

TRUST AGREEMENT AND INDENTURE OF RESTRICTIONS  
OF

MISSION HILLS ESTATES

This TRUST AGREEMENT AND INDENTURE OF RESTRICTIONS OF MISSION HILLS ESTATES (the "Indenture"), made this 29<sup>th</sup> day of July, 1993, by and between P & M DEVELOPMENT CO., a Missouri corporation, herein called "OWNER"; and HAROLD SINN, CHRISTOPHER COTTON, and THOMAS M. LAWLESS, all of St. Louis County, Missouri, herein called "TRUSTEES".

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W I T N E S S E T H:

WHEREAS, Owner is vested with fee simple title to a certain tract of land situated in St. Louis County, Missouri, herein sometimes referred to as "SITE", being more particularly described as follows, to-wit:

All of that property described in EXHIBIT A annexed hereto and by reference made a part hereof; and

WHEREAS, this Indenture is established for the purpose, inter alia, of complying with City of Valley Park Ordinances applicable to Site; and

WHEREAS, Owner intends to develop and improve the above described Site in part with residences, and in part with open space area for the common use and enjoyment of the occupants and owners of said residences; and

WHEREAS, Owner has caused said Site to be laid out and platted as a subdivision (the "Subdivision") to be named MISSION HILLS ESTATES SUBDIVISION, the plat of which has been recorded in the office of the Recorder of Deeds within and for St. Louis County, Missouri, in Plat Book 320 at Page(s) 54 to 55 of said records, said Subdivision being herein sometimes referred to as "PLAT"; and

WHEREAS, Owner has caused, or may cause, to be constructed and laid out upon a part of said Site open space areas intended to be used for, by way of example, and not by way of limitation, recreation area and park purposes, said open space area being herein referred to as "Common Ground", said Common Ground being identified and more particularly described on said Plat (or by separate instrument, if any, of record), as either "Common Ground" or "Common Land(s)", or "Common Area(s)", said terms being used interchangeably herein, and having the same meaning; and

WHEREAS, there has been designated and recited on Plat certain streets and also certain easements which have been provided for the purpose of constructing, maintaining, and operating (as applicable) sewers, pipes, conduits, poles, wires, and other facilities and utilities for the benefit of the owner or owners of the lots shown on said Plat, and for the use of such others as may be later designated by Owner herein; and

WHEREAS, it is the purpose and intent of the Owner and of the Trustees that said Subdivision (Plat) and any other single family residence subdivision as may be created and established upon Site, or upon any part thereof, shall in conjunction with Common Ground be and remain a first class, integrated, single family residence project; and

WHEREAS, all reservations, limitations, conditions, and covenants contained in this Indenture, any and all of which are herein referred to as "Restrictions", are made jointly and sever-

ally for the benefit of all persons who may purchase, hold, or own, from time to time, any of the several lots which may be hereafter platted or created upon Site and made subject to these Restrictions, and for the benefit of Owner, and their respective tenants, invitees, successors, and assigns;

NOW, THEREFORE, by these presents Owner does hereby subject the Site to the terms, conditions, covenants and Restrictions contained in this Indenture; and in consideration of the premises and the sum of One Dollar (\$1.00) to them in hand paid by Trustees, the receipt of which Owner hereby acknowledges, and with the agreement and consent of Trustees to act as such hereunder, Owner by these presents hereby grants, bargains and sells, conveys and confirms unto said Trustees, as tenants in common and not as joint tenants, and unto their Successors in Trust, so long as these Restrictions shall remain in force and effect:

- A. All the strips of land shown on Plat as private roadways, streets, drives and cul-de-sacs; and easements in, over, upon and across all the strips of land shown on Plat for public utility easements, storm water sewers, drainage facilities and roadway easements.
- B. Easements in, over, upon and across such portions of Plat as may be now or hereinafter designated as streets and roads, and for public utility easements, storm water sewers and drainage facilities, as follows: The rights, benefits, and advantages with said (Plat) Subdivision of having ingress and egress from and to, over, along, and across easements, storm water sewers and drainage facilities, and of appropriately beautifying, maintaining and controlling the movement of traffic over the same; also of constructing, maintaining, reconstructing and repairing sewer, gas and water pipes and connections therewith on said roads, streets and driveways; also of using the same for highway purposes of every kind and of regulating the use thereof in the interest of health, welfare and safety of present or future residents of said Subdivision; and of laying, constructing, maintaining and operating thereupon, either above or underground, suitable supports or conduits for electricity, telegraph and telephone wires, and suitable pipes, conduits, or other means of conducting steam, electricity, hot water or other useful agencies.
- C. And Owner does also create and grant to said Trustees, their Successor or Successors, easements in, over and upon and across such portions of said land as may be used for residential or other purposes as follows: The rights, benefits and advantages of having egress and ingress to and from, over, along and across any of such land for the purpose of performing any of the rights and duties in these Restrictions and this Indenture contained; and of laying, constructing, maintaining and operating over, along and across any of said land used for any such residential or other purpose, either above or underground, suitable supports or conduits or other means of conducting sewage, steam, electricity, water, or other useful agencies, provided, that none of the supports, conduits, pipes,

devices or other appliances shall interfere with the lawful construction of any building or structure on said property, and that said easements shall terminate at the exterior foundation wall of any building structure.

- D. Common Ground, together with such improvements as are now or may hereafter be erected and constructed thereon, and the designated Common Ground in any plats hereafter recorded covering any land contained within said Site;

TO HAVE AND TO HOLD the same to said Trustees and their Successors in Trust, IN TRUST, for the Owner and for the present and future owners of each of the said lots in said Plat, and said lots and all of them shall remain forever subject to the burdens and entitled to the liens involved in said easements, and Owner, for itself, its Successors and Assigns, and for and in behalf of all persons who may hereafter derive title by, under and through Owner, for itself, its Successors and Assigns, to any part of said Subdivision (Plat), hereby provides that the liens and burdens of said easements, this Indenture and the Restrictions shall be, run with, and remain attached to each of the lots in said Subdivision (Plat) as appurtenant thereto, provided, however, that said easements are created and granted subject to the power and rights granted to the said Trustees by these Restrictions and this Indenture, and shall be availed of and enjoyed only under and subject to such reasonable rules and regulations as said Trustees and their Successors may make and prescribe or as may be made and prescribed under and by authority of the provisions of this Indenture.

