

1042

58404

1988-1863

INDENTURE OF COVENANTS AND RESTRICTIONS
OF DIAMOND POINTE

THIS INDENTURE, made this 14th day of October, 1997, by and between Lawrence F Behymer, Sr., Trust, (hereinafter known as the "Grantor"), and Mark Kaufer (hereinafter called "Trustee")

WITNESSETH THAT:

WHEREAS, Grantor is the owner of a tract of land situated in the County of St. Charles, Missouri, which it has caused to be subdivided, the plat of which is recorded in Plat Book _____ Page _____ in the Office of the St. Charles County Recorder of Deeds; and

WHEREAS, there have been or may be designated and established on said subdivision plat certain easements and certain common areas for the purpose of constructing, maintaining and operating various utilities, sanitary sewer and storm water facilities, open space, recreational areas, streets, street lights, walkways and other facilities for the 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 create a means of cooperation among lot and home owners in said subdivision in the interest of fostering and enhancing their health, safety and welfare, and for the establishment of a harmonious atmosphere and common interests, facilities and recreational activities directed to making for a wholesome spirit of neighborly understanding and cooperation; to ensure the attractiveness of the development and to preserve, protect and enhance the values and amenities of said properties by the adoption of a sound urban environmental plan and set of restrictions to govern said property, and to provide for the maintenance of said open spaces, recreational facilities, streets, street lights, walkways and other common facilities; and

WHEREAS, all reservations, limitations, conditions, easements and covenants herein contained (hereinafter sometimes referred to as "covenants and restrictions") are jointly and severally held for the benefit of Grantor and of all persons who may purchase, hold or own from time to time any of the several lots covered by this instrument.

NOW THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements contained herein and further, in consideration of the advantages to Grantor and the future owners of said lots, and with the agreement of the Trustee herein named to act as Trustee hereunder, Grantor hereby imposes the following covenants and restrictions on the above described tract of land:

ARTICLE I

PROPERTY SUBJECT TO THIS INDENTURE

A. Existing Properties: The real property which is, and shall be held, transferred, sold, conveyed, and occupied subject to this Indenture is located in St. Charles County, Missouri, and is more particularly described in Plat Book _____ Page _____ of the Office of the St. Charles county Recorder of Deeds.

B. Additions to Existing Properties: The Grantor in its sole discretion may from time to time add to the land subject to this Indenture such land as is not owned or hereafter owned or approved for addition by the Grantor. Grantor, however, shall be under no obligation to add any such land if it determines in its sole discretion that said addition is not in the best interest of the subdivision.

The additions authorized under this section shall be made by executing and delivering to the Trustee and filing or record in the St. Charles County Instrument executed by Grantor which shall extend this Indenture to such additional properties. Said instrument may contain such complementary additions to and modifications of the covenants and restrictions contained in this Indenture as may be necessary to reflect the different character, if any, of the added properties and which are not inconsistent with the scheme of this Indenture.

ARTICLE II

DEFINITIONS

The following words, when used in this Indenture, shall have the following meanings:

- a. "Association" shall mean Diamond Pointe Homeowners Association
- b. "Diamond Pointe" shall mean the real property described in Article I.
- c. "Common Properties" shall mean the streets in the subdivision and areas of land intended to be devoted to the common use and enjoyment of the owners. Such common properties may be designed for the use of all owners of Diamond Pointe or restricted to usage of owners and designated lots.
- d. "Lot" shall mean any plat of land shown on any recorded subdivision plat of any portion of Diamond Pointe except for streets and common properties.

e. "Owner" shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot or Living Unit.

f. "Living Unit" shall mean a building or a portion of a building which is intended for use and occupancy as a residence by a single family.

g. "Board of Trustees" shall mean duly elected trustee of Diamond Point authorized to conduct business of the Association in accordance with these Indentures.

h. "Trustee" shall mean an elected office of the Association.

ARTICLE III

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

A. Membership: Each person or entity who is a record owner in fee of any Lot or Living Unit in Diamond Point shall be member of the Association.

