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- 2. Date of Document: September 7, 2022
- 3. Grantor: Zykan Development, LLC  
Mailing Address:  
\_\_\_\_\_  
\_\_\_\_\_
- 4. Grantee: Stone Canyon Homeowners Association  
Mailing Address: % Zykan Development, LLC  
\_\_\_\_\_  
\_\_\_\_\_
- 5. Legal Description: See Exhibit A annexed to the document
- 6. Reference(s) to Book and Page(s): N/A

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**INDENTURE OF TRUST AND RESTRICTIONS FOR STONE CANYON  
CITY OF FORISTELL, ST. CHARLES COUNTY, MISSOURI**

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**INDENTURE OF TRUST AND RESTRICTIONS FOR STONE CANYON  
CITY OF FORISTELL, ST. CHARLES COUNTY, MISSOURI**

THIS INDENTURE OF TRUST AND RESTRICTIONS FOR STONE CANYON (the “Indenture”), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between Zykan Development, LLC, a Missouri limited liability company, hereinafter referred to as “Declarant”, and the STONE CANYON HOMEOWNERS ASSOCIATION, a Missouri not-for-profit corporation, hereinafter referred to as the “Association” or, for purposes of recording this Indenture in the St. Charles County Records, “Grantee”.

WITNESSETH THAT:

WHEREAS, Declarant is the owner of a tract of real property (the “Property”) located in the City of Foristell, St. Charles County, Missouri, described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Declarant has or will cause the Property to be subdivided under the name “Stone Canyon” (sometimes hereinafter referred to as the “Subdivision”), and has caused or will cause the record plat(s) of the Subdivision to be recorded in the St. Charles County Records; and

WHEREAS, common land has been or will be reserved on the plat(s) of the Subdivision, and there has been or will be designated, established and recited on such plat(s) certain streets, common land and easements which are for the exclusive use and benefit of the residents of the Subdivision; and

WHEREAS, Declarant, being the owner of the entire tract, may desire, from time to time, to encumber and dispose of parts thereof; and

WHEREAS, it is the purpose and intention of this Indenture to protect the Property against certain uses, and

WHEREAS, all reservations, limitations, conditions, easements and covenants herein contained (all of which are sometimes hereafter termed “restrictions”) are jointly and severally for the benefit of all persons who may purchase, hold or reside upon the Property.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements made by the parties hereto each to the other, the receipt and sufficiency of which is hereby acknowledged, the parties hereto COVENANT and AGREE to and with each other, collectively and individually, for themselves, their heirs, successors and assigns, and for and upon behalf of all persons who may hereafter derive title to or otherwise hold through them, together with their heirs, successors or assigns, any of the lots and parcels of land in the Subdivision, all as hereinafter set forth:

**ARTICLE I**  
**DEFINITION OF TERMS**

The following terms when used in this Indenture (unless the context requires otherwise) shall have the following meanings:

1. "Architectural Committee" is defined in Article IX of this Indenture.
2. "Assessment Year" shall be a calendar year.
3. "Association" shall mean and refer to the Stone Canyon Homeowners Association, a Missouri not-for-profit corporation, and its successors and assigns.
4. "Board" or "Directors" shall mean and refer to the Board of Directors of the Association.
5. "Builder" shall mean and refer to Declarant if Declarant is constructing a Living Unit on a Lot or any builder who purchases a Lot from Declarant for purposes of building a Living Unit thereon.
6. "City" shall mean and refer to the City of Foristell, Missouri.
7. "Common Ground" shall mean and refer to all real property and the improvements thereon which are now or hereafter owned by the Association and all easements, licenses and other rights held by the Association for the common use and enjoyment of all Owners including, without limitation, parks, open spaces, cul-de-sac islands, recreational facilities, lakes, streets, designated off-street parking spaces, paths, trails, walkways, storm water (including natural creeks and waterways and detention basins) and sanitary sewers and drainage facilities, retaining walls, subdivision entrance ways, monuments and gates, street lights and other such areas and facilities as may be shown on the record plat(s). Nothing hereinabove contained shall be deemed a representation that any of the enumerated facilities are or will be included in the Subdivision or that any such facilities will be constructed upon the Common Ground.
8. "Consumer Price Index" shall mean and refer to the Consumer Price Index For All Urban Consumers, All Items, St. Louis, Missouri published by the Bureau of Labor Statistics, United States Department of Labor.
9. "County" shall mean and refer to St. Charles County, Missouri.
10. "Declarant" shall mean and refer to Zykan Development, LLC, a Missouri limited liability company, its successors and assigns, if such successors and assigns should acquire more than one undeveloped Lot from Declarant and the deed or another instrument executed by Declarant providing for the transfer of such rights.
11. "Declarant Control Period" shall mean a period of time commencing upon the date of the adoption of this Indenture and continuing until the later to occur of (a) a date not later than six

months following the issuance of occupancy permits ninety five percent (95%) of the Living Units on the Property or (b) December 31, 2028.

12. "Indenture" shall mean and refer to this Indenture of Trust and Restrictions for Stone Canyon, City of Foristell, St. Charles County, Missouri, as from time to time amended.
13. "Living Unit" shall mean and refer to any structure constructed upon a Lot in the Subdivision designed and intended for independent residential use.
14. "Lot" shall mean and refer to any plot of land, with the exception of the Common Ground, shown on the recorded subdivision plat(s) of the Property.
15. "Member" shall mean and refer to a member in the Association.
16. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers but excluding those having such interests as security for the performance of an obligation and excluding Declarant.
17. "Prime Rate" shall mean for any day, the highest rate from time to time reported in the Money Rates column or any successor column of The Wall Street Journal (the "Journal"), currently defined as being the base rate on corporate loans posted by at least seventy-five percent (75%) of the nation's thirty (30) largest banks, even if such rate was never actually charged by such bank. In the event the Journal publishes more than one rate, the highest of such rates shall be the "Prime Rate", or if the Journal publishes a retraction or correction of the rate, the new rate shall be the "Prime Rate". In the event the Journal ceases publishing the Prime Rate, the "Prime Rate" shall mean the from time-to-time publicly announced floating prime rate of interest charged by Bank of America, NA., St. Louis, Missouri, or its successors.
18. "Plat" shall mean and refer to the plat of Stone Canyon Subdivision and any additional subdivided property made subject to this Indenture from time to time by amendment in the manner provided herein.
19. "Property" shall mean and refer to the real property described on Exhibit A attached hereto and incorporated herein by reference.
20. "Subdivision" shall mean and refer to Stone Canyon, as per plat(s) thereof recorded or to be recorded in the St. Charles County Records.

## **ARTICLE II DURATION OF TRUST**

The Indenture of Trust herein created shall continue until such time as the Plat(s) of the Subdivision may be vacated by the Board of Aldermen, or its successors, after which period of time fee

simple title to the Common Ground shall vest in the then record Owners of all Lots constituting a part of the Property as tenants in common; provided, however, that all of the rights, powers and authority conferred upon the Association shall continue to be possessed by the Association. The right of said tenants in common shall only be appurtenant to and in conjunction with their ownership of Lots in the Subdivision, and any conveyance or change of ownership of any Lot shall carry with it ownership in the Common Ground so that none of the Owners of Lots and none of the owners of the Common Ground shall have such rights of ownership as to permit them to convey their interest in the Common Ground except as is incident to the ownership of a Lot, and any sale of any Lot shall, without specifically mentioning it, carry with it all the incidents of ownership of the Common Ground.

**ARTICLE III  
RESERVATION OF EXPENDITURES**

Declarant reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided for sewers, gas pipes, water pipes, conduits, poles, wires, street lights, roads, streets, recording fees, subdivision fees, consultation fees or other fees, charges and expenses incurred with respect to the Property.

**ARTICLE IV  
PROPERTY SUBJECT TO THIS INDENTURE  
AND ADDITIONS THERETO**

1. Existing Property. The real property which is described on Exhibit A, attached hereto and incorporated herein, shall be held, transferred, sold, conveyed and occupied subject to this Indenture.
2. Additions to Existing Property. The Declarant may cause additional property or properties to be made subject to this Indenture by executing and recording an amendment to this Indenture, all without the consent of any Owner, mortgagee or holder of any deed of trust encumbering the Subdivision. The property or properties thus added may include areas and facilities which are to constitute a portion of the Common Ground. An amendment to this Indenture which adds Common Ground to the Subdivision may contain special covenants and restrictions as to such Common Ground.

**ARTICLE V  
THE ASSOCIATION AND ITS MEMBERS**

1. Function of Association. The Association is responsible for management, maintenance, operation and control of the Common Ground and for the enforcement of this Indenture.

2. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Article VI, Section 3 of this Indenture, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.
3. Votes. All Owners, including Declarant with respect to unsold Lots, shall be entitled to one vote in the Association for each Lot owned by such Owner and in no event shall more than one vote in the Association be cast with respect to any Lot. If any Owner consists of more than one person, the voting rights of such Owner shall be exercised as if the Owner consisted of only one person.