#### ARTICLE I

##### Sec. 1.01 -- Selection of Trustees; Meeting of Lot Owners; Term

(a) This Indenture, and the easements, trusts and Restrictions in this Indenture set forth and contained, shall continue and be binding upon Owner and Trustees 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 thirty (30) years from the first day of January, 1993, 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 these Restrictions and this Indenture, by two-thirds (2/3) vote of those entitled to vote, may terminate the trusts or release all of the land restricted thereby from any one or more or all of said Restrictions and this Indenture at the end of said thirty (30) year period, or of any succeeding 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 thirty (30) year period or of any fifteen (15) year period thereafter.

In the event the Subdivision encumbered by these Restrictions and this Indenture is vacated, thereafter fee simple title to the Common Ground shall vest in the then lot owners as tenants in common, but the rights of said tenants in common shall be exercisable only appurtenant to and in conjunction with their lot ownership.

(b) Subject to the provisions of Subparagraph (c) of this Section 1.01, HAROLD SINN, CHRISTOPHER COTTON, and THOMAS M. LAWLESS, all herein sometimes referred to as "Originally Named Trustee(s)", shall serve for terms of five (5) years, four (4)

years, and three (3) years, respectively from date of recording of this Indenture, or until their respective successors shall have been duly appointed or elected, as the case may be. Upon the expiration of each initial term, each subsequent term shall be of five (5) years in duration. In the event of death, disability, incompetency, resignation, or inability for whatever reason of any Trustee, or his Successor, to discharge his duties hereunder, or upon the expiration of the term of any Trustee hereunder, the surviving or remaining Trustee(s) shall designate a Successor Trustee to fill the unexpired term of such Trustees, or of his Successor, as the case may be, but subject always to subparagraph (c) of Section 1.01.

(c) When fifty percent (50%) of all lots authorized by the last approved Development Plan of the Site (as amended), have been sold and transferred of record, Originally Named Trustee **THOMAS M. LAWLESS** (or his Successor in office), shall be replaced by election of the lot owners other than Owner [and any successor developer]; and when ninety-five percent (95%) of all such authorized lots have been sold and transferred of record, Originally Named Trustee **CHRISTOPHER COTTON** (or his Successor in office), shall be replaced by election of the lot owners other than Owner [and any successor developer]; and when one hundred percent (100%) of all such authorized lots have been sold and transferred of record, then Originally Named Trustee **HAROLD SINN** (or his Successor in office), shall be deemed to have resigned. Whenever replacement by an election is required hereunder, an election shall be held, after notice thereof as hereinafter provided, and the Successor Trustee shall be elected and chosen by record owners of developed lots in accordance with the foregoing. A sale or transfer of any lot or lots not improved with a residence structure shall not affect the term of office of any then Originally Named Trustee.

(d) In the event the office of any Trustee herein becomes vacant, and such vacancy, for any reason, is not filled by appointment as herein provided, then the owners of not less than fifteen (15%) percent of the lots encumbered by this Indenture or the Owner, may, by giving notice (by U.S. Mail, postage prepaid, directed to all of lot owners encumbered by this Indenture, or by personal delivery, or by posting notice, as to any lot, on such lot) hold a special election, such election to be held in St. Louis County, Missouri, not less than thirty (30) days after the date of giving such notice, for the purpose of filling such vacancy. Such vacancy shall be filled by the majority vote of those lot owners attending the election; the record owners of each lot shall be entitled to one (1) vote in the aggregate. If, prior to the filling of any vacancy by election, such vacancy is filled by appointment, pursuant to the terms of this Indenture, such election need not be held and shall be called off.

(e) Where the provisions of this Indenture cannot be fulfilled by reason of unfilled vacancies among the trustees, the Board of Alderman of the City of Valley Park may upon the petition of any concerned resident or property owner of the Subdivision, appoint one or more trustees to fill vacancies until such time as trustees are selected in accordance with the trust indenture. Any person so appointed who is not a resident or property owner within the Subdivision shall be allowed a reasonable fee for his services by the order of appointment, which fee shall be levied as a special assessment against the property in the Subdivision, and which shall not be subject to any limitations on special assessments contained in this Indenture or elsewhere.

(f) The actions of a majority of the Trustees shall bind all the Trustees; all persons, with respect to approval of plans and specifications (pursuant to Section 4.01 hereof) shall be entitled to rely, conclusively, upon the written approval thereof by any one Trustee, as constituting the approval of a majority of the Trustees.



(g) The provisions of subparagraph (c) of this Section 1.01 with respect to percentage of sales and transfers of lots in the Site, shall not apply to sales from Owner or from any successor developer to another successor developer for development and resale, but are intended to apply to sales, in the usual course, of lots improved with residences, to persons who will occupy such residences, whether such sales be by Owner or by a subsequent successor developer. [With respect to any votes or elections hereunder, except with respect to elections described in subparagraph (c) of this Section 1.01,], so long as Owner [or a successor developer] owns any part of the Site, Owner [or the successor developer, if any] shall be entitled to one (1) vote for each record platted lot owned by Owner and one (1) vote for each authorized lot not platted of record.

Sec. 1.02 -- [Reserved].

ARTICLE II

Sec. 2.01 - The Trustees shall keep said roads, circles, parking areas, walks, and Common Ground open at all times for the use and benefit of the owner or owners of the various building and residences now constructed or hereafter constructed upon Site and for the use and benefit of the lessees, tenants and licensees of the owner of said residences and for the benefit of their respective invitees. Such use shall always be subject to the general rules and regulations hereafter established or prescribed by the Trustees and subject to the established charges therefor. The Trustees shall have, to exercise as they, in their sole discretion deem best, the power, to make, improve and construct and reconstruct the roads, circles, walks, parking areas, and Common Ground as are now constructed or may hereafter be constructed upon Site and conveyed to Trustees, and to maintain and repair the same, to regulate the use thereof, and to provide for the proper lighting, policing, and protection of same, and to construct and maintain, or permit others to construct and maintain, overhead or underground transmission systems and pipes, conduits and other means for the transmission of electric, telephone and telegraph services, and gas, steam, water and other useful agencies, storm and foul water systems, for the benefit of Site and the Owner, Owner's tenants and lessees, and their invitees, and for the benefit of the aforesaid lot owners, and their invitees all herein sometimes referred to as "USERS".

Sec. 2.02 - No above ground building improvements or structures (other than required street lights) shall be constructed upon the Common Ground located in street cul de sac areas, divided street entry islands or median strips, except in compliance with the provisions in the legend on the Plat for said subdivision, and except upon the written approval of the City of Valley Park, or the St. Louis County Department of Highways and Traffic, or other appropriate governmental authority, as the case may be.

