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Recorder of Deeds  
St. Charles County, MO  
BY: Paula Goodrich

COVER PAGE

WATERSIDE CROSSING  
INDENTURE OF TRUST AND RESTRICTIONS

Date: APRIL 11, 2005

Grantor: McBride & Son Homes Land Development, Inc.

Grantee: Waterside Crossing Homeowners' Association

Grantee's Address: #1 McBride & Son Center Drive  
Chesterfield, MO 63005

Legal Description: As set forth on Exhibit A of the attached Indenture of Trust and Restrictions.

This cover page is attached solely for the purpose of complying with the requirements stated in §§ 59.310.2; 59.313.2 RSMo 2001 of the Missouri Recording Act. The information provided on this cover page shall not be construed as either modifying or supplementing the substantive provisions of the attached Indenture of Trust and Restrictions. In the event of a conflict between the provisions of the attached Indenture of Trust and Restrictions and the provisions of this cover page, the attached Indenture of Trust and Restrictions shall prevail and control.

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UST-MISC

WATERSIDE CROSSING  
INDENTURE OF TRUST AND RESTRICTIONS

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**WATERSIDE CROSSING**  
**INDENTURE OF TRUST AND RESTRICTIONS**

McBride & Son Homes Land Development, Inc. (the "Declarant"), and WATERSIDE CROSSING HOMEOWNERS' ASSOCIATION, a Missouri nonprofit corporation (the "Association"), make and enter into this Indenture of Trust and Restrictions ("Indenture") effective as of April 11, 2005.

RECITALS:

A. Declarant is the owner of certain real property located in the City of St. Peters, St. Charles County, Missouri, which is more particularly described on Exhibit A, attached hereto and incorporated herein.

B. Declarant desires to create on the above-described property a planned residential community to be known as "Waterside Crossing" consisting of attached Single Family Dwellings (as hereinafter defined) constructed on the Lots (as hereinafter defined) with open spaces, streets, roads, walkways and other common ground and facilities ("Community").

C. This Indenture is not a condominium declaration, the Community does not constitute a "Condominium" as defined in Ch.448 RSMo., as amended, and the Properties (as hereinafter defined) now or hereafter subject to this Indenture shall not be subject to or governed by Ch.448 RSMo., as amended.

D. Declarant desires to insure compliance with the requirements and the general purposes and objectives upon which the Community has been established.

E. Declarant deems it desirable, for the efficient preservation of the values and amenities in the Community, to form a nonprofit 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.

F. Declarant has caused to be incorporated under the laws of Missouri as a nonprofit corporation, Waterside Crossing Homeowners' Association, for the purpose of exercising the functions aforesaid.

G. 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 property 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.

1. DEFINITIONS

The following words when used in this Indenture (unless the context shall prohibit or clearly indicate otherwise) shall have the following meanings (and shall not have the meaning ascribed to these terms in Ch. 448 RSMO., as amended):

(a) "Association" shall mean and refer to Waterside Crossing Homeowners' Association, a Missouri nonprofit corporation, and its successors and assigns.

(b) "Board" shall mean the Board of Directors of the Association. The directors on the Board may be individually or collectively referred to herein as "Director" or "Directors".

(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 easements, licenses and 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 more than one Owner of the Properties, including, without limitation:

(i) parks, open spaces, playgrounds, streets, parking areas within the Common Properties, subdivision entrance areas and monuments, street lights, storm water control easement areas and facilities, paths, walkways, and other trail systems;

(ii) all sanitary and storm sewer facilities, including any detention and/or retention basins, and all utility installations, lines and connections for gas, electricity, light, telephone, water and plumbing, cable television wires, as located in any utility easements on a recorded plat in St. Charles County Recorder of Deeds, excepting those utilities located within a Lot (unless or until such time that a facility, as described above, has been accepted for maintenance by a municipal or quasi-municipal entity);

(iii) all apparatus and installations, now or hereafter, erected on the Common Properties and intended for common use;

(iv) any auxiliary buildings, parks, recreational facilities (if any) and other structures which may, at any time, be erected on the Common Properties and which are intended for common use;

(v) all streets until such time as they have been dedicated to and accepted by the City of St. Peters; and

(vi) Limited Common Elements.

Common Properties shall not include any item that solely serves a particular Lot or Single Family Dwelling.

