

NOV 2 1993

DECLARATION CREATING
HARBORVIEW HOMEOWNERS ASSOCIATION
(PHASES 3 through 9)

KNOW ALL MEN BY THESE PRESENTS, That WHEREAS, CRAIG A. PORTER, is the owner of certain real property located on Clay County, Missouri and described in Exhibit A which is attached hereto and made a part hereof as if fully set out herein; and

WHEREAS, this indenture made and entered into this 28th day of October, 1993, by and between CRAIG A. PORTER, Party of the First Part, hereinafter called "Grantor", and CRAIG A. PORTER, Party of the Second Part, hereinafter referred to as "Trustee"; and

WHEREAS, Grantor is in the process of developing said land into a subdivision for residential purposes and developing facilities for the enjoyment by the future lot owners in said development, which said development shall be known as "HARBORVIEW", (Phases 3 through 9) and which said development shall be developed in several parts with a separate plat for each part thereof as it is developed; and

WHEREAS, the Grantor is desirous of promoting and enhancing the value of said tracts of land by stabilizing residential values and establishing facilities and services therein; and

WHEREAS, the Grantor believes that the creation of a trust of certain of the property rights in said tract and of certain use restrictions is the most beneficial means of accomplishing this purpose; and

WHEREAS, it is the purpose and intention of this indenture to preserve said tract of land primarily as a restricted residential neighborhood and to protect the same against certain uses by the adoption of a common neighborhood plan and scheme of restrictions; to apply that plan and restrictions, not only to all of the land and every parcel thereof as it may be sold from time to time, but also in favor of all other parcels within the area in the hands of the present or subsequent owners thereof, and to mutually benefit, guard and restrict the present and/or future title holders or occupants of any and all said parcels, and to foster the health, welfare, safety and morals of all who own lots or reside in said area; and

Craig A. Porter

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CLAY COUNTY MISSOURI
RECORDERS OFFICE

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WHEREAS, all reservations, limitations, conditions, easements and covenants herein contained, any and all of which are hereafter termed "RESTRICTIONS", are jointly or severally for the benefit 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 the sum of One Dollar (\$1.00) to Party of the First Part in hand paid by the Party of the Second Part, the receipt of which is hereby acknowledged, and, further, in consideration of the advantage to accrue to the Party of the First Part, as well as to future owners of said lots into which said tract may be subdivided, and with the agreement and consent of the Party of the Second Part to act as Trustee hereunder, the Party of the First Part agrees as follows:

The Party of the First Part, or the Grantor, shall contemporaneously with the recording of each platted subdivision of the herein described land, grant, bargain, sell, convey, transfer, assign and set over unto the said Trustee, his successors and assigns, all singular and the several strips and parcels of land which are to be delineated and set apart as greenways or park areas on said plat of said subdivision, and said Grantor, upon the consideration heretofore recited, do also hereby agree to create, reserve and transfer, assign and grant unto the said Trustee easements for the purposes set forth in Article I hereof, over, across, through and under all of the lots in said subdivision as marked out and set out on said plats to be filed for the subdivision of said land, including all entrance ways, roadways, greenways and park areas, TO HAVE AND TO HOLD all of the foregoing to the Trustee, his successors and assigns, IN TRUST upon the uses and purposes, for the term and upon the conditions hereinafter set forth in this indenture.

ARTICLE I

STREETS, ROADWAYS, GREENWAYS AND PARK AREAS

1. The Trustee shall have the power to enforce all of those covenants and restrictions contained in Declaration of Covenants and Restrictions, dated June 15, 1993, and recorded in Book 2250, Page 87-100 in the Office of the Recorder of Deeds of Clay County, Missouri.

2. The Trustee shall have the right and power to plant, care for, spray, trim, protect and replant shrubbery and to sow or resow, trim and care for grass in or upon the entrance ways, greenways and park areas conveyed to him or to be conveyed, or in or upon any other areas of the HARBORVIEW development area.

