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Recorder of St. Charles County

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COUNTY OF ST. CHARLES  
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**INDENTURE OF TRUST AND RESTRICTIONS FOR  
STONECROFT  
ST. CHARLES COUNTY, MISSOURI**

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**INDENTURE OF TRUST AND RESTRICTIONS FOR  
STONECROFT  
ST. CHARLES COUNTY, MISSOURI**

THIS INDENTURE OF TRUST AND RESTRICTIONS FOR STONECROFT, ST. CHARLES COUNTY, MISSOURI (the "Indenture"), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between SUMMIT POINTE, L.C., a Missouri limited liability company (hereinafter referred to as "First Party"), and STONECROFT HOMEOWNERS ASSOCIATION, a Missouri nonprofit corporation (hereinafter referred to as the "Association").

WITNESSETH THAT:

WHEREAS, First Party is the owner of a tract of real property (the "Property") located in St. Charles County, Missouri (the "County"), as more particularly described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, First Party has caused the Property to be subdivided under the name "Stonecroft" (sometimes hereinafter referred to as the "Subdivision"), and has caused or will cause the record plat(s) of such 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 and 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, except those streets or easements which are or may hereafter be dedicated to public bodies and agencies; and

WHEREAS, First Party, 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 preserve the Property, subdivided as aforesaid, and to protect the same against certain uses by the adoption of this Indenture; and

WHEREAS, all reservations, limitations, conditions, easements and covenants herein contained (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 Control Committee" shall have the meaning set forth in Article VII hereof.
2. "Association" shall mean and refer to Stonecroft Homeowners Association, a Missouri nonprofit corporation, and its successors and assigns.
3. "Board" or "Directors" shall mean the Board of Directors of the Association.
4. "By-Laws" shall mean and refer to the By-Laws of Stonecroft Homeowners Association, as from time to time amended. A copy of the By-Laws is attached to this Indenture, marked Exhibit B and incorporated herein by reference.
5. "Common Expenses" shall mean and refer to the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate. Common Expenses shall not include any expenses incurred during the Control Period for initial development or other original construction costs unless a majority of the total Class "A" votes of the Association approve such expenditure.
6. "Control Period" shall mean and refer to the period the First Party is entitled to appoint a majority of the members of the Board as provided in Section 3.5 of the By-Laws. The Control Period shall terminate on the first to occur of the following:
  - (a) when 95% of the total number of Lots permitted to be developed on the Property have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders;
  - (b) December 31, 2012; or
  - (c) when, in its discretion, First Party so determines.
7. "County" shall mean St. Charles County, Missouri.
8. "Common Ground" (or the plural of any thereof) shall mean and refer to all real property and the improvements thereon 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, paths, trails, walkways, storm water (including detention basins) and sanitary sewers and drainage facilities, retaining walls, subdivision entrance ways and monuments, street lights, and other such areas and facilities as may be shown on the record plat(s) of the Subdivision. 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 Common Ground.

9. "Consumer Price Index" shall mean and refer to the Consumer Price Index For All Urban Consumers, All Items, St. Louis, Missouri (1993-95=100), published by the Bureau of Labor Statistics, United States Department of Labor, or any successor index thereto.

10. "First Party" shall mean and refer to Summit Pointe, L.C., a Missouri limited liability company, its successors and assigns, including, but not limited to, any builder or developer who purchases vacant Lots or parcels of land constituting a portion of the Property for the purpose of building residences thereon for sale to third persons.

11. "Governing Documents" shall mean this Indenture, the By-Laws and the Rule and Regulations, as each may be amended.

12. "Indenture" shall mean and refer to this Indenture of Trust and Restrictions for Stonecroft, St. Charles County, Missouri, as from time to time amended.

13. "Lot" shall mean and refer to any plot of land, with the exception of Common Ground, shown on the recorded subdivision plat(s) of the Property.

14. "Member" shall mean and refer to a person subject to membership in the Association pursuant to Article IV, Section 2 of this Indenture.

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

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 First Party.

17. "Person" shall mean and refer to a natural person, a corporation, a partnership, a trustee, or any other legal entity.

18. "Property" shall mean and refer to the real property described on Exhibit A attached hereto and incorporated herein by reference.



19. "Rules and Regulations" shall mean and refer to Board-adopted Rules and Regulations which establish administrative procedures for internal Association governance and operating procedures for use of the Common Ground.

## ARTICLE II

### DURATION OF TRUST

The Indenture of Trust herein created shall continue until such time as the plat(s) of the Property may be vacated by the County 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 rights 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 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 conveyance 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

First Party 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

### 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 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 IV, Section 3 of this Indenture and in the By-Laws, 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. Voting.

The Association shall have two classes of membership, i.e., Class "A" and Class "B."

(a) Class "A." Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Article IV, Section 2 of this Indenture, except that there shall be only one vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Article IX, Section 8 of this Indenture.

(b) Class "B." The Class "B" Member shall be the First Party. The Class "B" Member shall be entitled to three (3) votes for each Lot owned.

The Class "B" membership shall terminate upon the earlier of:

- (i) two years after expiration of the Control Period pursuant to Article I, Section 6 of this Indenture; or
- (ii) when, in its discretion, First Party so determines and declares in an instrument recorded in the St. Charles County Records.

Upon termination of the Class "B" membership, First Party shall be a Class "A" Member entitled to Class "A" votes for each Lot which it owns.

