

BILL NO. 1463

ORDINANCE NO. 1335

**AN ORDINANCE PROVIDING FOR THE APPROVAL OF THE RECORD PLAT, TRUST INDENTURE, WARRANTY DEED AND ESCROW AGREEMENT FOR HIGHLAND FOREST, A SUBDIVISION LOCATED AT THE TERMINUS OF SQUIRES WAY DRIVE, EAST OF SHOETTLER VALLEY DRIVE.**

**WHEREAS**, Barry Homes, Inc., has submitted for review and approval the Record Plat, Trust Indentures, Warranty Deed and Escrow Agreement for Oak Creek Meadows Subdivision; and,

**WHEREAS**, the petitioner has submitted a Record Plat consisting of twenty-seven (27) lots ranging from 10,174 square feet to 16,979 square feet with 5.73 acres of common ground and stormwater detention easements; and,

**WHEREAS**, the Planning Commission having reviewed the same and has recommended approval thereof.

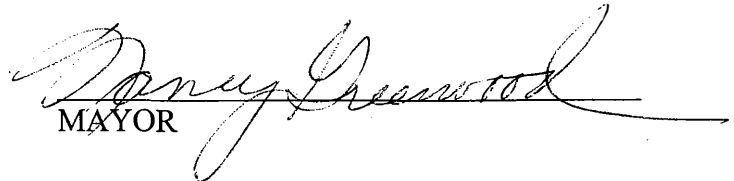
**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, ST. LOUIS COUNTY, MISSOURI, AS FOLLOWS:**

Section 1. The Trust Indenture, Warranty Deed, Escrow Agreement and Record Plat for Highland Forest Subdivision, which are made a part hereof and attached hereto as Exhibits 1, 2, 3, and 4 are hereby approved; provided, however, that nothing in this ordinance shall be construed or interpreted as an acceptance of the public utilities or public utilities or public easements which are dedicated on the record plat.

Section 2. The Mayor and City Clerk are authorized and directed to evidence the approval of said Trust Indenture, Warranty Deed, Escrow Agreement and Record Plat by affixing their signatures and the official seal of the City of Chesterfield as required on said documents.

Section 3. This Ordinance shall be in full force and effect from and after its passage and approval.

Passed and approved this 21st day of October, 1997.

  
MAYOR

ATTEST:


  
DEPUTY CITY CLERK

Exhibit 1



**HIGHLAND FOREST  
INDENTURE OF TRUST AND RESTRICTION**

THIS INDENTURE, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1997 by and between R.J. BARRY CONSTRUCTION, INC. a Missouri corporation, and RICHARD J. BARRY, CURTIS G. BARRY and CHRIS R. BARRY all of the state of Missouri, hereinafter referred to as "Trustees":

WITNESSETH THAT:

WHEREAS, The legal description marked Exhibit A hereto attached, in accordance with a Final Development Plan so that plats or portions of said tract may now be recorded; and,

WHEREAS, common land, Cul-de-sacs, and street lights have been reserved in Highland Forest; and,

WHEREAS, there may be designated, established and recited on the recorded plat of Highland Forest certain streets, common land, easements and any other non-public items which are for the exclusive use and benefit of the present an future residents of Highland Forest except those streets or easements which are or may hereafter be dedicated to public bodies and agencies, and which have been provided for the purpose of constructing, maintaining and operating sewers, sewer treatment plant, pipes, poles, wires, storm water drainage, water supply, parks and other facilities and public utilities for the use and benefit of the residents of Highland Forest; and,

WHEREAS, all reservations limitations, conditions, easements and covenants hereafter termed "restrictions: are jointly or severally for the benefit of all persons who may purchase, hold or reside upon, any of the lots covered by this instrument; and