Sec. 2.03 - Trustees shall have the right at all times to construct and maintain, or permit others to construct and maintain [, in or over the easement strips delineated on Plat, and upon such easement strips as Owner may hereafter designate by appropriate plat or instrument of record,] walks, overhead or underground transmission systems for the transmission of electric, telephone and telegraph service and gas, steam, water and other useful agencies, and storm and foul water systems for the benefit of Users, and of any parties to whom Trustees may have granted the right to use same.

Sec. 2.04 - The Trustees shall provide for and forever secure to Users, and each of them, the right, benefit, and advantage of having ingress and egress from and to, over, along, and across

such roads, circles, walks, parking areas, and Common Ground, provided that the use thereof shall be subject to general rules and regulations hereafter established or prescribed by the Trustees.

Sec. 2.05 - The Trustees shall provide that no persons, firm or corporation shall at any time obstruct or occupy any part of the roads, circles, walks, parking areas and Common Ground areas with building materials, soil or other objects calculated to prevent free passage to Users.

Sec. 2.06 - The rights and easements herein granted are to be easements in fee annexed to and forever to continue to be annexed to and passing with and inuring to each part of Site that is expressly made subject to and encumbered by these Restrictions and this Indenture, whether so subjected by plat or other record instrument. The land so expressly encumbered by these Restrictions and this Indenture shall remain subject to the burdens and entitled to the benefits involved in said easements, except as herein otherwise provided, and it is hereby expressly agreed that the rights and easements and each of them are created and granted subject to the powers and rights granted to Trustees in Article III of this Indenture, and to the provisions of Article IV hereof, and shall be availed of and enjoyed only and subject to such reasonable rules and regulations as Trustees or their Successors may from time to time make and prescribe, or as may be prescribed under and by authority of the provisions of Article IV, or elsewhere in this Indenture; and none of the things, power to do which is hereinafter conferred upon Trustees or their Successors, shall be done (unless otherwise in this Indenture provided), excepting by and through Trustees or their Successors, or with their written permission.

### ARTICLE III

#### Rights, Authorities, Powers, Interest and Duties of Trustees

Trustees and their Successors in Trust, as Tenants in Common (and not as Joint Tenants), shall, for and during the period of this Indenture and these Restrictions, have the following rights, authorities, powers, interests and duties:

Sec. 3.01 - To construct, reconstruct, maintain and repair the streets, gutters, and curbing, or any of them, in and upon the aforesaid roads, places, circles, walks, parking areas, Common Ground and structures, all to the effect that there shall be continuous maintenance of same; to plant, grow and preserve trees and shrubbery in any appropriate spaces in or upon or adjacent to said roads, places, circles, walks, parking areas, and Common Ground; and to construct lay, maintain, reconstruct and repair proper and sufficient sewer systems, gas and water pipes and other pipes and conduits and connections therewith, and overhead and underground transmission systems for conducting electricity, telephone or telegraph service in or upon the said roads, places, circles, walks, parking areas and Common Ground, and in or upon the easement strips shown on Plat, or upon those hereinafter established upon Site, and all of the said rights and powers shall apply to and be exercised upon or with respect to such like improvements and conveniences as may be made by Owner. Trustees shall also have the power, by way of example and not by way of limitation, to construct, reconstruct, maintain, and repair recreation buildings, and other recreation facilities in the Common Ground, and the right to construct, reconstruct, maintain and operate upon any part of the Common Ground, planting islands, bridges, fences, sculptors, landscaping improvements of any type, character, or description, and other recreation facilities. And it shall be the duty of the Trustees to levy assessment for, contract for and make any or all of the improvements herein auth-

orized, except that where any improvement or facility be accepted for maintenance by any public or quasi-public authority, the Trustees shall not thereafter have any duty or obligation with respect thereto.

Sec. 3.02 - To grant to such person or persons, corporation or corporations, and for such time as they, the Trustees, or their Successors may deem best, the right to enter upon said roads, circles, places, parking area, walks, common areas, and Common Ground, or any of them, or the easement strips shown on plat, or those hereafter established on Site, and erect and maintain overhead and underground transmission systems for conducting electricity or telephone or telegraph service, and to construct and maintain therein suitable pipes or conduits or other means to conduct water, gas, steam, and other useful agencies and to supply the same for the use and benefit of Owner and Users.

Sec. 3.03 - To light, police, sprinkle, oil, clean or resurface said roads, circles, walks, places, parking areas, common areas and Common Ground, and clean storm sewer systems, pipes, conduits and connections therein; to preserve, maintain and keep open the same and the connections, entrances and exits of the same whenever necessary to do so by appropriate legal proceedings; also to pay the general and special taxes which may be assessed against the same; also to receive, hold, convey, dispose of and administer in trust for the purpose of these Restrictions and this Indenture, any gift, grant, conveyance or donation of money or real or personal property, and generally to do whatever else may to the Trustees or their Successors deem to be necessary with respect to said roads, circles, places, parking areas, walks, common areas, and Common Ground, including the collection, removal, carrying away and disposal of garbage, rubbish, and ashes from the said roads, places, circles, walks, common areas, and Common Ground, and in and from the Site, and to make proper contracts therefor, covering such periods of time as the Trustees may deem best.

Sec. 3.04 - To make provision with the St. Louis County Water Company (or any other appropriate utility) to furnish water for use upon any part of the Site. To make provision with any fire district, municipality or person for protection against loss or damage by fire of improvements now or hereafter erected upon Site, and for the sprinkling, washing, and cleaning of the roads, places, avenues, circles, walks, parking areas, common areas, Common Ground, and the curbing and guttering, or the watering of trees, grass and shrubbery thereon, or for any other use thereon by the Trustees deemed necessary or proper, and also for use in cleaning and flushing sewers in the Site, and also for any other uses in said Site which the Trustees may from time to time deem necessary or proper, and to enter into any contract or contracts with respect to such water and the furnishing thereof and the payment therefor as the Trustees may deem proper. And the Trustees may install and keep in operation and repair water and fire plugs, police signal systems and connections in said roads, places, avenues, circles, walks, parking areas, common areas, and Common Ground, and may install and keep in operation and repair any facilities constituting a part of the common area or Common Ground, including, but not by way of limitation, improvements calculated to improve the aesthetic appearances of Site.

