenture constitutes record notice and perfection of the lien as to assessments which become delinquent thereafter, together with interest thereon and cost of collection thereof as hereinafter provided. Further recording of a claim for assessment and/or charge under this Section 5 is not required. The Association shall be entitled to enforce collection of any and all of such assessment(s) and/or charge(s), interest and costs through enforcement of such lien, whether by foreclosure or otherwise. Each such assessment and/or charge, together with such interest thereon and cost of collection thereof as herein provided, shall also be the personal obligation of the Owner of such Lot at the time when the assessment became due. Notwithstanding anything herein to the contrary, the lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and non-payment of any such annual or special assessment shall not constitute a default under any federally insured mortgage.

(c) The assessment(s) and/or charge(s) levied under this Section shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Properties or for maintaining the market value of 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 improvement, maintenance and operation of the Common Properties and all facilities thereon, including, but not limited to, the payment of taxes and insurance thereon, debt service and repair, maintenance, replacements and additions thereto and for

BK-10240 PG-0056

(e) In addition, the Directors may levy a special assessment or charge against any Owner and/or Lot for all costs and expenses incurred, including costs of collection, interest, attorney's fees and other associated costs for purposes of making repairs or maintenance to a Lot or improvements thereon, which repairs or maintenance the Owner has failed to make or for repairing any damage caused by an Owner or such Owner's employees, agents, invitees or tenants. Nothing herein shall be deemed to impose absolute liability without respect to fault or negligence upon the Owners for damage to the Common Properties or the Lots.

(f) Assessments shall be made in a manner and subject to the following procedure:

(i) As to annual assessments, on or before thirty (30) days in advance of each assessment year, as established by the Directors, the Directors shall prepare a proposed budget for the upcoming assessment year taking into consideration all anticipated items of expense, including reasonable replacement and other reserves. Based upon the proposed budget, the Directors shall establish the annual assessment for the upcoming assessment year. The Directors shall set the due date for payment of the assessment, and may provide for a periodic payment schedule if deemed desirable by the Directors. If at any time during an assessment year, the Directors determine in their reasonable opinion that the annual assessment will not provide sufficient funds during the assessment year to cover the expense of items in the proposed budget and/or the expense of any items not indicated on the proposed budget which may occur and are non-extraordinary and reasonably necessary to the general operation of the Association and/or the Common Properties, then the Directors may levy an additional supplemental assessment for the remainder of the assessment year in the amount necessary to cover the anticipated revenue deficit for that assessment year. The right and power to levy a supplemental annual assessment shall extend to the Directors for the first assessment year and each assessment year thereafter. Written notice of any levy of a supplemental assessment shall be given to each Owner and payment shall be made as directed by the Directors in such notice.

(ii) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant, the maximum annual assessment shall be five hundred dollars (\$500.00) per Lot.

(A) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(B) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner other than Declarant, the maximum annual assessment may be increased

BK-10240 PG-0057

above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(C) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(iii) Subject to requisite member approval as set forth herein, special assessments shall be made by the Directors upon thirty (30) days notice, and, at the discretion of the Directors, may be payable in a lump sum, in periodic installments or due and payable within thirty (30) days from the date of such notice.

(iv) Any charge or assessment imposed by the Association, with the exception of an assessment under Section 5(e) hereof, shall be divided among Owners on the basis of an equal amount per Lot.

(v) Notice of any assessment shall be given by the Directors, either by mail, postage prepaid, addressed to the address shown on the real estate assessment records of St. Louis County or any appropriate municipality (and notice so given shall be considered given when mailed), or by posting a brief notice of the assessment upon the Lot itself.

(vi) The failure or delay of the Directors to prepare or serve any budget or any annual or special assessment shall not constitute a waiver or release in any manner of any Owner's obligation to pay such assessment whenever the same shall be made, and in the absence of any annual assessment the Owner shall continue to pay at the then existing rate established for the previous payment.

(g) If any assessment or charge is not paid within thirty (30) days after the delinquency date, such assessment shall bear interest from the date of delinquency at the lesser of eighteen percent (18%) per annum or the highest rate allowed by law, and the Directors may bring legal action against the Owner personally obligated to pay same, and, in addition, shall be entitled to the rights as set forth in Section 5(b) hereinabove with respect to enforcement of payment of same. The Board of Directors is hereby authorized to notify any Mortgagee that the Board is taking steps to collect unpaid assessments or to enforce a lien against said Lot.

(h) The following properties subject to this Indenture shall be exempt from the assessments, charges and liens created herein:

(i) All Common Properties.

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

BK-10240 PG-0058

(iii) All Lots owned by the Declarant or successor builder-developers before title to the Lot has been transferred to the first purchaser thereof at retail (as distinguished from sale in bulk or at wholesale to others for development or resale). Any Lot located within lands added hereto, the Owners or residents of which are not eligible to use portions of the Common Properties, shall not be subject to assessment for such portions of the Common Properties.

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

(j) The liability for an assessment may not be avoided by a waiver of the use or enjoyment of any Common Properties, services or recreation facilities, or by abandonment of the Lot against which the assessment was made, or by reliance upon assertion of any claim against the Board of Directors, the Association or another Owner.

(k) Nothing contained herein shall abridge or limit the rights or responsibilities of Mortgagees and nothing herein shall be construed to require a Mortgagee to collect the assessments provided for herein.

(l) This Section 5 does not prohibit the Association from taking a deed in lieu of foreclosure.

(m) A judgment or decree in any action brought under this Section is enforceable by execution of the judgment and shall include costs and reasonable attorney's fees and paralegal expenses for the prevailing party.

(n) Any payments received by the Association in discharge of a Lot Owner's obligation may be applied to the oldest balance due.