NOW THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements made by the parties hereto each to the other, the parties hereto covenant and agree to and with each other, collectively and individually, for themselves, their heirs, successors and assigns, and for and upon behalf of all persons who may hereafter derive title to or otherwise hold through them together with their heirs, successors, or assigns, any of the lots, and parcels of land in any plat to Highland Forest, all as described herein as follows, to-wit:

**SECTION A**

1. EASEMENTS. All the easements delineated on the plat of said Subdivision may be used for the purpose of constructing, operating and maintaining wires, pipes, conduits or other transmission systems and appurtenances for electric, telephone, telegraph, computer, water, sewage, storm water, natural gas, video or cable television, and all other services in the nature of public utility, either under ground or above ground. Those easements designated as monument easements may be used for monument erection and maintenance.

2. REFUNDS. R.J. BARRY CONSTRUCTION, INC. reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided by them for sewers, gas, pipes, conduits, poles, wires, street lights, roads, streets, recording fees, subdivision fees, charges and expenses incurred with respect to the creation of any subdivision in the tracts described in Exhibit A attached hereto and made a part hereof.

## SECTION B

1. ARCHITECTURAL CONTROL. No building shall be erected, placed or altered on any lot, tract or parcel, until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Control Committee as to workmanship and materials, harmony of external design with existing structures and as to location with respect to topography and finish grade elevation. No fence, wall, home addition, or other exterior improvement shall be erected, placed or altered on any lot, tract or parcel unless similarly approved. Approval shall be reasonably given in accordance with the restrictions as hereinafter provided.

2. BUILDING PERMITS. All applications for building permits shall be accompanied by a plat in duplicate drawn to scale, showing the actual dimensions of the lot to be built upon, the size of the building to be erected, the location of the building lines within the block, and other such information as may be necessary to provide for the enforcement of these restrictions.

3. ARCHITECTURAL CONTROL COMMITTEE. The initial Architectural Control Committee is composed of RICHARD J. BARRY, CURTIS G. BARRY and CHRIS R. BARRY. The Architectural Control Committee shall serve until all lots in the subdivision are sold, but one member will be replaced by the Trustees when fifty percent (50%) of the lots are sold and another member will be replaced by the Trustees when Ninety Five percent (95%) of the lots are sold and the third initial Architectural Control Committee member will be replaced by the Trustees upon sale of all the lots. Thereafter, the Trustees shall determine the composition and necessity of the committee. In the event of the death or resignation of any member of the Committee, the remaining member or members shall have full authority to designate a successor or successors. A majority of the Committee may designate a representative of the Committee to act for it. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. At any time after ten (10) years from the date of this indenture, if this development is fully developed with improvements on all lots, the then record owners of a majority of the tracts shall have the power through a duly recorded instrument to change the membership of the Committee or to modify any of its powers or duties. The Committee approval or disapproval as required in these covenants shall be in writing. In the event the Committee or its designated representative fails to approve or disapprove within sixty (60) days after plans and specifications have been submitted to it (or in the event, if no suit to enjoin the construction has been commenced prior to the

completion thereof), approval will not be required and the related covenants will be deemed to have been fully complied with. Members of the committee shall have the power and authority to grant variances when circumstance arise to merit them at their discretion, but in no event can variances be granted which violate current City of Chesterfield Ordinances.

4. ABOVE GROUND STRUCTURES. No above ground structure, other than required street lights, may be erected within a cul-de-sac, divided street entry island, or median strip without the written approval of the City of Chesterfield Department of Planning.

