

**INDENTURE OF TRUST AND DECLARATION OF RESTRICTIONS
OF
MANDERLEIGH OF TOWN AND COUNTRY**

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INDENTURE

This **INDENTURE OF TRUST AND DECLARATION OF RESTRICTIONS OF MANDERLEIGH OF TOWN AND COUNTRY** (the "Indenture") is made and entered into as of this 8th day of September, 1994, by and between **TOWN & COUNTRY DEVELOPMENT LIMITED LIA331LITY COMPANY**, a Missouri limited liability company ("Grantor"); and **FRED C. BRUNING, DONALD L. MICELI and JOSEPH J. MICELI**, all of St. Louis County, Missouri ("Trustees").

W I T N E S S E T H:

WHEREAS, Grantor is the owner of fee simple of that certain **81.244+** acre tract of land (the "Real Estate") located in the City of Town & Country, County of St. Louis, State of Missouri, being more particularly described in **Exhibit A** annexed hereto and incorporated herein by this reference; and

WHEREAS, Grantor has caused the Real Estate to be laid out as a subdivision (the "Subdivision") to be named and known as **MANDERLEIGH OF TOWN AND COUNTRY** ("Manderleigh"), and Grantor has caused a portion of said Real Estate (said Manderleigh Subdivision) to be platted of record pursuant to that certain plat ("**Plat**") titled "Manderleigh of Town and Country Plat One", which Plat Grantor has **recorded** in the St. Louis County Recorder's Office as **Daily No. 492 on the 13th day of September, 1994, in Plat Book 330 at Page(s) 2,3 & 4** of said St. Louis County Recorder's Office; and

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WHEREAS, the City of Town and Country has approved the Subdivision as a "Planned Residential Community" under the terms of its Zoning Ordinance and Subdivision Ordinance; and

WHEREAS, there are designated, established and recited on the recorded Plat of Manderleigh certain streets and cul-de-sacs and certain easements which are for the exclusive use and benefit of the owner or owners of lots and parcels shown on said recorded Plat of Manderleigh, and which have been provided for the purpose of constructing, maintaining and operating utilities, sewers, pipes, wires, storm water drainage, and other facilities and public utilities for the use and benefit of the owner or owners of the lots shown on said Plat; and

WHEREAS, it is the purpose and intention of this Indenture to preserve the Real Estate, and the Manderleigh Subdivision established thereon by the said Plat, as a restricted neighborhood and to protect same against certain uses thereof by means of the adoption of a common neighborhood plan and scheme of restrictions, and to apply that plan and restrictions to the entire Subdivision; and

WHEREAS, all reservations, limitations, conditions, easements and covenants herein contained, any and all of which are hereafter termed "Restrictions", are jointly and severally for the benefit of all persons who may purchase, hold or reside upon any of the several lots shown on said Plat and covered by this instrument, and it is intended that this Indenture and the said Restrictions shall be a covenant running with the land; and

WHEREAS, Grantor desires to establish in the Trustees sufficient authority, and also to establish in said Trustees sufficient right, title and interest in said Real Estate, to carry out the purposes of this Indenture.

NOW, THEREFORE, for and in consideration of the premises and of the mutual promises, covenants and agreements made by the parties hereto, each to the other, and to the agreement and consent of the Trustees to act as Trustees hereunder, Grantor does by these presents, **GRANT, BARGAIN AND SELL** unto the Trustees, the easements, streets and cul-de-sacs of the Subdivision, and the sidewalks on said Plat contained, if any, and those **easement improvements** designed for storm water control, and the common ground, common land and common area (collectively, the "common ground"), if any, shown on the Plat, **TO HAVE AND TO HOLD** the same in trust in accordance with and pursuant to this Indenture, together with all rights and appurtenances to the same belonging unto the said Trustees and to their successors and assigns for the sole benefit, use and enjoyment of the lot owners of the Manderleigh Subdivision, their heirs and assigns, subject to easements, conditions, restrictions, deeds of trust and rights of way of record. (For purposes of this Indenture, the term "owner" or "lot owner" shall mean and refer to the **record owner, whether one or more** persons or entities, of the fee **simple title to any lot which is** a part of the Real Estate, including

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contract sellers, but excluding those persons or entities having interests as security for the performance of obligations.) Grantor hereby covenants that it and its successors and assigns shall and will **WARRANT AND DEFEND** the title to the premises unto the said Trustees, and their successors and assigns, forever against the claims of all persons whomsoever, excepting, however, the general taxes, if any, becoming a lien after the date of this instrument.

ARTICLE I

TRUSTEES' DUTIES AND POWERS

The Grantor hereby invests the Trustees, and their successors, with the following rights, powers, duties, authorities, and obligations:

1. The power and authority to exercise such control over, and the duty to maintain, the easements, common ground, streets, private street paving, cul-de-sacs, turn around islands, and sidewalks (except for those easements, common ground, streets, private street paving, cul-de-sacs, turn around islands, and sidewalks which may hereafter be dedicated to public bodies or agencies), street lights, entrance markers, medians, shrubbery, storm water sewers and control devices (including storm water retention and detention facilities and other storm water facilities) , sanitary sewer trunks and lateral lines, pipes, and disposal and treatment facilities, and any other areas or structures as may be shown on the Plat of the Real Estate, and/or as may be intended for the common use of the lot owners of the Manderleigh Subdivision, in order to maintain, landscape, repair, rebuild, supervise and insure the proper use of same; including, the right (to themselves and others to whom they may grant permission) to construct, operate and maintain on, under and over said easements, common ground, streets and cul-de-sacs, appropriate or necessary sewers, pipes, poles, wires, and other facilities and public utilities for services to the lots shown on said Plat. Without limiting the generality of the foregoing, the Trustees shall have the right, power, authority and responsibility of maintaining, repairing, and replacing all streets in Manderleigh Subdivision (including all base materials, pavements, curbs, gutters, sidewalks, subdivisions monuments and street lights from time to time installed) . The costs of such maintenance, repair, and replacement shall be assessable against the Owners pursuant to the terms of ARTICLE VI.