(e) "Declarant" shall mean and refer to McBride & Son Homes Land Development, Inc., its successors and assigns if such successors or assigns acquire or succeed to ownership of all Lots which have not been improved with a Single Family Dwelling remaining in the Community then owned by Declarant for the purpose of development or if Declarant expressly assigns its "Declarant rights" hereunder to such assigns in writing.

(f) "Limited Common Elements" shall mean a portion of the Common Properties allocated by this Indenture or the Board for the exclusive use of one or more, but fewer than all of the Single Family Dwellings. Any chute, flue, duct, wire, conduit, bearing wall, bearing column, fence and any other fixture or improvement which lies partially within and partially outside the designated boundaries of a Single Family Dwelling or Lot, serving only that Single Family Dwelling or Lot, is a Limited Common Element allocated solely to that Lot and any portion of such an improvement serving more than one Lot, but less than all of the Lots, is considered a Limited Common Element, allocated proportionately to the Lots served. The Board from time to time by resolution, may determine which other fixtures and improvements shall be designated as Limited Common Elements.

(g) "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.

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

(i) "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.

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

## 2. EASEMENTS AND PROPERTY RIGHTS

(a) Every Owner and every resident of the Properties subject to this Indenture except with respect to Limited Common Elements 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;

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

(iii) The right of the Directors to suspend the voting rights and rights 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;

(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 (except Limited Common Elements) and require licenses and license fees where it is deemed necessary by the Directors;

(v) The right of the Directors to dedicate or transfer all or part of the Common Properties (except Limited Common Elements), or grant such easements and rights of way in and to the Common Properties, to any public or quasi-public agency, authority, or utility and subject to such conditions as may be reasonably necessary for the development of the Community provided that, subject to the foregoing exception, no other conveyance or transfer of fee title to all or any of the Common Properties shall be effective unless an instrument agreeing to such conveyance or transfer has been recorded and approved by two-thirds (2/3) of each class of members at a meeting of the members or consented to in writing and signed by members holding at least eighty percent (80%) of the voting power pursuant to Section 6(k) hereof. The Directors may dedicate or transfer the streets to the City of St. Peters or other political subdivision or municipality and/or grant easements over or otherwise affecting Common Properties at their sole discretion;

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

(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;

(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

(ix) The right of the Directors and/or Declarant (during such time as Declarant owns a Lot) to annex additional residential and Common Properties to the Community.

(b) The Common Properties (except Limited Common Elements) 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 the Common Properties.

(d) In the event that any utilities and utility connections 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 on each Lot an easement 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 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 benefiting 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 5 hereof.

(h) There shall be and hereby is imposed a non-exclusive perpetual easement fifteen (15) feet in width along the rear lot lines and four (4) feet in width along the side lot lines (except the side lot of each Lot along which the Single Family Dwelling on that Lot is located and attached to another Single Family Dwelling) of all Lots for sump pump drainage purposes. Without limiting the generality of any other provision of this Indenture, the Association may, but shall not be obligated to, maintain, clean and repair all such sump pump drainage easements, and is hereby granted easements in gross for ingress to and egress from such sump pump drainage easements and as otherwise required to perform the foregoing.

(i) 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.



(j) The Property including the Lots and Single Family Dwellings thereupon located shall be subject to a perpetual easement in gross to the Directors and the Association, their successors and assigns, for ingress and egress to perform its obligations and duties as required by this Indenture as well as all maintenance, repairs and other tasks which the Directors and/or Association has the right or discretion to perform hereunder. Should it be necessary on a non-emergency basis, to enter a Single Family Dwelling or upon a Lot in order to maintain, service, improve, repair or replace any Common Properties, Limited Common Element, the Single Family Dwelling, or any other item required or permitted to be maintained by the Association hereunder, employees, agents and workmen shall be entitled to entrance by exhibiting to the Owner an order from the Association signed by one of the members of the Board of Directors or an agent of the Board of Directors. The Association shall specifically have the authority to enter any Single Family Dwelling or Lot, on an emergency basis, for the purposes of repairing, maintaining, servicing or replacing the roof, plumbing, sewers, other utilities, pipes, walls, and wires within any Single Family Dwelling or Lot which serves another Single Family Dwelling or Lot, without the necessity of exhibiting an order from the Association. The determination of whether such an emergency exists shall be within the sole discretion of the Association, but it is anticipated that entering any Single Family Dwelling or Lot without an order from the Association shall only occur if the Owner is not present or reasonably available at the time such emergency occurs.