Sec. 3.05 - Also, to convey and grant to others outside of the Site, but subject always to laws and ordinances applicable to Site, the right to use the roads, places, avenues, circles, walks, parking areas, common areas, and Common Ground, storm sewer systems, water and gas pipes, and other pipes and conduits, and the overhead and underground transmission systems, or any of them, which may at any time from time to time be in the aforesaid roads, places, avenues, circles, walks, parking areas, common areas, and Common Ground, or in the easement strips shown on Plat or in those hereafter established on Site, the terms of and com-

compensation for such use or uses to be agreed upon between the Trustees or their Successors, or determined as may be provided by law or ordinance. The compensation received for such use or uses shall be held and expended as necessary by the Trustees or their Successors, for the maintenance, repair, lighting, cleaning, policing, sprinkling, improving, and beautifying of such roads, places, avenues, circles, walks, parking areas, easement strips, common areas, and Common Ground, and the storm sewers and other improvements located within, upon and about the Site as the Trustees may deem necessary or proper; provided, however, that any such right or use granted to others shall be in common with the right to those in the said Site.

Sec. 3.06 - Also, to cut, remove, and carry away from all vacant land areas in the Site and properly dispose of all weeds and unsightly grasses or other growths, as well as rubbish, filth and accumulations of debris and other things tending to create unsightliness or untidiness; this may be done at the expense of the trust, or if the owner of such land fails, omits, or refuses, after 10 days written notice delivered to such owner or posted on such land, to remedy such condition, at the expense of the owner of such land, on whose land such expense is incurred, by special assessment against him, as the Trustees may determine; the right to prescribe the type and location of rubbish containers, and the method manner, and means of rubbish disposal.

Sec. 3.07 - To transfer and convey to any public authority any sewer system, storm sewer pipe, water pipe, or other pipe or conduit and appurtenances which may heretofore or hereafter have been constructed by Owner or by the Trustees, and to receive money considerations therefor; but, with respect to any and all of same constructed by Owner, all such money considerations shall be paid over and delivered by the Trustees to Owner, and the Owner hereby reserves unto itself, its Successors and assigns, the right to receive and retain for its own use and benefit any money so paid over and delivered to it, and any money consideration which may be refunded or allowed, for or on account of such improvements, or for or on account of any sums previously expended or subsequently provided by Owner, for sewer systems, or gas, sewer, water or other lines, pipes or conduits, or electric poles or wires, or street lights, roads or streets, or recording fees, consultation fees, or other fees, charges and expenses incurred with respect to the creation of the Subdivision on the Site described in Exhibit A annexed hereto, or on any other land hereafter subjected to this Indenture.

Sec. 3.08 - As Trustees of an express trust and for the benefit of other owners of any part of the Site, to prevent any infringement of, or compel for performance, any covenants or Restrictions in this Indenture contained and to prescribe and enforce rules and regulations with respect to the use of the roads, places, avenues, circles, walks, parking areas, common areas, Common Ground, and/or sewers, sewer pipe, water, gas or other pipe and appurtenances, and overhead or underground transmission systems or any of them.

Sec. 3.09 - To prohibit heavy hauling over, upon or along said roads, places, avenues, circles, and parking areas, and to prohibit speeding or racing and regulate speeds thereon; to prohibit the obstruction of said roads, places, avenues, circles, parking areas, and walks by storage of materials or otherwise.

Sec. 3.10 - To dedicate, at any time, to public use, the roads, places, avenues, circles, walks, parking areas, easement strips, common areas, and Common Ground, or any part thereof in said Site. Whenever any road, place, walk, avenue, circle, parking area, common area, or Common Ground, or any part thereof, is dedicated to public use, or is condemned and taken by public authority, then the powers and duties of the Trustees with respect to the same shall cease, but the Restrictions by this In-



indenture imposed upon the Site shall nevertheless continue in full force and effect until the termination thereof, as provided in Article IV. Unless the Trustees dedicate the roads, places, avenues, circles, easement strips, parking areas, common areas, walks, Common Ground, or any of them, to the public for public use as hereinabove provided, the Trustees shall hold the same perpetually upon the trusts herein provided for the use and benefit of the Owners of the land and improvements in said Site. If any moneys are received by the Trustees as compensation for roads, places, avenues, circles, walks, parking areas, easement strips, common areas, Common Ground, or any part thereof taken in condemnation proceedings, the amount so received shall be applied to the payment pro rata of and damages which may be assessed against any of the land owners in said Site, and the surplus, if any, shall be held by the Trustees and shall be used for general purposes of the trust, the same as funds collected under Section 3.20 of this Article III. Anything to the contrary herein notwithstanding, Common Ground may be dedicated to public use only upon ratification of such dedication by a three-fourths vote of the lot owners affected by these Restrictions and this Indenture.

Sec. 3.11 - To enter upon the said roads, walks, places, avenues, circles, parking area, common areas, Common Ground and easement strips for the purpose of doing the things herein specified, or any of them.

Sec. 3.12 - In exercising the powers, rights and privileges granted to them, and in discharging the duties imposed upon them, to, from time to time, employ agents, servants and laborers as they may deem necessary, and employ counsel and institute and prosecute such suits as they may deem necessary or advisable, and defend suits brought against them or any of them in their character or capacity as Trustees.

Sec. 3.13 - In conjunction with required approvals from the City of Valley Park, or other appropriate governmental agency, as the case may be, to consent to the encroachment upon or to the partial or full vacation of any easement created or established herein, or hereafter created or established upon Site, and to consent upon the encroachment of any building set-back line, side or rear set back lines, and to consent to the resubdivision of any lot, where in the opinion, judgment, and discretion of the Trustees, such encroachment or vacation or resubdivision is desirable by reason of errors in construction layout, surveys, or building location, or otherwise reasonably necessary or desirable; provided, however, in cases of partial vacation of any easement, the remaining part thereof shall be reasonably adequate for the purpose for which same shall have been created, and provided further, in the cases of full vacation of any easement, that there is no longer reasonably utility or purpose therefor, or that a substitute easement is established concurrently with such vacation.

Sec. 3.14 - To construct, reconstruct and maintain fences on the outboundary property lines of Site.

Sec. 3.15 - The right to use the Common Ground for such purpose(s) as in the sole judgment of Trustees, the Trustees may decide, provided such use is for the common use of all lot owners, and to such third parties, if any, as Trustees may grant such right of use pursuant to the next sentence of this Section 3.15. The right to grant road or utility or other easements to third parties outside of the Subdivision, including, but not by limitation, non-exclusive easements over the Common Ground.

Sec. 3.16 - The right to contract with any person or persons for the management of the Common Ground, or any part thereof, upon such reasonable fee or management basis and terms as the Trustees, in the sole discretion of Trustees, may approve.