### SECTION C

1. The following restrictions shall apply to all lots:

a. OIL AND MINING OPERATIONS. 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 for oil or natural gas shall be erected, maintained or permitted upon any lot.

b. UNLICENSED VEHICLES. The habitual parking of any unlicensed automobiles or other motor vehicles capable of carrying passenger, whether housed or not, shall not be allowed on any tract.

c. NO NUISANCE ALLOWED. No lot or any building thereon shall be maintained, operated or neglected in such a manner as to constitute or create a nuisance.

d. GARBAGE AND REFUSE DISPOSAL. No lot shall be used as a dumping ground for rubbish. Trash, garbage or other liquid or solid waste materials shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

e. FENCES. All fences shall be well designed and attractive in appearance and no larger than four (4) feet n height. The Architectural Control Committee may permit fences constructed of any materials other than chain link when in their judgment the fence would not detract form the overall appearance of the Subdivision.

f. LOTS SHALL NOT BE SUBDIVIDED. No lot shown on the recorded plat of HIGHLAND FOREST, shall be hereinafter subdivided, except where all portions shall be used to enlarge other lots.

g. PROPER USE. No lot in this Subdivision or any building thereon shall be used for any purposes other than the following:

1. Home occupation as defined by Chesterfield Zoning Ordinance.

2. Parks, playground.

h. SETBACK LINES. No building shall be situated on a lot nearer than twenty (20) feet to the edge of the front of the property or nearer than fifteen (15) feet to the rear lot line nor closer than six (6) feet to the side lot lines.

i. BUILDINGS. No building shall be erected or maintained on any lot other than a detached private one-family residence. Only one residential unit may be constructed or maintained on any one lot.

j. NO TEMPORARY STRUCTURE OR TRAILERS. No structure of temporary character shall be used as a residence, nor shall any trailer, mobile home, motor home, van or other vehicle, basement, tent, shack, garage or other out-building be used as a residence temporarily or permanently.

k. BILLBOARD AND SIGNS. No billboard, signboard or advertising sign shall be permitted other than "For Rent" or "For Sale" signs, such signs for garage sales and small yard signs erected by contractors currently doing work on any residence also being permitted. Such permitted signs shall be limited to a single sign for each premise and shall not exceed four square feet in area, except that developers may display larger signs at entrance to Subdivision. Until three (3) months after the closing on the final available lot.

l. ANIMALS AND LIVESTOCK. No animal or livestock shall be raised, bred or kept on any lot except household pets not kept for commercial purposes. No wild or dangerous animal shall be considered a household pet.

m. NO MOBILE HOMES. No mobile home, motor home or van shall be kept or maintained as a permanent structure on any lot in this Subdivision, nor shall they be kept ungaraged.

n. NO ABOVE GROUND POOLS. No aboveground swimming pools shall be installed on any lot in the subdivision either on a temporary or permanent basis. However, this restriction shall not apply to "hot tubs" or "spas" which are eight feet or less in diameter nor shall it apply to children's portable wading pools made of vinyl or similar material.

o. ANTENNAE AND SATELLITE DISHES. No television, radio or other antennae shall be attached to the roofs or sides of and residence. No "ham radio" antenna is permitted on any lot. No satellite dishes with a diameter greater than eighteen inches (18) are permitted. The proposed location of any satellite dish shall be submitted by drawing to, and approved by, the Architectural Control Committee, or if it has been disbanded pursuant to Section B.3, the Trustees. The Committee reserves the right to condition its approval upon the incorporation of certain conditions intended to camouflage the satellite dish.

p. DRIVEWAY AND WALKWAYS. No driveway or walkway shall be expanded in length or width nor shall the original configuration be altered without review and consent of the Architectural Review Committee. Any resurfacing shall be consistent with the original surface unless consent by the Committee to an alternative is given.

q. NO COMMERCIAL VEHICLES. No commercial vehicles shall be kept or parked on any lot or street except in conjunction with the normal operation of business within the subdivision.