The streets in Manderleigh Subdivision are private. The Trustees hereunder are responsible for all repairs and maintenance thereof.

2. The power and authority to publicly dedicate any private streets constructed or to be constructed whenever such dedication would be accepted by a public agency. Furthermore, the power to grant easements on, under and over the common ground for streets, ingress and egress, sewers and utilities.

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3. The power to prevent, in their own name as Trustees, any infringement and to compel the performance of any Restriction or provision set out in this Indenture or established by law, and also any rules and regulations issued by the Trustees covering the use of any Subdivision properties or facilities subject to their control or any matters relating thereto; provided, however, this power, granted to the Trustees is intended to be discretionary and not mandatory.

4. The power to receive, hold, convey, dispose and administer in trust, for any purpose mentioned in this Indenture, any gift, grant, conveyance or donation of money or real or personal property.

5. The power to purchase and maintain in force insurance against all risks, casualties, and liabilities of every nature and description, including but not limited to, fiduciary, public liability and property damage insurance, as the Trustees may deem necessary and proper.

6. The power to require a reasonable deposit not to exceed two percent (2%) of the cost of the project or One Thousand Dollars (\$1,000.00), whichever is greater, in connection with the proposed erection of any building or structure, fence, detached building, outbuilding, swimming pool, tennis court or other structure on any of said lots in said Subdivision in order to provide that upon completion of the project, all debris shall be removed from the site and from adjacent lots and from adjacent common ground, and that any and all damages to Subdivision improvements shall be repaired.

7. The power to establish reasonable and uniform traffic rules and regulations for the use of driveways and streets and reasonable and uniform rules and regulation for the use of the common areas in the Subdivision.

8. The Trustees, in exercising the rights, powers and privileges granted to them and in discharging the duties imposed upon them by the provisions of this Indenture, may from time to time enter into contracts, employ agents, servants and labor as they may deem necessary, and employ counsel to institute, prosecute, dismiss and settle such suits brought against them individually or collectively in their capacity as Trustees, and the Trustees shall likewise have all other such powers without limitation necessary or useful to perform any tasks assigned to the Trustees hereunder and to do any acts which further the purpose and intent of this Indenture. In furtherance of this section, the Trustees are authorized and empowered to cooperate and contract with the trustees of adjoining or nearby subdivisions in the development and maintenance of facilities and common roadways which inure to the benefit and general welfare of the inhabitants of the entire area.

9. The Trustees are authorized to act through a duly authorized representative provided; however, that unless a greater number is expressly

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required, all acts of the Trustees shall be agreed upon by a majority of said Trustees; provided, further, that a Trustee shall only be responsible for his own intentional wrongful acts and shall not be responsible for his own negligent acts or the wrongful acts of others. Neither the Trustees nor any of them shall be held personally liable for injury or damage to persons or property by reasons of any act or failure to act of the Trustees or any of them, collectively or individually. Neither the Trustees nor Successor Trustees shall be entitled to any compensation or fee for services performed pursuant to this Indenture.

10. 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, to negotiate with such public agency for such purpose. Should acquisition by eminent domain become necessary, only the Trustees need be made parties, and any proceeds received shall be held by the Trustees for the benefit of those entitled to the use of said common ground.

11. No right or power conferred on the Trustees under this Indenture for the purpose of complying with the provisions of the Subdivision Ordinance of Town and Country, Missouri, may be abrogated.

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ARTICLE II

DESIGNATION AND SELECTION OF TRUSTEES
MEETING OF LOT OWNERS

1. The initial Trustees for the Subdivision shall be **FRED C. BRUNING, DONALD L. MICELI, and JOSEPH J. MICELI**, designated herein alternatively as "Trustee" or "Trustees", who, by their signature to this instrument, consent to serve in that capacity for terms which shall expire at such time, unless otherwise agreed by the Grantor, as the Grantor *no* longer *owns* at least one lot in the Subdivision. Any Trustee shall have the right to resign at any time upon giving notice to the remaining Trustee or Trustees. Whenever any Trustee so resigns, or refuses to act, or becomes unable to act through disability or death, or whenever any Trustee, other than an initial Trustee, becomes disqualified to act through sale of his lot or parcel in the Subdivision, the remaining Trustees (subject to paragraph 2 of this Article II) shall have the power to appoint a successor or successors for the unexpired portions of their terms by written instrument recorded in the office of the St. Louis County Recorder's Office; provided the successor so appointed is a lot or parcel owner in the Subdivision or an officer of any corporate owner or a partner of any partnership which owns a lot in the Subdivision. If any such appointed lot owner sells his lot, he shall cease to be a Trustee and his successor shall be appointed in the same manner by the remaining Trustee or Trustees. If all Trustees retire or cease to act as Trustees, then the lot owners in the Subdivision shall appoint new Trustees at a meeting of **the lot owners**.