(k) The Property, including the Lots and Single Family Dwellings thereupon located, shall be subject to a perpetual easement in gross to the Declarant, its successors and assigns, for access, ingress and egress to perform any duties and obligations which may be imposed upon Declarant, its successors and assigns, as developer of the Community, by this Indenture or by any state, county, municipal or other governmental agency, including, without limitation, any obligations or duties which may be helpful or necessary for the release of development escrows deposited with any such state, county, municipal or other governmental agency.

### 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:

(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 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, 2012.

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 the approving vote of two-thirds (2/3) of each class of members entitled to vote at a meeting of the members, or the consent given in writing by members holding at least eighty-percent (80%) of the voting power, pursuant to Section 6(k) hereof, 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. Charles 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 (i) fee simple title to the Common Properties to the then Lot Owners as tenants in common and (ii) fee simple title to the Limited Common Elements to the then Lot Owners which own the Lots or Single Family Dwellings served by the Limited Common Elements 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 Limited Common Elements, 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 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. Any interest in real property which may vest at any time in the future as a result of this Indenture shall vest, if at all, within twenty-one years of the death of the last to survive of the now living descendants of George H. W. Bush, 41st president of the United States of America, or such longer vesting period as is allowed by law.

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 and (iii) a one time working capital assessment which shall be due immediately upon the first conveyance of any Lot (and not on any subsequent conveyance) after a Single Family Dwelling has been constructed upon such Lot in the amount of \$300.00 for purposes of providing working capital for the Association; such assessment is to be treated as a special assessment hereunder and shall be a charge against the title of each such Lot and shall be a continuing lien and otherwise shall be collectible and enforceable in accordance with this Section 5.

(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. Furthermore, mortgagees of any such financing on a Lot and/or improvements thereon shall not be required to collect, retain or escrow any assessments as referenced hereinabove.

(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/or required, and for the improvement, maintenance and operation of the Common Properties and Limited Common Elements 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 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 consent given in writing and signed by members holding at least eighty percent (80%) of the voting power, pursuant to Section 6(k) hereof, or the approving vote 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 construction, operation, maintenance, repair and replacement 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.

(iii) In addition to other special assessments authorized by this Subsection (d), 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 St. Charles County or the City of St. Peters. 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.

(iv) 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.

(e) In addition, the Directors may levy a special assessment or charge against any Owner and/or Lot(s) 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 and/or Limited Common Elements serving such Lots(s), which

repairs or maintenance the Owner has failed to make or which the Association or Board has the duty or right 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 proposed budget(s) for the upcoming assessment year taking into consideration all anticipated items of expense, including reasonable replacement and other reserves. Based upon the proposed budgets, the Directors shall establish the annual assessment for the upcoming assessment year for all Lots. The Directors shall set the due date for payment of the assessments, 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 budgets 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) 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.

(iii) 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.

(iv) 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. Charles 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.

(v) The failure or delay of the Directors to prepare or serve any budget or any annual, additional 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 or additional 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 exempt from taxation under the laws of the State of Missouri.

(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 David Jones ("Director 1"), John F. Eilermann, Jr. ("Director 2") and Mark Potthast ("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, 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 that the provisions of this Indenture cannot be fulfilled due to unfilled vacancies among the Directors, a Lot Owner may petition the City of St. Peters Council (and the City of St. Peters 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.

(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 Sections 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 subsection (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 Sections 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 subsections 6(b)(ii) and (iii), and no Director(s) shall be elected by the members under the provisions of subsections 6(b)(ii) and (iii) and the appointed nominee(s) shall serve as Director(s) until all Directors are elected by the Owners under the provisions of Section 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. Charles 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 President, one (1) member to



serve as Vice-President, and one (1) member to serve as Secretary/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. Charles, and there may be special meetings of the Association as may be called by any one of the Directors, also to be held at a convenient place in the County of St. Charles. 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.

(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.

(k) Notwithstanding anything contained herein to the contrary, any action required or permitted to be taken herein by approval of the Members may only be taken without a meeting of the Members, if the action is approved by Members holding at least eighty percent (80%) of the voting power. The action must be evidenced by one or more written consents, signed by Members representing at least eighty percent (80%) of the voting power and delivered to the Association. Such written consents shall be filed by the Secretary with the minutes of the proceedings of the Members and shall have the same force and effect as a vote at a meeting duly held. Written notice of such Member approval shall be given to all Members who have not signed a written consent. If written notice is required because consents have not been received

from all of the Members, such Member approval shall be effective ten (10) days after such written notice is given:

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 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 to Declarant. 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. The Owner shall bear the responsibility for the maintenance of any Owner constructed improvement authorized under this Section 8 in the same manner as the Owner bears the responsibility for maintaining Limited Common Elements.