2. BUILDING SPECIFICATIONS. All buildings within the development shall conform to the following principles and requirements, unless specifically exempted elsewhere within these restrictions, or unless a variance is granted by the Architectural Control Committee.

a. Foundations shall be constructed of concrete, except that the Architectural Control Committee may permit some other material of equal or greater quality.

b. All framing construction must be on a 16 inch centers or less.

c. All interior walls must be constructed or composed of either sheetrock or plaster of one-half inch or greater of thickness or wood or masonite paneling of one-fourth inch or greater thickness or other material of equal or superior quality if approved in advance by the Architectural Control Committee.

d. All framing material must be of two by four stock or greater.

e. No pitched roofs shall be constructed of ferrous metal or rolled roofing.

f. The exterior finish of all buildings shall be limited to the following materials:

1. Brick or Brick Veneer;
2. Natural Stone or Stone Veneer;
3. Siding of Hard wood;
4. Any material recognized as being superior or equal to the material described in 1 through 3 by the Architectural Control Committee.

g. No dwelling shall be erected or maintained which has less than 2,400 square feet of inside living space, exclusive of garages.

#### SECTION D

1. TRUSTEES. There shall be appointed three (3) Trustees of the Subdivision and Richard J. Barry, Curtis G. Barry and Christ R. Barry, by this document, appointed initial Trustees of HIGHLAND FOREST. After Fifty Percent (50%) of the lots in the subdivision have been sold, an election shall be held pursuant to the terms herein to elect one (1) replacement

Trustee from among the lot owners. Similarly, after Ninety Five percent (95%) of the lots are sold, an additional Trustee shall be selected from the lot owners and the third initial Trustee will be replaced upon sale of all the lots.

2. GRANTING EASEMENTS. Said Trustees shall have the right to grant any person or corporation undertaking to furnish electricity, heat, light, water, power or gas, or any convenience desirable for a resident district, the right to place the necessary poles, wires, pipes, conduits, or other implements up, in, on or under any of said streets and to make contracts for supplying the occupants of the land abutting upon said streets with such utilities. All such poles, wires, pipes, conduits or other implements shall at all times be subject to the reasonable control and regulation of said Trustees, and all sewer connections shall be made under permits issued by said Trustees. Trustees shall have the right to grant other easements as they deem necessary.

3. EMINENT DOMAIN. 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, during the period of Trust as well as the times fixed for the appointment or election of Trustees, are hereby authorized to negotiate with such public agency for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Trustees need be made parties, and in any event the proceeds received shall be held by the Trustees for the benefit of those entitled to the use of the common property, roads or easements.

4. MAINTENANCE. Said Trustees shall have power and it shall be their duty as and when they shall deem it necessary to cause the following work to be done in and upon said tract. Namely, the said streets shall be kept clean, clear of ice and snow, lighted, sprinkled, repaired, maintained and reconstructed. The sewers in the said streets shall be cleaned, repaired, maintained and reconstructed. Garbage, ashes and other refuse accumulated on any street, lot, or any other place in said tract, shall be removed, and any taxes which may be levied on said streets shall be paid by said Trustees. Further, all common ground shall be kept mowed and free of all debris, and otherwise totally maintain in a first class manner and in a neat and clean condition and all taxes which may be levied shall be paid.

5. ASSESSMENTS. To enable said Trustees to pay the cost of such work and the incidental expense of the same and of administering their said trust, they shall have power to make assessments upon and against the several lots or parcels of land in said tract and against the owners thereof, apportioned to and against each as hereinafter stated not to exceed Two Hundred Fifty Dollars (\$250.00) per lot in any one year, but this limitation shall not be applied to any assessment levied for the purpose of constructing or reconstructing any street or sewer built in said tract, nor shall the limitation apply in situations where the Trustees are complying with all subdivision rules and regulations, or ordinances of Chesterfield.

6. LIENS. Every assessment hereby authorized shall become a lien against any lot or parcel of ground to which it relates whenever it shall be declared by said Trustees by instruments in writing, executed, acknowledged and recorded in the Office of the Recorder of Deeds for the County of St. Louis, State of Missouri, in the manner provided for conveyance

affecting real estate. The recording of any such assessment shall be taken as a demand for payment therefor and the same shall bear interest at the rate of 10% per annum, or the highest legal rate if it is less than 10%, beginning thirty (30) days after the date of record. Upon the payment of any assessment so recorded, satisfaction thereof shall be acknowledged by instrument duly executed, acknowledged and recorded by the Trustees at the expense of the lot owners.