## ARTICLE V

### ASSOCIATION POWERS AND RESPONSIBILITIES

The Association shall have the rights, powers, duties and authorities described throughout this Indenture and the following rights, powers and authorities:

#### 1. Acceptance and Control of Common Ground

(a) Subject to the provisions of Article XIV, Section 9 of this Indenture, to acquire, hold, lease (as lessor or lessee), operate and dispose of the Common Ground. Without limiting the generality of the foregoing, the Association may enter into leases, licenses or operating agreements for portions of the Common Ground, for such consideration or no consideration as the Board deems appropriate, to permit use thereof by community organizations and by others,

whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of the owners, occupants and residents of the Subdivision.

(b) First Party and its designees may convey to the Association, and the Association shall accept "as is," fee title, leasehold or other property interests in the Common Ground. Notwithstanding the foregoing, during the Control Period, upon First Party's request, the Board shall cooperate with First Party in its development of the Subdivision, and to facilitate such development, shall have the right, in its discretion, to adjust and reconfigure the Common Ground and to convey and exchange portions thereof to the from time to time owners of adjoining Lots.

(c) To manage, operate and control the Common Ground, and to adopt such reasonable Rules and Regulations regulating the use of the Common Ground as it deems appropriate.

2. Maintenance of Common Ground. To maintain, repair and replace the Common Ground, the cost of which shall be a Common Expense.

3. 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.

4. 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 First Party's or its successors' or assigns' development of property adjacent to the Property, the Association shall grant First Party and such public or quasi-public utilities and authorities as First Party may direct, and their respective successors and assigns, the perpetual right and easement to enter the Common Ground at any time and from time to time to erect, install, maintain, repair, rebuild and operate water, sewer, gas, telephone, power and cable television 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.

5. Deposits. To require a reasonable deposit in connection with the proposed erection of any building or structure, fence, swimming pool, tennis courts, or other structure in the Property approved in accordance with Article VII of this Indenture, in order to provide that upon completion of the project, all debris shall be removed from the site and from adjacent Lots and parcels, and that any and all damage to subdivision improvements shall be repaired.

6. 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 Board is 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.

7. Variances. To grant variances from the provisions of this Indenture where, in the sole discretion of the Board, due cause therefor is demonstrated by an Owner.

8. Insurance.

(a) Required Coverages. To obtain and continue in effect the following types of insurance, if reasonably available at commercially reasonable rates, or if not so available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Ground. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Common Ground insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board’s business judgment but not less than an amount equal to one-quarter of the annual assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

Premiums for all insurance on the Common Ground shall be Common Expenses.

(b) Policy Requirements. To arrange for periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Metropolitan St. Louis area. All Association policies shall

provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible which, in the event of an insured loss, shall be treated as a Common Expense. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots.

All insurance coverage obtained by the Board shall:

- (i) be written with a company authorized to do business in Missouri which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- (ii) be written in the name of the Association as trustee for the benefit of the Association and its Members.
- (iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Ground as a Member in the Association;
- (vii) provide a waiver of subrogation under the policy against any Owner, tenant, or household member of an Owner or a tenant;
- (viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and
- (ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

- (iii) an endorsement requiring at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

- (iv) a cross liability provision; and

- (v) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Ground, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Ground shall be repaired or reconstructed unless the Voting Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Ground shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members, and placed in a capital improvements account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy special assessments to cover the shortfall against the Owners.

9. Compliance and Enforcement.

(a) Every Owner and resident with the Subdivision shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after notice and a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Lot;

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use any recreational facilities within the Common Ground; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot;

(iv) 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;

(v) exercising self-help or taking action to abate any such violation in a non-emergency situation;

(vi) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot 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 to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article VII from continuing or performing any further activities in the Subdivision; and

(viii) levying special assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents:

(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 the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, 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.

(b) 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 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.

#### 10. Indemnification of Officers, Directors and Others.

Subject to the indemnification provisions in Chapter 355 of Mo. Rev. Stat., the Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Missouri law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

The Association shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

### ARTICLE VI

#### DIRECTORS' DUTIES AND POWERS

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



1. Control of Common Ground. To exercise control over and maintain, improve and operate the Common Ground with landscaping, shrubbery, decorations, buildings, recreational facilities and structures of any kind or description, and any and all other types of facilities in the interest of the health, welfare, safety, recreation, entertainment, education and for the general use of the Owners; to grant such easements and rights-of-way over the Common Ground to such utility companies or public agencies or others as they shall deem necessary or appropriate in accordance with the provisions of Article V, Section 4; to adopt Rules and Regulations not inconsistent with law or this Indenture; and in every and all respects govern the operation, functioning and usage of the Common Ground.

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

(b) To clear rubbish and debris and remove grass and weeds from and trim, cut back, remove, replace and maintain trees, shrubbery and flowers upon any neglected property, and to charge the Owners thereof with the reasonable expense so incurred, which shall be a lien against such parcel of neglected property.

(c) The Directors, or their agents or employees, shall not be deemed guilty or liable for any manner of trespass for any repair, replacement, abatement, removal or planting authorized under paragraphs (a) and (b) of this Section 2.