(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 (except Limited Common Elements) in accordance with the provisions provided for herein, to exercise control over the Common Properties, continuously maintain, improve and operate same with landscaping, shrubbery, decorations, buildings, recreational facilities and structures of 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, to operate and maintain any storm water control 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 and to grant easements to any party over or otherwise affecting Common Properties.

(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.

(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:

(i) 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.

(ii) Purchase insurance against all risks, casualties and liabilities of every nature and description as more particularly set forth in Section 9(s) hereof.

(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 such property, in all respects, limited only as provided in this Indenture or by law.

(1) 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 the City of St. Peters, as applicable, and any other governmental entity of which the Properties may become a part. 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.

(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 St. Charles County or appropriate governmental entities, the Directors shall within thirty (30) days of receipt of the aforementioned request, remove the entry monuments from the aforementioned street corners and/or medians.

(r) At the discretion of the Directors, the Directors shall have the power to perform exterior maintenance upon each Lot and the Single Family Dwelling located on such Lot which is subject to assessment hereunder, as follows: paint, repair, replace and care for roofs, gutters, downspouts, trees (except those trees and shrubs installed by the Owners with the Directors' permission), shrubs, and grass. Such exterior maintenance shall not include glass surfaces, exterior doors, siding, brick, walks, garage doors, shutters, awnings, window boxes, doorways, doorsteps, air conditioning units, stoops, mailboxes, utilities, utility meters, porches, balconies, windows, fences, sidewalks, individual decks, patios or driveways. An Owner of a Lot shall not have the right to apply a different color, paint/stain or quality (other than the same color or stain and quality as originally provided by Declarant) to doors, decks, patios or fences without prior written approval by the Directors.

(ii) In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner or the Owner's family, guests, or invitees, the Directors may correct the condition and, in such event, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which Owner is subject under Section 5(e) hereof.

(iii) The Directors shall provide snow removal upon the driveways, city walks and front sidewalks leading to a Single Family Dwelling and front stoops.

(iv) The Association shall be responsible for maintaining, repairing and replacing parking spaces not located on the Lots, if any.

(v) The Directors may, but are not required to, budget for and maintain, repair and replace Limited Common Elements, provided that it is performed on a uniform basis or part of a uniform schedule of maintenance, repair and replacement during a year or over a period of years. Should the Directors not provide for such maintenance, then they may require a Lot Owner to maintain, repair or replace a Limited Common Element and if the Lot Owner fails to maintain, repair or replace the same within a reasonable period of time, the Directors may maintain, repair or replace the same and assess the Lot Owner for the costs incurred and collect reimbursement in the same manner as if a special assessment has been assessed against the Lot and its Owner.

(vi) All spaces, interior partitions, and other fixtures and improvements within the boundaries of a Single Family Dwelling are part of that Single Family Dwelling except for those which meet the definition of Limited Common Elements. Any glass surfaces, garage doors, shutters, awnings, window boxes, driveways, doorways, doorsteps, sidewalks, decks, air conditioning units, stoops, steps, mailboxes, utilities, utility meters, porches, balconies, patios, and all exterior doors and windows and other fixtures designated to serve a Single Family

Dwelling, but located outside the Single Family Dwelling's boundaries are allocated exclusively to that Single Family Dwelling and are the Owner's responsibility to maintain, repair and replace.

(s) Commencing not later than the time of the first conveyance of a Lot to a person other than Declarant, the Directors shall maintain, to the extent reasonably available:

(i) Property insurance on the Common Properties, Limited Common Elements, Single Family Dwellings and Lots insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the actual cash value of insured Property at the time the insurance is purchased and at each renewal date, exclusive of land and excavations, foundations and other items normally excluded from the Property policies; and

(ii) Liability insurance in an amount determined by the Board covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Properties. To the extent that any of the Lot(s) are covered by an insurance policy carried by the Directors, the Owners shall be responsible for the payment of the deductible amount under said policy, and the Directors shall apply the policy's proceeds to any repair or replacement incurred on a Lot.