#### 6. SELECTION OF DIRECTORS; MEETINGS OF OWNERS

(a) The Board of Directors of the Association shall consist of three (3) members. The original directors are Richard T. Sullivan, Jr. ("Director 1"), Barry Simon ("Director 2") and John F. Eilermann, Jr. ("Director 3"). During the period of service of Director 1, Director 2, or Director 3 or their appointed successors ("Original Directors"), one or more shall be subject to removal, with or without cause, and Declarant shall have the exclusive right to designate the successor to such removed Director for his or her unexpired period of service as provided for hereunder. Should any of the Original Directors die, resign, or cease to hold office as set out, or decline to act or become incompetent or unable for any reason to discharge the duties, or avail himself or herself of or exercise the rights and powers hereby granted or bestowed upon them as Directors under this Indenture, then Declarant shall have the exclusive right to designate the successor thereto for his or her unexpired period of service as provided for hereunder. In the event

BK-10240 PG-0059

that the provisions of this Indenture cannot be fulfilled due to unfilled vacancies among the Directors, a Lot Owner may petition the St. Louis County Council (and the Council shall have the right and power) to appoint or cause to be appointed a director to fill the vacancy during said interim ("Interim Director"). Any Interim Director who is not an Owner shall receive a reasonable fee for services rendered and the fee shall be determined by the Directors who are not Interim Directors. The fee shall be levied as a special assessment against the Lots, which assessment shall not be subject to any limitations on special assessments, if any, contained in this Indenture.

(b) Until such time as Declarant has sold and conveyed all of the Lots (regardless of whether such Lots are constructed and/or sold in phases), which may be subject to this Indenture to persons or entities other than a successor builder or developer, the following procedure for designating successor Directors shall be followed:

(i) After Declarant has sold and conveyed fifty percent (50%) of the Lots which may be subjected to this Indenture to persons other than a successor builder or developer, Director 1, or his appointed successor Director shall resign and his or her successor shall be elected by the members other than Declarant at a special meeting of the members to be called thereafter, such successor being the nominee receiving the highest number of votes cast. Such Director shall serve as Director until all Directors are elected by members other than Declarant under the provisions of Section 6(c) following.

(ii) After Declarant has sold and conveyed ninety-five percent (95%) of the Lots which may be subjected to this Indenture to persons other than a successor builder or developer, Director 2, or his appointed successor Director shall resign and his or her successor shall be elected by the members other than Declarant at a special meeting of the members to be called thereafter, such successor being the nominee receiving the highest number of votes cast. Such Director shall serve as Director until all Directors are elected by members other than Declarant under the provisions of Section 6(c) following.

(iii) After Declarant has sold and conveyed one hundred percent (100%) of the Lots which may be subjected to this Indenture to persons other than a successor builder or developer, Director 3, or his appointed successor Director shall resign and his or her successor shall be elected by the members of the Association at a special meeting of the members to be called thereafter, such successor being the nominee receiving the highest number of votes cast. Such Director shall serve as Director until all Directors are elected by members of the Association under the provisions of Section 6(c) following.

BK-10240 PG-0060

(iv) Declarant, in its sole discretion, may (but shall not be required to) appoint a second and/or third Director from the membership of the Association prior to the time designated for election of a second and/or third Director as set out in paragraphs 6(b)(ii) and (iii) above. In anticipation of the Declarant exercising this option, the Association may call a special election in accordance with the provisions of this Indenture to elect an Owner or Owners to be the nominee(s) for Director(s) to be appointed by the Declarant under the provisions of this subparagraph (iv). In the event the Declarant does appoint the nominee(s) elected by the Association as the second and/or third Director(s) prior to the time set forth in paragraph 6(b)(ii) and (iii) above, then such nominee(s) shall become a Director(s) with full powers and shall not be subject to removal by the Declarant, just as if such nominee(s) were elected pursuant to the provisions of 6(b)(ii) and (iii), and no Director(s) shall be elected by the members under the provisions of 6(b)(ii) and (iii) and the appointed nominee(s) shall serve as Director(s) until all Directors are to be elected by the Owners under the provisions of paragraph 6(c). The Declarant shall exercise its option to appoint the Association nominee(s) by recording a written instrument evidencing the exercise of such option in the St. Louis County, Missouri land records.

(c) After Declarant has sold and conveyed all of the Lots which may be subjected to this Indenture other than to a successor builder or developer, the following procedure shall be followed:

(i) All of the then acting Directors shall resign;  
and

(ii) At a special meeting of the members, three (3) Directors shall be elected, one for a term of three (3) years, one for a term of two (2) years and the third for a term of one (1) year.

(iii) After the expiration of the term of office of the Directors elected as provided in Section 6(c)(ii), each successor Director must be a member, and shall be elected by members, and each such successor Director shall serve for a term of three (3) years so that the terms shall be continuously staggered, one (1) Director being elected at each annual meeting of the members.

(d) Following each annual meeting of the Association as provided for herein, the Directors shall designate one (1) of its members to serve as Chairperson and President, one (1) member to serve as Secretary, and one (1) member to serve as Treasurer, until the time of the next following annual meeting.

(e) There shall be an annual meeting of the Association (subject to the provisions of Section 6(j) hereof) to be held on the first Saturday of March of each year during the term of this Indenture, said meeting to be held at a convenient place in the County of St. Louis, and there may be special meetings of the

BK-10240 PG-0061

Association as may be called by any one of the Directors, also to be held at a convenient place in the County of St. Louis. No less than ten (10) days' notice in writing to each member of the time and place of any annual or special meeting shall be given by the Directors or by the Director calling said meeting, by depositing same in the United States mail, properly addressed to the address shown on the real estate tax assessment records for each Owner and with postage prepaid. The successor to an elected Director whose term has expired shall be elected at the special meeting called for that purpose. At any annual or special meeting each Lot shall be entitled to one (1) vote and any action or proposal to be approved shall require approval by a majority of votes cast at such meeting. Any vote may be cast in person or by proxy. Any designation of a proxy shall be on a form approved by the Directors and shall be filed with the Directors at least forty-eight (48) hours before any meeting at which such proxy will vote. Any member who has failed to pay any assessments due and payable shall not be entitled to vote at any annual or special meeting provided for herein. The person or persons receiving the highest number of votes cast shall be deemed elected and shall, upon his, her or their acceptance in writing, at once and by force of this Indenture imposed, succeed to, be vested with, and possess and enjoy as a joint tenant but not as a tenant in common, with the remaining Directors, all of the estate, rights, interests, privileges and powers granted by this Indenture to the Directors. In the event that any Director elected hereunder shall die or become unable for any reason, to discharge the duties or avail himself or herself of or exercise the rights and powers herein granted or bestowed upon him, her or them as Directors under this Indenture, then and thereupon, it shall be the duty of the remaining Directors to select a successor.