Sec. 3.17 - The right to authorize and permit, subject to such reasonable rules and regulations as the Trustees may promulgate, the tenants, licensees, invitees, and permittees of the owner of any lot or lots established in the Site, to use the Common Ground.

Sec. 3.18 - In connection with the recording of a duly authorized amendment to this Indenture authorizing the following as to specific land, the right to render, from time to time, other land adjacent to and contiguous with Site, subject to and subservient to these Restrictions and this Indenture, by appropriate legend on a plat of the land intended to be made subject to this Indenture and these Restrictions, or by filing an appropriate other instrument of record effective to make such land subject to these Restrictions and this Indenture. Such other land, though separated from Site by a street may nevertheless be treated by Trustees, in their sole judgment, as contiguous.

Sec. 3.19 - To avail themselves of and exercise the rights and powers herein granted to them, provided that nothing herein contained shall be taken to compel the Trustees to make any payment or incur any liability in excess of the amount, which shall for the time being be in their hands as the result of assessments made against any of the owners of land in the Site, as hereinafter provided.

Sec. 3.20 -- General Purpose Assessments - In order to provide the means necessary to make the payments and perform the duties and avail themselves of and exercise the rights and powers aforesaid, and to secure the various ends contemplated and intended to be effected by means of this Indenture and these Restrictions (other than the special assessments referred to in Section 3.23 of this Article III), the Trustees are hereby empowered to levy, assess and collect each year, commencing in the year in which this Indenture is placed of record, from the owners of any record Subdivision lots which may hereafter be created upon and within said Site, a sum of money sufficient for all the general purposes ("general purpose assessments") hereinbefore recited (in addition to the special assessments hereinafter in Section 3.23 of this Article III mentioned for specific purposes) provided that the total amount required in any year for said general purposes shall not exceed a sum equal to One Hundred Dollars (\$100.00) per year per Single Family Residential Lot, provided that said sum shall on each fifth (5th) anniversary after January 1st, 1993, be subject to increase or decrease by the percentage of increase or decrease in the Consumers Price Index for all urban Consumers (published by the U. S. Department of Labor), all items from the 1st day of January next succeeding the year in which these Restrictions are recorded, using the year 1982-84 equals 100 as the base year. If such Consumer Price Index is no longer publishes by the U.S. Department of Labor, then such subsequent or replacement index or suitable replacement index (in the sole judgment of the Trustees) shall be utilized. Provided that each lot shall first be and become subject to the general purpose assessments as aforesaid commencing on that date on which the first of the following occurs: (1) conveyance of the lot by Owner or by any successor developer improved with a residence to a purchaser for occupancy of such completed residence; (2) conveyance of the lot by Owner or by any successor developer not improved with a residence to any purchaser who is not a successor developer; and (3) occupancy as a residence of the lot improved with a residence by any person. Provided further that, for the calendar year in which a particular lot shall first be subject to general purpose assessments as hereinabove provided, the general purpose assessment levied against such particular lot for said calendar year shall be a prorated portion of the amount of the general purpose assessments levied for that particular year, such prorated assessment being calculated based on the ratio which (x) the remaining number of

days in such calendar from the date on which such lot is first subject to general purpose assessments as provided aforesaid, bears to (y) 365. The prorated assessment for such first calendar year in which the lot shall first be subject to general purpose assessments shall be due and payable on the date on which such lot first becomes subject to such assessment, provided that the Trustees, at their option, may permit such assessment to be paid in one or more installments thereafter. It is expressly understood and agreed that, as provided aforesaid, so long as Owner or any successor developer shall own any lot in said subdivision, such lot shall not be subject to any assessments under this Indenture, except as provided aforesaid; provided that if Owner or such successor developer shall permit any residence constructed on any lot owned by it to be occupied as a residence, then, as provided aforesaid, such lot shall be subject to assessments, if any, hereunder commencing for the calendar year of such occupancy and thereafter.

The total amount of assessments so required for general purposes shall be determined or estimated from year to year by the Trustees and may be made payable in advance or in one or more installments as Trustees may determine; and the owner or owners of each lot which is subject to general purpose assessments for such particular year (excepting the owners of any roads, places, walks, avenues, circles, parking areas, easement strips, common areas, and Common Ground, title to which may be vested in the Trustees) irrespective of its location, now existing or hereafter created upon the Site, shall be required to pay in advance on such account such proportion of the said annual amount (in the installments as called for by the Trustee) as such lot bears to the sum of all single family residence lots then located in the Site which are subject to general purpose assessments for such particular year. Taxes, sewer assessments, water, electric, gas, and other utility charges, which may be assessed against or charged for the roads, places, avenues, circles, parking areas, easement strips, common areas, and Common Ground, and the costs of operating, repairing, and maintaining, including the reconstruction, if necessary, of any common area, parking area, Common Ground, roads, places, avenues, circles, walks, and improvements located thereon, conveyed to or acquired by the Trustees and title to which shall be held by the Trustees, shall be paid out of the funds collected in accordance with this paragraph. If the annual assessment for general purposes as previously fixed by the Trustees is insufficient to provide for all such general purposes, the Trustees may levy and collect additional assessments from time to time for general purposes, subject to limitations herein in this paragraph imposed on such general purpose assessments.

**Sec. 3.21 - Stormwater Control Assessments.** IF ANY "STORM WATER CONTROL AND DETENTION EASEMENT(S)" ARE SHOWN ON THE PLAT OF THE SUBDIVISION SUBJECT TO THIS INDENTURE, BUT NOT OTHERWISE, then in addition to annual general purpose assessments and special assessments herein otherwise authorized, the Trustees shall make and enforce annual stormwater control assessments (in the manner provided for herein for making and enforcing the annual general purpose assessments), said stormwater control assessments being for the repair, operation and maintenance of stormwater control easements, including all underground and above ground facilities and pipes used in connection therewith and access easements to such stormwater control facilities and easements. The maximum annual amount of such stormwater control assessments shall be an amount (per lot) equal to five percent (5%) of the annual general purpose assessment for each lot, and such stormwater assessments shall be made only until such stormwater control facilities and easements shall be accepted for maintenance by the Metropolitan St. Louis Sewer District or other public authority.