B. Voting Rights: Voting shall be by said Lots, each of said Lots being entitled to one full vote. Each vote may be cast by the owner of the Lot to which the vote is attributable or by a person have written authorization to vote in place of said owner, and such authorization has been signed by said owner.

ARTICLE IV

SELECTION OF TRUSTEES; MEETINGS OF LOT OWNERS

There shall be one (1) member of the Board of Trustees. The original Trustee is the person named herein. during the period of service of the said named Trustee as a member of the Board of Trustees, should the named Trustee or his appointed successors, die, resign or cease to hold office as set forth above, or decline to act or become incompetent or unable for any reason to discharge the duties, or avail of or exercise the rights and powers hereby granted or bestowed upon him/her as member of the Board of Trustees under this Indenture, then and thereupon, Grantor shall have exclusive right to designate the successor thereto for his unexpired period of service as provided for hereunder.

At such time as 50 % of the lots have been sold, one (1) resident shall be appointed as Trustee as a member of the board, and then after 95% of the lots have been sold, one (1) additional resident shall be appointed as Trustee as a member of the board. At such time as all of the lots which are subject to this Indenture have been sold and conveyed for residential use, Grantor shall resign as Trustee, appointing the 3rd and final Trustee. Trustees shall be elected for terms of three (3) years each.

Following the annual meeting of the lot owners as provided for herein, the Board of Trustees shall designate one (1) of its members to serve as chairman, one (1) member to serve as secretary, and one (1) member to serve as Treasurer, until the next annual meeting.

There shall be an annual meeting of said lot owners on the first Monday of November (or any other day in November determined by the Trustees) of each year during the term of this instrument, said meeting to be held at a convenient place in the County of St. Charles. There may be special meeting of said lot owners as may be called by any one of the members of the Board of Trustees, to be held at a convenient place in the County of St. Charles. Ten (10) days notice in writing to the owner of each lot of the time and place of any annual or special meeting shall be given by the Trustees or by the Trustee calling said meeting, by depositing, same in the United States mail, properly addressed and with postage prepaid. The successor to the elected member of the Board whose term has expired shall be elected by the lot owners at the annual meeting each year and the owners of each lot shall be entitled to one (1) vote for each full lot owned, which vote may be cast in person or by proxy. Any lot owner who failed to pay any assessments due and payable shall not be entitled to vote at any annual or special meeting provided for herein. the person or persons receiving the highest number of votes cast shall be deemed elected and shall, upon his, her or their acceptance in writing, at once and by force of this Indenture imposed, succeed to, be vested with, and possess and enjoy as a joint tenant but not as a tenant in common, with the remaining members of the Board of Trustees, all of the estate, rights, interests, privileges and powers by this Indenture granted to the Trustees. In the event that any Trustee elected hereunder shall die or cease to reside in the land subject to this instrument, or become unable for any reason, to discharge the duties or avail himself or herself of or exercise the rights and powers herein granted or bestowed upon him, her or them as Trustees under this Indenture, then and thereupon, it shall be the duty of the remaining Trustees to select a successor to fill the unexpired term.

All members of the Board of Trustees, except the Trustees herein named and their appointed successors, shall be residents of the land subject to this instrument

Any business relevant or pertinent to the affairs of the subdivision may and shall be transacted at any annual or special meeting described above. All actions by the lot owners at annual or special meetings shall be by a majority of votes cast at such meetings. The quorum required for any action of the lot owners at annual or special meetings shall be fifty percent (50%) of the lot owners. All actions of the Board of Trustees shall be by the majority vote.

The Board of trustees shall not be individually or severally liable in any respect for the performance of, or omission to perform any act or duty as such Board of Trustees. Any trustee except the Trustees named herein and their appointed successors may be removed from office by an affirmative vote of two thirds of the Association Membership.

ARTICLE V

TRUSTEES DUTIES AND POWERS

The Trustees shall have the following rights, powers, duties and obligations which may be exercised without an annual or special meeting described in Article IV:

A. To acquire and hold the common property, as defined in Article VI below, to exercise control over such common property, maintain and improve the same with landscaping, shrubbery, decorations, buildings, recreational facilities and structures of any kind or description, and any and all other types of facilities in the interest of the health, welfare, safety, recreation, entertainment, education and for the general use of the owners of lot in Diamond Pointe to grant such easements and right-of-way over such common property to such utility companies.