**ARTICLE VI  
DESIGNATION AND SELECTION OF DIRECTORS  
AND MEETINGS OF MEMBERS**

1. Original Directors. The Board of Directors of the Association shall consist of three (3) Members. The original Directors shall be Fred Zykan Sr., Jeffry Zykan and John Becker (collectively the "Original Directors"), who shall serve in such capacity until their successors are elected or appointed as hereinafter provided. Should an Original Director or a successor Director appointed by Declarant resign other than is required by Section 2 of this Article VI, refuse to act, become disabled or die, Declarant shall have the power to appoint a successor Director who shall serve until his successor is elected by the Members in the manner hereinafter provided.
2. Election of Directors. At such time as occupancy permits have been issued for the Living Units on fifty percent (50%) of the Lots authorized to be developed in the Subdivision, or at such earlier time as Declarant may determine, Declarant shall cause the resignation of one (1) of the Original Directors, and a successor Director shall be elected by the Members. At such time as occupancy permits have been issued for the Living Units on ninety-five percent (95%) of the Lots authorized to be developed in the Subdivision, or at such earlier time as Declarant may determine, Declarant shall cause the resignation of a second Original Director, and a successor Director shall be elected by the Members. The two (2) Directors elected by the Members pursuant to the foregoing provisions shall serve until such time as occupancy permits have been issued for the Living Units on all Lots authorized to be developed in the Subdivision, or until such earlier time as Declarant may determine, when the term of such elected Directors shall expire and Declarant shall cause the resignation of the third Original Director then serving hereunder, and the then Members shall elect three (3) successor Directors, one (1) of which shall be elected to serve for one (1) year, one (1) of which shall be elected to serve for two (2) years, and one (1) of which shall be elected to serve for three (3) years from the date of election (the first annual meeting of the Members to be held under Section 7 of this Article VI shall be held within one (1) year from the date of such

election). Thereafter, all Directors shall be elected for terms of three (3) years each.

3. Manner of Conducting Elections.

- a. The elections for the first two (2) successor Directors under Article VI, Section 2 of this Indenture shall be by mail. Notice of call for nominations shall be sent to all Owners, and shall require all nominations be received within thirty (30) days thereafter. All nominations received shall be compiled on an election ballot and mailed to all Members, who shall have thirty (30) days to cast their votes and return their ballots to Declarant. The person receiving the most votes shall be elected the successor Director; provided, however, if the person elected declines to serve, the person receiving the next highest number of votes whom is willing to serve shall be declared the Director. In the event of a tie, a runoff election shall be conducted by mail in the aforesaid manner. For purposes hereof, nominations and/or ballots shall be timely received if postmarked by the United States Postal Service no later than midnight on such thirtieth (30th) day.
- b. Except as provided in Article VI, Section 3(a) of this Indenture, all elections shall be held at the annual meetings to be held pursuant to Section 7 of this Article VI, and shall be preceded by notice signed by the Directors then in office, or should there be no Directors, then by three (3) such Members, sent by mail to or personally served upon all Members at least ten (10) days before the date fixed for the meeting to be held for the purpose of electing Directors. The notice shall specify the time and place of meeting, which shall be in the County. At such meeting or at any adjournment thereof, the majority of the Members attending such meeting, in person or by proxy, shall have the power to elect such Directors, who shall thereupon serve until their successors have been duly appointed or elected and qualified. At such meeting, each Member entitled to vote for a Director, whether attending in person or by proxy, shall be entitled to one (1) vote per Lot owned, which, when the Member constitutes more than one person or entity, shall be cast as they among them shall determine; in no event shall more than one (1) vote be cast with respect to any Lot. The result of any election of Directors shall be certified by the persons elected as chairman and secretary at such meeting, and their certification shall be acknowledged and recorded.

4. Qualification of Directors.

- a. Any Director elected under the provisions of this Article VI shall be an Owner in the Subdivision, or an officer or agent of a corporate Owner, and if such Owner sells his or her Lot or resigns, refuses to act, becomes disabled or dies, the remaining Directors shall appoint an Owner to act as the successor for the unexpired term. Where the provisions of this instrument cannot be fulfilled by reason of unfilled vacancies among the Directors arising due to default or inaction by the Declarant, the Board of Aldermen of the City or its successors may, upon petition of any concerned resident or Owner in the Subdivision and upon providing advance written notice to such Declarant, appoint one or more Directors to fill the vacancies until such time as Directors are elected or selected in the

manner provided in this Indenture. Any person so appointed who is not an Owner within the Subdivision shall be allowed a reasonable fee for his/her services by the order of appointment, which fee shall be levied as a special assessment against the Lots and which fee shall not be subject to any limitations on special assessments contained in this Indenture or elsewhere.

- b. Prior to each election of Directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each eligible person who has a bona-fide interest in serving as a Director may file as a candidate for any position to be filled by the Members. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of Directors in a fair, efficient and cost-effective manner. Nominations also may be permitted from the floor.
  - c. Except with the respect to Directors selected by the Declarant, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairperson, who shall be a member of the Board, and three (3) or more Members or representatives of Members. Members of the Nominating Committee shall be appointed by the Board not less than thirty (30) days prior to each annual meeting to serve a term of one (1) year and until their successors are appointed, which such appointment shall be announced in the notice of each election.
  - d. The Nominating Committee may make as many nominations for the election to the Board as it shall, in its discretion, determine.
  - e. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.
5. Election Procedures. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.
6. Removal of Directors.
- a. Any Director elected by the Members may be removed, with or without cause, by the vote of a majority of the votes entitled to be cast for the election of such Director. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall be elected by the Members to fill the vacancy for the remainder of the term of said Director.
  - b. Any Director elected by the Members who has three (3) consecutive unexcused absences from Board meetings, or who is more than thirty (30) days delinquent (or is the representative of a Member who is so delinquent) in the payment of any Assessment or other charge due the Association, may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a

successor to fill the vacancy for the remainder of the term.

- c. In the event of the death, disability, or resignation of a Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term.
  - d. This Section shall not apply to the Directors appointed by the Declarant. The Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a Director appointed by or elected as a representative of the Declarant.
7. Annual Meetings. The first meeting of the Members of the Association shall be held within one year after the date of the election referenced in Section 2 of this Article VI. Subsequent regular annual meetings may be set by the Board to occur during the same quarter of the Association's fiscal year as that in which the first such election occurred on a date and at a time set by the Board.
8. Special Meetings. Special meetings of the Owners may be called by the President of the Association, a majority of the Directors, or by Owners having at least one-third ( $\frac{1}{3}$ ) of the votes in the Association. Written notice of the place, day and time of the annual meeting and all special meetings shall be delivered, within the time period set forth in Section 9 hereunder, to all Owners and Directors, if such Directors are not Owners and to those institutional holders of a first mortgage or first deed of trust on any Lot that have requested such notice by written notification to the Directors within the time period set forth in Section 9 hereunder. Any Owner or holder of a first mortgage or first deed of trust shall have the right to designate a representative to attend all annual and special meetings. If sent by mail, notice shall be deemed delivered when deposited with the United States Postal Service, with postage thereon prepaid, addressed to the person or entity entitled to notice at his or her last known address.
9. Notice of Meetings.
  - a. Written or printed notice stating the time and place of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than sixty (60) days before the date of such meeting. In addition, in the case of a special meeting, the notice shall state the purpose or purposes for which the meeting is called; no business shall be transacted at a special meeting except as stated in the notice.
  - b. If mailed, notice shall be deemed delivered when deposited with the United States Postal Service, postage prepaid, addressed to the Member at his or her address as it appears on the Association's records.
  - c. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting, and waiver of notice of a meeting of the Members shall be deemed

the equivalent of proper notice. Attendance at a meeting by a Member shall be deemed a waiver of notice unless such Member attends for the limited purpose of objecting to lack of proper notice.

10. Quorum.

- a. The presence of Members representing a thirty percent (30%) majority of the total Members in the Association shall constitute a quorum at all Association meetings.
- b. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. Notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.
- c. Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

11. Voting and Proxies.

- a. The voting rights of the Members shall be as set forth in this Indenture. When a quorum is present at any duly called meeting, a majority of the votes cast shall decide any question brought before the meeting, unless the question is one which, by express provision of the Missouri Not-For-Profit Corporation Act (the "Act") or this Indenture, requires a different vote, in which case such express provision shall govern and control the decision of such question.
- b. Members may vote in person or by proxy. On any matter as to which a Member is entitled personally to cast the vote for his or her Lot, such vote may be cast in person or by proxy, subject to the limitations of the Act relating to the use of general proxies and subject to any specific provision to the contrary in this Indenture.
- c. Every proxy shall be in writing specifying the Lot for which it is given, signed by the Member or his or her duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

- d. Every proxy shall be revocable and shall automatically cease upon: (a) conveyance of any Lot for which it was given; (b) receipt by the Secretary of a written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person; or (c) eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.
12. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by the Members holding at least eighty percent (80%) of the voting power. Such consents shall be signed within sixty (60) days after receipt of the earliest dated consent, dated and delivered to the Association. Such consents shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice summarizing the material features of the authorized action to all Members entitled to vote who did not give their written consent.

## **ARTICLE VII ASSOCIATION'S DUTIES AND POWERS**

The Association, or the Declarant during the Declarant Control Period, shall have the rights, powers, duties and authorities described throughout this Indenture, and, without limiting the generality of any thereof, the following rights, powers, duties and authorities:

1. Acquisition, Disposition, Etc. of the Common Ground. To acquire, receive, hold, convey, dispose of and administer the Common Ground in trust and in accordance with and pursuant to the provisions of this Indenture, and to otherwise deal with the Common Ground as hereinafter set forth. Without limiting the generality of the foregoing, during the period in which Declarant retains the right under Article XIII, Section 5 of this Indenture to amend this Indenture, upon request of Declarant, the Directors shall cooperate with Declarant in its development of the Subdivision, and to facilitate such development, Declarant shall have the right, in its discretion, to adjust and reconfigure the Common Ground; Directors agree to convey and exchange portions of the Common Ground to Declarant and the from time to time Owners of adjoining Lots; and to grant Declarant and the from time to time Owners of adjoining Lots easements over the Common Ground for appurtenances (including, but not limited to, patios, decks, driveways, sidewalks and retaining walls) to their Living Units. The provisions of this Article VII, Section 1, shall not be amended, modified or deleted without the prior written consent of Declarant.
2. Control of the Common Ground. To exercise such control over the easements, streets and roads, sidewalks (except for those easements, streets and roads and sidewalks which are now or may hereafter be dedicated to public bodies or agencies), entrances and entrance markers, retaining walls, lights, gates, park areas, lakes, cul-de-sac islands, medians, shrubbery, storm water sewers and drainage facilities including, but not limited to, natural creeks and waterways and detention

basins, sanitary sewer trunks and lateral lines, pipes, and disposal and treatment facilities constituting the Common Ground as is necessary to maintain, repair, rebuild, supervise and assure the proper use thereof, including the right (to themselves and others to whom they may grant permission) to construct, operate and maintain on, under and over said easements, streets, sidewalks, sewers, pipes, poles, wires and other facilities and public utilities for services to the Lots, and the right to establish traffic rules and regulations for the usage of driveways, streets and parking lots in the Subdivision.