Sec. 3.22 - If the Trustees should at any time be sued for damages for personal injuries or death sustained by anyone or for damage to property by anyone sustained by anyone on the Site or by anyone by reason of any act of the Trustees in their capacities as Trustees (and not in their individual capacities), then the Trustees may [, if the insurance company insuring and indemnifying Trustees against loss or damage by reason of any such claim or suit, shall fail, refuse, or neglect to assume the defense of such claim or suit, or shall fail, refuse, or neglect to pay and satisfy any judgment rendered in such suit against the Trustee,] employ attorneys to defend such suit or action or to compromise and settle, at any time, such claims, before or after suit, or after judgment; and the expense thereof, including any amount paid in settlement or in satisfaction of any judgment recovered against them, and interest and costs and attorney's fees and other costs of defending such action, shall be assessed by the Trustees pro rata against the owners of residence lots and against the residences thereon situated, in the same manner as provided in the foregoing Section 3.20, and the payment thereof shall be enforced as hereinafter provided, the amount so to be paid shall be in addition to the assessment for general purposes referred to in the foregoing Section 3.20.

The Trustees shall also be authorized to expend money for the collection of assessments and keeping the books of account, and they are also authorized to purchase and carry insurance to protect them against claims for personal injuries or death, or for damage to property, sustained by anyone as hereinbefore provided, and to purchase fire and extended coverage insurance insuring any property owned by them in their capacity as Trustees against loss or damage by fire or other casualty, and any amounts so expended for insurance shall be included in expenditures for general purposes as provided in Section 3.20 of this Article III.

Sec. 3.23 - Whenever the assessments herein authorized under Section 3.20, Section 3.21 and Section 3.22 are insufficient to defray the costs of maintaining, operating, construction and reconstructing any roads, places, avenues, circles, walks, parking areas, recreational facilities, common areas, and Common Ground, the Trustees may levy a special assessment, without regard to the limitations thereon provided for in Section 3.20, Section 3.21 and 3.22, to defray such excess costs, provided, first, however, that the lien of any such special assessment shall be junior to and subordinate to the lien of any Deed of Trust imposed within four (4) years of the date of this Indenture upon any property affected by such assessment if the holder of such Deed of Trust be a duly qualified savings and loan association, bank, insurance company, retirement or pension fund, otherwise the lien of such assessment to be senior to that of any encumbrance recorded after the date of this Indenture; and provided, second, however, that no special assessment shall become effective until approved by two-thirds (2/3) vote of the record owners of any and all lots then subject to these Restrictions and this Indenture. Such special assessments shall be made, if at all, in the same manner as herein provided for the making of assessments for general purposes under Section 3.20, and the enforcement of the collection thereof effected in the same manner hereinafter provided in Section 3.24 for the enforcement of collection of assessments made for general purposes.

Sec. 3.24 - A written or printed notice signed by the Trustees or a majority of them, or having names written or printed thereon with their authority, stating the amount of money required for general purposes, hereinbefore recited, of any installment or installments thereof, or of the sums hereinbefore required for special purposes (other than such general purposes), and the date or dates when payment thereof must be made, shall be served at least thirty (30) days before any payment under said notice shall be required to be made, upon each of said owners, either by delivering said notice to each owner personally, or to

his agent, or to any person over the age of fifteen years (15) found in charge of the residence, or by mailing the same to such owner's last known address, or by posting the same upon any conspicuous place upon the residence building with respect to which such assessment is being made; [provided, however, that the aforesaid notice provision shall not be applicable to the general purpose assessment levied against a particular lot for the calendar year in which such particular lot first becomes subject to general purpose assessments (as provided in Section 3.20 hereof), which assessments shall be deemed automatically levied against such lot, and shall be due and payable, on that date which is the date on which such lot first becomes subject to general purpose assessments (as provided in Section 3.20 hereof), without any notice from the Trustees pursuant to this Section 3.24 being required.] Service in any one of the said methods shall be sufficient; said annual amount and installments thereof (and any special assessment) required to be paid as above provided, shall as soon as such notice be served, become to the extent of and for the amount payable by each owner as above provided, a charge or lien upon his residence building, and upon his interest in any land or building a part of the Site, and said lien shall continue in full force and effect until said amounts are fully paid, and the same (together with all other assessments) shall constitute a first lien (excepting in cases of the lien of a Deed of Trust imposed upon any such property within four (4) years of the date of this Indenture, the lien of which, if the holder of such Deed of Trust be a duly qualified savings and loan association, bank, insurance company, retirement or pension fund, shall be senior to the lien of any special assessment) against the property superior to any lien or encumbrance which the owner may have heretofore created or may thereafter create against the said residence building, and owner's property and any improvements thereon, and all persons acquiring any interest in said residence buildings, and property, or any of them, from the owner and owners thereof, whether voluntarily or involuntarily, shall take the same subject to such right or power in the Trustees to assess the same for the purposes of these Restrictions and this Indenture. In case of said annual assessment or the amount of any installment thereof, or any special assessment, if not promptly paid when due, it shall thereafter bear interest at the lesser of eighteen percent (18%) per annum and the maximum legal rate; and if after default the same shall have been placed in the hands of any attorney for collection, the fee of such attorney shall be paid by the residence building owner or owners, in default and against whom such action to enforce collection has been taken, and shall likewise be a first lien (except as herein otherwise provided in the cases of Deeds of Trust imposed upon such property and held by a savings and loan association, bank, insurance company retirement or pension fund) on the residences and property of such owner or owners. The Trustees may institute and prosecute any legal proceedings in law or in equity, or both, against the owner or owners so making default, and against their respective residence building and lot, and against all persons claiming through and under them, to compel such payment with interest, costs of suit and attorney's fees attending the recovery of payment in default. Each residence building and lot, in respect of which default is made shall at all times on occasion of any such default be liable to be sold under decree of any court of competent jurisdiction in appropriate legal proceedings in like manner as if the amount so due and unpaid with interest, costs and attorney's fees, were secured by mortgage or Deed of Trust on such building, property and lot, to the end that out of the proceeds of such sale the amount so in default be raised and paid, with interest, costs and attorney's fees; the purchaser or purchasers, however, at such sale shall take subject to these Restrictions and this Indenture and to all of the covenants, easements, provisions, powers and rights herein contained, created, or granted, in the same manner and to the same extent as if the said owners had sold said building or buildings, property, and lot or lots voluntarily subject



to the provisions hereof, excepting that such sale shall clear the property sold from the lien of the particular assessment in default and on account of which said sale occurred. The owner of any such building, property, or lot at the time of such assessment, whether general or stormwater control or special, shall also be personally liable to the Trustees for the payment thereof, together with interest, costs and attorney's fees.