(t) Insurance policies carried pursuant to Subsection (s) of this Section must provide that:

(i) Each Owner is an insured person under the policy with respect to the liability arising out of its membership in the Association;

(ii) The insurer waives its right to subrogation under the policy against any Owner or member of his household;

(iii) No act or omission by an Owner unless acting within the scope of his authority on behalf of the Association will void the policy or be a condition to recovery under the policy;

(iv) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance;

(v) If the insurance described above becomes unavailable to the Association, the Association promptly shall cause notice of that fact to be hand-delivered to the mailboxes for the Single Family Dwellings or to be sent prepaid by United States mail to all Owners;

(vi) The Association may carry any other insurance it deems appropriate to protect the Association or the Owners;



(vii) Any loss covered by the Property policy must be adjusted with the Association, and the insurance proceeds for that loss are payable to the Association, and not to any Mortgagee. The Association shall hold any insurance proceeds in trust for the Owners and lienholders as their interest may appear. Subject to the provisions of this Section, the proceeds must be disbursed first for the repair or restoration of the damaged area, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the Property has been completely repaired or restored, and then only in the sole discretion of the Directors;

(viii) An insurance policy issued to the Association does not prevent an Owner from obtaining insurance for his/her own benefit. Any parts of a Lot or Single Family Dwelling not covered by property insurance maintained by the Association shall be insured by the Owner. Owners are also encouraged to obtain a sewer and drain backup endorsement since this is not the responsibility of the Association unless the Association contracts for such service. The Owner shall be solely responsible for maintaining property insurance on all personal property of the Owner and liability insurance for the acts and omission of the Owner. All insurance maintained by an Owner shall waive the insurance company's right of subrogation against the Association and Declarant.

(ix) An insurer that has issued an insurance policy, shall issue certificates or memoranda of insurance through the Association and, upon written request, to any Owner, or Mortgagee. The insurer issuing the policy may not cancel or refuse to renew it without giving thirty (30) days prior written notice of the proposed cancellation or non-renewal by regular United States mail to the Association, each Owner and each Mortgagee to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses;

(x) Any portion of the Property for which insurance is required which is damaged or destroyed shall be repaired or replaced by the Association unless repair or replacement would be illegal under any state or local health or safety statute or ordinance, or eighty percent (80%) of the Owners vote not to rebuild either at a meeting of the Owners or through written consents of the Owners;

(xi) The cost of repair or replacement in excess of insurance proceeds and reserves may be declared a special assessment by the Board of Directors;

(xii) If the entire Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Properties must be used to restore the damaged area to a condition compatible with the remainder of the Community, and the insurance proceeds attributable to the Single Family Dwellings and Limited Common Elements which are not rebuilt must be distributed to the Owners of those Single Family Dwellings, then the Owners of the Single Family Dwelling to which those Limited Common Elements were allocated or to lienholders as their interest may appear and the remainder of the proceeds must be distributed to

all Owners or lienholders as their interest may appear in proportion of their ownership interest in the Association;

(xiii) With respect to the repair or replacement of any portion of the Property, as soon as practicable after receiving the proceeds of insurance or if in the judgment of the Association additional time is necessary to obtain the sums due from assessments made against Owners, then after the receipt of such assessments, the Association shall pursue to completion, the repair or reconstruction of any Single Family Dwelling insured by the Association, Limited Common Elements or other Common Properties damaged or destroyed. No consent or other action by any Owner shall be necessary. Such repair or reconstruction shall be in accordance with the original plans and specification of such Single Family Dwelling or may be in accordance with any other plans and specifications the Association may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Single Family Dwelling may not vary by more than five percent (5%) from the number of cubic feet and number of square feet for such Single Family Dwelling as originally constructed pursuant to such original plans and specifications, and the location of the building shall be substantially the same as prior to damage or destruction.

(u) The Directors may remove any signage erected or constructed anywhere within the Properties which signage was not approved by the Directors and is not otherwise specifically allowed hereunder.

#### 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 subject to the Association's election to maintain any Lot or improvement thereon.

(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, or other outbuilding shall be used on any Lot at any time as a residence temporarily or permanently. No outbuildings, detached garages, sheds, 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 swimming pools shall be allowed, constructed or placed upon any Lot in any portion of the Properties.

(ix) No fences or screening of any kind shall be erected or maintained on any Lot; except for one section of privacy fence, 10' long and 6' high, in white vinyl only, to be on the lot line attached to the Single Family Dwellings at the party wall. This section of fence must be attached to the rear of the residence and must be kept in good repair with the cost of any maintenance to be borne equally by the adjoining owners. 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(i) hereof.