3. The Trustee shall have the power and right to provide monument signs and/or lights in or on all drives, lanes, circles, streets and roads, and on or at all gateways or entrances, or in such other places in or about the area covered by this indenture as he may in his judgement determine.

4. The Trustee shall have the right and power to grant easements in over or under the streets, drives, lanes, trails or roads conveyed to him for any of the purposes set out in Article I hereof. Greenways and park areas may be set up and established by the Trustee and maintained by the Trustee for the use of the lot owners, present and future, of said tract subdivided.

5. The Trustee shall have the right and power to construct recreational facilities and maintain same.

ARTICLE II

COVENANTS

These covenants shall run with the land and shall be binding upon all parties hereto and all persons claiming under them until December 31, 2003, at which time said covenants shall be automatically extended for a period of ten (10) years unless, by a vote of the owners of not less than 51% of the lots, it is agreed to change such covenants in whole or in part, it being understood that an owner shall be entitled to cast as many votes as he may own lots in said subdivision.

ARTICLE III

GENERAL POWERS

1. The Trustee shall have the right and power to provide for and maintain parkgrounds, greenways, entrances, or recreational facilities in said subdivision on any lands set aside for the general use of the owners of the lots in said subdivision or to which the said owners have access and the use thereof.

2. The Trustee shall have the right and power to care for and maintain any and all vacant lots in said subdivision, remove weeds and cut grass thereon, to pick up and remove therefrom loose materials, trash and rubbish of all kinds, and to do anything and all other things necessary or desirable in the judgement of the Trustee to keep such vacant and unimproved property neat in appearance and in good order.

Each lot must be mowed and kept free of weeds and underbrush for the general appearance of the development and prevention of fires.

If the lot owner does not fulfill this requirement, the Trustee reserves the right to mow and clean up said lot and to charge each owner a reasonable fee for this service.

Failure to pay the charge where it has become necessary to mow and clean said lot shall give the right to the Trustee, or his agent, to place a lien against the property for this service.

ARTICLE IV

ASSESSMENTS

1. The Trustee and his successors are hereby authorized, empowered and granted the right to make assessments upon and against the said several lots and said parcels of and in the subdivision for the purposes and at the rates hereinafter provided:

(A) To make uniform assessments (except as hereinafter provided) of Thirty Dollars (\$30.00) per lot per year upon and against the several lots or parcels of land in said subdivision for the purpose of carrying out the general duties and powers of the Trustee as described herein and for the further purpose of enabling the Trustee to defend and enforce restrictions, and to provide for mowing of the properties to preserve the asthetic values thereof.

(B) If, at any time, the Trustee shall consider it necessary to make any expenditures requiring an assessment, in addition to the assessments above provided, he shall transmit in writing to the owners of lots, for their approval, an outline of the plan for the project contemplated and the estimated amount required for completion of same and the total assessment required. If such project and the assessment so stated be approved at a meeting of the lot owners, duly called and held in the manner provided by the Trustee, by the owners of not less than fifty-one per cent (51%) of all of the lots, the Trustee shall notify all owners of the said tracts of the additional assessments. The limit of Thirty Dollars (\$30.00) per lot per year for general purposes shall not apply to any assessment made under the provisions of this paragraph.

(C) It being understood that for notwithstanding any other provisions of this agreement, no special assessments shall be made against lots owned by Craig A. Porter without his consent.

2. All assessments, either general or special, made by the Trustee for the purposes hereinabove enumerated shall be made in the manner and subject to the following procedure, to-wit:

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(A) Notice of all assessments may be given by mail addressed to the last known or usual post office address of the holder of legal title and deposited in the United States mail, postage prepaid, or may be given by posting a brief notice of the assessment upon the lot itself. Service in either of the above methods shall be sufficient.