2. Any provision to the contrary contained in Paragraph 1 of this Article II **notwithstanding, at** such time as fifty percent (50%) of the single-family lots shown on the Plat are sold, one (1) of the Trustees serving at that time, as selected by the Grantor, shall be removed from his trusteeship by recordation of a document in the Recorder's Office by the Grantor, or its assigns, effective upon the date of such recordation and a new Trustee shall be elected by majority vote of the then owners (other than the Grantor) of the single-family lots shown on the Plat, and additionally, at such time as seventy-five percent (75%) of the single-family lots shown on the Plat **are sold**, a second Trustee shall be removed by the same procedure and a second new Trustee shall be elected by majority vote of the then owners (other than the Grantor) of the single-family lots. In the event one of such new Trustees resigns, or refuses to act, or becomes unable to act through disability or death, or whenever any new Trustee becomes disqualified to act through the sale of his lot in the Subdivision, the remaining Trustee elected by the owners (other than the Grantor) shall have the power to appoint a successor or successors for the unexpired portion of the term by written instrument recorded in the office of the St. Louis County Recorder's Office, provided the successor so appointed is a lot owner in the Subdivision; provided,

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however, that in the event both such new Trustees cease to be Trustees or qualified as Trustees as aforesaid, then the owners (other than Grantor) shall have the power to appoint successors for the unexpired portions of their terms by written instrument acknowledging their appointment, recorded in the office of the St. Louis County Recorder's Office. Both new Trustees, and their successors, if applicable, shall serve until such time as one hundred percent (100%) of the single-family lots shown on the Plat have been sold or are owned by parties intending to occupy residences on such lots as homeowners, or two (2) years after appointment of the second new Trustee, whichever shall first occur, at which time all Trustees shall resign and the then owners (excluding Grantor, if Grantor then owns any lots) of single-family lots shown on the Plat shall elect by majority vote three (3) Trustees, to serve for one, two and three years, respectively, in order to obtain continuity of trusteeship. Thereafter, all Trustees shall be elected for terms of three (3) years each by the owners.

3. All such elections shall be by lot owners, upon written notice by the Trustees, or should there be no such Trustees, then by one (1) such lot owner, sent by mail to or personally served upon, all record lot owners, at least ten (10) days prior to the date set for the meeting to be held for the purpose of electing Trustees. The said notice shall specify the time and place of meeting, which meeting shall be held in the City of Town & Country, Missouri. Owners of a majority of the lots shown on the Plat shall constitute a quorum for the purpose of electing Trustees or for any other business purpose coming before a meeting. At any such meeting or at any adjournment thereof, and provided that a quorum is present, the majority of the record owners attending such meeting in person or by proxy, shall have the power to elect such Trustees, who shall thereupon serve until their successors have been duly appointed or elected and qualified. At such meeting, the owners of each lot shown on the Plat, whether attending in person or by proxy, shall be entitled to one (1) vote for each single-family lot owned. If any lot is jointly owned and all joint owners do not appear at any meeting, all joint owner(s) who do appear shall be entitled to exercise a vote as to that lot without the requirement of a proxy from the absent joint owner(s), unless the Trustees shall have received a written notice from any such other joint owners specifically withdrawing such right. The result of such election shall be certified by the persons elected as Chairman and Secretary, respectively, at such meeting, and their certification shall be acknowledged and recorded. Any business relevant or pertinent to the affairs of the Subdivision may be transacted at any meeting of the lot owners called in conformity with the procedure described above.

4. The Trustees shall have an annual meeting for all lot owners at which time they will report on their activities for the preceding year which shall take place in the City of Town & Country at a place designated by the Trustees by written notice to all lot owners to take place at 7:30 P.M. on

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the Second Tuesday of every May commencing with the year 1995 or at such other time as designated by the Trustees.

5. The Trustees shall submit to the City of Town and Country, Missouri, on or before the 15th day of January of each year, a list of the then acting Trustees hereunder, with each Trustee's name, address, and telephone number. Furthermore, the Trustees shall notify the City of Town and Country, within thirty (30) days, of any change in the membership of the Trustees.

6. Any Trustee elected or appointed hereunder (except for the initial Trustees and successor appointed by them) must be an owner in the Subdivision and must not be delinquent in the payment of assessments hereunder, or must be an officer of a corporate owner, or a partner of a partnership owner, who is not delinquent in the payment of assessment hereunder. If such owner sells his or her lot or becomes delinquent in the payment of assessments hereunder, or if such Trustee resigns, refuses to act, becomes disabled or dies, the remaining Trustees may, pursuant to the terms of Paragraph 1 or Paragraph 2 of this Article II, appoint a qualified person to act as Trustee for the unexpired portion of the term of the Trustee no longer acting or qualified to act.

ARTICLE III

RESERVATION OF EXPENDITURES

The Grantor reserves the right to receive and retain any money or consideration which may be refunded or allowed on account for any sums previously expended or subsequently provided by it for sewers, storm water control devices, gas pipes, water pipes, conduits, poles, wires, street lights, roads, or streets, or for the construction, installation, maintenance, upkeep or connection of any of same, or for **recording fees, subdivision fees, consulting fees, or any other fees, charges and all other expenses without limitation incurred with respect to the creation and development** of the Subdivision.