(f) If a Lot is jointly owned, only one person shall be entitled to vote for the Owners of that Lot and such person shall be known as the "Voting Member." If a Lot is jointly owned and if one of the multiple Owners of that Lot is present at a meeting of the Association, he or she shall be entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners are present, the vote allocated to that Lot may be cast only in accordance with the agreement of the majority in interest of the multiple Owners. Once the majority position has been established the Voting Member shall cast the vote. There is majority agreement if any one of the multiple Owners casts the vote allocated to that Lot without protest being made to the person presiding over the meeting by any of the other Owners of the Lot. A corporation, if an Owner, shall act through its president or through another officer or director as the board of directors of that corporation designates in writing. A partnership, if an Owner, shall act through a partner as designated by the partnership in writing. A trust, if an Owner, shall act through its trustee. If there is more than one such trustee for a trust, then the beneficiaries of such trust shall designate in writing which trustee shall be entitled to vote. All designations of Voting Members shall be held by the Board of Directors.



BK-10240 PG-0062

(g) All Directors, except Interim Directors and the Original Directors, shall be Owners. If any Owner is a corporation, partnership or trust, then any partner, officer, director, employee or agent of such corporation or partnership or trustee of such trust may be a Director.

(h) No business may be transacted at any meeting (special or general) at which there is not a quorum, except as provided below. Except as otherwise provided herein, a quorum shall be deemed present at a meeting of the Association if the members in attendance at the beginning of the meeting represent at least ten percent (10%) of the votes of each class of members eligible to vote at the time of the meeting, either in person or by proxy. If proper notice is given and a meeting called at which the proposed business cannot be conducted because of failure to achieve a quorum, then the Directors may either:

(i) Give another notice of the meeting indicating the proposed business or purpose and if such meeting is held within thirty (30) days of the date of the first meeting at which there was no quorum, then there shall not be a quorum requirement to transact the proposed business at such second meeting; or

(ii) Take a vote of the Association on any proposed business by written ballot of the members in lieu of a meeting.

(i) A quorum is present at a meeting of the Directors if a majority of the Directors are in attendance. All actions of the Directors shall be by majority vote. The Directors may take action by majority vote on written ballots or by unanimous consents in lieu of a meeting.

(j) For the period from the date of execution hereof until such time as there are fewer than two Original Directors still serving, at the option of the then existing Directors, no annual meeting of the Association shall be held. During such period, the Directors may appoint an advisory board consisting of Owners. The number of members of such advisory board shall be the number deemed appropriate by the Directors from time to time. The members of such advisory board shall serve at the will of the Directors. The advisory board shall be formed for the purpose of reporting to and/or advising the Directors concerning the status and operation of the Properties. Such advisory board may hold informal meetings of members if so desired by the advisory board, but such meetings are not required.

#### 7. RESERVATION OF EXPENDITURES

The Declarant reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended, deposited, placed in escrow, or subsequently provided by it for utility facilities or services, streets, subdivision fees or for any other purpose of any nature or

BK-10240 PG-0063

description with respect to any subdivision or land which is now or may in the future be made subject hereto. Declarant further reserves the right to receive and retain any monies, damage payments or condemnation award for any easement or other interest granted or condemned as to any street or Common Properties within the Properties.

8. ARCHITECTURAL CONTROL

(a) From and after such time as a Lot becomes subject to assessment as provided herein, no building, fence, wall, driveway or other structure or improvement of any sort shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition or removal of all or any part thereof, or exterior change or alteration in any improvement thereon be made, nor shall any removal of any tree with a three inch or greater caliper or any change in grade or slope of any Lot be made, until all plans and specifications showing the degree, nature, kind, shape, size, square footage, height, elevation, materials, colors, location of the same entrances and driveways, and configuration of all improvements upon said Lot shall have been submitted to and approved by the Directors. All decisions rendered by the Directors shall be deemed final. It is the intent of this Indenture that the restrictions of this Section shall not apply for Declarant until such time as the Lot is subject to assessment as provided herein. With respect to architectural approvals, the Directors, at their option, may appoint an architectural approval committee comprised of not less than three nor more than five Owners to review all proposed construction and submit recommendations of approval or disapproval of same to the Directors. All requests for approval submitted to the Board of Directors shall be deemed automatically approved if no response is given within sixty (60) days of making submissions.

(b) A Lot Owner may not change the appearance of the improvements within or upon the Common Properties.

(c) All additions, alterations and improvements to the Lots and Common Properties shall not, except pursuant to prior approval of the Board of Directors, cause any increase in the premiums of any insurance policies carried by the Association or by the Owners of any Lots other than those affected by such change.

9. DIRECTORS' DUTIES AND POWERS

The Directors shall have the following rights, powers, duties and obligations:

(a) To acquire and hold the Common Properties and to transfer or sell the Common Properties in accordance with the provisions provided for herein including Sections 2(a)(v), 4 and 11(h), to exercise control over the Common Properties, continuously maintain, improve and operate same with landscaping, shrubbery, decorations, buildings, recreational facilities and structures of

BK-10240 PG-0064

any kind or description, and any and all other types of facilities in the interest of the health, welfare, safety, recreation, entertainment, education and for the general use of the Owners of the Properties, to grant such easements and rights-of-way over the Common Properties to such utility companies or public agencies or others as they shall deem necessary or appropriate in accordance with the provisions of Section 2(a)(v), to make rules and regulations, not inconsistent with the law and this Indenture, for the use and operation thereof and in every and all respects govern the operation, functioning and usage of the Common Properties.

(b) To maintain, repair and replace any improvements on Lots which have been neglected and to charge the Owner thereof with the reasonable expense incurred, which shall be a lien against the Lot owned by such Owner and improvements thereon pursuant to Section 5(e) hereof.

(c) To exercise such control over the easements, streets, drives, trail systems, walkways and rights-of-way (except for such as have been or may hereafter be dedicated to public bodies or agencies) as is necessary to maintain, repair, supervise and insure the proper use of said easements, streets, drives, trail systems, walkways and rights-of-way by the necessary public utilities and others, including the right (to themselves and to others to whom they may grant permission) to construct, operate and maintain on, under and over said easements, streets, drives, trail systems, walkways and rights-of-ways, street lights, sewers, pipes, poles, wires and other facilities and public utilities for service to the Lots within the lands subject hereof, and to establish traffic regulations for the use of such streets, drives and walkways to operate and maintain a system of street lights and pay electric utility payments on the system at such time as the system is completed and delivered to the Directors, and to operate and maintain any storm water control easement and facilities, including lakes and other retention areas, serving any portion of the Properties, which have not been accepted for maintenance by any appropriate public body, agency or utility company.