(B) Every 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 eight per cent (8%) per annum, until paid, and such payment and interest shall constitute a lien upon said lot 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 Trustee's minutes, the Trustee 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 Office of the Recorder of Deeds of Clay County, Missouri; and, the Trustee may, upon payment, cancel or release any one or more lots from the liability of assessment (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 Trustee shall cause to be noted from time to time in the corporate minutes of his proceedings, the payments made on account of assessments.

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

ARTICLE V

ORGANIZATION

1. The Trustee herein named shall serve for a term ending on December 31, 2003, or until his successors shall be named. In the event of the death, resignation or inability of the herein named Trustee prior to the expiration of his term, his successor shall be named by the owners of a majority of the lots who shall select and appoint a Trustee to fill the unexpired term.

Successor Trustees, except in the case of filling a vacancy, shall be elected for terms of three (3) years each, but a Successor Trustee elected to fill a vacancy shall be elected in the manner hereinabove provided.

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2. There shall be an annual meeting of lot owners at a convenient place in Smithville, Clay County, Missouri, for the purpose of electing Trustees, or for the transaction of such other business as may properly come before said meeting, on the third Tuesday in January in each year, beginning in the year 2004 and each year thereafter. Notice of the meeting shall be given by insertion of a notice in a newspaper circulated in Clay County, Missouri, at least seven (7) days before the date of the meeting, or, at the election of the Trustee, notice of said meeting may be had by mailing to each lot owner a letter setting forth the date, time and place of said annual meeting.

3. Successor to the Trustee whose term has expired shall be elected by the lot owners at the annual meeting each year and the owner or 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. The person or persons receiving the highest number of votes or ballots shall be deemed elected and shall, upon his or their acceptance in writing, at once and by force of this indenture, succeed and shall be vested with, possessed of and enjoy as a joint tenant, but not as a tenant in common, with the remaining Trustee or Trustees, all of the estate, rights, interests, privileges and powers by this indenture granted to his or their predecessor. Any lot owner who has failed to pay any assessment due and payable shall not be entitled to vote at any annual or special meeting as provided for above. In the event any Trustee named herein or elected hereunder, with the exception of the original Trustee, (who shall be replaced as set forth in Paragraph 1 of this Article V) shall die, resign, or become incompetent for whatever reason to discharge the duties and avail himself or herself of or exercise the rights and powers granted herein or bestowed upon him or them as Trustees under this indenture, then and thereupon, it shall be the duty of the survivor or remaining Trustees to select a Successor to fill the unexpired term of such deceased or incompetent Trustee or Trustees. Any business relevant or pertinent to the affairs of the HARBORVIEW property, or subdivision thereof, may and shall be transacted at any annual or special meeting described above. A majority of the lot owners or Board of Trustees, respectively, shall constitute a quorum at the respective meeting of each.

4. In any election of Trustees, the owner of each lot shall be entitled to one (1) vote for each full lot owned by him, which vote may be cast in person or by proxy. No person shall, however, be considered as the owner of a lot until fee simple title of said lot shall have been conveyed to him by Warranty Deed, duly recorded.

5. At each annual meeting, the Trustees shall render an accounting of all monies received, disbursed and held by them during and at the end of the preceding year.

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ARTICLE VI

AMENDMENTS

1. For and during a period of ten (10) years, commencing with the date hereof, the provisions of this indenture may be modified or amended by the joint and concurrent action of the Grantor and the Trustee hereunder.

2. From and after ten (10) years from the date hereof, this indenture may be modified or amended by a vote of the owners of not less than fifty per cent (50%) of the lots into which this tract may be subdivided, for an additional ten (10) year period.

3. From and after that ten (10) year period, this indenture may be modified, amended or terminated by the concurring vote of the owners of not less than fifty one per cent (51%) of the lots in which said tract shall be subdivided.

4. No person shall be considered as an owner entitled to vote for any purpose provided in this indenture unless and until he shall have acquired fee simple title by Warranty Deed, duly recorded in the Office of the Recorder of Deeds of Clay County, Missouri, nor shall any record lot owner be entitled to vote unless he shall have fully paid all assessments which may be lawfully made by the Trustee against his property.