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

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

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

6. Trash and Other Services. At the discretion of the Directors, to provide for the collection of trash, rubbish and garbage and otherwise to provide such services as shall be in the interest of the health, safety and welfare of the Owners and residents, and to enter into and assume contracts for such purposes covering such periods of time as they may consider advisable; provided, however, that neither First Party, nor the Association, nor their respective officers, directors, successors, assigns, agents, employees, affiliates or licensees shall provide or maintain or be responsible for providing or maintaining, in any way, security for all or any portion of the Properties or for any Owners. Furthermore, each and every Owner hereby releases and agrees to indemnify and hold First Party and the Association and their respective officers, directors, successors, assigns, agents, employees, affiliates or licensees, harmless from and against any and all claims, demands and liabilities for any damage to real or personal property or injury or death resulting in any way, due to the existence or level of security provided with respect to the Properties.

7. Agents. In exercising the rights, powers and privileges granted to them, and in discharging the duties imposed upon them by the provisions of this Indenture, from time to time to enter into contracts, employ agents and other employees as they deem necessary or advisable, employ counsel to advise the Directors or to institute and prosecute such suits as they deem necessary or advisable, and to defend suits brought against them individually or collectively in their capacity as Directors.

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

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

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

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

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

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

## ARTICLE VII

### ARCHITECTURAL AND ENVIRONMENTAL CONTROL

1. Architectural Approval. From and after such time as a Lot becomes subject to assessment as provided in Article IX of this Indenture, no building, fence, wall, driveway, deck, patio, patio enclosure, screened porch or other structure, swimming pool, tennis court or improvement shall be commenced, erected or maintained on such Lot, nor shall any exterior addition to, removal of or from, or exterior 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 (i) 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 appointed by the Directors in their sole discretion, by an architectural committee composed of three (3) or more representatives, and (ii) all permits required by the County or any other governmental authority having jurisdiction over the project have been received. Reference herein to "Architectural Control Committee," shall refer either to the aforesaid Committee, if appointed and constituted, or to the Directors, whichever happens to be acting at the time. In the event the Architectural Control 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), or such longer period as the Architectural Control Committee may indicate in writing is reasonably necessary to complete its review and analysis of such materials, approval will not be required and this provision will be deemed fully complied with. The Architectural Control 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. All requests hereunder shall be submitted to the Architectural Control Committee in writing, and shall be deemed submitted when personally delivered to the Architectural Control Committee at the address from time to time designated for such purposes, or when receipted by the Architectural Control Committee if sent to the Committee at the aforesaid address by postage prepaid, registered or certified mail, return receipt requested.

It is the intent of this Indenture that all buildings and structures within the Subdivision shall be constructed of attractive exterior materials of high quality. In its review of submissions, the Architectural Control Committee shall evaluate the construction standards and building materials for all proposed construction on the Lots to insure that they are in conformance with such objectives. Any permitted accessory buildings, enclosures, appurtenant structures to or extrusions from any building or structure on any Lot shall be of similar or compatible materials, design and construction. Exterior finishes and elevations once approved shall not be altered without the express consent of the Architectural Control Committee.

The decision of the Architectural Control Committee to approve or reject a request under this Article VII shall be final; provided, however, no such decision shall constitute a precedence for any other request, and each such request shall be reviewed and decided on a case-by-case basis.

2. Limitation of Liability. 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 for any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Architectural Control 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 First Party, 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. In all matters, the Board, the Architectural Committee, and the members of each shall be defended and indemnified by the Association as provided in Article V, Section 10.

## ARTICLE VIII

### SEWERS AND DRAINAGE FACILITIES

1. Association's Responsibility - Common Ground. The Association shall be responsible for the maintenance, repair and replacement of the private sanitary and storm sewers, if any, any detention basins, and any other sanitary or storm sewers or drainage facilities located on and servicing the Common Ground.

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 IX

### ASSESSMENTS

1. General. First Party, 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 (i) annual

assessments or charges and (ii) special assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The annual and special assessments together with interest thereon and costs of collection thereof shall be a charge on and continuing lien upon the Lot against which such assessment is made. 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 the assessment fell due.

2. Purpose. The assessments levied under this Article 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 the services and performance of the 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(s) of the Subdivision including, but not limited to, the payment of taxes and insurance thereon, and the repair, maintenance, replacement and addition thereto, and the cost of labor, equipment, materials, management and supervision thereof; for the establishment of reasonable reserves; and for such other needs as may arise.

3. Annual Assessments. Until increased as herein authorized, the maximum annual assessment shall be One Hundred Fifty and 00/100 Dollars (\$150.00) per Lot; provided, however, that the Directors may increase such assessment for any assessment year by an amount which is equal to the greater of (i) five percent (5%) over the previous year's assessment, or (ii) 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 the sole judgment to be most similar to the discontinued Index.

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 Class "A" Members voting in person or by proxy at a meeting duly called for such purpose, written notice of which setting forth the purpose of the meetings shall have been sent to all Class "A" Members at least thirty (30) days in advance.

Each annual assessment shall be levied prior to or during the year for which it is assessed, notice thereof being given by first class mail addressed to the last known or usual post office address of each Owner and deposited in the United States mail with postage prepaid, or by posting of 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. Storm Water Facilities. In addition to the foregoing, the Board is authorized to make separate annual assessments upon and against each Lot for the purpose of maintaining or repairing the storm water storage, disposal or sewer facilities located within the Subdivision; provided, however, the separate power granted to the Board by this Section 4 shall expire with the calendar year following the acceptance of such storm water facilities for public maintenance. Any assessment made under authority granted in this, Section 4, shall be assessed and collected in the same manner as assessments under Section 3 above, and the Board shall have the same powers of collection and lien rights against the Lots as provided in said Section 3.