B. To exercise such control over the easements, streets, 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, 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, walkways and rights-of-way, street lights, detention basins on common property, drainage facilities, sewers, pipes, poles, wires and other facilities and public utilities for service to the lots within the lands subject hereto; and to establish traffic regulations for the use of such streets and walkways.

C. To plant, care for, maintain, spray, trim, protect and replace trees, shrubbery and vegetation within any right-of-way, to decorate the entrance way to the subdivision by appropriate landscaping or by subdivision sign in such other manner as the Trustees shall deem appropriate.

D. To dedicate the streets, walkways, or right-of-ways, or any portion or portions thereof, but only when such dedications would be accepted by an appropriate public agency.

E. 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 lot that is, in the opinion of the Trustees, neglected, unattractive in appearance, or detrimental to adjoining property, and to charge the owners therewith the reasonable expense so incurred, together with interest thereon at the rate of eighteen percent (18%) per annum, plus attorney fees and expenses incurred in the collection or attempted collection thereof, which shall be a lien against such parcel of neglected property. The Trustee, or their agents or employees, shall not be deemed guilty or liable for any other manner of trespass for any such abatement, removal or planting.

F. At the discretion of the Trustees 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 property owners and residents, and to enter into and assume contracts of such purposes covering such purposes covering such periods of time as they may consider advisable.

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

H. To receive, hold, convey, dispose of and administer in trust for any purpose mentioned in the Indenture any gift, grant, conveyance or donation of money or real or personal property.

I. With regard to all property, real, personal, or mixed, owned or held by them as members of the Board or Trustees, the full and unqualified right, power and authority to:

1. Make all contracts and incur all liabilities necessary, related or incidental to exercise of the Trustees' powers and duties hereunder, including the construction of improvements.
2. Purchase insurance against all risks, casualties and liabilities of every nature and description.
3. Borrow money on such property, including making a permanent, temporary or construction loan, encumber and hypothecate same, make and execute promissory notes or incur liabilities and obligations secured by deed of trust, mortgage, lien or encumbrance on the same.
4. Use, handle, manage, control, operate, hold, deal in and in all respects treat such property, limited only as provided in this Indenture or by law.

J. In the event it shall become necessary for any public agency to acquire all or any part of the property herein conveyed to the Trustees, for any public purpose, the Trustees are hereby authorized to negotiate with such public agency for such acquisition and to execute such instruments as may be necessary for conveyance to any such public agency. Should acquisitions by eminent domain become necessary, only the trustees need to be made parties, and subject to the reservation by Grantor, as provided in parties, and subject to the reservation by Grantor, as provided in Article XI hereof, any monies, damage payments or condemnation award shall be held by the Trustees for the benefit of the owners of the lots subject hereto.

K. The Trustees shall deposit the funds coming into their hands, as Trustees, in a state or national bank, protected by the Federal Deposit Insurance Corporation, or in a state or federal savings and loan association, protected by the Federal Savings and Loan Insurance Corporation.

L. All rights, powers, duties, privileges and acts of every nature and description conferred upon the Trustees by the terms of the Indenture may be Executed and exercised by a majority of the Trustees, unless otherwise provided herein. Members of the Board of Trustees shall not be personally liable for their acts in the performance of their duties, except for dishonest or acts criminal in nature.

M. Notwithstanding any other condition herein, the Trustees shall make suitable provisions for compliance with all subdivision and other ordinances, rules and regulations of any municipality of which the subdivision may become a part and for such purposes shall not be limited to the maximum assessment provided for herein. Specifically and not by way of limitation, the Trustees shall make provisions for the maintenance and operation of all parking lots, roadways, detention basin drainage facilities and easements not otherwise accepted by a public agency or utility.

N. To hire or retain individuals or an outside company to manage the affairs of the subdivision for and on behalf of the Trustee or to consult with the Trustee relative to the affairs of the Subdivision.