(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 may 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) No more than two (2) Antennas shall be allowed per Lot.  
(B) The Antenna(s) shall be for the personal use of the Owner or resident.

(C) The Antenna(s) shall be located no less than five (5) feet behind the front of the Single Family Dwelling.

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

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

(2) The Antenna(s) 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(s) 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(s) at the expense of the Lot Owner at any time before or after the installation of the Antenna(s).

(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.

(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 gross vehicle weight in excess of five (5) tons, 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 A.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.

(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.

(xvix) 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 St. Peters Department of Public Works.

(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.

(xxiii) All driveways serving Single Family Dwellings shall be concrete. The Owners must keep such driveways in good repair and in their natural color. The Board may require a driveway to be replaced if the Owner of the Single Family Dwelling has not kept such driveway in good condition and in its natural color. If the Board deems it necessary, the driveway shall be replaced and the Owner shall reimburse the Association for such expenses. If the Owner fails to promptly reimburse the Association for such expenses, the Association may place a lien against the Owner's Lot in accordance with Section 5.

(xxiv) No Single Family Dwelling may be constructed or altered on any Lot which has a floor area of less than 1,250 square feet.

## 11. PARTY WALLS

(a) Each wall which is built as part of the original construction of a Single Family Dwelling upon a Lot and placed on the dividing line between two Lots shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) The costs of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) If a party wall is destroyed or damaged by fire or other casualty, an Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to their use thereof. Any such use shall be without prejudice to the right of any of those Owners to call for a larger contribution from the others under any rule of law which provides for liability for negligent or willful acts or omissions. To the extent that any of the aforementioned items are covered by an insurance policy carried by the Association, the relevant Owner or Owners shall be responsible for the payment of the deductible amount under that policy, and the Association shall apply the policy's proceeds to any repair or replacement.

(d) Notwithstanding anything herein to the contrary, in the event that any such damage or destruction of a party wall is caused by the willful or negligent act of an Owner, such Owner shall be responsible to pay that portion of the cost of repair thereof which may be in

excess of any insurance proceeds. Notwithstanding any other provisions of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

## 12. LEASES

Each Owner shall have the right to lease or rent the Single Family Dwelling for single family residential purposes only, subject to the following requirements:

(a) Every lease or rental agreement shall be in writing, and shall be subject to all provisions of this Indenture as amended from time to time. Further, the lease or rental agreement shall be deemed to incorporate the Rules and Regulations of the Association by reference and shall include the provisions that any violations of (A) the Rules and Regulations; (B) the Indenture as amended; or (C) the covenants and conditions of the lease or rental agreement itself other than nonpayment of rent, shall be the basis for termination of the lease or rental agreement.

(b) Every proposed lease or rental agreement shall be subject to the Directors approval so as to assure compliance with this Section.

(c) Every lease or rental agreement shall appoint the Board in its sole and absolute option and discretion, to act as an agent for the Owner for the purpose of enforcing the terms, covenants and conditions of the lease or rental agreement, other than the non-payment of rent. If any such violation is not cured within thirty (30) days or such shorter time that may be provided in the lease or rental agreement, the Directors shall have the right of action to evict or otherwise terminate the lease or rental agreement or the tenant's possession to the Single Family Dwelling under the Rent and Possession Laws or Unlawful Detainer Laws of the State of Missouri. The Directors shall have no liability to the Owner or the tenant on account of any action taken to evict or otherwise terminate the lease of the tenant's possession of the Single Family Dwelling.

(d) Every lease or rental agreement shall have a minimum initial term of one (1) year.

(e) Every lease shall be subject to the Rules and Regulations as promulgated by the Directors from time to time.

## 13. 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 and Limited Common Elements.

(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 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. Charles 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) This Indenture and the provisions herein may be amended, modified or changed from time to time by Declarant, so long as Declarant owns a Lot, by recording such amendment in the office of the Recorder of Deeds of St. Charles County, Missouri. Thereafter, subject to the requirements of Section 4, this Indenture and any part thereof may be altered or amended, by a written agreement approved by the vote of two-thirds (2/3rds) of the Owners at a meeting of the Owners, or the consent given in writing and signed by members holding at least eighty percent (80%) of the voting power pursuant to Section 6(k) hereof; and such written alteration or amendment, recorded with the Office of the Recorder of Deeds for St. Charles 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. All amendments are to be approved by the City of St. Peters, Missouri Director of Planning prior to recording.