(d) To plant, care for, maintain, spray, trim, protect and replace trees, shrubbery and vegetation within any rights-of-way, to decorate the entranceway to the subdivision by appropriate landscaping or by a subdivision sign or in such other manner as the Directors shall deem appropriate.

(e) To dedicate the private streets, drives, walkways, or rights-of-way, or any portion or portions thereof, when such dedications would be accepted by an appropriate public agency.

(f) At the discretion of the Directors, to designate certain parking areas for the sole and exclusive use of Owners, their occupants, guests or invitees.

BK-10240 PG-0065

(g) To clear rubbish and debris and remove grass and weeds from and trim, cut back, remove, replace and maintain trees, shrubbery and flowers upon any neglected property, and to charge the Owners thereof with the reasonable expense so incurred, which shall be a lien against such parcel of neglected property. The Directors, or their agents or employees, shall not be deemed guilty or liable for any manner of trespass for any such abatement, removal or planting.

(h) At the discretion of the Directors, to provide for the collection of trash, rubbish and garbage and otherwise to provide such services as shall be in the interest of the health, safety and welfare of the Owners and residents, and to enter into and assume contracts for such purposes covering such periods of time as they may consider advisable; provided, however, that neither Declarant, nor the Association, nor their respective officers, directors, successors, assigns, agents, employees, affiliates or licensees shall provide or maintain or be responsible for providing or maintaining, in any way, security for all or any portion of the Properties, and for any Owners, or Owners principals, shareholders, partners, agents, family members, invitees or guests. Furthermore, each and every Owner, its principal(s), shareholder(s), partners, agents, family members, invitees and guests, hereby release and hold harmless the Declarant (including any successor builder or developer) and the Association, and their respective officers, directors, successors, assigns, agents, employees, affiliates or licensees from and against any and all claims, demands and liabilities for any damage to real or personal property or injury or death resulting in any way, due to the existence or level of security provided with respect to the Properties.

(i) 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 and other employees as they deem necessary or advisable, employ counsel to advise the Directors or to institute and prosecute such suits as they deem necessary or advisable, and to defend suits brought against them individually or collectively in their capacity as Directors.

(j) To receive, hold, convey, dispose of and administer in trust for any purpose mentioned in this Indenture any gift, grant, conveyance or donation of money or real or personal property.

(k) With regard to all property, real, personal or mixed, owned or held by them as Directors, the full and unqualified right, power and authority to:

(l) Make all contracts and incur all liabilities necessary, related or incidental to the exercise of the Directors' powers and duties hereunder, including the construction of improvements.

BK-10240 PG-0066

(ii) Purchase insurance against all risks, casualties and liabilities of every nature and description.

(iii) Borrow money, including making a permanent, temporary or construction loan, make and execute promissory notes or incur liabilities and obligations with respect thereto and to grant a lease or leasehold security interest in Common Properties to secure such obligations such that the secured party could charge admissions for the use of said Common Properties to Owners or a wider public until the loan with respect thereto was repaid.

(iv) Sell, convey, trade, exchange, use, handle, manage, control, operate, hold, and deal in and with, in all respects, limited only as provided in this Indenture or by law.

(l) In the event it shall become necessary for any public agency to acquire all or any part of the Common Properties for any public purpose, the Directors are hereby authorized to negotiate with such public agency for such acquisition and to execute such instruments as may be necessary for conveyance to any such public agency subject to the provisions of Section 2(a)(v). Should acquisitions by eminent domain become necessary, only the Directors need be made parties, and subject to the reservation by Declarant, as provided in Section 7 hereof, any monies, damage payments or condemnation award shall be held by the Directors for the benefit of the Owners of the Lots subject hereto.

(m) The Directors shall deposit the funds coming into their hands, as Directors, in a state or national bank protected by the Federal Deposit Insurance Corporation.

(n) All rights, powers, duties, privileges and acts of every nature and description conferred upon the Directors by the terms of this Indenture may be executed and exercised by a majority of the Directors, unless otherwise provided herein. The Directors shall not be personally liable for their acts in the performance of their duties, except for dishonesty or acts criminal in nature, and the Association shall indemnify and hold the Directors harmless from all such acts to the extent permitted by law.

(o) Notwithstanding any other condition herein, the Directors shall make suitable provision for compliance with all subdivision and other ordinances, rules and regulations of all applicable governmental or quasi-governmental authorities maintaining jurisdiction or control in and to the Properties. Specifically, and not by way of limitation, the Directors shall make provision for the maintenance and operation of all street lights, roadways, storm water facilities and easements not otherwise accepted by a public agency or utility.

BK-10240 PG-0067

(p) At the discretion of the Directors, the Directors may enter into licensing agreements with commercial entities for the management and operation of any portion of the Common Properties, including, without limitation, any recreational facilities and/or any related concessions, for the benefit of the Owners and residents of the Properties.

(q) The Directors, upon proper approval from appropriate governmental authorities, shall have the power to erect ornamental entrance monuments to the Properties, such monuments to be located on the street corners and/or median within the street right-of-way and adjacent easements as may be shown on any recorded subdivision plat of the Properties. The Directors shall have the duty to maintain and repair those monuments, together with all related equipment, utility facilities and landscaping located on the aforementioned corners, median and/or easements. If required to do so in writing by any governmental or quasi-governmental authorities maintaining jurisdiction or control in and to the Properties, the Directors shall within thirty (30) days of receipt of the aforementioned request, remove the entry monuments from the aforementioned street corners and/or median.

#### 10. USE RESTRICTIONS

(a) The following restrictions shall apply to all portions of the Properties, and Declarant, for and on its behalf and on behalf of each and every subsequent Owner of any Lot therein, their grantees, lessees, successors and assigns, covenants that:

(i) 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 Directors. No residence, other than one Single Family Dwelling, may be constructed on each Lot.