PARTY OF THE FIRST PART:

Craig A. Porter
CRAIG A. PORTER

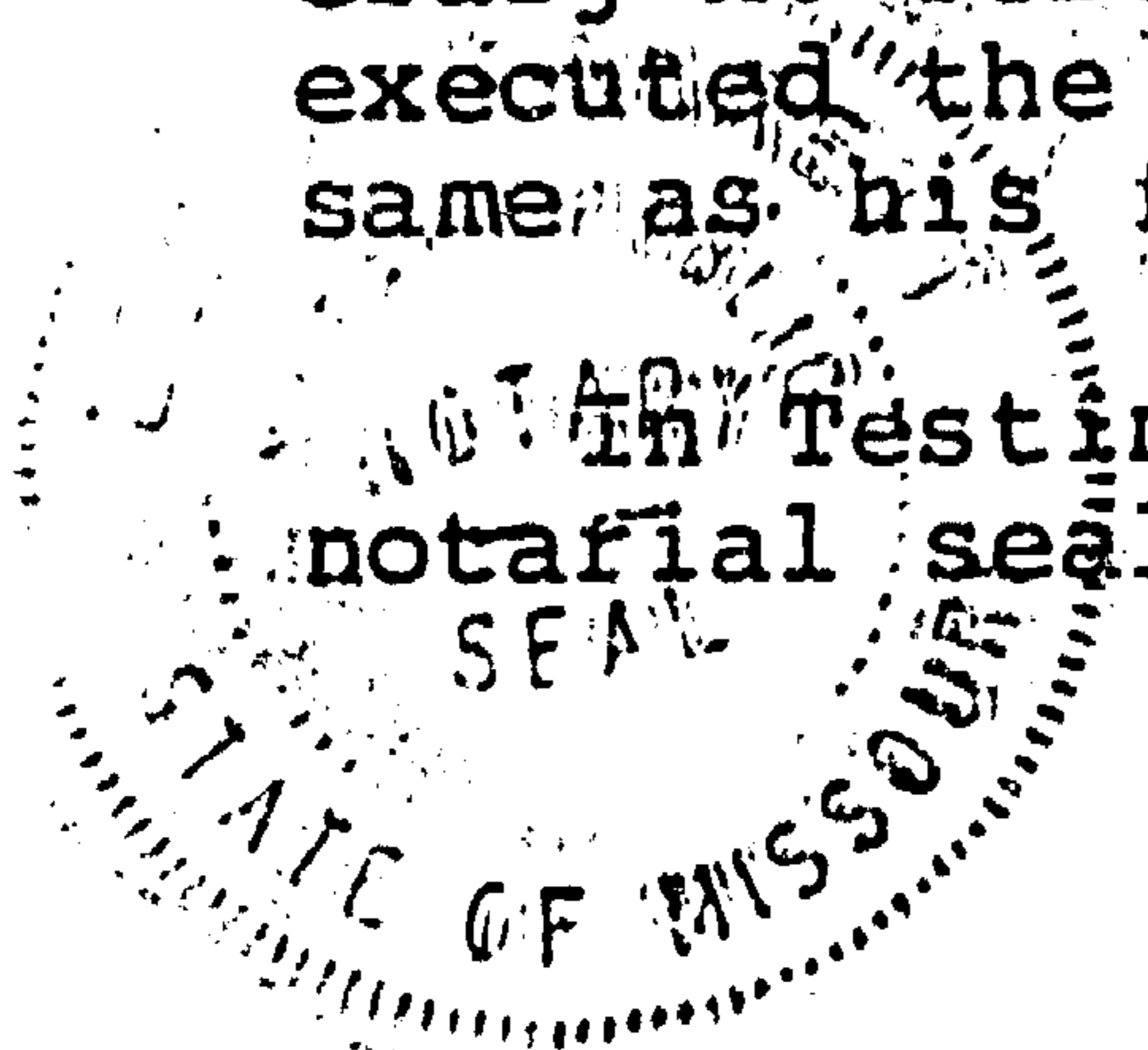
PARTY OF THE SECOND PART:

By Craig A. Porter
CRAIG A. PORTER, TRUSTEE

STATE OF MISSOURI)
 Clay) ss.
COUNTY OF CLINTON)

On this 2nd day of ~~October~~ ^{November}, 1993, personally appeared before me Craig A. Porter, who is personally known to me to be the person who executed the foregoing instrument and acknowledged that he executed same as his free act and deed.

In Testimony Whereof, I have hereunto affixed my signature and notarial seal this 2nd day of ~~October~~ ^{November}, 1993.



Lee A. Barrett
Notary Public

My commission expires Lee A. Barrett, Notary Public
County of Clay, State of Missouri
My Commission Expires Sept. 26, 1995



TRACT I

All of the Southwest Quarter of Section 12, Township 53, Range 33, Clay County, Missouri, subject to easements and restrictions of record and public roadways in use.

EXCEPT: A subdivision of land in the Southwest Quarter of Section 12, Township 53 North of the Base Line, Range 33 West of the Fifth Principal Meridian, an addition to the City of Smithville, Clay County, MO, more particularly described as follows: Beginning at a point on the East line of said Southwest Quarter, said point being South 00 degrees 25' 36" West, 35.00 feet from the center of said Section 12; thence from said point-of-beginning South 00 degrees 25' 36" West, 956.52 feet along the East line of said Southwest Quarter; thence South 64 degrees 43' 51" West, 257.63 feet; thence North 25 degrees 16' 09" West, 48.00 feet to the P.C. of a curve to the right, said curve having a radius of 525.00 feet; thence along said curve, through a central angle of 12 degrees 16' 14", 112.43 feet; thence South 77 degrees 00' 05" West 50.00 feet to a point on a curve, nontangent, with a radius of 575.00 feet; thence along said curve, through a central angle of 01 degrees 43' 46", 17.36 feet; thence South 78 degrees 43' 51" West, 238.64 feet; thence North 19 degrees 25' 55" East, 238.37 feet; thence North 09 degrees 43' 51" East, 189.94 feet; thence North 56 degrees 31' 56" West, 268.08 feet; thence North 44 degrees 43' 51" East, 50.00 feet; thence North 45 degrees 16' 09" West, 50.00 feet to the P.C. of a curve, nontangent, with a chord that bears North 22 degrees 13' 50" East, said curve having a radius of 300.00 feet; thence along said curve, through a central angle of 45 degrees 00' 00", 235.62 feet to the P.C. of said curve; thence North 00 degrees 16' 09" West, 112.00 feet to a point that is 35.00 feet South of the North line of said Southwest Quarter; thence North 89 degrees 43' 51" East, 610.00 feet, parallel with said North line, to the point of beginning. The bearing system is based on SLSA survey number 16670.

EXCEPT: A tract of land in the Southeast Quarter of the Southwest Quarter of Section 12, Township 53 North of the base line, Range 33 West of the Fifth Principal Meridian, Smithville, Clay County, Missouri, described as follows: Beginning at a point on the East line of said Southwest Quarter that is North 00 degrees 25' 36" East, 522.49 feet from the South Quarter Corner of said Section 12; thence from said point-of-beginning, North 61 degrees 34' 24" West, 219.59 feet to a point on a curve to the left nontangent with a radius of 345.00 feet and with a chord that bears North 20 degrees 55' 35" East; thence along said curve through a central angle of 15 degrees 00' 00", 90.32 feet; thence South 76 degrees 34' 24" East, 166.61 feet to the East line of said Southwest Quarter; thence South 00 degrees 25' 36" West, 149.97 feet along said East line to the point-of-beginning. The bearing systems is based on the East line of said Southwest Quarter being North 00 degrees 25' 36" East.