ARTICLE IV

STORM WATER CONTROL FACILITIES

The Grantor grants unto the Trustees, and their successors, easements for any and all storm water control facilities, easements and detention basins shown on the Plat or otherwise located in or serving the Subdivision, including all underground and above ground facilities, pipes and detention facilities in connection therewith, and Grantor also grants unto the Trustees, and their successors, access easements to such storm water control facilities and easements across the lots in the Subdivision (collectively, the "Storm Water Control Facilities") , which Storm Water Control Facilities shall serve as such for the Subdivision. The Trustees

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shall be responsible for the operation, maintenance, repair and upkeep of said Storm Water Control Facilities, and shall have the normal and usual maintenance responsibility of keeping said Storm Water Control Facilities free from unsightly accumulation of trash, weeds, debris, other waste matter, surface algae or similar growth. The Trustees shall have exclusive responsibility W for constructing, improving, repairing, operating and maintaining said Storm Water Control Facilities and improvements related thereto for storm water control, and (ii) for performing any control of infestations of mosquitoes or other insects on or within same or otherwise. All costs incurred by the Trustees in maintaining said Storm Water Control Facilities shall be borne by the Subdivision as a whole.

In order to pay for the necessary expenses and costs of repairing, operating and maintaining the Storm Water Control Facilities, and in order to establish appropriate reserves for the repair, operation and maintenance of the Storm Water Control Facilities, the Trustees shall annually levy a uniform assessment upon each lot during each calendar year (subject to Paragraph 6 of Article VI hereof) in the amount of at least ONE HUNDRED DOLLARS (\$100.00), which assessments shall be deposited by the Trustees in a segregated, reserved and restricted account established by the Trustees, and said monies shall be used and applied by the Trustees for payment only of those costs attendant to storm water control and the operation, maintenance, repair and upkeep of the Storm Water Control Facilities. The assessments per lot pursuant to this Article IV shall not be levied after, and shall be discontinued upon, the earliest to occur of the following: W the Trustees have levied, collected and deposited into the segregated account the sum of TEN THOUSAND DOLLARS (\$10,000.00) of assessments pursuant to the foregoing provision, provided that in the event the funds in such segregated account need to be used from time to time to pay for the operating, repairing, and maintaining the Storm Water Control Facilities, the assessments required hereunder shall be reinstated from time to time until the segregated account shall be restored to the sum of TEN THOUSAND DOLLARS (\$10,000.00); (ii) the Storm Water Control Facilities shall be accepted for maintenance by The Metropolitan St. Louis Sewer District; or (iii) the City of Town & Country shall no longer have an ordinance requiring that the assessments under this Article IV be levied. If the assessments under this Article IV shall be discontinued because of the occurrence of either of the events set forth in clause (ii) or (iii), then and in either event the amounts previously received by the Trustees on account of such assessments which have not been expended for the purposes hereinbefore described shall be added to the assessments held by the Trustees under Article VI hereof. The assessments required by this Article IV are in addition to the assessments authorized under Paragraph 1(a) of Article VI hereof. The assessments required under this Article IV shall be made and collected pursuant to the procedures set forth in Paragraph 2 of ARTICLE VI thereof.

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Each lot owner shall be responsible for the maintenance, repair and replacement of the lateral sewer line or lines servicing such owners lot.

ARTICLE V

LANDSCAPE BUFFER EASEMENT

Within the boundary lines of Lots 95, 96 and 97 of the Subdivision, there is shown on the Plat an easement for a landscape buffer (the "Landscape Buffer"), which Landscape Buffer is for the benefit of the entire Subdivision. The Landscape Buffer and the location thereof is shown on the Plat, and is more particularly described in Exhibit B annexed hereto and incorporated herein by this reference. The Grantor hereby grants unto the Trustees, and their successors, a perpetual landscaping easement in, over, upon and across the said Landscape Buffer located on Lots 95, 96 and 97 shown on the Plat, for the planting, locating, maintaining and Landscaping of the Landscape Buffer with grass, trees, shrubs, flowers and other landscaping materials. Said Landscape Buffer shall not be considered nor deemed to be common land under the Town & Country Subdivision ordinance, and, subject to the provisions hereof and the easement rights of the Trustees with respect thereto, the respective owner or owners of said Lots 95, 96 and 97 and enjoyment of said the exclusive shall have the full and exclusive use Landscape Buffer. The Trustees shall have responsibility for maintaining and planting the grass, trees, shrubs, flowers and the landscaping materials planted and located within the Landscape Buffer, and all costs incurred by the Trustees with respect thereto **shall be borne by the Subdivision** as a whole.

The Trustees shall have the right, from time to time, to enter upon the Landscape Buffer, and to obtain access thereto across the lots in the Subdivision, for the maintenance and planting purposes heretofore described.

ARTICLE VI

ASSESSMENTS

The Trustees and their successors are hereby authorized, empowered and granted the right to make assessments **upon and** against the lot owners and the several lots in the Subdivision for the purposes herein stated and at the rate hereinafter provided, and in the manner and subject to the provisions of this Indenture. Each owner of a lot by acceptance of a deed therefore, 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) regular assessments or charges and (ii) additional assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided. The regular and additional assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided for, shall be a charge on the land and shall be a continuing lien

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upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided for, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