O. To maintain the detention basins, if any, drainage facilities, and sewer lines serving the subdivision.

P. To require reasonable deposit in connection with the proposed erection of any building or structure, fence, attached building, outbuilding, swimming pool, tennis courts or other structure on a lot approved as provided herein, 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 caused by such improvement shall be repaired.

Q. To establish rules and regulations for the recreational facilities, if any.

ARTICLE VI

COMMON PROPERTY

Common property means and refers to all those areas of land on the recorded subdivision plat of Diamond Pointe not located within a numbered lot, which areas are to be devoted to the common use and enjoyment of the owners of lots subject to this Indenture. Every owner of a lot subject to this Indenture shall have a right and easement of enjoyment in and to the common property and such easement shall be appurtenant to and shall pass with the title to every such lot. Title to the common property is vested in the

Trustee. Upon termination of this Indenture, title to common property shall vest in the owners of lots subject to this Indenture as tenants in common.

ARTICLE VII

ASSESSMENTS

Grantor, for each lot subject hereto, hereby covenants and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, shall be deemed to covenant and agree to pay annual assessments or charges and special assessments, the same to be levied, collected and enforced as hereinafter provided.

All assessments, regular or special, as determined by the Trustee, will be apportioned and assessed equally among the lots affected by the Indenture.

The annual and special assessments, together with such interest thereon and costs of collection thereof, including a reasonable attorney fee, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the lot (and all improvements thereon) against which such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall also be the personal obligation of the person or persons owning such lot at the time such assessment became due.

The assessments levied hereunder shall be used exclusively for the purpose of promoting the health, safety, welfare and recreation of the owners of the lots subject hereto, and including without limitation, the maintenance, operation, and improvement of the common property, the easements, streets, walkways and rights-of-way (except for such as have been or may hereafter be accepted by public bodies or agencies) and the performance of the duties, powers and rights of the Trustee as herein described.

In addition to the annual assessment authorized hereinabove, there may be levied a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement within or upon the common property or any easement, street, walkway or other right-of-way provided for the benefit of the lots subject hereto, and including the provision of necessary fixtures or personal property related thereto upon the approval of a majority of the lot owners voting thereon, in person or by proxy, at a meeting duly called for this purpose, written notice of which shall have been sent to all lot owners at least thirty (30) days in advance, setting forth the purpose of the meeting.

All assessments, either annual or special, shall be made in the manner and subject to the following procedure:

A. The Trustee shall levy each annual assessment not to exceed \$150.00 per lot, at least thirty (30) days in advance of each assessment year, as established by the Trustee; provided, however, that the first annual assessment may be adjusted according to the then number of months remaining in the assessment year, as fixed by the Trustee. All subsequent annual assessments shall thereafter be on a full assessment year basis. Special assessments shall be levied in the manner provided above. The due date for each assessment (either annual or special) shall be March 1. The maximum annual assessment fee may be increased by a vote of fifth percent (50%) of all members of the association.

B. Notice of any assessment shall be given by the Trustee, either by mail, postage prepaid, addressed to the last known or usual post office address of the holder of legal title (and notice so given shall be considered given when mailed), or by posting a brief notice of the assessment upon the assessable property itself.

If any assessment is not paid on the due date, as established by the Trustee, then such assessment shall become delinquent and shall, together with such interest thereon and costs of collection thereof as hereinafter provided, thereupon become a continuing lien of the lot involved (and all improvements thereon), which shall bind such lot in the hands of the then owner, his or her heirs, devisees, personal representatives, successor and assigns. In addition to such lien, the personal obligation of the then owner to pay such assessment shall remain his personal obligation regardless of passage of title to his lot to a successor.

If any assessment is not paid within thirty (30) days after the due date, such assessment shall bear interest from such due date at the rate per annum which is the lesser of (i) the maximum rate permitted by law, if any, or (ii) eighteen percent (18%); and the Trustee may bring legal action against the owner personally obligated to pay the same, and, in addition, may execute and acknowledge an instrument reciting the levy of the assessment with respect to such lot and cause the same to be recorded in the

office of the Recorder of Deeds of St. Charles, and thereafter institute and appropriate legal action to

enforce such lien. Upon payment, the Trustee shall execute and record (at the expense of the owner of the affected lot) a release of such lien. All costs, including reasonable attorney's fees, incurred by the Trustee in enforcing the payment of any delinquent assessment shall be paid by the lot owner in default and the amount of such cost, including reasonable attorney's fees, shall be a lien against the lot involved until paid.