3. Maintenance of Common Ground. To exercise control over the Common Ground and easements and to pay real estate taxes and assessments on said Common Ground out of the general assessment hereinafter authorized; to maintain and improve the Common Ground with shrubbery, vegetation, decorations, buildings, recreational facilities of any kind or description, other structures, and any and all other types of facilities in the interest of health, welfare, safety, morals, recreation, entertainment, education, and general use of the Owners and residents in the Subdivision, all in conformity with applicable laws; and to prescribe by reasonable rules and regulations the terms and conditions of the use of Common Ground, all for the benefit and use of the Owners and residents in the Subdivision and according to the discretion of the Directors.
4. Maintenance of Entrance Monument Easement. Without limiting the generality of Article VII, Section 3 of this Indenture, the Association shall have the power, authority and responsibility to maintain, improve and repair any entrance monuments installed on any easement or as part of the Common Ground within the Subdivision, and shall include the cost thereof in the annual assessment levied pursuant to Article XI, Section 3 of this Indenture.
5. Maintenance of Storm Water Facilities. If any natural creek(s) run through or detention easements (collectively "Storm Water Facilities") are created and established on the record plat(s) of the Subdivision, without limiting the generality of Article VII, Section 3 of this Indenture, the Directors shall have the power, authority and responsibility to maintain, improve and repair such creek(s), easements and detention basins as part of the Common Ground and shall include the cost thereof and of maintaining, improving and repairing the creek(s) and any detention easements (and improvements thereon) shown on the plat(s) in the annual assessment levied pursuant to Article XI, Section 3 of this Indenture. Further, as provided in Article XI, Section 4 of this Indenture, the Directors shall have authority to levy special assessments for the maintenance and repair of such facilities.
6. Declarant Control. Notwithstanding anything in this Indenture to the contrary, the Declarant shall not be liable to any Owner or any third party for, and 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 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 from its control and maintenance of the Common Ground set forth above, wherever the Common Ground is located.

7. Dedication. To dedicate to public use any private streets constructed or to be constructed in the Property whenever such dedication would be accepted by a public agency.
8. Easements. To grant easements for public streets, sewers, utilities and cable television on and over the Common Ground. Notwithstanding anything contained in this Indenture to the contrary, if required in connection with Declarant's or its successors' or assigns' development of property adjacent to the Property, the Association shall grant Declarant and applicable public and private utilities, cable and fiber optics companies and their respective successors and assigns, the perpetual right and easement to enter the Common Ground at any time and from time to time erect, install, maintain, repair, rebuild and operate water, sewer, gas, telephone, power, cable television and fiber optics pipes, lines, poles and conduits including the right to clear the right-of-way for such pipes, lines, poles and conduits, and to keep it clear of brush and trees. The provision of this Article VII, Section 8 shall not be amended, modified or deleted without the prior written consent of Declarant during the Declarant Control Period.
9. Enforcement. To prevent any infringement and to compel the performance of any restriction set out in this Indenture or established by law, and also any rules and regulations issued by said Directors governing the use of the Common Ground or any matters relating thereto. The power and authority herein granted to the Association is intended to be discretionary and not mandatory, and shall not restrict the right of any Owner to proceed in his own behalf. Without limiting the generality of the foregoing, the Board may, after notice and an opportunity to be heard, impose sanctions for violation of this Indenture including, without limitation, the following:
  - a. imposing reasonable monetary fines which shall constitute a lien upon the violator's Lot. In the absence of the Board's determination to the contrary, the fine shall be \$50.00 for the first violation, \$75.00 for the second violation and \$100.00 for the third and subsequent violations. The fine(s) may be doubled every thirty (30) days a violation continues. The Owners may vote to change the general fine schedule set forth herein by a majority vote of the Owners at a meeting where a quorum is present. The Board shall issue notices of fines, and before a fine shall be final, the Owner shall be given ten (10) days to appeal and request a hearing in front of the Board. If no request for a hearing or appeal is filed, the fine shall be final on the tenth (10th) day after notice was sent by first-class mail or hand delivery. If a hearing is requested, the Board may uphold, modify or eliminate the fine, which such action shall be final upon written notice to the Owner.
  - b. suspending an Owner's right to vote;
  - c. suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the association;
  - d. exercising self-help or taking action to abate any violation of this Indenture in a non-emergency situation; and

- e. requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Lot or Living Unit in violation of this Indenture and to restore the Lot or Living Unit to its previous condition, and upon failure of the Owner to do so, the Board or its designee shall have the right to enter the Property, remove the violation and restore the Lot or Living Unit to substantially the same condition as previously existed and any such action shall not be deemed a trespass.

In addition, the Board may take the following enforcement procedures to ensure compliance with this Indenture:

- i. exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or
- ii. bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

All remedies set forth in this Indenture shall be cumulative of any remedies available at law or in equity. In any action to enforce this Indenture, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The decision to pursue enforcement in any particular case shall be left to the Board's discretion. A decision not to enforce shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may permit the City and/or County to enforce ordinances within the Property for the benefit of the Association and its Members.

It is the intent of this Indenture that the restrictions of this Section 9 of Article VII shall not apply to Declarant.

10. Vacant and Neglected Lots. To clean up rubbish and debris and remove grass and weeds from and to trim, cut back, remove, replace and maintain trees, shrubbery and flowers upon any vacant or neglected Lots or parcels of land in the Property, and to charge the Owners thereof with the expenses so incurred; provided, however, no Lots or parcels of land owned by Declarant regardless of where in the Subdivision they are located shall be deemed "vacant" or "neglected" for purposes of this Section. In exercising their authority under this Section 10 of Article VII, neither the Association nor the Directors or their respective agents or employees shall be deemed guilty or liable for trespass or for any damage or injury occasioned by or in the course of any such abatement, removal or planting.

11. Plans and Specifications. As more specifically provided in Article IX hereof, to consider, approve or reject any and all plans and specifications for any and all buildings or structures and additions or exterior renovations thereto, fences, satellite dishes, swimming pools, tennis courts, playground equipment, landscaping and other improvements proposed for construction, erection or installation on any Lot except for those Lots owned and controlled by Declarant. In acting hereunder, the Directors shall consider and apply the limitations and parameters established in this Indenture and shall otherwise use their discretion in determining what is best for the Subdivision as a whole, and in no event shall a decision to allow or disallow any item constitute precedent for any future request or a reversal of any past request.
12. Deposits. To require a reasonable deposit in connection with the erection of any building or other structure or improvement approved in accordance with the provisions of this Indenture to assure that, upon completion of the project, all debris is removed from the site and adjacent Lots and parcels and all damage to subdivision improvements is repaired.
13. Insurance. To purchase and maintain in force such insurance as they may deem appropriate, including, but not limited to, property insurance and liability insurance protecting the Association and the Owners from claims for personal injuries and property damage arising from use of the Common Ground and facilities as well as insurance protecting the Directors from any and all claims for damages arising out of any decision, act, or failure to act, of the Directors acting in their capacity as Directors.
14. Employment. In exercising the rights, powers and privileges granted and in discharging the duties imposed upon the Association by the provisions of this Indenture, from time to time to enter into contracts, employ agents, servants and labor as they may deem necessary or advisable, and to defend suits brought against the Association or the Directors, individually or collectively, in their capacity as directors of the Association.
15. Condemnation. In the event it shall become necessary for any public agency to acquire all or any part of the Common Ground for a public purpose, the Directors are hereby authorized to negotiate with such public agency for such acquisition and to execute instruments necessary to that purpose. Should acquisition by eminent domain become necessary, only the Association need be made a party, and any proceeds received shall be held by the Association for the benefit of those entitled to the use of said Common Ground.
16. Variations. To grant variations from the provisions of this Indenture where, in the sole discretion of the Directors, due cause therefor is demonstrated by an Owner.