(ii) No commercial activity of any kind shall be conducted on any Lot, but nothing herein shall prohibit the maintenance of such facilities as are incident to the sale of residences nor the carrying on of promotional activities by the Declarant, or any successor builder-developer, nor the conduct of a home occupation in strict accordance with the provisions of the applicable zoning ordinances.

(iii) 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.

(iv) Each Owner shall maintain and keep his Lot in good order and repair.

BK-10240 PG-0068

(v) No animals, reptiles, birds, horses, rabbits, fowl, poultry, cattle or livestock of any kind, shall be brought onto or kept on any portion of the Properties, except that no more than two dogs, cats, or other household pets (except house pets with vicious propensities) and aquariums may be kept or maintained on any Lot. The keeping of any pet which by reason of its noisiness or other factor is a nuisance or annoyance to the neighborhood is prohibited.

(vi) 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 (A) Owners from placing one "For Sale" or "For Rent" sign (not to exceed 2 feet x 4 feet in dimension) on a Lot or (B) signs erected or displayed by Declarant or by a successor builder-developers in connection with the development of the Properties and the sale, rental, and/or construction of improvements on the Lots.

(vii) No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence temporarily or permanently. No outbuildings, detached garages, sheds, barns, shacks or structures whether of temporary character or not other than the residences constructed on Lots shall be constructed or maintained on any Lot in any portion of the Properties.

(viii) No clothesline, and no above-ground swimming pools shall be allowed, constructed or placed upon any Lot in any portion of the Properties, and no inground swimming pools shall be allowed, constructed or placed upon any Lot in any portion of the Properties without the prior written approval of the Directors.

(ix) (A) No fences or screening of any kind shall be erected or maintained on any Lot without the prior written consent of the Directors as to location, material and height, and the decision of the Directors to approve or reject a fence shall be conclusive. Nothing herein contained shall (i) prevent placement of fences by the Association on the Common Ground or (ii) affect or limit the rights of Declarant to erect privacy fences pursuant to Section 2(h) hereof. The Board may require an application be submitted setting forth the proposed location, material and height of all such fences.

(B) The Directors' review of all fences for approval shall assure that such fences adhere to the following standards and requirements unless applicant can demonstrate to the satisfaction of the Directors that strict adherence to such standards and requirements would (a) create an undue hardship on applicant; and (b) approval would be in the best interests of the subdivision.

BK-10240 PG-0069

(1) Maximum height of 48" for full perimeter fencing.

(2) Fencing shall only enclose the rear yards of any residence. Rear yard fencing shall be full perimeter and no fencing shall be erected or maintained on any Lot between the rear of the residence constructed upon such Lot and the street upon which such Lot fronts. Fencing must start at the rear corners of the residence constructed. Fencing must be within four inches (4") of the Lot lines and Lot corners. With respect to corner lots, fencing along the side of the rear yard facing the street shall not be placed any nearer to said street than four inches (4") of the building line limit established by the subdivision plat. Lots may have exceptions at the sole discretion of the Directors.

(3) All fencing will be either/or:  
(a) Wrought iron or aluminum simulated wrought iron.

(b) Wood picket style.

(4) All fencing to be made only of the following materials:

(a) Wrought iron or aluminum simulated wrought iron.

(b) Cedar or wolmanized (treated wood). Cedar or wolmanized (treated wood) board fencing may have any picket width up to a maximum of six inches (6") in width. The minimum open space between pickets must be three inches (3") regardless of the picket width.

(5) All picket fence to be installed with the good side facing out.

(6) The Directors, in their discretion, may, but shall not be obligated to, require that all Lots be professionally surveyed to assure proper fence locations prior to installation thereof.

(7) All wood fences are to remain in their natural state, that is, they cannot be painted a color.

(8) Swimming pool and patio privacy fencing will be handled on a case-by-case basis. Request must be made in writing as stated above.

(9) All posts shall be anchored in a base of concrete at least one (1) foot six (6) inches into the soil.



BK-10240 PG-0070

(x) Nothing contained in this Indenture shall restrict, limit, inhibit or prevent the Declarant, its successors or assigns from developing the Properties and building residences and selling the same.

(xi) No Lot shall have an exterior solar collector system, wind generator system, or any similar type system or appliance without Director approval pursuant to Section 8 hereof.

(xii) No exterior television, radio aerial, antenna, receiving dish, satellite dish, or any other device for the reception or transmission of radio or television or other electronic signals (hereinafter referred to as "Antenna") shall be erected or maintained on any Lot or upon the exterior of any dwelling or the Common Property except with the prior written approval of the Directors. The Directors or their designated committee shall approve an application for the installation of an Antenna only upon the following conditions:

(A) Only one Antenna per Lot.

(B) The Antenna shall be for the personal use of the Owner or resident.

(C) The Antenna shall not be visible in the view from the street towards the dwelling (including the street view of dwellings on corner Lots).

(D) The Lot Owner shall satisfy one of the following:

(1) The Antenna shall not be visible from the neighboring Lots, streets or common areas; or

(2) The Antenna shall be disguised to resemble and in fact shall be visually indistinguishable from structures, devices or improvements otherwise allowed in the Community and/or by this Indenture.

(E) The Antenna shall not pose any known or verifiable hazards to the health of the residents of the Lot Owner or the neighboring Lots. The Directors may require, in their sole discretion, that certain tests be performed on the Antenna at the expense of the Lot Owner at any time before or after the installation of the Antenna.

(F) The Directors or their designated committee shall have the power to require such specific forms of screening (fencing, shrubbery, etc.) as the Directors deem appropriate in order to effectuate the intent of this Section.

BK-10240 PG-0071

(G) All installations must comply with local zoning requirements and building codes if applicable.

(H) The Directors reserve the right to require any repair, maintenance, additional landscaping or testing to the Antenna at any time after the installation thereof. Failure to comply with this Section shall be enforceable by a schedule of fines as published by the Directors from time to time. Said fines shall be collected and enforced in the same manner as an assessment. The Directors shall have the further right to take such action to enforce this Section with all remedies available to it in law or equity.

(I) The granting of the written permission to install the Antenna pursuant to this Section shall be a revocable license issued by the Directors to the Lot Owner and his/her/its successors which may be revoked if the Lot Owner does not remain in compliance with the terms of this Section as amended from time to time.