1. (a) The Trustees and their successors are authorized to make uniform assessments in each calendar year (except as hereinafter provided in Paragraph 6 of this Article) of an amount not to exceed Seven Hundred Fifty Dollars (\$750. 00) [subject to adjustment and increase as hereinafter provided) against each single-family lot which is a lot of record on the date the assessment is levied, all for the purpose of enabling the Trustees to defend and enforce these Restrictions; adequately to maintain, generate, construct, reconstruct and operate easements, common ground, streets, private street paving, cul-de-sacs, turnaround islands, sidewalks, entrance markers, medians, street lights, shrubbery, Storm Water Control Facilities, utilities, and other such areas or structures as may be shown on the Plat of the Real Estate and/or as may be intended for the common use of the lot owners; to dispose of garbage or rubbish; to maintain and plant the Landscape Buffer; to perform or execute any powers or duties provided for in this Indenture; and overall, properly to protect the health, safety and general welfare of the lot owners, including the purchase of any insurance necessary or useful to protect the interests of the lot owners or the Trustees. Furthermore, the assessments levied under this Paragraph 1 (a) shall be used to ensure that the common ground and all facilities constructed thereon are maintained in compliance with the Ordinances of the City of Town & Country, Missouri and in such manner that such common ground and structures will remain attractive and useful to the owners, shall not be injurious to the health, safety, and welfare of residents of surrounding areas. The maximum amount of the assessment provided for in this Paragraph 1(a) shall be adjusted and increased in proportion to the increase in the Cost of Living Index (United States Department of Labor, All Cities, All Items, 1982-1984 equals 100, or if not available, most similar index) from the date of recording this Indenture to the date of levying any assessment hereunder.

(b) If at any time the Trustees shall consider it necessary to make any expenditure requiring an assessment additional to the assessments above provided, the Trustees shall submit in writing to the owners of all **lots for approval an outline of the plan for the project contemplated and the estimated amount required.** Such project and additional **assessment shall be approved either** W at a meeting of the lot owners duly called and held in the manner provided in reference to the election of Trustees, by two thirds (2/3) majority vote of the lot owners entitled to meet at such a meeting, or (ii) on written consent of the owners of three quarters (3/4) majority of the lots; and if so approved, then the Trustees shall notify all lot owners of the Subdivision of the additional assessments. There shall be one (1) vote per lot. The limit of Seven Hundred Fifty Dollars (\$750.00)

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[subject to adjustment and increase based upon Cost of Living Index as hereinabove provided] per calendar year for general purposes set forth in Paragraph 1(a) of this Article, shall not apply to any assessment made under the provisions of this Paragraph 1(b).

2. All assessments, either regular or additional, or general or special, made by the Trustees pursuant to Article IV hereof for the purposes therein stated, or made by the Trustees pursuant to Paragraph 1 of this Article for the purpose hereinabove enumerated, shall be made in the manner and subject to the following procedure, to-wit:

(a) Notice of all assessments shall be given by certified mail addressed to the last known or usual post office address of the record holder of the fee simple estate and deposited in the United States mail with postage prepaid, or may be given by posting a brief notice of the assessment upon the lot itself. (b) Every such assessment shall become due and payable within thirty (30) days after notice is given as hereinabove provided. From and after the date when said payment is due, it shall bear interest at the rate of twelve percent (12%) per annum until paid, and such payment and interest, together with all costs of collection thereof, shall constitute a lien upon said lot upon which the residence is situated, and said lien shall continue in full force and effect until said amount is fully paid. At any time after the passage of the resolution levying an assessment and its entry in its minutes, the Trustees may, in addition, execute and acknowledge an instrument reciting the levy of the assessment with respect to any one or more lots and cause same to be recorded in the St. Louis County, Missouri Recorder's Office, and the Trustees may, upon payment, cancel or release any one or more lots from the liability of assessments (as shown by recorded instrument) by executing, acknowledging and recording (at the expense of the owner of the property affected) a release of such assessment with respect to any lot or lots **affected, and the** Trustees shall cause to be noted from time to time in the minutes of their proceedings, the payments on account of any assessments. The lien created hereby shall be enforceable in the same manner as deeds of trust with power of sale or by court suit, provided no such lien shall be foreclosed upon until written notice by certified mail is given to any mortgagee of record of such lot, provided such mortgagee shall first have registered in writing its name and address with the Trustees. All costs associated with the collection of past due assessments, **including, but not limited** to, filing fees, attorneys fees and court costs, shall be paid by the owner(s) of the affected lot. The lien of any assessment hereunder shall be junior to that of any institutional **mortgagee, if the** mortgage or deed of trust be for an initial term of not less than ten (10) years. An institutional mortgagee is defined herein as a bank, life insurance company, pension fund, or savings and loan association which is the record holder of a mortgage or deed of trust encumbering any lot subject to this Indenture.

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3. All rights, duties, powers, privileges and acts of every nature and description which the Trustees might execute or exercise under the terms of this Indenture may be executed or exercised by a majority of said Trustees then in office unless otherwise expressly provided in this Indenture.

4. Notwithstanding any other condition herein, the Trustees shall make suitable provision for compliance with all subdivision and other ordinances, rules and regulations of St. Louis County and the City of Town & Country and for such purposes shall not be limited to the maximum assessment provided for in this Indenture. Specifically and not by the way of limitation, the Trustees shall make provision for the maintenance and operation of all streetlights, roadways, Storm Water Control Facilities and easements.

5. The Trustees may deposit the funds received by them as Trustees in bank accounts at interest, when deemed feasible by them, in their discretion but any such depository shall be insured by the Federal Deposit Insurance Corporation. The Trustees shall designate one of their members as "Treasurer" of the subdivision funds collected under this instrument, and such funds shall be placed in the custody and control of such Treasurer.

6. Any lot subject to this Indenture shall be subject to all assessments provided for herein only from and after the date upon which title to any such lot shall pass from the Grantor to the purchaser; provided, however, in the event title to any lot shall pass from the Grantor to the purchaser during a year in which any assessment provided for herein was levied, then that purchaser of any such lot shall pay to the Trustees, at the time of closing, the pro-rata share of any such assessment, determined on the basis of thirty days to the month. Notwithstanding the foregoing, lots owned by the Grantor, if any, shall become subject to all assessments hereunder two (2) years after the appointment of the second new Trustee under Paragraph 2 of Article II hereof.