## **ARTICLE VIII EASEMENTS**

1. Association's Easements.

- a. Without limiting the generality of any other provision of this Indenture, the Property shall be subject to a perpetual easement in gross in favor of the Association, and to the Declarant during the Declarant Control Period, for ingress and egress to perform its obligations and duties as required by this Indenture. Should it be necessary to enter any Lot or Living Unit to effect a repair or to perform any maintenance or other duty of the Association under this Indenture, the employees, agents, contractors and subcontractors engaged by the Association shall have authority to do so upon presentation to the Owner of a work order or other directive from the Association.
  - b. The Association is also hereby granted perpetual easements to maintain any portions of the Common Ground which encroach upon the Lots.
  - c. All easements and rights herein established for the benefit of the Association shall run with title to the Property and be binding on the from time to time Owners, purchasers, mortgagees and all other persons having an interest in any Lot or Living Unit, whether or not such easements are mentioned or described in any deed of conveyance.
2. Owners' Easements. Perpetual easements are hereby established appurtenant to all Lots for use by the Owners thereof, their families and guests, invitees and servants, of the Common Ground. Each Owner is further granted a perpetual easement, running with the ownership of his Lot, to use and occupy the balcony, terrace, patio, deck, sidewalks, driveways and garage, if any, which are part of the Living Unit as originally constructed and the retaining wall(s), if any, on such Lot, should there be any encroachment on the Common Ground or any other Lot. Although this provision is intended primarily to pertain to overhanging gutters, eaves and similar items of construction, it shall nevertheless be construed broadly to include all forms of overhangs and construction. All easements and rights herein established shall run with the land and inure to the benefit of and be binding on Declarant and any Owner, purchaser, mortgagee or other person having an interest in any portion of the Property, whether or not such easements are mentioned or described in any deed of conveyance.
3. Utility Easements. In addition to all other easements established in this Indenture or on the Plat, easements are hereby established in favor of the Declarant, Association, the Owners and the applicable utility companies to construct, reconstruct, repair, replace and maintain any sanitary or storm sewers, water, electric, gas, cable television, fiber optics or telephone lines or connections, and to enter upon the Lots or the Common Ground to repair, replace and generally maintain said connections. Notwithstanding any other provision of this Indenture, if the Directors deem the repair, replacement or maintenance of any such connection to be an emergency, the Directors shall have the right in their discretion to repair, replace or maintain such connection and assess the cost thereof against the Owners of the Lots served thereby, and each Owner covenants to pay any such assessment upon demand. If not paid when due, such assessment shall be and become a continuing lien on the benefitted Lot and the personal obligation of the Owner, and shall be subject to collection in the manner set forth in Article XI hereof.

4. Easement to Inspect and Right to Correct. The Association and the Declarant shall have the right to inspect, monitor, test, redesign, and correct any structure, improvement or condition which may exist on any portion of the Property, including the Lots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner, and except as otherwise provided in this Indenture, no entry into a Living Unit shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise. Further, without limiting the generality of the foregoing, Association shall have the right to periodically enter upon the Common Ground to inspect the maintenance and upkeep of the Common Ground, including building exteriors, common mechanical systems, common structural items, landscaping, irrigation systems and common area amenities such as playgrounds and club houses that may have been constructed by Declarant. Declarant will schedule and coordinate its review of the Common Ground through the president of the Board. During the inspection, Declarant will review and, if appropriate, make recommendations to the Association relating to the repair, maintenance and upkeep of the Common Ground. Declarant may also, if it so chooses, make repairs or take other corrective action with respect to repair or maintenance items that it identifies during the review.
5. Right of Declarant in Common Ground/Annexation of Additional Property. During the Declarant Control Period, Declarant shall have the right to utilize the Common Ground for promotional purposes until development and sale of each Lot is complete, and the right to annex additional residential and Common Ground into the Subdivision.

## **ARTICLE IX ARCHITECTURAL AND ENVIRONMENTAL CONTROL**

No building, fence, wall, driveway, deck, patio, patio enclosure, screened porch or other structure, swimming pool, tennis court or other improvement shall be commenced, erected or maintained on such Lot, nor shall any exterior addition, removal, change or alteration (structural or nonstructural) in any improvement on such Lot be made, nor shall any tree with a three inch (3") or greater caliper be removed, nor shall the grade or slope of any Lot be changed, nor shall any item, apparatus or device be attached to or the color or other exterior appearance of any structure upon any such Lot be changed until the plans and specifications showing the degree, nature, kind, shape, size, square footage, height, elevation, materials, colors, location and configuration of the same shall have been submitted to and approved in writing by the Directors, or, if so appointed by the Directors in their sole discretion, by an Architectural Committee composed of three (3) or more representatives [reference herein to "Architectural Committee" shall refer either to the aforesaid committee, if appointed and constituted, or to the Directors, whichever happens to be acting at the time]. Each application for review shall include plans and specifications showing the site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable, and such other information as the Architectural Committee may reasonably require. In reviewing each submission, the Architectural Committee may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on

purely aesthetic considerations, and the Architectural Committee shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment.

The Architectural Committee shall make a determination on each application within sixty (60) days after receipt of a completed application and all required information, and may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

In the event that the Architectural Committee fails to respond within the period specified above, approval shall be deemed given. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the United States Postal Service. Personal delivery of such written notice shall, however, be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which Plans have been approved within one (1) year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one (1) year of commencement unless otherwise specified in the notice of approval or unless the Architectural Committee grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

The Architectural Committee may, by resolution, require all applications to be filed in a specified manner to a designated address, and unless observed, the application shall not be deemed to have been received. Further, the Architectural Committee may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Subdivision; they do not create any duty to any person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Architectural Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property Owners.

Neither Declarant, the Association, the Board or any committee or member of any of the foregoing shall be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial

condition or quality of work of any contractor or its subcontractors, employees or agents; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot or Living Unit. In the event the Architectural Committee fails to approve or disapprove any design, materials, colors or location within sixty (60) days after all required plans and specifications have been submitted to it (and fees, if required, have been paid), approval will not be required, and this provision will be deemed to have been fully complied with. The Architectural Committee is authorized where it deems appropriate to charge a review fee for any submission to defray the costs of reviews it conducts or authorizes.

Notwithstanding the foregoing, the terms, conditions and restrictions of this Article IX shall not apply to Declarant nor to any Builder.

## **ARTICLE X SEWERS AND DRAINAGE FACILITIES**

1. Association's Responsibility - Detention Structures and Pipes. The Association shall be responsible for the maintenance, repair and replacement of any private sanitary and/or storm sewers, detention basins and other drainage facilities located in the Subdivision. Further, without limiting the generality of the foregoing, the Association shall be responsible for maintenance of any detention easements within the Subdivision reflected on the Plat.
2. Owners' Responsibility. Each Owner shall be responsible for the maintenance, repair and replacement of the lateral sewer line or lines servicing such Owner's Lot.

## **ARTICLE XI ASSESSMENTS**

1. General. Declarant, for each Lot within the Subdivision, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay annual and special assessments, if any, from time to time fixed, levied and assessed in accordance with the provisions of this Indenture.

The annual and special assessments levied hereunder, together with interest thereon and costs of collection thereof, shall be a charge on and continuing lien upon the Lot against which assessed. Each such assessment, together with interest thereon and cost of collection thereof, shall also be the personal obligation of the person who was the Owner of such Lot at the time of the assessment fell due.

2. Purpose. The assessments levied under this Article XI shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Subdivision, and in particular, for the rendering of services in the furtherance of such purposes including, but not

limited to, the carrying out of all functions herein authorized, the acquisition, improvement, maintenance and operation of the Common Ground and all facilities thereon and easements established herein or on the Plat and the payment of taxes on the Common Ground.

3. Annual Assessments.

- a. The maximum annual assessment shall, until increased as herein authorized, be Two Hundred, Fifty and 00/100 Dollars (\$250) per Lot; provided, however, that the Directors may increase such assessment for any assessment year by an amount which is equal to the increase in the Consumer Price Index as indicated by the last available Index published prior to the assessment year over the corresponding last available Index published prior to commencement of the first assessment year hereunder. If such Index be discontinued, the Directors shall utilize a successor index, determined by the Directors in their sole judgment, to be most similar to the discontinued Index.
- b. The Directors may, after consideration of current maintenance costs and future costs and needs, fix the actual assessment for any year at a lesser amount. The Directors may change the basis and maximum of assessments provided for herein upon the approval of a majority of the Directors and the assent of a majority of the Members 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 at least thirty (30) days in advance and shall set forth the purpose of the meetings.
- c. Notice of each levy under this Article XI, Section 3, shall be given by first class mail addressed to the last known or usual post office address of each Owner and deposited with the United States Postal Service, postage prepaid, or by posting a notice of the assessment upon the Lot against which it applies. Each annual assessment shall be due on the date which is thirty (30) days after such mailing or posting, and shall become delinquent if not paid within thirty (30) days following such due date.

4. Special Assessments.

- a. If other than as provided in Section 3(b) of this Article XI, the Directors at any time consider it necessary to make any expenditure requiring an assessment additional to the annual assessment, they shall submit a written outline of the contemplated project and the amount of the assessment required to the then Lot Owners. If such assessment is approved either by a majority of the votes cast in person or by proxy at a meeting of the Owners called by the Directors, or by written consent of a majority of the total votes entitled to vote thereon, the Directors shall notify all Owners of the additional assessment; PROVIDED, HOWEVER, that in determining such required majority, only those Owners who have paid all assessment theretofore made shall be entitled to vote. The limit of the annual assessments for general purposes set forth in Section 3 hereof shall not apply to any assessment made under the provisions of this Section 4. Notice of any special assessment hereunder shall be given in the same manner as notices of annual

assessments are given, with such assessment becoming delinquent thirty (30) days after the date of such notice.

- b. In addition to other special assessments authorized under Section 4(a) of this Indenture, the Directors may make a separate special assessment, without a vote of the Members, for the operation, maintenance and repair of the storm water drainage facilities and other storm water control easements and facilities in the Subdivision including, but not limited to, creeks, retention and/or detention basins.

Notwithstanding any provision of this Indenture to the contrary, if the assessments levied in any year under Section 3 of this Article XI are insufficient to support all budgeted expenses, Declarant, during Declarant Control Period, may but shall not be obligated to advance funds to the Association for such purposes, and if it does so, shall have the right to be repaid the amount of all such advances with interest thereon at the rate of one percent (1%) over the Prime Rate.