(xiii) No Lot shall be resubdivided nor shall a fractional part of any Lot be sold without the consent of the Directors. This provision shall not, however, require the consent of the Directors for the sale of an entire Lot as shown on a final recorded subdivision plat.

(xiv) Personal property, including, without limitation, boats, trailers, trucks with a rated gross cargo capacity in excess of one (1) ton, campers and recreational vehicles, shall not be placed or stored permanently or temporarily in the open or in an unenclosed carport on any Lot, nor shall they or any motor vehicle of any type or description be parked for any time on the unpaved portion of any Lot or on any street "overnight". For purposes hereof, overnight shall be defined as being any time between the hours of 12:00 P.M. and 8:00 A.M.

(xv) No trash, garbage, rubbish, refuse, debris, trash cans or trash receptacles of any type shall be stored in the open on any Lot, but shall be kept secured within the improvements located on each Lot; provided that after sunrise on any day designated for trash pick-up, trash, garbage, rubbish, refuse and debris secured within appropriate trash cans or receptacles may be placed at the street curbing for pick-up; provided further that trash cans or receptacles shall be removed and secured within the improvements for each Lot prior to sundown of the same day.

(xvi) All water and other sewer systems servicing the Property (other than lawn sprinkler systems servicing any single Lot or a sprinkler system servicing the Common Properties) shall be constructed by the Declarant or any subsequent builder or developer. No Owner or occupant of any Lot in the Property shall construct any water or other sewer system on the Property, other than a lawn sprinkler system servicing a single Lot.

BK-10240 PG-0072

(xvii) No motor vehicle or equipment shall be repaired or otherwise serviced in front of or adjacent to any residence in the Property. No abandoned cars, motorcycles, jeeps, trucks or other motor vehicles of any kind whatsoever that are unable to move under their own power and no mobile homes, campers, buses, boats or boat trailers may be stored or suffered to remain upon any of the Common Properties or the Lots other than in an enclosed garage.

(xviii) No activity shall be conducted or permitted on the Common Properties which would create a nuisance, disturbance or excessive noise or commotion. The Association shall have the right to prohibit, restrict and prevent such gatherings or assemblies of individuals on the Common Properties under such reasonable rules and regulations as the Association, in its sole discretion, may from time to time determine.

(xix) 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 Property. No above ground gas or propane storage tanks shall be permitted upon or in any Lot or portion of the Property.

(xx) No above-ground structure, other than required street lights, may be erected within a cul-de-sac, divided street entry island or median strip without the written approval of the appropriate governmental or quasi-governmental authority maintaining jurisdiction and control thereof.

(xxi) No fences, walls, trees, hedges or shrubs shall be erected or maintained in such manner so as to obstruct sight lines for vehicular traffic.

(xxii) The Board may require a reasonable deposit in connection with the proposed erection of any building or structure in the Property approved in accordance with 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.

#### 11. GENERAL PROVISIONS

(a) Any subsequent builder or developer shall be responsible in the same manner as Declarant with respect to that portion of the Properties developed by said builder-developer for construction of all major improvements, and the establishment and conveyance of Common Properties.

(b) The Directors, or the Owner of any Lot subject to this Indenture, shall have the right to enforce, by any proceeding at law or in equity, all of the covenants, conditions, restrictions and provisions hereof, either to restrain or enjoin a violation or threatened violation or to recover damages. Failure or forbearance

BK-10240 PG-0073

by the Directors or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In any legal action filed by the Directors against an Owner or if the Directors retain legal counsel without filing a legal action in order to enforce any covenant or restriction herein contained or adopted pursuant to Director rules or regulations of any action to recover damages on account of breach of any such covenant, restriction, rule or regulation, the Owner shall be personally liable for and pay the Directors' reasonable attorneys' fees and costs incurred with or without legal action. If the attorneys' fees and costs are not paid by the Owner within thirty (30) days after the Directors have given written notice thereof to the Owner by certified mail, return receipt requested, then the fees and costs shall thereafter bear interest at the rate provided in Section 5(g) hereof and the Directors may execute and acknowledge an instrument reciting the debt and causing the instrument to be recorded in the Office of the Recorder of Deeds of St. Louis County, Missouri, thereupon the debt shall become a continuing lien on the Lot and the improvements thereon which shall bind the Owner, his or her heirs, successors and assigns. The lien shall be enforceable and governed by Section 5 of this Indenture.

(c) Subject to the requirements of Section 4, this Indenture and any part thereof may be altered or amended, by a written agreement signed by not less than two-thirds (2/3's) of the Owners; and such written and signed alteration or amendment, recorded with the Office of the Recorder of Deeds for St. Louis County, Missouri, shall become a part of the provisions and restrictions of this Indenture. No such amendment, modification or change shall reduce or modify the obligation or right granted to or imposed upon the Directors with respect to maintenance obligations and the power to levy assessments therefor or to eliminate the requirement that there be Directors unless some person is substituted for the Directors with the responsibility and duties of such Directors. Any amendments so adopted prior to the completion of the development shall be reviewed and approved by the St. Louis County Director of Planning or similar person of any municipality of which the subdivision may hereafter become a part.

(d) In connection with the sale of all or part of the Properties subject to this Indenture, Declarant shall have the right to assign to such purchaser the rights herein reserved or granted to Declarant.

(e) Any notice required to be sent to any member or Owner under the provisions of this Indenture shall be deemed to have been properly sent when mailed, postage prepaid, to the address shown on the real estate tax assessment records of St. Louis County or any appropriate municipality for each Owner.

BK-10240 PG-0074

(f) Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provision hereof, each of which shall remain in full force and effect.