5. Special Assessments. If at any time the Board considers it necessary to make any expenditure requiring an assessment additional to the annual assessment, it shall submit a written outline of the contemplated project and the amount of the assessment required to the Class "A" Members. If such assessment is approved by a majority of the votes cast in person and by proxy at a meeting of the Class "A" Members called by the Board, or on written consent of a majority of the total votes entitled to vote thereon, the Board shall notify all Owners of the additional assessment; provided, however, that in determining such required majority, each Class "A" Member who has paid all assessments theretofore made shall be entitled to one (1) full vote, and Class "A" Members who are delinquent in their payment of prior assessments shall not 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 5. 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.

6. Prorations. Should a Lot become subject to assessments after January 1 in any year, and should an annual or special assessment have been levied for that year, then such assessment shall be adjusted so that such Lot shall be charged with a portion of the assessment prorated for the balance of that year.

7. Interest and Liens. All assessments shall bear interest at the rate of eighteen percent (18%) per annum, and such assessment, together with interest and costs of collection, shall constitute a lien upon the Lot against which it is assessed until the amount, together with interest and charges, is fully paid. As an assessment becomes delinquent, the Board may execute, acknowledge and record in the St. Charles County Records an instrument reciting the levy, and thereafter institute any appropriate legal action to enforce such lien. Should an Owner pay an assessment after the recording of such notice, the Board shall cause a release of said lien to be executed and recorded (at the expense of the Owner of the affected Lot).

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.

8. Exemptions. The following properties subject to this Indenture shall be exempt from the assessments, charges and liens created herein:

- (i) All Common Ground;
- (ii) All properties exempted from taxation under the laws of the State of Missouri; and
- (iii) All Lots owned by First Party until occupied or until title to the Lot has been transferred to the first purchaser thereof for residential use and occupancy (as distinguished from sales in bulk or at wholesale to others for development or resale). No Lot devoted to residential use shall be exempt from assessment hereunder.

9. Keeping of Funds. The Board shall deposit the funds coming into its hands in a bank protected by the Federal Deposit Insurance Corporation, the treasurer being bonded as provided in Article V, Section 8 of this Indenture.

10. Ordinance Compliance. Notwithstanding any other conditions herein, the Board shall make suitable provisions for compliance with all subdivision and other ordinances, rules and regulations of the County, and any municipality of which the Property may become a part, 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.

11. Change of Ownership. Upon the conveyance of any Lot in the Subdivision other than a conveyance by First Party, 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 7 of this Article IX.

## ARTICLE X

### 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. No building or structure shall, without the approval of the Board, be used for a purpose other than that for which the building or structure was originally designed.
2. Building Location. No building or structure shall be located on any Lot nearer to the street(s) upon which such Lot fronts or by which such Lot is bordered or the side or rear lot lines than the front building line or side or rear set-back lines shown on the plat(s) of the Subdivision.
3. Resubdivision. No Lot shall be resubdivided nor shall a fractional part of any Lot be sold without the consent of the Board, which consent shall not be unreasonably withheld. In the event either of the foregoing is approved, then the assessment attributable to the Lot so subdivided shall be prorated between the resulting Lots.
4. Commercial Use. Except for the promotional activities conducted by First Party in connection with the development of the Property and the marketing and sale of residences therein and the conduct of a home occupation in strict accordance with the provisions of applicable zoning ordinances, no commercial activities of any kind shall be conducted on any Lot.
5. Nuisances. No loud, noxious or offensive activity shall be carried on upon any Lot or the Common Ground, 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, recreational motor vehicles, 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. No exterior lighting shall be directed outside the boundaries of a Lot or other parcel.
6. Maintenance. Each Owner shall maintain and keep his Lot 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 on any Lot overnight, and no exterior appurtenances such as sculptures, bird baths or similar personal property items, shall be placed in the front yard of any Lot.
7. Obstructions. There shall be no obstruction of any portion of the Common Ground or any storage, construction or planting thereon by any 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.
8. Animals. No animals, reptiles, birds, horses, rabbits, fowl, poultry, cattle or livestock of any kind shall be brought onto or kept on the Properties, except that no more than two 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 enclosed by an in-ground electric fence) leashed and no "runs" or other outside structures are erected or installed therefor. The keeping of any pet which by reason



of its noisiness or other factor is a nuisance (as determined by the Board in their sole judgment) or annoyance to the neighborhood is prohibited.

9. Trucks, Boats, Etc. No trucks (other than pick-up trucks not exceeding 3/4 ton) or commercial vehicles, boats, motorcycles, campers, house trailers, boat trailers or trailers of any other description shall be permitted to be parked or stored on any Lot unless they are parked or stored in an enclosed garage or some other enclosure (open or otherwise) approved by the Architectural Control Committee, except only during periods of approved construction on the Lot. Further, no motor vehicle or equipment shall be repaired or otherwise serviced in front of or adjacent to any residence in the Subdivision.

10. Abandoned Vehicles. No abandoned cars, motorcycles, trucks or other motor vehicles of any kind whatsoever that are unable to move under their own power may be stored or suffered to remain upon any of the Common Ground or on any Lot. If any such motor vehicle is so stored or remains on the aforesaid premises, the Board may take the necessary steps to remove the same at the Owner's expense.

11. Vehicular Sight Lines. No fence, wall, tree, hedge or shrub planting shall be maintained in such 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 Architectural Control Committee.

12. Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, barn, shed or other outbuilding shall be erected or installed on any Lot at any time.

13. 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 signs erected or displayed by First Party in connection with the development of the Property and the marketing and sale of residences therein.