(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. Charles County or any appropriate municipality for each Owner.

(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 or Association, 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 for the benefit of those entitled to the use of the common property, roads or easements.

(i) The following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration to the extent such agency(ies) insure, guaranty or hold any debt secured by a mortgage, deed of trust or other security interest

encumbering a Lot and such consent is required by such agency(ies): 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.

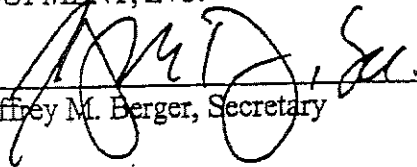
(k) Declarant, so long as Declarant owns a Lot, and/or the Directors, at any time, shall have the right, without consent of the Directors (in the case of Declarant) or Owners, to amend the Indenture to delete any portion of the Properties subject hereto which is owned by Declarant (provided Declarant approves such deletion in writing) or add any property to the Properties subject hereto which is contiguous to the Properties and the owners of such added property shall be Owners hereunder and such added property when platted shall be included within the definition of Lot(s) or Common Properties hereunder, as designated by Declarant or the Directors, as the case may be.

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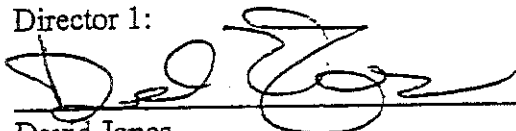
IN WITNESS WHEREOF, the undersigned have executed this Indenture the day and year first above written.

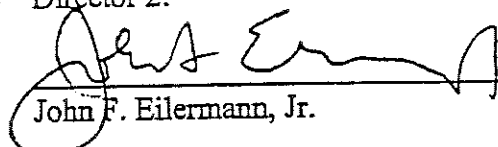
DECLARANT:

McBRIDE & SON HOMES LAND  
DEVELOPMENT, INC.

By:   
Jeffrey M. Berger, Secretary

CONSENT OF THE DIRECTORS OF  
WATERSIDE CROSSING  
HOMEOWNERS' ASSOCIATION,  
a Missouri nonprofit

Director 1:  
  
David Jones

Director 2:  
  
John F. Eilermann, Jr.

Director 3  
  
Mark Potthast

Being all of the Directors

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

On this 17<sup>th</sup> day of APRIL, 2005 before me personally appeared Jeffrey M. Berger, to me known, who being by me duly sworn did say that he is the Secretary of McBride & Son Homes Land Development, Inc., a Missouri corporation, and that the foregoing instrument was executed by Jeffrey M. Berger by authority of its Board of Directors; and said Jeffrey M. Berger, acknowledged said instrument to be the free act and deed of said corporation.

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

*Donna L. Knese*

DONNA L. KNESE  
Notary Public - Notary Seal  
STATE OF MISSOURI  
ST. CHARLES COUNTY  
MY COMMISSION EXP. DEC. 6, 2007

Notary Public

My term expires:

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

On this 13<sup>th</sup> day of APRIL, 2005, before me personally appeared David Jones, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his/her free act and deed.

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

*Donna L. Knese*

Notary Public

My term expires:

DONNA L. KNESE  
Notary Public - Notary Seal  
STATE OF MISSOURI  
ST. CHARLES COUNTY  
MY COMMISSION EXP. DEC. 6, 2007

RECORD AS IS

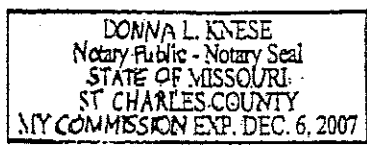
STATE OF MISSOURI )  
 ) ss.  
COUNTY OF ST. LOUIS )

On this 13<sup>th</sup> day of APRIL, 2005, before me personally appeared John F. Eilermann, Jr., to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his/her free act and deed.

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

Donna L. Knese  
Notary Public

My term expires:



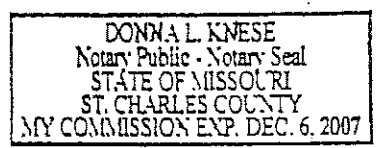
STATE OF MISSOURI )  
 ) ss.  
COUNTY OF ST. LOUIS )

On this 18<sup>th</sup> day of APRIL, 2005, before me personally appeared Mark Potthast, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his/her free act and deed.