7. Purchasers of lots shall not be assessed by the Trustees hereunder for installation of common improvements such as streets, sewers, Storm Water Control Facilities, lights, sidewalks, and utilities, if any, and other improvements which the original developer is required to construct under the Subdivision ordinance of the City of Town & Country or otherwise, but this prohibition shall not apply to maintenance and repair of such items, nor the assessments for installations not required in order for the property to be subdivided under said Ordinance.

8. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

9. For and during the period of their delinquency, any owner who is delinquent in the payment of assessments hereunder shall not have the right

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to vote hereunder, the right to act as Trustee hereunder, or the right to use and enjoy any recreational facilities, if any, in the Subdivision.

ARTICLE VII

DECLARATION OF RESTRICTIONS

Grantor, being the owner of the Real Estate lying and being situated in the City of Town & Country, County of St. Louis, State of Missouri, and being more particularly described in Exhibit A annexed hereto, and being platted and subdivided by the Plat above described, by this Indenture does impose upon all the lots in the Subdivision and all common property established therein, the following restrictions and conditions, to wit:

1. No structure shall be erected on any single-family lot other than one detached single-family dwelling with a minimum of a two car garage and, unless approved expressly by the Trustees, all garages shall be side entry or rear entry garages.

2. No single-family residence shall be erected on any lot nearer the front or rear lot line, or side lot line,, than the building lines shown on the recorded Plat. For the purposes of this covenant, eaves and steps shall not be considered as part of the building, except, that, no portion of any building, *including* its eaves, steps or porches, shall encroach upon an adjoining lot, and further except that no portion of any eaves shall be erected so as to extend beyond the building lines by more than three (3) feet.

3. No single-family dwelling shall contain less than the minimum square footage of living area required by the now existing Subdivision Ordinance of the City of Town & Country, nor shall contain less than the following minimum square footage of living area: (i) 3200 square feet **with respect to two (2) story dwellings, and (ii) 2800 square feet with respect to one (1) story or ranch-style dwellings.**

4. No residence shall be used directly or indirectly for any business purpose of any character, or for any purpose other than as an exclusive private residence for one family.

5. Without permission of the Trustees, no sign of any kind shall be displayed to the public view of any lot or parcel except one professionally made sign of not more than six (6) square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sales period. No signs shall be displayed to the public view of any lot or parcel unless a sign permit is first obtained from the City of Town & Country, if said City requires permits for signs.

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6. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, or **in any house on any** lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose, and further provided that they do not exceed two (2) in number in the aggregate.

7. Easements, installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat. The easement area of each lot and all improvements on each such lot shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible, and except for maintenance of the Landscape Buffer which is the responsibility of the Trustees.

8. Boats, trailers, campers and/or recreational vehicles may not be stored outside of a garage.

9. No fence or wall or shed or other outbuilding or structure, whether permanent or temporary, may be erected on any lot without the consent in writing of the Trustees. In the event any fence shall be constructed, it shall not be permitted to deteriorate or fall into disrepair and the Trustees may in their discretion repair or restore such fence and charge the cost of same to the owner of such lot. If a fence constructed on a lot shall be closer than eighteen (18) inches to the boundary line of another lot subject to this Indenture, the owner of such adjoining lot shall have the right, but only while said fence is so in place, to use and maintain the unfenced part of said lot adjoining his or her lot, to fence in the same as part of his or her lot, and to connect his or her fence, if any, to said fence.

10. At no time may any patio or sun deck be used as storage space. Trunks, boxes, garden tools or any other items which have a tendency to mar the beauty of the entire Subdivision may not be stored so as to be visible from neighboring lots or from the street. All lots and houses shall be maintained in a neat and tidy condition, with lawns properly mowed.

11. The Trustees shall have the power to approve or reject all plans and/or specifications for the construction, reconstruction, addition to, or alteration of any building, fence, wall or other structure of any kind, as well as plans and/or specifications for the location of the structure or structures on the lot or lots and the grading and landscaping treatment. No work shall be started upon any of the **above improvements** until the plans and/or specifications for the location of the structure or structures on the lot or lots and the grading and landscaping treatment have been submitted to and received the written approval of the Trustees. The Trustees shall have the right to refuse to approve any design which, in their opinion, is not suitable or desirable, taking into consideration the type of materials to be used, harmony of the structure or structures with

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the surroundings, the effect of the building or alteration therein, as planned, on the outlook from adjacent or neighboring property, and any and all other factors which, in their opinion, may affect the desirability and suitability of the Subdivision as a desirable residential area, including without limitation compliance with Paragraph 9 hereof. The Trustees shall either **approve or reject said plans** and/or specifications within twenty (20) days after receipt thereof, and if the Trustees fail to act within said time, the plans and/or specifications shall be considered as approved.

12. Unless this requirement is waived in writing by the Trustees, before any residential dwelling is started, a completion bond, an escrow disbursing agreement, or a letter of credit, from a title company or a local bank located either in St. Louis County or the City of St. Louis of the State of Missouri, guaranteeing completion of such home, as per plans and specifications, within twelve (12) months, is required. A copy of such document shall be given to the Trustees, the form and content of which shall be reasonably satisfactory to the Trustees. Strikes, inclement weather or an act of God shall constitute a reasonable excuse for an extension of time.