The lien of any assessment provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon any lot subject hereto, as to assessments which become due and payable prior to a sale or transfer of such lot pursuant to foreclosure or 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. The term "Mortgage" or "Mortgages" shall include deed of trust or deeds of trust.

All common properties subject to this indenture and lots owned by Grantor prior to their first sale to an owner shall be exempt from the assessments, charges and liens created herein.

No assessment shall become due on any lot until first conveyance from Premium Homes.

ARTICLE VIII

USE AND OTHER RESTRICTIONS; ARCHITECTURAL CONTROL

The following restrictions shall apply to all land subject hereto and Grantor, for and on its behalf and on behalf of each and every subsequent owner of any lot therein, their grantees, Lessees, successors and assigns, covenants:

A. Land Use: No building or structure (other than those designed for maintenance purposes) shall be used for a purpose other than a single family residence without the prior written approval of the Trustee.

B. Resubdivisions: No lot shall be resubdivided nor shall a fractional part of any lot be sold without the prior written approval of the Trustee.

C. No Commercial Activities: No commercial activity of any kind shall be conducted on any lot in any residence thereon, but nothing herein shall prohibit the carrying on of promotion activities by the Grantor.

D. Nuisances: No noxious or offensive activity shall be carried on upon any portion of the land or in any residence thereon, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood. No exterior lighting shall be directed outside the boundaries of a lot.

E. Maintenance of Lots and Residences: Each owner shall maintain and keep his or her lot and residence thereon in good order and repair (except for such repairs and maintenance as may be provided by the Trustee in his discretion), and shall do nothing which will prejudice the structural integrity or increase the rate of insurance on the improvements or which would be in violation of law. The owner of each lot shall keep all weeds and grass upon said lot cut and neat in appearance.

F. Obstructions: There shall be no obstruction of any portion of the common property or any storage or construction or plating thereon by any owner. No clothes, laundry or other articles or equipment shall be placed, hung, exposed or stored in any portion of the land or in any portion of the exterior of any lot outside of patios or other enclosed areas or on or about the exterior of any buildings.

G. Animals: No animals, reptiles, birds, horses, rabbits, fowl, poultry, cattle or livestock of any kind, shall be brought onto or kept on the land, except that no more than two dogs or two cats, or two other household pets (except house pets with vicious propensities) may be kept or maintained on any lot or in any residence. The keeping of any pet which by reason of its noisiness or other factor is a nuisance or annoyance to the neighborhood is prohibited.

H. Parking of Motor Vehicles, Boats, Motorcycles, Campers and Trailers: No trucks or commercial vehicles, boats, recreational vehicles, motorcycles, campers, house trailers, boat trailers, and 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. The foregoing prohibition shall not apply to temporary parking such as for pick-up, delivery and other commercial services, or for repair not to exceed 24 hours. No inoperable vehicles or apparatus may be kept, maintained or repaired in the subdivision.

I. Overhead Wiring: No power or telephone distribution or service connection lines may be erected or maintained above the surface of the ground on any lot without the consent in writing of the Trustee.

J. Obstruction of Traffic: No fence, wall, tree, hedge or shrub shall be maintained in such manner as 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 prior written approval of the Trustee.

K. Antennas: No outside aerial, antenna, satellite dish, disc or earth station shall be erected, installed or constructed on any lot without the prior written approval of the Trustee.

L. Temporary Structures: No structure of a temporary character, trailer, tent, shack, garage, barn or other out buildings shall be used on any lot at any time as a residence, either temporarily or permanently.

M. Signs: No signs, advertisements, billboards, or advertising structures of any kind may be erected, maintained, or displayed on any lot or on the exterior of any structure; provided, however, that nothing herein shall prohibit signs erected or displayed by Grantor in connection with the sale of residences.