(g) In the event that the Declarant exercises its option to appoint a second and/or third Director nominated by the Association as set out in Section 6(b)(iv) above thereby giving the Association control of the Directors, the Declarant and/or successor builder-developers shall retain the sole and exclusive right to exercise all powers heretofore granted to it under the terms of this Indenture pertaining to or in any way related to the continuation of development of the Properties until such development is completed. The Directors shall not interfere with the orderly development of the Properties or the rights of Declarant in such development. It is the intent of this provision that once control of the Directors is vested in the Association that such Directors shall exercise (independent of Declarant control) all governance powers and duties as provided in this Indenture including, but not limited to, the budget, assessments and other matters which will come under their exclusive control upon the sale of one hundred percent of the Lots to persons or entities other than a successor builder or developer. The control of the completion of the development and all rights and powers necessary and appurtenant thereto shall remain exclusively and solely in the Declarant; provided however, the Directors shall execute any and all documents necessary for the proper exercise of the powers and rights set forth and reserved herein to Declarant. For the period after Declarant no longer exercises control of the Directors due to accelerated appointment pursuant to Section 6(b)(iv) and prior to the date Declarant has sold and conveyed 95% of the Lots which may be subjected to this Indenture to persons or entities other than a successor builder or developer, the Common Properties shall be operated at the times (both as to hours and days) and in the manner (specifically, without limitation, as to quality of maintenance) which is substantially equivalent to the operation which was provided by the Declarant controlled Directors, unless any such deviation is specifically approved in writing by Declarant. The provisions of this Subsection may not be modified or amended without the written consent of Declarant so long as Declarant owns any Lot in the Properties.

(h) In the event it shall become necessary for any public agency to acquire all or any part of the property herein conveyed to the Directors, for any public purpose, the Directors, during the period of this Indenture as well as the times fixed for the appointment or election of Directors, are hereby authorized to negotiate with such public agency for such acquisition and to execute instruments necessary for that purpose. Should acquisition by eminent domain become necessary, only the Directors need be made parties, and in any event, the proceeds received shall be held by the Directors the benefit of those entitled to the use of the common property, roads or easements.

BK-10240 PG-0075

(i) As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, dedication of additional Common Properties, and amendment of this Indenture.

(j) Any exercise or enforcement by Declarant of its rights or powers as authorized or set forth in this Indenture, including but not limited to its rights with respect to amending the terms and provisions hereof, shall not in any way be deemed to cause a forfeiture, elimination, release, reduction, modification or transfer of Declarant's rights, powers and remedies as set forth herein except as specifically provided otherwise.

IN WITNESS WHEREOF, the undersigned have executed this Indenture the day and year first above written.

DECLARANT:

J & B JOINT VENTURE NO. ONE,  
a Missouri general partnership

By: [Signature]  
J. B. Properties, Inc. as general partner

By: [Signature]  
Duly Authorized President

By: [Signature]  
The Jones Company Custodian, as general partner

By: [Signature]  
Duly Authorized President

CONSENT OF THE DIRECTORS OF  
THE MEADOWS AT CHERRY HILLS  
HOMEOWNERS' ASSOCIATION, a  
Missouri not-for-profit  
corporation

Director 1:  
[Signature]  
Richard T. Sullivan, Jr.

Director 2:  
[Signature]  
Barry Simon

Director 3:  
[Signature]  
John F. Eilermann, Jr.

Being all of the Directors

STATE OF MISSOURI )  
COUNTY OF ST. LOUIS ) ss.

On this 20<sup>th</sup> day of April, 1998, before me appeared John H. Berra, Jr. to me personally known, who, being by me duly sworn, did say that he is the President of J & B Properties, Inc., a corporation of the State

BK-10240 PG-0076

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 John H. Berran Jr. 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.

  
Notary Public

My term expires: 3-11-96 MICHAEL T. PAULSEN

STATE OF MISSOURI       )  
                                  ) ss.  
COUNTY OF ST. LOUIS    )

On this 20th day of May, 1993, before me appeared Howard Chilcutt, to me personally known, who, being by me duly sworn, did say that he is the President of The Jones Co. Custom Homes Inc., 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 Howard Chilcutt acknowledged said instrument to be the free act and deed of said corporation.

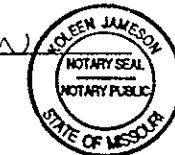
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

  
Notary Public

• My term expires: 4-19-94

STATE OF MISSOURI       )  
                                  ) ss.  
COUNTY OF ST. LOUIS    )

On this 3rd day of May, 1994, before me personally appeared Richard T. Sullivan, Jr., to me personally known, who, being by me duly sworn did say he is a Director of The Meadows at Cherry Hills Homeowners' Association, a Missouri not-for-profit corporation, and that the seal affixed to the foregoing instrument



KOLEEN JAMESON  
NOTARY PUBLIC - STATE OF MISSOURI  
ST. LOUIS COUNTY  
MY COMMISSION EXPIRES 4/1/97

BK-10240 PG-0077

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 Richard T. Sullivan, Jr. 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.

My term expires: 3/7/95

Notary Public

CLARE R. WENTE  
NOTARY PUBLIC, STATE OF MISSOURI  
MY COMMISSION EXPIRES 3/7/95  
IN CHARLES COUNTY

STATE OF MISSOURI

)  
) ss.

COUNTY OF ST. LOUIS

On this 17<sup>th</sup> day of May, 199<sup>4</sup>, before me personally appeared Barry Simon, to me personally known, who, being by me duly sworn did say he is a Director of The Meadows at Cherry Hills Homeowners' Association, a Missouri not-for-profit corporation, 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 Barry Simon 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.

Notary Public

My term expires: 3/11/96

MICHAEL T. FAHLBERG

STATE OF MISSOURI

)  
) ss.

COUNTY OF ST. LOUIS

On this 3rd day of May, 199<sup>4</sup>, before me personally appeared John F. Eilermann, Jr. to me personally known, who, being by me duly sworn did say he is a Director of The Meadows at Cherry Hills Homeowners' Association, a Missouri not-for-profit corporation, 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



BK-10240 PG-0078

authority of its Board of Directors; and said John F. Eilermann, Jr. 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.

My term expires: 3/7/95

Clare R. Wente  
Notary Public  
CLARE R. WENTE  
NOTARY PUBLIC, STATE OF MISSOURI  
MY COMMISSION EXPIRES 3/7/95  
ST. CHARLES COUNTY

**LENDER CONSENT**

The undersigned, Mark Twain Bank, holder of a Deed of Trust on the Properties described in the foregoing Indenture, which Deed of Trust is recorded in Book 09938, Page 621 of the Office of the Recorder of Deeds for St. Louis County, Missouri, does hereby consent to and subordinate its Deed of Trust to the foregoing Indenture.