5. Interest and Liens. All assessments shall bear interest at the rate of one percent (1%) over the Prime Rate from the date of delinquency, and such assessment, together with interest and costs of collection, shall constitute a lien upon the Lot against which assessed until fully paid. As an assessment becomes delinquent, the Directors may execute and acknowledge and record an instrument in the County Records reciting the levy, and thereafter institute any appropriate legal action to enforce such lien. Should an Owner pay an assessment after notice is recorded, the Directors shall execute and record (at the expense of the Owner) a release of such lien.

The lien of the assessments provided for herein shall be subordinate to the lien of any institutional (bank, savings and loan association, pension or retirement fund, insurance company or federally insured mortgage) first mortgage now or hereafter placed upon any Lot with respect to which assessments have become due and payable prior to a sale or transfer of such Lot pursuant to foreclosure or transfer in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. As used herein, the term "mortgage" or "mortgages" shall include deed or deeds of trust.

6. Uniform Rate. Assessments and Special Assessments must be fixed at a uniform rate for all Lots.
7. Keeping of Funds. The Association shall deposit its funds in a bank protected by the Federal Deposit Insurance Corporation, the treasurer being bonded for the proper performance of his duties in an amount fixed by the Directors.
8. Ordinance Compliance. Notwithstanding any other conditions herein, the Association shall make suitable provisions for the compliance with all subdivision and other ordinances, rules and regulations of the County including, but not limited to, maintenance and operation of street lights, easements and roadways (except for those easements and roadways as are dedicated to public bodies or agencies), and for such purposes shall not be limited to the maximum assessment

provided for herein.

9. Change in Ownership. Upon the conveyance of any Lot in the Subdivision, other than a conveyance by Declarant, the conveying Owner or grantee of such Lot shall give the Association written notice of such conveyance and pay the Association a One Hundred and 00/100 Dollar (\$100.00) transfer and administrative fee to cover the Association's expenses resulting from such change in ownership. Until paid, the transfer fee due hereunder shall constitute a lien on the transferred Lot, and shall bear interest and be subject to collection as provided in Section 5 of this Article XI.
10. Limitation of Rights of Delinquent Owner. For and during the period of their delinquency, any Owner who is delinquent in the payment of assessments hereunder shall not have the right to vote or serve as a Director hereunder.

## **ARTICLE XII RESTRICTIONS**

In addition to the limitations and restrictions imposed by other provisions of this Indenture, the following restrictions are imposed upon and against the Property and each Lot now or hereafter existing therein:

1. Building Use. Except for those buildings or structures owned by Declarant or any Builder, no building or structure shall, without the approval of the Directors, be used for a purpose other than that for which the building or structure was originally designed.
2. Design Standards.
  - a. Living Unit Size. No Living Unit shall be permitted on any Lot if the ground floor area of the main structure, exclusive of the basement (if any), garage, and unenclosed and/or unheated patios and porches, is less than 1,600 square feet by outside measurement; provided, however, that if the Living Unit has a second story, the ground floor area, exclusive of open porches, shall not be less than 1,200 square feet, by outside measurement, with a total square footage on the ground and second floors of not less than 2,250 square feet together, by outside measurement.
  - b. Building Lines. No Living Unit, building or structure shall be located on any Lot nearer to the front street that is the front building line or the side building line shown on the Plat. Provided, however, windows, dormers, cornices, chimneys, porches, balconies or other similar projections may project over the above-described front, side and rear lines, for such distances as may be permitted under the Ordinances of the City.
  - c. Garages. Each Living Unit shall have a garage capable of holding a minimum of two cars. All garages must be attached to the main dwelling house unless otherwise approved

by the Architectural Committee. All garages facing any street must be equipped with doors which shall be kept closed as much as practicable to preserve the appearance of the elevation of the house. No carports will be allowed.

- d. Height Limitation. Any Living Unit erected on any of said Lots shall not be more than two (2) levels in height above ground, provided, that (i) walkout basements shall not be included in calculating such height limitations, and (ii) a Living Unit more than two (2) stories in height may be erected on any of said Lots with the written consent of the Architectural Committee.
- e. Permissible Building Materials. The front outside exterior wall(s) of all structures shall be constructed with a minimum of twenty percent (20%) brick, rock or stone of good quality and workmanship. The remaining outside exterior walls of all structures shall be constructed of either brick, rock, stone, painted or stained wood, textured masonite, concrete fiber siding or maintenance free vinyl siding and of good quality and workmanship. The use of any other material for the outside exterior walls shall not be permitted without first having obtained the written consent of the Architectural Committee.
- f. Building Colors. Building colors, except for trim colors, shall be earth tones, white or similar suitable colors, earth tone colors include, but are not limited to, red, beige, cream, dark brown, gray, gray blue, greenish blue, off-white, pale yellow, tan and taupe brown.
- g. Door, Trim, and Window Colors. Door colors, trim colors and the colors of window frames shall be earth tones, white, black or a color that clearly complements the main color of the building.
- h. Roofs. The roof of any Living Unit shall be covered by slate, tile or fiberglass/asphalt shingles of 3D architectural quality or higher. The use of any other material for the roof shall not be permitted without first having obtained the written consent of the Architectural Committee.
- i. Driveways. All driveways on any Lot shall be paved with concrete, stamped concrete or with an exposed aggregate finish. Asphalt or gravel driveways are expressly prohibited.
- j. Foundations. Concrete foundations shall be covered with a Permissible Building Material so that no more than twelve inches (12") in height of the concrete of any building shall be visible.
- k. Walkways. All walkways shall consist of stone, brick, concrete, stamped concrete or with an exposed aggregate. Asphalt walkways are expressly prohibited.

3. Resubdivision. No Lot shall be re-subdivided nor shall a fractional part of any Lot be sold or leased, provided, however, that the Declarant may re-subdivide any Lot and sell or lease any fractional part thereof.
4. Commercial Use. Except for the promotional activities conducted by Declarant in connection with the development of the Property and marketing the sale of residences therein and the conduct of a home occupation in strict accordance with the provisions of the applicable zoning ordinances, no commercial activities of any kind shall be conducted on any Lot.
5. Leases. No Living Unit shall be rented by the Owner thereof for transient purposes, and all leases of the Living Units shall be expressly made subject to the provisions and conditions of this Indenture and of any rules and regulations adopted by the Directors. Further, no lease of any Living Unit shall be effective unless and until a copy thereof identifying the lessee thereunder and containing the terms herein required has been delivered to the Association.
6. Nuisances. No loud, noxious or offensive activity shall be carried on upon any Lot or Common Ground in the Subdivision, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood. Without limiting the generality of the foregoing, no motorized vehicles including, but not limited to, cars, go-carts, trailers, recreational vehicles (RVs), sleds, snow mobiles, trucks, vans, all-terrain vehicles (ATVs), motorcycles, dirt bikes, minibikes, tractors, truck-tractors, campers, or house trailers shall be operated, driven, ridden, parked, stored or otherwise placed on, in or about the Common Ground.
7. Firearms. No firearm, or other potentially lethal weapon, including but not limited to handguns, rifles, shotguns, pellet or B.B. guns, compound bows, and crossbows shall be discharged in the Subdivision.
8. Maintenance. Each Owner shall maintain and keep his Lot and Living Unit in good order and repair, and shall do nothing which would be in violation of law. Trash, rubbish, toys, tools, cases, crates or any discarded item shall not be left outside of any Living Unit overnight, and no exterior front yard appurtenances such as sculptures, bird baths or similar personal property items or fixtures shall be placed on any Lot or Living Unit without the consent of the Architectural Committee which may be granted or withheld in its sole discretion. No Owner shall permit the lawn upon such Owner's Lot to grow in excess of six inches (6") in height.
9. Obstructions. There shall be no obstruction of any portion of the Common Ground or any storage or construction or planting thereon by an Owner. No clothes, laundry or other articles or equipment shall be placed, hung, exposed or stored on any portion of the Common Ground or on any Lot or on the exterior of any building.
10. Overhead Wiring. No power or telephone distribution or service connection lines may be erected or maintained above the surface of the ground on any Lot.

11. Animals. No animals, reptiles, birds, horses, rabbits, fowl, poultry, cattle or livestock of any kind shall be brought onto or kept within the Subdivision, except that no more than three (3) dogs, cats, or other household pets (except house pets with vicious propensities) may be kept or maintained on any Lot, provided that such pets are not kept for any commercial purpose and are at all times (except when confined on an Owner's Lot) leashed and no "runs" or other outside structures are erected or installed therefore. The keeping of any pet which by reason of its noisiness or other factor is a nuisance (as determined by the Directors in their sole judgment) or annoyance to the neighborhood is prohibited. Owners of all pets shall remove any fecal matter deposited by such pet promptly after the elimination by such pet and dispose of such fecal matter in a sanitary fashion.

12. Motor Vehicles.

- a. Except during periods of approved construction on a Lot, and except for development activities of the Declarant related to the Property, no buses, trucks (other than pick-up trucks not exceeding one ton), commercial vehicles, boats, motorcycles, recreational vehicles, campers, house trailers, boat trailers or trailers of any other description shall be permitted to be parked or stored in the Subdivision unless parked or stored in an enclosed garage.

As used herein, "commercial vehicle" shall mean the following:

- i. A motor vehicle designed or regularly used for carrying freight and merchandise or more than nine (9) passengers;
  - ii. A motor vehicle with lettering and/or other designs on it that clearly identify the vehicle as being used in, or to promote, any type of business;
  - iii. A motor vehicle with equipment mounted on it (either temporarily or permanently) typically used to carry out a trade or business; and
  - iv. An open bed truck carrying, in the bed in plain view, material that is typically used to carry out a trade or business.
- b. No abandoned cars, motorcycles, jeeps, trucks or other motor vehicles of any kind whatsoever that are unable to move under their own power may be stored or permitted to remain in the Subdivision unless parked or stored in an enclosed garage.
  - c. No motor vehicle shall be parked on any street in the Subdivision overnight, which for the purposes hereof shall mean at any time between the hours of 12:00 a.m. and 8:00 a.m., nor shall any motor vehicle or equipment be repaired or otherwise serviced in front of or adjacent to any residence in the Subdivision.