14. Garbage. No trash, garbage, rubbish, refuse, debris, trash cans or trash receptacles of any type shall be stored in the open on any Lot, but shall be kept secured within the improvements located on each Lot; provided, 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.

15. Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are established and are and/or will be reserved as shown on the recorded plats of the Property. 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 flow of drainage channels in the

easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

16. 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.

17. Cul-De-Sac, Etc. No above-ground structure, other than required street lights, may be erected upon a cul-de-sac, divided street entry island, or median strip.

18. Fences. (A) No fencing or screening of any kind shall be erected or maintained on any Lot without the prior written consent of the Architectural Control Committee and unless in strict compliance with the following standards and requirements, to-wit:

(1) Other than as expressly permitted by the provisions of this Section 18, the maximum height for full perimeter fencing shall be forty-eight inches (48").

(2) Fencing shall only enclose the rear yards of any Lot. No fencing shall be erected or maintained on any Lot between the rear corner of the residence 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 residence. Notwithstanding the foregoing, 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, and the Architectural Control Committee may, as in other unique situations, approve fencing of up to seventy-two inches (72") in height. **No fencing shall be allowed within the Equilon Pipeline easement without written approval from the Equilon Pipeline Company.**

As used in this, paragraph (2), 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 Control Committee, the interference by utility structures. When an extraordinary circumstance exists, with prior written consent of the Architectural Control 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 Control 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 notice by the Board.

(3) All fencing shall be of either cedar or wolmanized lumber, wrought iron or aluminum simulated wrought iron, or polyvinyl chloride (PVC) materials. Under no circumstance will "chain link" fencing be considered acceptable, 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 Control Committee, whose decision to allow or disallow any other material or design shall be final.

(4) Except for certain approved styles of PVC or wrought iron fencing, fencing may be any picket width up to a maximum of six inches (6"), and regardless of picket width, the minimum open space between pickets shall be three inches. Request of 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 Board.

(5) All picket fences shall be installed with the good siding facing out.

(6) All wood fences are to remain in their natural state or can be painted or stained white, black, gray, or a natural brown tone. In the event that any fence deteriorates or falls into disrepair, and the Owner of the Lot on which the fence is located fails to repair or remove same after notice from the Board, the Board, its agents, employees or contractors, shall have the absolute right to enter upon the Lot, without being deemed guilty or liable for any manner of trespass, and repair or restore such fence and charge the cost of same to the then Owner of the Lot on which the fence is located and impose a lien on such Lot until paid. The procedures hereinabove set forth for the collection of delinquent assessments shall be applicable to enforcement of the aforesaid charges.

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

(8) Swimming pool and patio privacy will be handled on a case-by-case basis.

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

20. Swimming Pools. (a) No above ground swimming pools will be allowed on any Lot in the Subdivision unless they are recessed at lease one-half ( $\frac{1}{2}$ ) of their exterior depth into the yard or the slope of a yard and completely surrounded by decking, properly skirted to the surrounding ground level so as to present the appearance of an in-ground pool. The plans for any such pool must be submitted to and approved by the Architectural Control Committee, and shall include drawings, material lists, landscape detail and any other information deemed necessary by the Architectural Control Committee in its sole discretion. The approval of any such pool shall not constitute a precedence for other such structures, and each instance will be determined on a case by case basis.

(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 Board to conform with such governmental guidelines.

21. Television Antennae. No exterior television or radio antenna, towers, direct broadcast, satellite dishes or antennas used to receive multichannel multi-point distribution (wireless cable) signals may be installed in the Subdivision without the prior approval of the Architectural Control Committee under Article VII of this Indenture; provided, however, in reviewing a request for approval of any such device, the Architectural Control Committee shall comply with all Federal, State and local laws, ordinances and regulations, and shall not impose any restriction which will preclude an Owner's receipt of an acceptable quality signal.

22. Sprinklers. All water and other sewer systems servicing the Subdivision (other than lawn sprinkler systems servicing any single Lot or a sprinkler system servicing the Common Ground) shall be constructed by the First Party. No Owner or occupant of any Lot in the Subdivision shall construct any water or other sewer system on the Property, other than a lawn sprinkler system servicing a single Lot. **No buildings, structures, fences, trees, or improvements of any kind, other than those approved in writing from the Equilon Pipeline Company shall be allowed to be erected, planted, or permitted within the fifty foot (50') Equilon Pipeline Easement.**

## ARTICLE XI

### EASEMENTS

#### 1. Easements in Common Ground.

First Party grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Ground, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association; and
- (c) The Board's right to:
  - (i) adopt rules regulating use and enjoyment of the Common Ground, including rules limiting the number of guests who may use the Common Ground;

(ii) suspend the right of an Owner to use recreational facilities within the Common Ground (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;

(iii) dedicate or transfer all or any part of the Common Ground, subject to such approval requirements as may be set forth in this Indenture;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Ground;

(v) permit use of any recreational facilities situated on the Common Ground by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board and designate other areas and facilities within the Common Ground as open for the use and enjoyment of the public; and

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

## 2. Easements of Encroachment.

First Party grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Ground and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions); provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