7. SUCCESSION. When any one or more of said Trustees or successors appointed as herein provided shall die or resign or shall become non-residents of the County of St. Louis, or shall cease to have any interest in said tract, either as a lot owner or as owner of stock in any corporation owning the lot, then the remaining Trustee or Trustees shall, by written instrument, appoint a successor or successors who shall reside in either the County of St. Louis and shall be interested in said tract either as a lot owner or stockholder as above provided. Said instrument shall be executed, acknowledged and recorded as may be required by law for an instrument affecting real estate. It shall set forth the name of the person who has ceased to be Trustee and whose place is to be filled and the name of the appointee and as soon as said instrument shall be recorded the appointee shall be immediately substituted as Trustee and shall have the right, title and power, and shall be subject to all the duties conferred and imposed by this instrument as fully as if he were named herein as Trustee.

Where the provisions of this restriction indenture cannot be fulfilled by reason of unfilled vacancies among the trustees, Chesterfield City Council may upon the petition of any concerned resident or property owner of the subdivision appoint one or more Trustees to fill vacancies until time as Trustees are selected in accordance with the trust indenture. Any person so appointed who is not a resident or property owner within the subdivision shall be allowed a reasonable fee for his services by the order of appointment, which fee shall be levied as a special assessment against the property in the subdivision, and which shall not be subject to any limitation on special assessments contained in the trust indenture or elsewhere.

8. DUTIES. The Trustees hereby provided for shall keep minutes of their proceedings. Any two of them may exercise the powers of the board. They shall serve without pay except for expense reasonable incurred. They shall comply with all subdivision rules and regulations and those of the City of Chesterfield.

9. ENFORCEMENT. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created in these covenants; and failure by the Trustees or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Any and all such costs of enforcement shall be borne by the person or persons violating or attempting to violate such covenant or restriction or rules and regulations of the Subdivision.



## SECTION E

1. RULES AND REGULATIONS. The Trustees may provide for any and all subjects, rules and regulations which are not in existence or in conflict with the Declaration as the Trustees may determine to be in the best interest of all owners at HIGHLAND FOREST and in the furtherance of the design and purpose for which HIGHLAND FOREST has been and is being developed, including, but not limited to, specifications for operations of any and all of the common area, the quality of maintenance, for reasonable sanctions to be imposed upon those persons violating the rules and regulations so adopted from time to time.

2. MEETINGS. Any two (2) Trustees may call a meeting of the Subdivision either on their own accord or at the behest of owners representing twenty-five percent (25%) of the lot owners by number. Trustees shall give notice in advance of at least ten (10) days to all owners by personal delivery or notice by United States Mail to the last known address of each lot owner.

## SECTION F

1. DURATION. These covenants shall be filed in the Office of the Recorder of Deeds of St. Louis County, Missouri, and shall be binding upon the parties hereto, the future owners of the property hereinafter described, and upon all persons or corporations claiming under the parties hereto, for the duration of HIGHLAND FOREST as a subdivision unless an instrument signed as per Section F(3) herein has been recorded, agreeing to change these covenants in whole or in part. In the event the subdivision is vacated, fee simple title shall vest in the then lot owners as tenants in common. The rights of the tenants shall only be exercisable appurtenant to and in conjunction with their lot ownership. Any conveyance or change of ownership of any lot shall convey with it ownership in the common land, and no interest in the common land shall be conveyed by a lot owner except in conjunction with the sale of a lot. The sale of any lot shall carry with it all the incidents of ownership of the common land although such is not expressly mentioned in the deed; provided, however, that no right or power conferred upon the Trustees shall be abrogated.