13. Vehicular Sight Lines. No fence, wall, tree, hedge or shrub planting shall be maintained in such a manner to obstruct sight lines for vehicular traffic. Except as may be required to comply with the prior sentence, no live tree shall be removed without the approval of the Directors.
14. Outbuildings and Installations.
- a. No more than one storage building, detached garage or other outbuilding shall be permitted on any Lot and then only if:
    - i. the exterior facade and materials of such building or outbuilding coordinates with the exterior facade and materials of the Living Unit;
    - ii. the structure is anchored to a permanent concrete foundation; and
    - iii. prior written approval is obtained by the Architectural Committee.
  - b. No storage building, detached garage or other outbuilding shall be used on any Lot at any time as a temporary or permanent residence.
  - c. No structure of a temporary character, including but not limited to, trailers, tents, shacks, garages, sheds, barns or other out buildings shall be installed, constructed or maintained on any Lot at any time other than as provided in Section 14(a) of this Article XII.
  - d. Permanent basketball or other sports goals or game boards shall not be permitted in the Subdivision, and temporary goals shall not be placed on the Common Ground.
15. Signs. 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 (i) Owners from placing one “For Sale” or “For Rent” sign (not to exceed 2 feet x 4 feet in dimension) on their Lot, (ii) one sign not exceeding one square foot notifying people of the presence of an alarm or home security system located in the Living Unit, or (iii) “for sale” and “for lease” signs, construction identification signs, Builder’s signs, directional signs, and other signs erected or displayed by Declarant or any Builder in connection with the development of the Subdivision and the marketing and sale of residences therein.
16. Lighting. Except for seasonal Christmas decorative lights which may only be displayed between December 1 and February 1, all exterior lighting must be approved by the Architectural Committee, and in no event shall any exterior lighting be directed outside the boundaries of a Lot or other parcel.
17. Garbage. No trash, garbage, rubbish, refuse, debris, trash cans or trash receptacles of any type shall be stored in the open on any Lot; provided, however, 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; and, provided, further, that trash cans

or receptacles shall be removed and secured within the improvements on each Lot prior to sundown of the same day.

18. Utility and Drainage Easements. Easements for the installation and maintenance of utilities and drainage facilities are established in this Indenture and are or will be reserved as shown on the recorded Plats of the Subdivision. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or the flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.
19. Oil Drilling. 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, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot or portion of the Property. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or portion of the Property.
20. Cul-De-Sac, Etc. No above-ground structure, other than required street lights and fire hydrants, may be erected upon a cul-de-sac island, divided street island, or median strip.
21. Fences. Except for those fences erected by Declarant, no fences or screening of any kind shall be erected or maintained on any Lot within the Subdivision without the prior written consent of the Architectural Committee and in strict compliance with the following standards and requirements, to-wit:
  - a. The maximum height for full perimeter fencing shall be seventy-two inches (72”).
  - b. Fencing shall only enclose the rear yards of any Lot. Rear yard fencing shall be full perimeter, and no fencing shall be erected or maintained on any Lot between the rear corner of the Living Unit constructed upon such Lot and the street upon which such Lot fronts. Except under extraordinary circumstances (as defined below), fencing must start at the rear corners of the Living Unit and must be within four inches (4”) of the lot lines and lot corners. With respect to corner Lots, fencing along the side or the rear yard facing the street shall not be placed any nearer to said street than four inches (4”) of the building line limit established by the subdivision plat. As used in this Section 21(b) of Article XII, the term “extraordinary circumstances” shall include the necessity to protect “green space”, avoiding the destruction of a tree canopy, a severe or extreme rear yard slope, or in certain instances determined by the Architectural Committee, the interference by utility structures. When an extraordinary circumstance exists, with prior written consent of the Architectural Committee, fencing may be set beyond four inches (4”) of the lot lines and lot corners; provided, however, prior to providing its consent, the Architectural Committee may, in its discretion, require the written approval of all adjoining Lot Owners for the fence variance. In those instances where written consent is given, the Lot Owner shall continue to maintain that portion of such Owner’s Lot that is located outside the

fence, and the Owner's failure to do so on more than three (3) occasions (as determined by the Board serving notice of such failure on the Owner) shall be considered revocation of the variance whereupon the fence shall be deemed in violation of this Indenture and removed or brought into strict compliance within sixty (60) days after receipt of notice from the Board.

- c. All fencing shall be of either black wrought iron, or black aluminum simulated wrought iron materials. Privacy fences of any type or material are prohibited. Under no circumstance shall wood, vinyl, or "chain link" fencing be considered acceptable (unless installed around detention areas by Declarant), regardless of material composition or design. Certain other materials or combinations of materials or designs may be approved on a case-by-case basis by the Architectural Committee, whose decision to allow or disallow any other material or design shall be final.
  - d. Fencing may be any picket width up to a maximum of three inches (3"), and regardless of picket width, the minimum open space between pickets shall be three inches (3"). Request for reduction of minimum open space or maximum height requirements as stipulated herein due to owners pet(s) shall not be cause for waiver of these requirements by the Architectural Committee.
  - e. All fence posts shall be anchored in a base of concrete at least one foot (1') six inches (6") deep into the soil.
  - f. Under no circumstances may swimming pool fencing exceed a height of forty-eight inches (48").
  - g. Within one (1) year following the erection of a fence, except for any fence erected by the Declarant, the Board may, in its sole discretion, require the Owner to landscape along such fence, in which event landscaping may include vegetation such as rambling rose, multi-flora rose, evergreen shrubbery or such similar materials as may be approved by the Board.
22. Decks, Porches, Screen Porches. All decks, patios, patio enclosures, screen porches, wooden walks and/or stairways and other such improvements approved by the Architectural Committee for construction within the Subdivision shall be constructed directly behind the Living Unit to which they are appurtenant.
23. Swimming Pools.
- a. No above ground swimming pools will be allowed on any Lot in the Subdivision.
  - b. All in-ground pools must have at least four feet (4') of concrete or some other such decking material surrounding the entire pool.

- c. Any requirements set forth in this Section for approval of installation of pools that may conflict with any governmental codes or guidelines may be changed by the Architectural Committee to conform with such governmental guidelines.

24. Satellite Receiving Dishes and Similar Devices.

- a. Notification of Installation. To the extent permitted by applicable law, any Owner shall notify the Architectural Committee prior to the installation of any satellite dish to be installed on his or her Lot.
- b. Satellite Dish Installation Preference. To the extent that the reception of an acceptable signal would not be impaired, the following policy is established with regard to the installation and maintenance of satellite dishes in the Subdivision. Each Owner shall consider three (3) factors, namely, Location, Height, and Screening (“Installation Preferences”), in making a decision regarding the placement of any satellite dish device, which consideration shall be accomplished by the completion of the checklist which is attached as Exhibit B to this Indenture. Any Owner of property upon which a satellite dish has been placed must be able to provide a completed copy of the Exhibit B checklist upon a review of the satellite dish location as evidence of its consideration of the Installation Preferences or the Owner will be presumed not to have complied with the Installation Preferences.

These placement preferences shall be enforced to the extent that such enforcement does not violate the provisions of the 37 C.F.R. Part 1, Subpart 5, Section 1.4000 or any successor provision promulgated under the Telecommunications Act of 1996, as amended from time to time.

25. Television Antennae. To the extent permitted by applicable law, under no circumstance shall television or radio antennae be permitted on any Lot or on the exterior of any Living Unit or other improvement on any Lot.

26. Hazardous and/or Unsightly Materials. No above-ground gas, propane, gasoline, oil or other hazardous material storage tanks or devices shall be permitted upon or in any Lot or the Common Ground of the Subdivision.

**ARTICLE XIII  
GENERAL PROVISIONS**

These general provisions shall apply to the foregoing Indenture:

- 1. Enforcement. Enforcement of any of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any such covenants and may be

brought to restrain any such violation and to recover damages therefor together with reasonable attorneys' fees and court costs.

2. Actions by Directors. The Directors are authorized to act through a representative, provided, however, that all acts of the Directors shall be agreed upon by at least a majority of said Directors. No Director shall be held personally responsible for his wrongful acts or for the wrongful acts of others, and no Director shall be held personally liable for unjust or damage to persons or property by reason of any act or failure to act of the Directors, collectively or individually. The Directors from time to time serving hereunder, except Directors appointed pursuant to Article VI, Section 4 hereof, shall not be entitled to any compensation or fee for services performed pursuant to this Indenture.
3. Indemnification. Each Director or officer, or former Director or officer, of the Association and such Director or officer's heirs, personal representatives and assigns, shall be indemnified by the Association from and against any and all claims, demands, losses, damages, liabilities, expenses, counsel fees and costs incurred by him or her or his or her estate in connection with, or arising out of, any action, suit, proceeding or claim in which he or she is made a party by reason of his or her being, or having been, such Director or officer; and any person who, at the request of the Association, served as Director or officer of another corporation in which the Association owned corporate stock, and his or her legal representatives, shall in like manner be indemnified by the Association; provided, that in neither case shall the Association indemnify such Director or officer with respect to any matters as to which he or she shall be finally adjudged in any such action, suit or proceeding to have been liable for gross negligence or willful misconduct in the performance of his or her duties as such Director or officer. The indemnification herein provided for, however, shall apply also in respect to any amount paid in compromise of any such action, suit, proceeding or claim asserted against such Director or officer (including expenses, counsel fees and costs reasonably incurred in connection therewith), provided the Board of Directors of the Association shall have first approved such proposed compromise settlement, and determined that the Director or officer involved was not guilty of gross negligence or willful misconduct; but in taking such action, any Director involved shall recuse himself or herself from the vote thereon.