## ARTICLE XII

### EQUILON AND CENTRAL ELECTRIC POWER COOPERATIVE EASEMENTS

#### Equilon Pipeline Company Easement

Notwithstanding anything contained in this Indenture to the contrary, it is expressly acknowledged that, as shown on the plat(s) of the Subdivision, Equilon Pipeline Company LLC, a Delaware limited liability company ("Equilon"), holds a pipe line easement and right-of-way

across a portion of the Properties, and that in addition to the other provisions of this Indenture, the following restrictions shall apply to the fifty foot (50') wide strip of land (the "Easement Area") lying twenty-five feet (25') on either side of the centerline of the twenty-two inch (22") pipeline located within such easement:

1. That no buildings, structures, fences, trees, or improvements of any kind, other than improvements covered by Section 2 of this Article XII will be erected or permitted in the Easement Area.
2. That if an Owners contemplates placing a street, sidewalk, drainage ditch, utility line, parking area, exercise trail, or other similar improvements across but not along the Easement Area, then not less than ninety (90) days prior to commencing such work, such Owner shall furnish Equilon with detailed plan and profile drawings satisfactory to Equilon of such work; Equilon will provide Owner with a current version of General Requirements For Crossing And Working Near Our Pipelines for Owner's compliance purposes; and, as a result of Owner's proposal, and should Equilon deem it necessary to excavate the pipeline for inspection, lower, encase or otherwise adjust any of the facilities because of such proposed work, Owner shall reimburse Equilon for the cost of such lowering, encasement or other adjustment with a payment in advance based on Equilon's estimate of the cost of the work provided, however, that if the actual cost exceeds the amount deposited, Owner shall reimburse Equilon the balance thereof and if the actual cost is less than the estimate, Equilon shall refund the excess to Owner;
3. That Equilon has the right, without any obligation to repair or resurface same, to cut any street, roadway, parking area, driveway, sidewalk, or any other paved surface, now or hereafter located across said Easement Area for the purpose of exercising any of the rights granted under said Grants;
4. That Equilon has the right, without any obligation to replace any plants, non-native grasses, or landscaping of any kind, now or hereafter located across said Easement Area for the purpose of exercising any of the rights granted under said Grants;
5. That no excavations shall be made on land adjacent to said Easement Area which will in any way impair or withdraw the lateral support of or which will cause any subsidence or other injury or damage to said Easement Area and/or any of Equilon's facilities located thereon; and
6. That Equilon, as a result of any work performed on its pipeline requiring the use of any adjacent area, will restore the affected area to a like condition following the completion of the work performed.

#### Central Electric Power Cooperative Easement

Notwithstanding anything contained in this Indenture to the contrary, it is expressly acknowledged that, as shown on the plat(s) of the Subdivision, Central Electric Power Cooperative ("CEPC") holds a transmission line easement across a portion of the property as

recorded in Book 2432 Page 1301 of the St. Charles County Records Office, and that in addition to the other provisions of this Indenture, the following restrictions shall apply to the forty foot (40') and seventy foot (70') wide strips of land (the "Easement Area") :

1. Present line-to-ground elevations must not be diminished. This applies to the entire right-of-way.
2. Erection of any structure on the right-of-way is not permitted.
3. Construction of roads or parking lots is not permitted unless there is adequate clearance between any proposed parking lots or roads and the transmission line. The National Electric Safety Code may require additional clearance over roads, driveways, and parking lots that are in excess of the clearance required over unimproved land. Central Electric Power Cooperative must be notified regarding any proposed parking lots or roads so that CEPC can determine if the clearance is adequate.
4. Planting of trees on the right-of-way is not permitted.
5. Any septic systems, drain fields, sewer lines, water lines, or any other underground facility must be buried at least five feet below ground surface.
6. Central Electric Power Cooperative must be notified of the location of all underground facilities on the right-of-way.
7. Buyers of subdivision lots that are within CEPC's right-of-way must be notified of CEPC's easement rights which include but are not limited to access, reconstruction, maintenance, and clearing rights.
8. Please notify all contractors working on this project of the following safety requirements. All equipment must be kept at least 10 feet (10') away from all of CEPC's conductors, no matter if conductors are energized or de-energized. Any trenching or earth moving done must be at least 10 feet (10') away from any of CEPC's structure, anchors, or guys. For the safety of the public and/or workmen involved, it may be necessary to de-energize the transmission line. If situations arise which require this condition, please coordinate your efforts through CEPC's dispatch center at 1-573-763-5315. When a CEPC line is to be de-energized, it is an absolute must that the structure number where the work is to be done is made known to CEPC.

### ARTICLE XIII

#### RIGHTS RESERVED TO DECLARANT

1. Marketing and Sales Activities. First Party may construct and maintain upon the Lots and portions of the Common Ground such facilities and activities as, in First Party's sole opinion, may be reasonably required, convenient, or incidental to the improvement or sale of Lots, including, but not limited to, business offices, signs, model units, and sales offices. First Party shall have easements for access to and use of such facilities at no charge. Further, 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,

First Party 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; (ii) to maintain sales, business and construction offices in display homes or trailers in the Subdivision (including without limitation, the Common Ground); and (iii) to park and to allow its subcontractors to park trucks and stock pile and store materials on any Lot(s) or on the Common Ground. First Party's construction activities shall not be considered a nuisance.

2. Right to Develop. First Party and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Ground for the purpose of making, constructing and installing such improvements to the Common Ground as it deems appropriate in its sole discretion. Further, notwithstanding anything contained in this Indenture to the contrary, if required in connection with First Party's development of the Property or any property adjacent to the Property, the Association shall grant First Party and such public or quasi-public utilities and authorities as First Party may direct, and their respective successors and assigns, the perpetual right and easement to enter the Common Ground at any time and from time to time to erect, install, maintain, repair, rebuild and operate water, sewer, gas, telephone, power and cable television 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.