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

Donna L. Knese  
Notary Public

My term expires:

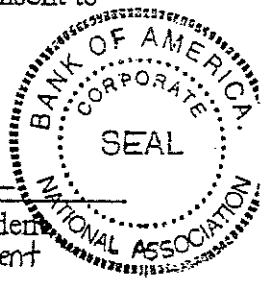


LENDER CONSENT

The undersigned, Bank of America, N.A., holder of a Deed of Trust on the Properties described in the foregoing Indenture, which Deed of Trust is recorded in Book 3704 Page 2503 of the Office of the Recorder of Deeds for St. Charles County, Missouri, does hereby consent to and subordinate its Deed of Trust to the foregoing Indenture.

BANK OF AMERICA, N.A.

By: *Donn P. Hackmann*  
Donn P. Hackmann, Senior Vice President  
President



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

On this 18<sup>th</sup> day of April, 2005, before me appeared Donn P. Hackmann, to me personally known, who, being by me duly sworn, did say that he/she is the Senior Vice President of Bank of America, N.A., a national banking association, and that the seal affixed to the foregoing instrument is the seal of said association,, and that said instrument was signed in behalf of said association by authority of its Board of Directions, and said Donn Hackmann acknowledged said instrument to be the free act and deed of said association.

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.

*Amy M. Cordeal*  
Notary Public

My term expires:  
September 16, 2005

**AMY M. CORDEAL**  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County  
My Commission Expires: Sept. 16, 2005

EXHIBIT A

LEGAL DESCRIPTION

WATERSIDE CROSSING

3055 OLD HIGHWAY 94 SOUTH  
11.754 ACRES  
JUNE 4, 2004

A TRACT OF LAND IN THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 46 NORTH, RANGE 4 EAST IN ST. CHARLES COUNTY, MISSOURI; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF McCLAY MEADOWS - PLAT ONE, A SUBDIVISION RECORDED IN PLAT BOOK 30, PAGE 317 OF THE ST. CHARLES COUNTY RECORDER'S OFFICE, ALSO BEING ON THE WEST LINE OF SUN RIVER VILLAGE A CONDOMINIUM, A SUBDIVISION RECORDED IN PLAT BOOK 30, PAGE 227 OF SAID RECORDER'S OFFICE;

THENCE SOUTH 02 DEGREES 14 MINUTES 22 SECONDS WEST, A DISTANCE OF 1342.91 FEET ALONG THE WEST LINE OF SAID SUN RIVER VILLAGE A CONDOMINIUM AND THE WESTERN LINE OF LAND NOW OR FORMERLY RICHARD AND JESSIE MARTIN AS RECORDED BY DEED IN BOOK 963, PAGE 1773 AND BOOK 1124, PAGE 947 OF SAID RECORDER'S OFFICE, TO THE NORTH RIGHT OF WAY LINE OF STATE HIGHWAY ROUTE 364;

THENCE ALONG SAID NORTH RIGHT OF WAY LINE THE FOLLOWING BEARINGS AND DISTANCES: SOUTH 76 DEGREES 03 MINUTES 05 SECONDS WEST, A DISTANCE OF 166.97 FEET; NORTH 11 DEGREES 20 MINUTES 13 SECONDS WEST, A DISTANCE OF 10.69 FEET; SOUTH 78 DEGREES 39 MINUTES 47 SECONDS WEST, A DISTANCE OF 130.81 FEET TO THE EAST LINE OF LAND NOW OR FORMERLY MELVIN AND LILLIAN HEMSATH AS RECORDED BY DEED IN BOOK 737, PAGE 1109 OF SAID RECORDER'S OFFICE;

THENCE ALONG SAID EAST LINE NORTH 04 DEGREES 15 MINUTES 14 SECONDS WEST, A DISTANCE OF 1414.54 FEET TO THE SOUTH LINE OF SAID McCLAY MEADOWS PLAT ONE;

THENCE ALONG SAID SOUTH LINE SOUTH 88 DEGREES 18 MINUTES 31 SECONDS EAST, A DISTANCE OF 450.00 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED TRACT OF LAND CONTAINING 11.754 ACRES IS BASED UPON A BOUNDARY SURVEY EXECUTED BY COLE & ASSOCIATES INC. DURING THE MONTH OF MAY AND JUNE, 2004 AND IS SUBJECT TO ALL EASEMENTS, RESTRICTIONS, RESERVATIONS AND CONDITIONS OF RECORD, IF ANY.