In determining whether or not a Director or officer was guilty of gross negligence or willful misconduct in relation to any such matters, the Board of Directors may rely conclusively upon an opinion of independent legal counsel selected by the Board of Directors. Unless otherwise provided by law, any compromise settlement authorized herein shall be effective without the approval of any court. The right to indemnification herein provided shall not be exclusive of any other rights to which such Director or officer may be lawfully entitled.

No Director or officer of the Association shall be liable to any other Director or officer or other person for any action taken or refused to be taken by him or her as Director or officer with respect to any matter within the scope of his or her official duties, except such action or neglect or failure to act as shall constitute gross negligence or willful misconduct in the performance of his or her duties as Director or officer.

4. Adjoining Tracts. The Association is authorized and empowered to cooperate and contract with trustees of adjoining or nearby tracts in the development and maintenance of facilities inuring to the benefit and general welfare of the inhabitants of the entire area.
5. Amendments. Until all Lots authorized to be developed in the Property have been sold and conveyed for residential use, Declarant shall have the right from time to time to unilaterally amend, modify or change this Indenture and the provisions herein applicable to all Lots, including the right to add new burdens or restrictions on Owners and Lots, by recording such amendment in the Office of the Recorder of Deeds of St. Charles County, Missouri. Thereafter, the provisions hereof may only be amended, modified or changed by written consent of two-thirds ( $\frac{2}{3}$ ) of all Owners. To be effective, any amendment, modification or change to the provisions of this Indenture shall be recorded in the Office of the Recorder of Deeds for the County. Notwithstanding anything to the contrary herein, this Indenture may not be amended by vote of the Owners during the Declarant Control Period unless Declarant gives its prior written consent to such amendment and executes such amendment.
6. Severability, Etc. All covenants and agreements herein are expressly declared to be independent and not interdependent. No laches, waiver, estoppel, condemnation or failure of title as to any part of the Property or any Lot in the Property shall be of any effect to modify, invalidate or annul any grant, covenant or agreement herein with respect to the remainder of the Property, saving always the right to amendment, modification or repeal as hereinabove expressly provided.
7. Invalidation. Invalidation of any one of the covenants of this Indenture shall in no way affect any other provision hereof.
8. Assignment by Declarant Rights. In connection with the sale of all or part of the Property subject to this Indenture, Declarant shall have the right to assign to such purchaser the rights herein reserved or granted to Declarant.
9. Rights During Construction and Sale. Notwithstanding any provision contained in this Indenture to the contrary, until all Lots authorized to be developed in the Subdivision have been sold and conveyed for residential use, Declarant and its successors and assigns shall have the right and privilege (i) to erect and maintain advertising signs, sales flags and other sales devices and banners for the purpose of aiding the sale of Lots and residences in the Subdivision; (ii) to maintain sales, business and construction offices in display homes or trailers in the Subdivision (including without limitation, the Common Ground) to facilitate the completion of development of the Subdivision and construction and sale of residences; and (iii) to park and to allow its subcontractors to park trucks and stockpile and store materials on any Lot(s) or on the Common Ground. Declarant's construction activities shall not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself and its successors and assigns to conduct the activities enumerated in this Section until all Lots in the Subdivision have been sold and conveyed for residential purposes. The provisions of this, Article XIII, Section 9, shall not be amended, modified or deleted without the prior written consent of Declarant.

10. Term. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Indenture shall run with and bind the Property for a term which is the longer of: (i) thirty (30) years from the date of recordation of this Indenture, after which said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then Owners of two-thirds ( $\frac{2}{3}$ ) of the Lots subject hereto has been recorded agreeing to terminate this Indenture as of the end of any such ten (10) year period, but in no event prior to the vacation of the Plat(s) of the Subdivision by the Board of Aldermen, or its successors; or (ii) as to any subdivision of the Property, for the duration of the subdivision encumbered hereby unless continued in effect by the vote of two-thirds ( $\frac{2}{3}$ ) of the Lots in such subdivision by an appropriate instrument filed of record prior to the vacation of the Plat(s) of such subdivision as aforesaid. No such agreement of termination shall be effective unless made and recorded one (1) year in advance of the effective date of such termination, and unless written notice of the proposed agreement of termination is sent to every Owner at least ninety (90) days in advance of any action taken.

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IN WITNESS WHEREOF, the undersigned has hereunto set its hands as of the day and year first above written.

DECLARANT:

ZYKAN DEVELOPMENT, LLC

BY: \_\_\_\_\_  
Jeffry Zykan, Member

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

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared Jeffry Zykan, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of ZYKAN DEVELOPMENT, LLC, a Missouri limited liability company, and that said instrument was signed in behalf of said limited liability company, and acknowledged said instrument to be the free act and deed of said limited liability company.

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

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

**EXHIBIT A  
LEGAL DESCRIPTION**

**PARCEL 1A:**

A TRACT OF LAND BEING PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 47 NORTH, RANGE 1 EAST, ST. CHARLES COUNTY, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; COMMENCING AT THE SOUTHWESTERN CORNER OF DIETRICH CROSSING, A SUBDIVISION RECORDED IN PLAT BOOK 41, PAGE 193 OF THE ST. CHARLES COUNTY RECORDS, SAID POINT BEING THE WESTERN QUARTER CORNER OF SECTION 18 AND THE SOUTHWEST CORNER OF LOT 10 OF SAID DIETRICH CROSSING; THENCE ALONG THE SOUTHERN LINES OF LOTS 10, 11 AND 12 OF SAID SUBDIVISION SOUTH 86 DEGREES 20 MINUTES 7 SECONDS EAST, A DISTANCE OF 1,188.67 FEET TO THE NORTHWEST CORNER OF PROPERTY CONVEYED TO THE CITY OF FORISTELL IN BOOK 2473 PAGE 71 OF SAID COUNTY RECORDS; THENCE ALONG THE WESTERN LINE OF SAID CITY OF FORISTELL PROPERTY SOUTH 01 DEGREE 28 MINUTES 56 SECONDS WEST, A DISTANCE OF 914.84 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE CONTINUING ALONG THE WESTERN LINES OF SAID CITY OF FORISTELL PROPERTY, PROPERTY CONVEYED TO SUSAN BETH AND GERALD WAYNE BRITAIN IN BOOK 5705 PAGE 1254, PROPERTY CONVEYED TO CREATIVE SYSTEMS INC IN BOOK 4213 PAGE 1771, PROPERTY CONVEYED TO LK PROPERTIES II LLLP IN BOOK 6839 PAGE 2454, AND LOT 11 OF HAWTHORNE SUBDIVISION RECORDED IN PLAT BOOK 50, PAGES 349-350 OF SAID COUNTY RECORDS SOUTH 01 DEGREE 28 MINUTES 56 SECONDS WEST, A DISTANCE OF 1,720.84 FEET TO THE NORTHEAST CORNER OF PROPERTY CONVEYED TO LK PROPERTIES II LLLP IN BOOK 6067 PAGE 911 OF SAID COUNTY RECORDS ; THENCE ALONG THE NORTHERN LINE OF SAID LK PROPERTIES II LLLP NORTH 88 DEGREES 50 MINUTES 21 SECONDS WEST, A DISTANCE OF 1,237.77 FEET TO THE SOUTHWEST CORNER OF SECTION 18; THENCE ALONG THE WESTERN LINE OF SAID SECTION 18 NORTH 2 DEGREES 32 MINUTES 48 SECONDS EAST, A DISTANCE OF 1,750.48 FEET; THENCE LEAVING SAID WESTERN LINE OF SECTION 18 SOUTH 87 DEGREES 27 MINUTES 12 SECONDS EAST, A DISTANCE OF 1,205.44 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,120,036.27 SQUARE FEET OR 48.6693 ACRES, MORE OR LESS.

**PARCEL 1B:**

A TRACT OF LAND BEING PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 47 NORTH, RANGE 1 EAST, ST. CHARLES COUNTY, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTHWESTERN CORNER OF DIETRICH CROSSING, A SUBDIVISION RECORDED IN PLAT BOOK 41, PAGE 193 OF THE ST. CHARLES COUNTY RECORDS, SAID

POINT BEING THE WESTERN QUARTER CORNER OF SECTION 18 AND THE SOUTHWEST CORNER OF LOT 10 OF SAID DIETRICH CROSSING; THENCE ALONG THE SOUTHERN LINES OF LOTS 10, 11 AND 12 OF SAID SUBDIVISION SOUTH 86 DEGREES 20 MINUTES 7 SECONDS EAST, A DISTANCE OF 1,188.67 FEET TO THE NORTHWEST CORNER OF PROPERTY CONVEYED TO THE CITY OF FORISTELL IN BOOK 2473 PAGE 71 OF SAID COUNTY RECORDS; THENCE ALONG THE WESTERN LINE OF SAID CITY OF FORISTELL PROPERTY SOUTH 01 DEGREE 28 MINUTES 56 SECONDS WEST, A DISTANCE OF 914.84 FEET; THENCE LEAVING SAID WESTERN LINE NORTH 87 DEGREES 27 MINUTES 12 SECONDS WEST, A DISTANCE OF 1,205.44 FEET TO A POINT IN THE WESTERN LINE OF SECTION 18 AND BEING THE EASTERN LINE OF PROPERTY NOW OR FORMERLY CONVEYED TO FORISTELL LAND INVESTMENT LLC PROPERTY IN BOOK 1335 PAGE 197 OF THE WARREN COUNTY, MISSOURI RECORDS; THENCE ALONG SAID WESTERN LINE OF SECTION 18 NORTH 2 DEGREES 32 MINUTES 48 SECONDS EAST, A DISTANCE OF 937.87 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,108,601.97 SQUARE FEET OR 25.4500 ACRES, MORE OR LESS.