N. Garages: All garages must be a minimum of a two car garage and must be attached to the main dwelling unless otherwise approved by the Trustee. All garages must be equipped with doors which shall be kept closed as much as practicable.

O. Grades: Within any slope control area established by the Grantor, no structure, planting, or other materials shall be placed or permitted to remain, nor shall any activity be undertaken, which may damage or interfere with established slope ratios, create erosion or sliding problems, or obstruct or retard the flow of water through drainage channels. The slope control areas of each lot or other parcel and all improvements on them shall be maintained continuously by the lot owner, except for those improvements for which a public authority or utility company is responsible.

P. Drilling and Quarrying: No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring oil or natural gas shall be erected, maintained or permitted upon any lot.

Q. Dumping of Rubbish: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers, or other equipment for the storage or disposal of such material, which equipment shall be kept in a clean and sanitary condition and out of view from the front of the lot, except for the day of trash pick up.

R. Sewage Dis: No individual sewer treatment system shall be permitted on any lot. All sanitary sewer lines shall connect with the central sewage disposal system provided. Water from downspouts or any surface water shall not be permitted to drain into the sanitary sewer system.

S. Water Supply: No individual water system shall be permitted on any lot.

T. Private Driveways: All private driveways leading from streets to any garage on any lot shall be paved with concrete, asphaltic concrete, or Romanstone Concrete pavers, and installed and constructed according to generally accepted engineering principles and procedures.

U. Trash Disposal: No building materials will be buried within the subdivision. All trash will be hauled off-site and disposed of in proper disposal facilities.

V. Height Limitation: Any residence erected on any of the lots shall not be more than two (2) levels in height above ground, provided that a residence more than two (2) stories in height may be erected on any of said lots with the written consent of the Trustee.

W. Minimum Building Size Requirements: Any residence must conform to the following minimum enclosed floor area.

Ranches or one story:	1,100 square feet
Two story and split levels:	900 square feet

The words "enclosed floor area" as used herein shall mean and include any residence enclosed and finished for all year occupancy, computed on outside measurements of the residence and shall not mean and include any area of basement, garages, porches and attics.

X. Building Lines: No part of any residence shall be located on any lot nearer to the front street or the side street that is the front building line or the side building shown on the recorded plat; nor shall any part of any residence be located on a lot nearer than 25 feet to the side property line nor nearer than twenty-five (25) feet to the rear property line. However, a residence or part of any residence may be

located on any lot nearer than the said building line shown upon said plat with the written consent of the Trustee and with approval of the County Board of Adjustment, provided, however the following enumerated parts of any residence may project over the above described front, side and rear lines, for the distance shown

Porch Projections: Unenclosed, covered porches, balconies and porta cocheres may project beyond the front building line not to exceed six (6) feet.

Y. Frontage: All dwelling houses shall front on the street on which it is located as shown on the recorded plat unless otherwise approved by the Trustee. Dwelling houses located on corner lots shall front or present a good frontage on both streets unless otherwise approved by the Trustee.

Z. Architectural Control: No building, fence, wall, swimming pool or other structure shall be commenced, erected or maintained upon any lot, nor shall any exterior addition or change or alteration therein be made until the plans and specific actions showing the nature, kind, shape, height, materials, and location of the same have been submitted to and approved in writing. No outbuildings shall be erected on the lots of the subdivision.

ARTICLE IX

EASEMENTS

Easements for installation and maintenance of utilities and damaged facilities are reserved to the Grantor as shown on the plat of the subdivision. Such easements shall include the right of ingress and egress for construction, installation and maintenance purposes. Adjoining said easements the Grantor reserves construction easements of sufficient width to install the utilities. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage any structure installed in accordance with the easement, or interfere with the installation and maintenance of utilities, or which may change the direction of the flow of drainage in the easement, or which may obstruct or restrain the flow of water through drainage channels in the easement. The easement areas of each lot and all improvements in it shall be maintained by the owner of such lot, except for those improvements for which a public authority or utility company is responsible. There shall be and is reserved to the Grantor a perpetual and exclusive easement over all lots, or any common area, for a distance of ten (10) feet behind any lot line which parallels a street (whether it be public or private) for the purpose of erecting and maintaining street intersection signs, directional signs, temporary promotional signs, entrance features, lights, signs, walls, masonry wall features and/or related landscaping. In the event that any utilities and connection therein serving a lot are located in part on a lot other than the lot being served by such utilities and connections, the utility company, the owner of a lot being served, and the contractor and employees of such company or owner shall have the right and easement to enter upon the lot in which the utility line or connection is located for the repair, maintenance and replacement of such line of connection.