2. CONSTRUCTION. All covenants and agreements herein are expressly declared to be independent; nor shall any laches, waiver, estoppel condemnation or failure of title as to any part or parcel of the said tract known as HIGHLAND FOREST be of any effect to modify, invalidate or annul any grant covenants or agreements herein, with respect to the remainder of said Subdivision saving always the right of amendment modification or repeal as hereinabove expressly provided.

3. AMENDMENT. As long as R.J. BARRY CONSTRUCTION, INC. owns at least one (1) lot in HIGHLAND FOREST this restriction Indenture may be amended, modified or changed by R.J. BARRY CONSTRUCTION INC. by securing written approval of said amendment, modification or change from the Chesterfield Planning Department and then recording said document at the (St. Louis County) Recorder's Office. No such amendment, modification, or change shall reduce or modify the obligation or right granted to or imposed

upon Trustees unless a substitution is imposed after approval by the City of Chesterfield Planning Department.

Thereafter, this Restriction Indenture may be amended at a meeting of the lot owners where at least fifty percent (50%) are present either in person or by written proxy. A vote of sixty-six and two-thirds percent (66-2/3%) of those voting is required for a change. Any amendment must be in writing, in proper recordable form and recorded at the St. Louis County Records Office.

4. At all times during the term of these indentures and any extensions thereof, all provisions herein contained must at all times be in compliance with the municipal ordinances of the City of Chesterfield and the Trustees may not amend these indentures wherein such amendment would violate any such ordinance.

IN WITNESS WHEREOF, we the undersigned, have executed this Indenture of Restriction this \_\_\_\_\_ day of September, 1997.

\_\_\_\_\_  
RICHARD J. BARRY, Trustee

\_\_\_\_\_  
CURTIS F. BARRY, Trustee

\_\_\_\_\_  
CHRIS R. BARRY, Trustee

R. J. BARRY CONSTRUCTION, INC.

By: \_\_\_\_\_  
RICHARD J. BARRY, President

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

On this \_\_\_\_ day of \_\_\_\_\_, 1997, before me appeared RICHARD J. BARRY, to me personally known, who, being by me duly sworn, did say that he is the President of R.J. BARRY CONSTRUCTION, INC. a corporation, of the State of Missouri, and that said instrument was signed on behalf of said corporation, by authority of its Board of Directors; and said RICHARD J. BARRY acknowledged said instrument to be the free act and deed of said corporation.

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

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

My Term Expires:

\_\_\_\_\_

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

On this \_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared RICHARD J. BARRY, 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 TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal in the County and State aforesaid, the day and year first above written.

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

My Term Expires:

\_\_\_\_\_

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

On this \_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared CURTIS G. BARRY, 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 TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal in the County and State aforesaid, the day and year first above written.

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

My Term Expires:

\_\_\_\_\_

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

On this \_\_\_\_ day of \_\_\_\_\_, 1997, before me personally appeared CHRIS R. BARRY, 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 TESTIMONY WHEREOF, I have hereunto set my hand and affixed by official seal in the County and State aforesaid, the day and year first above written.

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

My Term Expires:

\_\_\_\_\_

k:\vjbarry\subdivis\highland\indent1.sub

**GENERAL WARRANTY DEED**

THIS DEED, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1997, by and between R.J. BARRY CONSTRUCTION, INC., a Missouri corporation, with its principal offices in the County of St. Louis, State of Missouri party of the first part, and RICHARD J. BARRY, CURTIS G. BARRY, and CHRIS R. BARRY of the County of St. Louis, State of Missouri parties of the second part, as Trustees.

WITNESSETH, that the said party of the first part, for and in consideration of the sum of One Dollar and other valuable consideration paid by the said party of the second part, the receipt of which is hereby acknowledged, does by these presents, GRANT, BARGAIN AND SELL, CONVEY AND CONFIRM unto the said parties of the second part, the following described Real Estate, situated in the County of St. Louis, State of Missouri to wit:

The area designated as "Common Ground" on the Plat of Hyland Forest, according to the Plat thereof recorded on the \_\_\_\_\_ day of \_\_\_\_\_, 1997, as Daily # \_\_\_\_\_, Book \_\_\_\_\_ Page \_\_\_\_\_ of the St. Louis County Records.