3. Right to Transfer or Assign First Party Rights. Any or all of First Party's special rights and obligations set forth in this Indenture or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which First Party has under this Indenture or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded, written instrument. The foregoing sentence shall not preclude First Party from permitting other Persons to exercise, on a one time or limited basis, any right reserved to First Party in this Indenture where First Party does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment.

## ARTICLE XIV

### MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Subdivision. The provisions of this Article apply to both this Indenture and to the By-Laws, notwithstanding any other provisions contained therein.

1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:



(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Lot or the Owner or occupant which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the first Mortgagees or Owners representing at least sixty-seven percent (67%) of the total Association vote consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Ground which the Association owns, directly or indirectly (the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Ground shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot;

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Lots and the Common Ground (the issuance and amendment of architectural standards, procedures, Rules and Regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Indenture; or

(e) Use hazard insurance proceeds for any Common Ground losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Ground and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the

lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

3. Other Provisions for First Lien Holders. To the extent not inconsistent with Missouri law:

(a) Any restoration or repair of the Property after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this Indenture and the original plans and specifications unless the approval is obtained of the Eligible Holders of first Mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to Mortgages held by such Eligible Holders are allocated.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Holders of first Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to Mortgages held by such Eligible Holders are allocated.

4. Amendments to Documents. The following provisions do not apply to amendments to the constituent documents or termination of the Association as a result of destruction, damage, or condemnation pursuant to Section 3(a) and (b).

(a) The consent of Voting Members representing at least sixty-seven percent (67%) of the Class "A" votes and of First Party, so long as it owns any land subject to this Indenture, and the approval of the Eligible Holders of first Mortgages on Lots to which at least sixty-seven percent (67%) of the votes of Lots subject to a Mortgage appertain, shall be required to terminate the Association.

(b) The consent of Voting Members representing at least sixty-seven percent (67%) of the Class "A" votes and of First Party, so long as it owns any land subject to this Indenture, and the approval of Eligible Holders of first Mortgages on Lots to which at least fifty-one percent (51%) of the votes of Lots subject to a Mortgage appertain, shall be required materially to amend any provisions of the Indenture, By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (i) voting;
- (ii) assessments, assessment liens, or subordination of such liens;
- (iii) reserves for maintenance, repair, and replacement of the Common Ground;
- (iv) insurance or fidelity bonds;
- (v) rights to use the Common Ground;
- (vi) responsibility for maintenance and repair of the Property;
- (vii) expansion or contraction of the Property or the addition, annexation, or withdrawal of property to or from the Association;
- (viii) boundaries of any Lot;
- (ix) leasing of Lots;

(x) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Lot;

(xi) establishment of self-management by the Association where professional management has been required by an Eligible Holder; or

(xii) any provisions included in the Governing Documents which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Lots.

5. No Priority. No provision of this Indenture or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Ground.

6. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

7. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

8. Construction of Article XIV. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Indenture, the By-Laws, or Missouri law for any of the acts set out in this Article.

9. HUD/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the Mortgage on any Lot: merger, consolidation or dissolution of the Association; annexation of additional property; dedication, conveyance or mortgaging of Common Ground; or material amendment of this Indenture or the By-Laws. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Ground shall not be deemed a conveyance within the meaning of this Section.

## ARTICLE XV

### AMENDMENT OF INDENTURE

1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Indenture, until conveyance of the first Lot to an Owner, First Party may unilaterally amend this Indenture for any purpose. Thereafter, First Party may unilaterally amend this Indenture if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Lots; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

In addition, during the Control Period, First Party may unilaterally amend this Indenture for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner or unless such Owner shall consent in writing.

2. By Members. Except as otherwise specifically provided above and elsewhere in this Indenture, this Indenture may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five percent (75%) of the total Class "A" votes in the Association, including seventy-five percent (75%) of the Class "A" votes held by Members other than First Party, and First Party, so long First Party owns any property subject to this Indenture. In addition, the approval requirements set forth in Article XIV shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

3. Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of First Party without First Party's written consent.

If an Owner consents to any amendment to this Indenture or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Indenture.

## ARTICLE XVI

## 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/or 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. No Director shall be held personally liable for injury 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 shall not be entitled to any compensation or fee for services performed pursuant to this Indenture.
3. 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 Subdivision or any Lot in the Subdivision 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.
4. Invalidation. Invalidation of any one of the covenants of this Indenture shall in no way affect any other provision hereof.
5. 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 (b) 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 all plats of the Property; or (ii) as to any subdivision of the Property, for the duration of the subdivision encumbered hereby unless continued in effect thereafter by the vote of two-thirds (b) of the Lots in such subdivision by an appropriate instrument filed of record prior to the vacation of the plats 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.

IN WITNESS WHEREOF, First Party has executed this Indenture this 22<sup>nd</sup> day of February 2002

FIRST PARTY: SUMMIT POINTE, L.C.,  
a Missouri limited liability company

BY: TR Hughes, My Member  
Thomas R. Hughes, President

ASSOCIATION: STONECROFT HOMEOWNERS ASSOCIATION,  
a Missouri nonprofit corporation


BY: Bernard J Bax Secretary  
Bernard J Bax

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

On this 22<sup>nd</sup> day of February, 2002, before me personally appeared Thomas R. Hughes, President of Summit Pointe, L.C., a Missouri limited liability company, known to me to be the person who executed the foregoing in behalf of said limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

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.