Sec. 3.25 - Notwithstanding anything to the contrary contained in this Indenture, all Common Ground or Common Lands shall, so long as the Trustees are vested with fee simple title thereto, be maintained by the Trustees, and the cost of such maintenance shall be funded by general and/or special assessments, as provided in this Indenture.

#### ARTICLE IV

Owner, for itself, its successors and assigns, and for and on behalf of all persons who may hereafter derive title to or otherwise hold through it, its successors or assigns, any one or more of the residential lots covenants with the Trustees and for the benefit of such future owners and each of them, as follows:

Sec. 4.01 - Trustees, in their sole discretion, shall have the right and power to approve or reject all plans and specifications for the construction, reconstruction, addition or alteration, painting or repainting of or to any building, fence, wall, satellite dish, antenna, or other structure of any kind, as well as for the location and grade of any structure upon any lot and the general grading and landscape treatment. No such structure shall be constructed, reconstructed, added, altered, painted or repainted, except in strict compliance with the terms of this Section. No work shall be started upon any of the structures or improvements until the plans and specifications for same have been submitted to and received the written approval of the Trustees. The Trustees shall have thirty (30) days from receipt of the plans and specifications to approve or disapprove the same. Any plans not disapproved by the Trustees within the thirty (30) day period shall be deemed approved. The Trustees shall have the right to disapprove and reject any such plans which in their opinion would be injurious to, or out of harmony with, the present or future development of the Site, and in so passing upon such plans and specifications, they shall have the right to take into consideration the type, use, and color of materials and of finish, the architectural design, general aesthetic appearance, landscaping plans, and any and all other facts, which in their judgment, affects the desirability and suitability, and the maintenance of the Site as a first class residential community. All plans shall comply with the size minimums in respect of living area specified in Section 4.02 hereof. Owner reserves to Owner, and to any successor developer, the right to maintain on Site, sales office, construction trailers, and construction equipment.

Upon the elapse of thirty (30) days after the date of submission to the Trustees of two (2) complete sets of detailed plans and specifications, such plans and specifications shall be deemed to have been approved, unless any one of the Trustees shall have therefore delivered to the person submitting said plans and specifications, a set thereof with the rejections and disapproval of one (1) Trustee endorsed thereon, with the date of submission and endorsement shown thereon.

Sec. 4.02 - Each residence shall have a minimum of 800 square feet of living area in respect to any one story residence, and a



minimum of 1200 square feet of living area in respect of any two story residence, in both cases exclusive of garage, porches and basement.

Sec. 4.03 - No "For Sale" or other signs or displays of any type shall be placed or displayed upon any building located in, or upon any part of the Site, without the prior written approval of the Trustees, who shall have the right, in their sole discretion, to approve such signs as to form, contents, size, and location. The foregoing shall not apply to the Owner or any successor developer.

Sec. 4.04 - No oil drilling, oil development operations, oil refining or mining operations of any kind shall be permitted upon or in any part of the Site, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon the Site. No derrick, tank, or other structure designed for use in storing or boring for oil or natural gas or other mineral shall be erected, maintained, or permitted upon the Site.

Sec. 4.05 - When and if the Site, or any part thereof, is platted of record into lots, no platted lot shall thereafter be resubdivided, nor a fractional part thereof sold without the written consent of the Trustees, who are hereby authorized, if in their judgment or discretion, such consent is desirable and beneficial to the Site, to consent thereto.

Sec. 4.06 - No residential building, now or hereafter constructed upon the Site shall be used for other than solely residential purposes, nor shall same be used for any purpose prohibited by law or ordinance, nor shall anything be done, or said building used for any purpose, which, in the judgment of Trustees, may be or hereafter become a nuisance to any user of any residence lot in the Site.

Sec. 4.07 - No pigeons, poultry, cattle, hogs, rabbits, or other animals, excepting two dogs and/or two cats per single family residence, if such dog and/or cats be confined in an enclosed area, may be kept upon any part of the Site except on written permission of the Trustees, who shall, in their sole discretion, have the right to grant such permission for additional dogs and/or cats, subject to revocation at any time at the pleasure of said Trustees. No clothes shall be hung on any line or other device outside of any dwelling. No trailers, motorized campers of any make or variety, trucks or boats shall be parked (except for temporary purposes not exceeding four hours) in any street in the Subdivision, nor upon any part of any lot, without the prior consent of the Trustees. No person shall reside on any lot in any temporary tent, temporary structure, or trailer home.

Sec. 4.08 - Each of the covenants and restrictions in this Article IV shall run with the land, and shall attach to and run with all land made subject to and encumbered by this Indenture and these Restrictions, and shall be binding upon every owner or occupancy of any part of the land encumbered thereby as fully as if expressly contained in proper and obligatory covenants or conditions in each contract or conveyance of or concerning said land or any part thereof, including any improvements thereon. The Trustees shall have the rights to recover from any person violating any such covenant all costs and expenses incurred in procuring the enforcement thereof, including, but not by way of limitation, court costs, attorney's fees, and damages for any violation.

Sec. 4.09 - Each lot encumbered hereby shall be subject to the sideyard and building line requirements, if any, of City of Valley Park Ordinances and to those shown on the Plat, except as may be amended by City of Valley Park and approved by the Trustee.

## ARTICLE V

### Amendment and Modification

Anything in these Restrictions and this Indenture to the contrary notwithstanding, the record owners of the fee simple title of at least two-thirds (2/3) of the lots created upon Site and created upon other property which are now subject to and hereafter made subject to these Restrictions and this Indenture, may, at any time hereafter, by instrument duly signed, acknowledged and recorded by them, amend, modify, remove or release, in whole or in part, any of the restrictions herein created, or may by such instrument impose new and additional restrictions which hereafter shall govern any or all of the buildings and lots on the Site; provided that these Restrictions and this Indenture, as amended, are in compliance with applicable ordinances. No such amendment, modification or change shall reduce or modify the obligation or right granted to or imposed upon the Trustees with respect to maintenance obligations and the power to levy assessments therefor or to eliminate the requirement that there be Trustees unless some person is substituted for the Trustees with the responsibility and duties of such Trustees. Owner [and any successor developer] shall be entitled to vote with respect to such amendments in accordance with the terms of subparagraph (g) of Section 1.01 hereof.