**PARCEL 2:**

A TRACT OF LAND BEING PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 47 NORTH, RANGE 1 EAST, ST. CHARLES COUNTY, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS; BEGINNING AT THE NORTHWEST CORNER OF HAWTHORNE SUBDIVISION RECORDED IN PLAT BOOK 50 PAGES 349-350 OF THE ST. CHARLES COUNTY RECORDS, SAID POINT BEING IN THE WESTERN LINE OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 18; THENCE ALONG SAID WESTERN LINE NORTH 01 DEGREE 28 MINUTES 56 SECONDS EAST, A DISTANCE OF 359.10 FEET TO THE SOUTHWEST CORNER OF PROPERTY CONVEYED TO CREATIVE SYSTEMS INC. IN BOOK 4213 PAGE 1771 OF SAID COUNTY RECORDS; THENCE ALONG THE SOUTHERN LINE OF SAID CREATIVE SYSTEMS INC. SOUTH 89 DEGREES 25 MINUTES 34 SECONDS EAST, A DISTANCE OF 564.50 FEET TO A POINT; THENCE LEAVING SAID SOUTHERN LINE THE FOLLOWING COURSES AND DISTANCES; THENCE SOUTH 2 DEGREES 20 MINUTES 5 SECONDS WEST, A DISTANCE OF 184.03 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES SOUTH 14 DEGREES 41 MINUTES 21 SECONDS WEST, A RADIAL DISTANCE OF 525.00 FEET; THENCE EASTERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 7 DEGREES 34 MINUTES 23 SECONDS, A DISTANCE OF 69.39 FEET; THENCE SOUTH 67 DEGREES 44 MINUTES 16 SECONDS EAST, A DISTANCE OF 50.79 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 475.00 FEET AND A CENTRAL ANGLE OF 28 DEGREES 18 MINUTES 59 SECONDS; THENCE EASTERLY ALONG THE ARC A DISTANCE OF 234.75 FEET; THENCE NORTH 83 DEGREES 56 MINUTES 45 SECONDS EAST, A DISTANCE OF 144.92 FEET TO A POINT OF CURVE TO THE RIGHT HAVING A RADIUS OF 525.00 FEET AND A CENTRAL ANGLE OF 6 DEGREES 5 MINUTES 31 SECONDS; THENCE EASTERLY ALONG THE ARC A DISTANCE OF 55.82 FEET; THENCE SOUTH 89 DEGREES 57 MINUTES 44 SECONDS EAST, A DISTANCE OF 81.85 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 30.00 FEET AND A CENTRAL ANGLE OF 86 DEGREES 54

MINUTES 53 SECONDS; THENCE NORTHEASTERLY ALONG THE ARC A DISTANCE OF 45.51 FEET TO A POINT IN THE WESTERN RIGHT OF WAY LINE OF STATE HIGHWAY W; THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 3 DEGREES 7 MINUTES 23 SECONDS WEST, A DISTANCE OF 90.90 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT LIES SOUTH 87 DEGREES 31 MINUTES 37 SECONDS EAST, A RADIAL DISTANCE OF 1,176.28 FEET; THENCE SOUTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 01 DEGREE 24 MINUTES 50 SECONDS, A DISTANCE OF 29.03 FEET; THENCE LEAVING SAID WESTERN RIGHT OF WAY LINE AND ALONG THE NORTHERN LINE OF SAID HAWTHORNE SUBDIVISION THE FOLLOWING COURSES AND DISTANCES; SOUTH 78 DEGREES 7 MINUTES 17 SECONDS WEST, A DISTANCE OF 325.76 FEET; SOUTH 57 DEGREES 28 MINUTES 1 SECOND WEST, A DISTANCE OF 31.71 FEET AND NORTH 85 DEGREES 55 MINUTES 40 SECONDS WEST, A DISTANCE OF 871.57 FEET TO THE POINT OF BEGINNING.

CONTAINING 306,647.14 SQUARE FEET OR 7.0396 ACRES, MORE OR LESS.

**PARCEL 3:**

A TRACT OF LAND BEING PART OF THE WEST HALF OF THE SOUTHWEST QUARTER AND PART OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 47 NORTH, RANGE 1 EAST, ST. CHARLES COUNTY, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE SOUTHWESTERN CORNER OF DIETRICH CROSSING, A SUBDIVISION RECORDED IN PLAT BOOK 41, PAGE 193 OF THE ST. CHARLES COUNTY RECORDS, SAID POINT BEING THE WESTERN QUARTER CORNER OF SECTION 18 AND THE SOUTHWEST CORNER OF LOT 10 OF SAID DIETRICH CROSSING; THENCE ALONG THE SOUTHERN LINES OF LOTS 10, 11 AND 12 OF SAID SUBDIVISION SOUTH 86 DEGREES 20 MINUTES 7 SECONDS EAST, A DISTANCE OF 1,188.67 FEET TO THE NORTHWEST CORNER OF PROPERTY CONVEYED TO THE CITY OF FORISTELL IN BOOK 2473 PAGE 71 OF SAID COUNTY RECORDS, SAID POINT BEING THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE ALONG THE WESTERN LINE OF LOT 12 OF SAID DIETRICH CROSSING THE FOLLOWING COURSES AND DISTANCES; SOUTH 86 DEGREES 21 MINUTES 3 SECONDS EAST, A DISTANCE OF 3.29 FEET; SOUTH 88 DEGREES 24 MINUTES 13 SECONDS EAST, A DISTANCE OF 241.11 TO A POINT IN THE SOUTHERN LINE OF LOT 12 OF SAID DIETRICH CROSSING; THENCE LEAVING SAID LINE THE FOLLOWING COURSES AND DISTANCES; SOUTH 1 DEGREE 35 MINUTES 47 SECONDS WEST, A DISTANCE OF 29.48 FEET; ALONG A CURVE TO THE LEFT WITH A RADIUS OF 20.00 FEET AND A LENGTH OF 29.91 FEET TO A POINT OF TANGENCY; SOUTH 84 DEGREES 5 MINUTES 3 SECONDS EAST, A DISTANCE OF 8.71 FEET; ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 20.00 FEET AND A DISTANCE OF 24.79 FEET TO A POINT OF TANGENCY; SOUTH 13 DEGREES 4 MINUTES 2 SECONDS EAST, A DISTANCE OF 140.92 FEET; ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 150 FEET AND A LENGTH OF 81.97 FEET TO A POINT OF TANGENCY;

SOUTH 16 DEGREES 55 MINUTES 40 SECONDS WEST, A DISTANCE OF 97.43 FEET; SOUTH 15 DEGREES 19 MINUTES 58 SECONDS WEST, A DISTANCE OF 309.10 FEET; SOUTH 3 DEGREES 38 MINUTES 33 SECONDS WEST, A DISTANCE OF 115.00 FEET; ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 40.00 FEET AND A LENGTH OF 61.32 FEET TO A POINT OF TANGENCY; NORTH 88 DEGREES 31 MINUTES 4 SECONDS WEST, A DISTANCE OF 148.95 FEET TO A POINT ALONG THE EASTERN LINE OF A PROPERTY CONVEYED TO KLONDIKE PARTNERS LP IN BOOK 7286 PAGE 1769 OF SAID COUNTY RECORDS; THENCE ALONG SAID EASTERN LINE NORTH 1 DEGREE 28 MINUTES 56 SECONDS EAST, A DISTANCE OF 929.80 TO THE POINT OF BEGINNING.

CONTAINING 239,971.63 SQUARE FEET OR 5.5089 ACRES, MORE OR LESS.

**EXHIBIT B**  
**INSTALLATION PREFERENCE CHECKLIST**

Any satellite dish or similar device shall be installed in such a manner that it is placed in the most preferable location considering the three (3) factors of Location, Height, and Screening, with the first listed placement under each category being the most preferable. Each prior preference shall be eliminated in sequence regarding whether it will allow for the provision of an acceptable signal prior to considering placement of the device within the next listed preference. Consideration of each element shall be signified by marking either “Acceptable Signal” or “Unacceptable Signal”.

<b>Preference Description</b>	<b>Acceptable Signal</b>	<b>Unacceptable Signal</b>
<b>A. Location</b>		
1. Placement within 5 feet of the rearmost corner of the home on the rear wall of the home.		
2. Placement within 10 feet of the rearmost corner of the home on the rear wall of the home.		
3. Placement at the next closest distance from the rearmost corner of the home on the rear wall of the home.		
4. Placement within 5 feet of the rearmost corner of the home on the side wall that adjoins the garage.		
5. Placement within 10 feet of the rearmost corner of the home on the side wall that adjoins the garage.		
6. Placement on the next closest distance from the rearmost corner of the home on the side wall that adjoins the garage.		
<b>B. Height</b>		
1. Placement within 3 feet from the ground.		
2. Placement within 4 feet from the ground.		
3. Placement under an eave of the home.		
<b>C. Screening</b>		
1. Concealment of the device by shrubbery or other natural landscaping elements otherwise allowable within the restrictions of the development.		
2. Concealment of the device by an opaque surface such as a wall or fence otherwise allowable within the restrictions of the development.		
3. Concealment of the device by a natural or manmade object otherwise allowable within the restrictions of the development.		
4. Concealment of the device by the individual characteristics or location of the Property within the development.		