13. The Trustees shall not be liable in damages to anyone so submitting plans for approval or to any lot or property owners covered by this instrument by reason of mistake in judgment, negligence or nonfeasance of the Trustees, its agents or employees, arising out of or in connection with the approval or disapproval, or failure to approve any such plans.

14. In addition to these Restrictions, all subdivision improvements shall be subject to the provisions of the Town & Country Subdivision Ordinance and zoning ordinance and municipal Code, and no building structure or premises shall be used for purposes prohibited by law or ordinance. No above ground structure, other than required street lights, may be erected within a cul-de-sac or median without the prior written approval of the City of Town & Country. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. In such regard, lot owners are obligated to care for their property, including easements on their property, and to keep their property free from accumulation of weeds, debris and other waste matter, except as the same may be the responsibility of the Trustees as set forth in Article V hereof. Failure to comply with the provisions of this paragraph shall constitute a nuisance.

In the event the Trustees determine that a nuisance shall exist upon any lot within the Manderleigh Subdivision, the Trustees shall give the lot **owner of record seven** (7) days prior written notice indicating the nuisance existing on the lot and directing that the nuisance be removed or abated immediately. In the event the lot owner, within the said seven (7) day period, shall fail to remove or abate the nuisance set forth in the aforesaid notice or shall fail to present a written plan satisfactory to

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the Trustees for the removal or abatement of the nuisance, then the Trustees are hereby empowered to take the steps they deem necessary to remove or abate any nuisance so existing, including but not limited to, the cleaning up and removal of any debris, cutting of weeds or grass, trimming, cutting back, removing, replacing or maintaining trees, shrubbery or flowers. The owners of any property upon which any nuisance shall **have existed which the Trustees were required** to remove or abate shall be charged with any expenses incurred by the Trustees. The Trustees or any contractors, agents, or employees of the Trustees shall be authorized to go upon any lot upon which a nuisance is determined by the Trustees to exist for the purpose of removing or abating the nuisance and such entry is consented to by the lot owner and no person so entering upon the lot shall be deemed to have trespassed on the property.

15. No improvements shall be erected on those areas (if any) shown on the Plat of Manderleigh as "Permanent Open Space", nor on the Permanent Open Space areas described in **Exhibit C** annexed hereto and incorporated herein by this reference; and said Permanent Open Space areas shall be maintained as permanent open space in accordance with the ordinances of the City of Town & Country.

ARTICLE VIII

GENERAL PROVISIONS

These general provisions shall apply to this Indenture of Trust and Declaration of Restriction:

1. All covenants and agreements herein are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless released and revoked by vote of three-fourths (3/4) of lot owners in the Subdivision. Except as provided in Paragraph 5 of this Article, such release and revocation shall become effective and valid only after the City of Town & Country has consented to or approved same.

2. All covenants and agreements herein are expressly declared to be independent and not interdependent; nor shall any laches, waiver, estoppel, condemnation or failure of title as to any part or lot of said tract be of any effect to modify, invalidate or annul any grant, covenants or agreements herein, with respect to the remainder of said tract, saving always the right to amendment, modification or repeal as herein expressly provided.

3. 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

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any such covenant and may be brought to restrain any such violation and/or to recover damages therefore.

4. This Indenture, and any portion hereof, and any of the Restrictions contained herein, may be amended, modified, changed or released by the written consent of three fourths (3/4) of all the owners of lots or parcels, and any such amendment, modification, change or release shall become effective upon being recorded in the St. Louis County, Missouri, Recorder's Office; provided, however, that, except as provided in Paragraph 5 of this Article, no such amendment, modification, change or release shall be valid or effective until approved or consented to by the City of Town & Country. Furthermore, no such amendment, modification, change or release shall eliminate the requirement that there be Trustees. Further no amendment, modification, change or release shall be permitted as long as the Grantor owns any lot in the Subdivision, unless such Grantor consents to such amendment, which consent shall not be unreasonably withheld or delayed.

5. To the extent that the Town & Country Subdivision ordinance then currently in force requires approval of the City for amendments, modifications, changes and releases to or from this Indenture, and any portion hereof, and any of the Restrictions contained herein, and to the extent such Ordinance is valid and enforceable in making such requirement, this Indenture, and any portion hereof, and any of the Restrictions contained herein, shall not be amended, modified, changed or released without the approval or consent of the City of Town & Country, provided that if such ordinance is invalid or unenforceable or is repealed, then this Indenture, and any portion hereof, and any of the Restrictions contained herein, may be amended, modified, changes or released in accordance with the terms hereof, without the approval or consent of the City of Town & Country.

6. All rights of the Grantor hereunder shall be freely assignable by such Grantor. The Grantor reserves the right to plat of record additional portions of the Real Estate and to subject said additional portions of the Real Estate so platted to this Indenture. The term "Plat" as used herein means and includes the Plat of the portion of the Real Estate recorded simultaneously herewith and any additional plats of other portions of the Real Estate which may in the future be recorded by Grantor.

7. The conveyance or other change of ownership of any lot or other part or parcel of the Real Estate shall be subject to the terms of this Indenture and the terms of the Subdivision Ordinance of the City of Town & Country.

8. The common ground, including Permanent Open Space, recreational areas, and other common areas, shall be for the sole benefit, use, and enjoyment of owners, present and future, of the entire Subdivision.