Bernard J Bax  
Notary Public Bernard J. Bax



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

On this 22<sup>nd</sup> day of February, 2002, before me personally appeared Bernard J. Box, Secretary of Stonecroft Homeowners Association, a Missouri nonprofit corporation, known to me to be the person who executed the foregoing in behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

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.

Brenda L. Suit     2-22-02  
 Notary Public



LAND DESCRIPTION

01-0455

59.628 ACRES

2/22/02

MTS

BOOK 2835 PAGE 722

STONECROFT

A TRACT OF LAND IN THE NORTHEAST QUARTER OF SECTION 19, TOWNSHIP 46 NORTH, RANGE 4 EAST OF THE FIFTH PRINCIPAL MERIDIAN, ST. CHARLES COUNTY, MISSOURI AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF A 16.37 FOOT (24.8 LINKS) WIDE STRIP AS CONVEYED TO SILAS MILLER, DURING JUNE 1901, AND RECORDED IN BOOK 82 PAGE 140 OF THE ST. CHARLES COUNTY RECORDS, BEING ALSO THE WEST LINE OF PROPERTY CONVEYED TO FIBERPATH TECHNOLOGIES, L.L.C. BY DEED RECORDED IN BOOK 2390 PAGE 1193 OF THE ST. CHARLES COUNTY RECORDS, WITH THE NORTH LINE OF "ARTIST GROVE", A SUBDIVISION ACCORDING TO THE PLAT THEREOF RECORDED IN PLAT BOOK 31 PAGES 272 AND 273 OF THE ST. CHARLES COUNTY RECORDS; THENCE ALONG THE SAID NORTH LINE OF "ARTIST GROVE", AND THE WESTWARDLY PROLONGATION THEREOF, NORTH 89 DEGREES 29 MINUTES 00 SECONDS WEST 1321.42 FEET TO A POINT IN THE EAST LINE OF KISKER ROAD, AS ESTABLISHED BY TRUSTEE'S DEED AND EASEMENT AGREEMENT, EXECUTED APRIL 19, 2001, THENCE NORTHWARDLY ALONG THE SAID EAST LINE OF KISKER ROAD, THE FOLLOWING COURSES AND DISTANCES, ALONG A CURVE TO THE LEFT WHOSE CHORD BEARS NORTH 02 DEGREES 01 MINUTES 13 SECONDS EAST 242.29 FEET AND WHOSE RADIUS POINT BEARS NORTH 86 DEGREES 46 MINUTES 32 SECONDS WEST 5764.58 FEET FROM THE LAST MENTIONED POINT, AN ARC DISTANCE OF 242.31 FEET; THENCE NORTH 00 DEGREES 48 MINUTES 58 SECONDS EAST 1398.04 FEET; THENCE ALONG A CURVE TO THE LEFT WHOSE CHORD BEARS NORTH 00 DEGREES 29 MINUTES 09 SECONDS WEST 261.97 FEET AND WHOSE RADIUS POINT BEARS NORTH 89 DEGREES 11 MINUTES 02 SECONDS WEST 5764.58 FEET FROM THE LAST MENTIONED POINT, AN ARC DISTANCE OF 261.99 FEET; AND ALONG A CURVE TO THE RIGHT WHOSE CHORD BEARS NORTH 01 DEGREES 24 MINUTES 38 SECONDS WEST 75.01 FEET AND WHOSE RADIUS POINT BEARS NORTH 88 DEGREES 12 MINUTES 43 SECONDS EAST 5694.58 FEET FROM THE LAST MENTIONED POINT, AN ARC DISTANCE OF 75.01 FEET TO A POINT IN THE SOUTH LINE OF A 16.00 FOOT WIDE STRIP AS CONVEYED TO BEN STOLL IN BOOK 81 PAGE 30 OF THE ST. CHARLES COUNTY RECORDS; THENCE ALONG THE SAID SOUTH LINE OF A 16.00 FOOT WIDE STRIP, BEING ALSO 16.00 FEET PERPENDICULARLY DISTANT SOUTH OF AND PARALLEL OF THE SOUTH LINE OF "SHENANDOAH PARK", AS RECORDED IN PLAT BOOK 20 PAGES 1 THROUGH 5 OF THE ST. CHARLES COUNTY RECORDS, SOUTH 89 DEGREES 39 MINUTES 29 SECONDS EAST 1314.81 FEET TO A POINT BEING 16.00 FEET PERPENDICULARLY DISTANT WEST OF THE WEST LINE OF SAID "SHENANDOAH PARK"; THENCE ALONG A LINE BEING 16.00 FEET PERPENDICULARLY DISTANT WEST OF AND PARALLEL TO THE SAID WEST LINE OF "SHENANDOAH PARK", SOUTH 00 DEGREES 25 MINUTES 29 SECONDS WEST 641.45 FEET TO A POINT; THENCE ALONG THE WEST LINE OF PROPERTY CONVEYED TO MARLENE C. LOEFFLER TRUST AS TRACT B BY DEED RECORDED IN BOOK 1690 PAGE 983 OF THE ST. CHARLES COUNTY RECORDS, AND THE AFORESAID WEST LINE OF PROPERTY CONVEYED TO FIBERPATH TECHNOLOGIES, L.L.C., SOUTH 00 DEGREES 33 MINUTES 29 SECONDS WEST 1339.68 FEET TO THE POINT OF BEGINNING AND CONTAINING 59.628 ACRES.