ARTICLE X

RESERVATION OF EXPENDITURES

The Grantor reserved the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended, deposited, placed in escrow, or subsequently provided by it for utility facilities or services, streets, subdivision fees or for any other purpose of any nature or description with respect to any subdivision or land which is now or may in the future be made subject hereto.

ARTICLE XI

GENERAL PROVISIONS

The Trustee, or the owner of any lot subject to this indenture, shall have the right to enforce, by and proceeding at law or in equity, any of the covenants, conditions, restrictions and provisions hereof, either to restrain or enjoin a violation or threatened violation or to recover damages and the prevailing party in either such action shall recover attorneys fees and court costs. Failure or forbearance by the Trustee or any other owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

The covenants and restrictions of this indenture shall run with and bind the land subject hereto for a term of thirty (30) years from the date of recordation of this indenture, after which the said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument signed by the then owners of sixty-six and two-third percent (66-2/3%) of the lots subject hereto has been recorded, agreeing to terminate this indenture as of the end of such ten (10) year period. No such

1988 - 1871

agreement of termination shall be effective unless made and recorded one (1) year in advance of the effective date of such change, and unless written notice of the proposed agreement of termination has been sent to every owner at least ninety (90) days in advance of any action taken.

Any modification, amendment or change in the terms of this Indenture may be made at any time by instrument signed by the owners of sixty-six and two-thirds percent (66-2/3%) of the lots subject hereto, bearing the written consent of the Trustee, and recorded in the Office of the Recorder of Deeds of St. Charles County, Missouri.

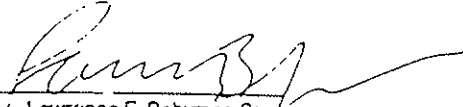
Any notice required to be sent under the provisions of this Indenture shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of the person who appears on the records as the record owner of the lot at the time of such mailing.

Invalidation of any of these covenants or restrictions by final judgement or decree shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

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

Lawrence F. Behymer, Sr., Trust
(Grantor)

Diamond Pointe Homeowners Association
(Trustee)


y Lawrence F. Behymer, Sr.


Mark Kaufer

STATE OF MISSOURI

COUNTY OF St. Charles

On this 14th day of October 1997, before me appeared Mark Kaufer being by me duly sworn that he is the PRESIDENT of DIAMOND POINTE HOMES, a Missouri corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that said Mark Kaufer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

My Commission Expires 3-16-00

Notary Public Mary Ann Paulé

MARY ANN PAULÉ
Notary Public - Notary Seal
STATE OF MISSOURI
ST. CHARLES COUNTY
MY COMMISSION EXP. MAR. 16, 2000

STATE OF MISSOURI

COUNTY OF St. Louis

Nov 1988 - 1872

On this 17th day of SEPTEMBER, 1997, before me appeared LAURENCE F. BEHYMER, SR., who being by me duly sworn that he is the TRUSTEE of TRUST, a Trustee of the Lawrence F. Behymer, Sr., Trust, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that said TRUSTEE acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed by official seal on the day and year last above written.

My Commission Expires AUGUST 24, 1998

Notary Public Antoinette M. Yocom

Trustee of the Lawrence F. Behymer, Sr., Trust

ANTOINETTE M. YOCOM
Notary Public - Notary Seal
STATE OF MISSOURI
— St. Louis County
My Commission Expires: Aug. 24, 1998

Lawrence F. Behymer, Sr.
Lawrence F. Behymer, Sr.

28404

STATE OF MISSOURI
COUNTY OF ST. CHARLES
RECORDER OF DEEDS
FILED FOR RECORD

OCT 14 1997

By Susan J. Hall
Time 10:36 AM

END OF DOCUMENT