So long as Owner [or a successor developer] owns any part of the Site, Owner [or the successor developer] shall have the right to amend these Restrictions and this Indenture, provided that (i) approval to such amendment is first obtained from the Board of Alderman of the City of Valley Park, or other appropriate governmental authority, as the case may be, and (ii) if Owner [or a successor developer] owns less than fifty percent (50%) of the lots encumbered by these Restrictions and this Indenture, then no such amendment shall authorize any increase in the assessments without the prior written approval of owners of at least fifty percent (50%) of all of the lots encumbered by these Restrictions and this Indenture.

Trustees herein are authorized to accept from Owner in the future additional roads, places, avenues, circles, walks, parking areas, common areas, and Common Ground, and to hold title thereto subject to the terms of this Indenture and subject to the terms of such further restrictions, if any, as Owner may impose therein at the time of such conveyance.

Whenever the approval of any action hereunder is required by the lot owners, the Owners of each lot authorized to be established by law shall, collectively, be entitled to cast one (1) vote.

Any amendment made to these Restrictions and this Indenture pursuant to the terms of this Article V shall be subject to review and approval of the City of Valley Park, or other appropriate governmental authority, as the case may be.

## ARTICLE VI

### Removal of Trustees and Enforcement of Restrictions

Sec. 6.01 - Should any of the Trustees herein designated, or any of their respective Successor Trustees, be guilty of malfeasance nonfeasance, or misfeasance in office, then the owners of at least ten per cent (10%) of the number of residential lots located upon the Site, may institute an action and proceeding in the names of such owners in a court of competent jurisdiction in the County in which the Site is situated, for the purpose of securing and effecting the removal of any such Trustee.

Sec. 6.02 - Before any suit may be brought under this Article VI for the removal of any Trustee, and as a condition precedent to any such suit, such Trustee shall be given written notice specifying in particular each of the grounds of alleged malfeasance, nonfeasance, or misfeasance of any such Trustee, and such Trustee shall have forty-five (45) days within which to cure any such default. If within said forty-five (45) days such Trustee shall have cured said default, or if within said forty-five (45) days Trustee shall have in good faith taken effective steps to cure such default, and shall prosecute such steps with continuity, good faith, and due diligence, then such action on the part of such Trustee shall constitute full and complete defense to any action brought for such Trustee's removal.

Sec. 6.03 - Anything to the contrary notwithstanding, the embezzlement by any Trustee herein of any funds received by any such Trustee, in their capacity as such, shall always constitute a ground for such Trustee's removal, and such misfeasance by any such Trustee shall not be subject to the curative procedure set forth in Section 6.02 hereinabove.

#### ARTICLE VII

##### Eminent Domain, Compliance with Local Laws and Assessments for Street Lights, Roadways and Easements

(a) In the event it shall become necessary for any public agency to acquire all or any part of the property herein conveyed to the Trustees, for any public purpose, the Trustees, during the period of Trust as well as the times fixed for the appointment or election of Trustees, 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 Trustees need be made parties, and in any event the proceeds received shall be held by the Trustees for the benefit of those entitled to the use of the Common Ground, roads, easements, and other areas provided hereunder for the common and joint use of the lot owners.

(b) Notwithstanding any other condition herein, the Trustees shall make suitable provisions for compliance with all subdivision and other ordinances, rules and regulations of St. Louis County or any other municipality of which the subdivision may become a part and for such purposes shall not be limited to the maximum assessment provided for herein. Specifically and not by way of limitation, the Trustees shall make provision for the maintenance and operation of all street lights, roadways and easements, unless the obligation for such maintenance and operation be assumed and accepted by a public authority.

#### ARTICLE VIII

##### Miscellaneous Provisions

Sec. 8.01 - Surface Storm Water Drainage - No person deriving title to any part of Site, by, through, and under Owner, shall have the right to modify, change, or alter such grade as Owner may have established, or may hereafter establish upon Site nor obstruct, alter, or change, in any way the drainage of surface waters after the courses thereof shall have been fixed by reason of any grade established by Owner or by any successor developer, unless such person shall have first procured the written consent and authorization of Trustees.

Sec. 8.02 - Reservation of Expenditures - Owner reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expensed, deposited or placed in escrow by Owner, or subsequently provided by it, for utility facilities or services, streets, subdivision fees or for any other purpose of any nature or description with respect to any land which is now or may in the future be made subject to this Indenture.

Sec. 8.03 - Retaining Walls - The Trustees and Their Successors in Trust shall have an easement of access, ingress and egress in, to, from, over and upon all lots in the Subdivision for purposes of maintaining, repairing and replacing any retaining walls, tie walls and support members (deadmen). The Trustees shall in their sole judgment and discretion allocate the cost of such work among those lots owners whom the Trustees determine in their sole judgment and discretion are benefited by such maintenance, repair and replacement. The Trustees shall notify each such lot owner of his allocable share of said cost. Failure of a lot owner to reimburse the Trustees within the period of time set forth in the Trustees' notice shall cause the unreimbursed amount to be a lien on said owner's lot, which lien shall be junior to all Deeds of Trust held by institutional lenders (bank, insurance company, savings and loan association or retirement fund) on said lot and shall bear interest and may be foreclosed upon in the same manner as the lien for unpaid assessments under Section 3.24 hereof. In addition, the record owner of any lot, except an institutional lender, shall be personally liable for all such costs allocated to such owner. Notices hereunder may be given in the same manner as notices of assessments under Article III of this Indenture.

Sec. 8.04 - Successor Developer - For the purpose of this Indenture, and as used in this Indenture, a "successor developer" is any builder, contractor, developer or other person who has purchased a lot or lots from Owner or from any other successor developer, for the purpose of constructing and improving such lot(s) with residence(s) for resale of such lot(s) improved with completed residence(s) to third-person(s) or homeowner(s). A purchaser who purchases a lot for the purpose of having a builder construct a residence on such lot for such purchaser, for the occupancy of such completed residence by such purchaser, is not a "successor developer".

IN WITNESS WHEREOF, Owner has caused this Indenture to be duly executed, and the Trustees have also hereto set their hands, this day and year first in this Indenture written.

OWNER:

P & M DEVELOPMENT CO.,  
a Missouri corporation

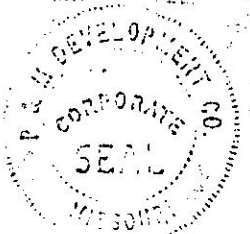
By: Mark S. Mehlman  
Mark S. Mehlman, President

TRUSTEES:

X Harold Sinn  
HAROLD SINN, AS TRUSTEE

X Christopher Cotton  
CHRISTOPHER COTTON, AS TRUSTEE

X Thomas M. Lawless  
THOMAS M. LAWLESS, AS TRUSTEE



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