Mark Twain Bank

By: Daniel P. Balzer  
Name: DANIEL P. BALZER  
Title: VICE PRESIDENT

STATE OF MISSOURI )  
COUNTY OF ST. LOUIS ) ss.

On this 24th day of JUNE, 1994, before me appeared DANIEL P. BALZER, to me personally known, who, being by me duly sworn, did say that he is the VICE PRES of MARK TWAIN BANK, 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 DANIEL P. BALZER acknowledged said instrument to be the free act and deed of said corporation.

Carol Mangelsdorf  
CAROL MANGELSDORF, NOTARY PUBLIC  
St. Louis County, State of Missouri  
My Commission Expires December 3, 1995

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BK-10240 PG-0079

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

\_\_\_\_\_  
Notary Public

My term expires:

3839/137

BK-10240 PG-0080

EXHIBIT A

LEGAL DESCRIPTION

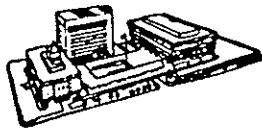
A tract of land being part of Sections 1 and 12, in Township 44 North, Range 3 East St. Louis County, Missouri, and being more particularly described as:

Beginning at a point on the West line of property conveyed to Cherry Hills Control Corp. by deed recorded in Book 6264 page 247 of the St. Louis County Records, said point being also the Northeast corner of "Audubon Village Plat One at The Villages of Cherry Hills", a subdivision according to the plat thereof recorded in Plat Book 251 pages 34 and 35 of the St. Louis County Records, being also a point on the East line of said Section 12; thence North 87 degrees 09 minutes 08 seconds West 1,029.14 feet along the North line of said "Audubon Village Plat One at The Village of Cherry Hills", to the East line of "Oak Park Plat One at The Village of Cherry Hills", a subdivision according to the plat thereof recorded in Plat Book 250 pages 47 through 49 of the St. Louis County Records, being also the Southeast corner of property conveyed to William R. White by deed recorded in Book 5830 page 431 of the St. Louis County Records; thence North 01 degree 35 minutes 53 seconds East 1,354.01 feet along said East line of "Oak Park Plat One at The Villages of Cherry Hills", the East line of "Oak Park Plat Two at The Villages of Cherry Hills", a subdivision according to the plat thereof recorded in Plat Book 254 page 79 of the St. Louis County Records the East line of "Oak Park Plat Three at The Villages of Cherry Hills", a subdivision according to the plat thereof recorded in Plat Book 258 page 36 of the St. Louis County Records, and the East line of said White property to the East-West dividing line between Sections 1 and 12; thence South 86 degrees 49 minutes 44 seconds East 3.29 feet along said dividing line to an East line of said White property; thence North 01 degree 03 minutes 11 seconds East 524.89 feet along said East line of the White property to a point; thence North 83 degrees 24 minutes 53 seconds East 837.75 feet to a point thence along a curve to the left whose radius bears North 85 degrees 02 minutes 53 seconds West 150.00 feet from the last mentioned point, a distance of 67.89 feet to a point; thence North 20 degrees 58 minutes 45 seconds West 201.33 feet to a point, thence North 22 degrees 34 minutes 13 seconds West 180.07 feet to a point; thence North 20 degrees 58 minutes 45 seconds West 100.64 feet to a point; thence along a curve to the left whose radius point bears South 69 degrees 01 minutes 15 seconds West 20.00 feet from the last mentioned point, a distance of 30.23 feet to a point; thence North 72 degrees 24 minutes 39 seconds East 100.18 feet to a point; thence along a curve to the left whose radius point bears South 17 degrees 35 minutes 21 seconds East 20.00 feet from the last mentioned point, a distance of 32.60 feet to a point; thence South 20 degrees 58 minutes 45 seconds East 94.71 feet to a point; thence South 19 degrees 23 minutes 17 seconds East 180.07 feet to

BK-10240 PG-0081

a point; thence South 20 degrees 58 minutes 45 seconds East 201.33 feet to a point; thence along a curve to the right whose radius point bears South 69 degrees 01 minutes 15 seconds West 200.00 feet from the last mentioned point, a distance of 22.60 feet to a point; thence South 89 degrees 34 minutes 50 seconds East 137.57 feet to the East line of said Section 1; thence South 01 degrees 13 minutes 14 seconds West 738.92 feet along said East line of said Section 1 to the Southeast corner thereof, being also the Northeast corner of said Section 12; thence South 00 degrees 53 minutes 40 seconds West 1,348.75 feet along said East line of Section 12 and the West line of said Cherry Hills Control Corp. property to the point of beginning.

3839/137



REC-1/89 Rev-4/94

DANIEL T. O'LEARY  
RECORDER OF DEEDS  
ST. LOUIS COUNTY MISSOURI  
41 SOUTH CENTRAL • CLAYTON, MO 63105

Michael D. McIver  
Director of Revenue



RECORDER OF DEEDS DOCUMENT IDENTIFICATION & CERTIFICATION SHEET

DOCUMENT NO. (SHOWN ON THE 1st PAGE OF  
INSTRUMENT, AND ALSO  
AT THE FOOT OF THIS PAGE.

STATE OF MISSOURI) SS  
COUNTY OF ST. LOUIS)  
FILED FOR RECORD

94 JUN 27 PM 12:42

RECORDER OF DEEDS  
ST. LOUIS COUNTY, MO.

STATE OF MISSOURI )  
COUNTY OF ST. LOUIS) 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 at the time and on the day, month and year, all as same appears hereon, and is truly recorded in the book and at the pages indicated on said instrument.

In witness whereof I have hereunto set my hand and official seal on the same day, month and year stamped and shown above.

*Daniel T. O'Leary*  
Recorder of Deeds  
St. Louis County, Missouri

By *D. McIver*  
Deputy Recorder



RECORDING  
FEES

DOCUMENT \$ 110.00

\_\_\_ N.P.

STATE USER \$ 4.00

\_\_\_ N.P.C.

FAHF FUND \$ 3.00

\_\_\_ N.N.C.

POSTAGE \$

\_\_\_ N.N.I.

36 TOTAL \$ 117.00

Filed for Record Jun 27, 1994

Daily No. 00354

B-10240 P-0047/0082

DESTINATION  
CODE  
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NOTATION

END OF DOCUMENT  
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