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9. It is further provided, declared and agreed that if the owner or owners of a lot or portion thereof, his heirs, executors, administrators, grantees, successors or assigns, or any one of them hereinafter owning any lot in the subdivision or part thereof embracing any one or more of such covenants shall infringe or attempt to infringe or omit to perform any covenant or restriction aforesaid which is by its provision to be kept and be performed by him, it shall be lawful for any person or persons owning any lot in the subdivision embraced in said covenant, or for the Board of Trustees in behalf of or for the benefit of themselves or any of said lot owners or for any agent or agents of the lot owners aforesaid, or for any or either of them, to proceed in law or in equity against the person or persons infringing or attempting to infringe or omitting to perform such covenant either to prevent or require it, him, or them from doing so or to recover damages or other dues for such infringement or omission. In this event, such person, persons and/or the Board of Trustees shall be entitled to the cost of court, including reasonable attorney's fees, in addition to any damages or remedies found by such court, should it be determined by such court that a violation, infringement or omission had occurred. The Board of Trustees shall not be responsible in damages should they fail to properly enforce any of the covenants and restrictions herein.

In the alternative, the trustees shall have the authority to adopt such rules and regulations with respect to Article I (7) and Article VII (15) as it may consider necessary or appropriate. Such rules and regulations may include fines for violations of the provisions of Article I (7) and Article VII (1) through (15), including a per diem fine for continuing violations; provided, however, the trustees shall give a lot owner, by regular U.S. Mail, at least ten (10) days written notice to cure such violation. If a lot owner cures such violation within the time period specified in the notice, the lot owner will not be liable for the fines. If the lot owner doesn't cure such violation within the time specified in the notice, the lot owner will be liable for all fines imposed herein as of the date of the mailing of the notice. All such fines imposed by this section shall automatically become a lien on such owner's lot and shall be levied, collected and enforced, and have the same priority as the liens provided for in Article III of this Indenture.

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SIGNATURES

IN TESTIMONY WHEREOF, the Grantor and the Trustees have executed this Indenture as of the day and year first above written.

GRANTOR:

TOWN & COUNTRY DEVELOPMENT
LIMITED LIABILITY COMPANY,
a Missouri limited liability company

BY: MICELI REALTY COMPANY,
Missouri Corporation, Member

TRUSTEES:

[SEAL]

By:

Fred C. Bruning, Vice President

Donald J. MICELI, Trustee

JOSEPH J. MICELI, Trustee

INDENTURE OF TRUST AND DECLARATION OF RESTRICTIONS
OF
MANDERLEIGH OF TOWN AND COUNTRY

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

On this 8th- day of September, 1994, before me appeared **FRED C. BRUNING**, to me personally known, who being by me duly sworn, did say that he is the Vice President of **MICELI REALTY COMPANY**, a Corporation of the State of Missouri, which is the Member of **TOWN & COUNTRY DEVELOPMENT LIMITED LIABILITY COMPANY**, a Missouri limited liability company, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation, by authority of its Board of Directors, and that said instrument was signed by said corporation in behalf of said limited liability company, by authority of its Members; and said **FRED C. BRUNING** acknowledged said instrument to be the free act and deed of said corporation and said limited liability company.

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

Notary Public

ROGER HERMAN

My Commission Expires:

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

On this 8th day of September 1994, before me personally appeared **FRED C. BRUNING**, to me known to be **the** person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed in his capacity as Trustee.

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

Notary Public

My Commission Expires:

ROGER HERMAN

INDENTURE OF TRUST AND DECLARATION OF RESTRICTIONS
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STATE OF MISSOURI)
) SS
COUNTY OF ST. LOUIS)

On this 8th, day of September 1994, before me personally appeared **DONALD L. MICELI**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed in his capacity as Trustee.

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

Notary Public

My Commission Expires

ROGER HERMM
NOTARY PUKJC-VATEOFM*
ST.LOMCOUNTY
MY CMWSSION EORES APK 18, IM'

INDENTURE OF TRUST AND DECLARATION OF RESTRICTIONS
OF
MANDERLEIGH OF TOWN AND COUNTRY

STATE OF MISSOURI

) SS

COUNTY OF ST. LOUIS

)

On this 8th day of September 1994, before me personally appeared **JOSEPI J. MICELI**, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed in his capacity as Trustee.

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

Notary Public

My Commission Expires

ROGER HERMM
NOTARY PUKJC-VATEOFM*
ST.LOMCOUNTY
MY CMWSSION EORES APK 18, IM'

INDENTURE OF TRUST AND DECLARATION OF RESTRICTIONS
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CONSENT OF MORTGAGEE

The undersigned holder and legal owner of the note or notes secured by Deed of Trust dated September 1st 1994, recorded in **Book 10301 at Page 197** of the St. Louis County Recorder's Office, hereby consents to the foregoing Indenture of Trust and Declaration of Restrictions of Manderleigh, and hereby subordinates said Deed of Trust thereto.

Dated: September 8, 1994

[SEAL]

By: _____

Print Name: _____

Title: _____

INDENTURE OF TRUST AND DECLARATION OF RESTRICTIONS
OF
MANDERLEIGH OF TOWN AND COUNTRY

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

On this day of September 1994, before me appeared _____ to me personally known, _____ who being by me duly sworn, did say that he is the _____ a corporation in the State of _____, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and said _____ acknowledged said instrument to be the free act and deed of said corporation.

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

(SEAL)

Notary Public

My Commission Expires:

IGNATIUS H. YUAN
Notary Public-Notary, Seal
STATE OF MISSOURI
St. Louis County
My Commission Expires Nov. 16,1996