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EXCEPT: A tract of land in the Southwest Quarter of Section 12, Township 53, Range 33, in the City of Smithville, Clay County, Missouri; being bounded and described as follows: Commencing at the Southeast corner of Lot 20, HARBORVIEW SUBDIVISION (PHASE ONE), a subdivision of land in the City of Smithville, Clay County, Missouri, according to the recorded plat thereof being also a point on the East line of said Southwest Quarter, said point being 991.52 feet South of the Northeast corner of said Southwest Quarter, as measured along said East line; thence South 0 degrees 25' 36" West, along said East line, 384.31 feet; thence South 84 degrees 21' 16" West, 337.02 feet; thence North 32 degrees 09' 46" West, 337.02 feet; thence North 32 degrees 09' 46" West, 198.50 feet; thence North 28 degrees 03' 50" West, 274.51 feet to the Southwest corner of Lot 29, of the aforementioned HARBORVIEW SUBDIVISION (PHASE ONE); thence North 78 degrees 43' 51" East, along the South line of said Lot 29, 238.64 feet to a point on the West Right-of-Way line of Harborview Drive, as now established; thence Southeasterly, along said Right-of-Way line, on a curve to the left, having an initial tangent bearing of South 11 degrees 16' 09" East, a radius of 575.00 feet, an arc distance of 17.36 feet; thence North 77 degrees 00' 05" East, 50.00 feet to a point on the East Right-of-Way line of said Harborview Drive; thence Southeasterly, on a curve to the left, having an initial tangent bearing of South 12 degrees 59' 55" East, a radius of 525.00 feet, an arc distance of 112.43 feet; thence South 25 degrees 16' 09" East, tangent to the last described curve, 48.00 feet to the Southwest corner of the aforementioned Lot 20; thence North 64 degrees 43' 51" East, along the South line of said Lot 20, 257.63 feet to the point-of-beginning.

EXCEPT: A tract of land in the Southwest Quarter of Section 12, Township 53, Range 33, in the City of Smithville, Clay County, Missouri; being bounded and described as follows: Commencing at the Northeast corner of said Southwest Quarter of Section 12, Township 53, Range 33; thence South 0 degrees 25' 36" West, along the East line of said Southwest Quarter, 1375.83 feet; thence South 84 degrees 21' 16" West, 147.50 feet to the True Point of Beginning of the tract to be herein described; thence South 5 degrees 38' 44" East, 25.00 feet; thence South 84 degrees 21' 16" West, 221.29 feet; thence North 32 degrees 09' 46" West, 147.38 feet; thence North 66 degrees 03' 41" East, 40.00 feet, to the Northwest corner of Lot 6, HARBORVIEW SUBDIVISION (PHASE TWO), a subdivision of land in the City of Smithville, Clay County, Missouri, according to the recorded plat thereof; thence South 32 degrees 09' 46" East, along the West line of said HARBORVIEW SUBDIVISION and its Southerly prolongation thereof, 133.47 feet; thence North 84 degrees 21' 16" East, 189.52 feet, to the True Point-of-Beginning.

EXCEPT: All that part of the Southwest Quarter of Section 12, Township 53, Range 33, in the City of Smithville, Clay County, Missouri, described as follows: Beginning at the Southwest corner of the Southwest Quarter of said Section 12, thence North 89 degrees 32' 42" East, along the South line of said Quarter Section, a distance of 50.0 feet to the True Point-of-Beginning of the tract to be herein described; thence North 0 degrees 24' 11" East, parallel to the West line of said Quarter Section, a distance of 295.00 feet; thence North 89 degrees 32' 42" East, parallel with the South line of said Quarter Section, a distance of 443.0 feet; thence South 0 degrees 24' 11" West, parallel to the West line of said Quarter Section 295.0 feet to the South line of said Quarter Section; thence South 89 degrees 32' 42" West along the South line of said Quarter Section, a distance of 443.0 feet to the True Point-of-Beginning.