TO HAVE AND TO HOLD the same, in trust, together with all rights and appurtenances to the same belonging, unto the said parties of the second part, and to their successors in trust pursuant to the provisions of the trust indenture filed and recorded herewith.

The said party of the first part hereby covenanting that it and its heirs and successors, shall and will WARRANT and DEFEND the title to the premises unto the said parties of the second part, and to their successors in trust forever against the lawful claims of all persons

**McCARTHY, LEONARD, KAEMMERER,  
OWEN, LAMKIN & McGOVERN, L.C.**

**ATTORNEYS AT LAW**

**18141 NORTH OUTER FORTY DRIVE, SUITE 300  
ST. LOUIS (CHESTERFIELD), MISSOURI 63017-0743**

**(314) 532-7100**

**FAX (314) 532-0857**

**mlklaw@mo.net**

**THOMAS W. McCARTHY III  
MICHAEL E. KAEMMERER  
ANDREW B. LEONARD  
JAMES C. OWEN  
WALTER E. LAMKIN  
DIANA K. WIELAND  
BRIAN E. McGOVERN  
JAMES P. TOWEY, JR.\*  
TODD A. MASSA\*  
PAULA M. YOUNG\*\***

**E. MEGAN KINSELLA  
ELAINE M. MOSS\*\*  
KATHERINE S. WALSH  
KEVIN T. McLAUGHLIN  
TAMI Z. MORRISSEY  
ROBERT A. MILLER**

**\*ALSO LICENSED IN ILLINOIS  
\*ALSO LICENSED IN DISTRICT  
OF COLUMBIA  
\*\*ALSO LICENSED IN CALIFORNIA**

September 26, 1997

Jerry Kelley  
Department of Planning  
922 Roosevelt Parkway  
Chesterfield, MO 63017-2079

**RE: Highland Forest Subdivision**

Dear Sir:

Enclosed please find two (2) draft Highland Forest Indentures of Trust and Restriction and two (2) draft General Warranty Deeds transferring title from the property developer to the subdivision Trustees under the Indentures.

It is our opinion that the attached Indenture of Trust and Restriction and Warranty Deed have been prepared in accordance with the Chesterfield Zoning and Subdivision Ordinances and will convey title to the Trustees under Missouri Law.

Please advise both Chris Barry and myself of your position concerning the sufficiency of these documents.

Very truly yours,

McCARTHY, LEONARD, KAEMMERER,  
OWEN, LAMKIN & McGOVERN, L.C.



Todd A. Massa

TAM/mes

Enclosure

k:\rjbarry\subdivis\highland\97kelley.926



THIS ESCROW AGREEMENT made and entered into by R. J. Barry  
Construction Co. Inc., herein called DEVELOPER, and  
NationsBank N.A., herein called ESCROW HOLDER and the CITY OF  
 CHESTERFIELD, MISSOURI, herein called CITY.

WITNESSETH:

WHEREAS, the DEVELOPER has submitted plans, information and data to the CITY  
 for the creation and development of a subdivision to be known as Highland  
Forest, and requesting approval of same; and

WHEREAS, the subdivision plans have been approved and the CITY has reasonably  
 estimated and determined that the cost of construction, installation and completion  
 of the improvements, all in accordance with the provisions of Ordinance # 1099, and  
 the Subdivision Regulations of the City, as amended, will be in the sum of

Five Hundred and One Thousand and 10/100----- DOLLARS

(\$501,000.10) lawful money of the United States of  
 America; and

WHEREAS, the DEVELOPER is seeking approval of the CITY of the final plat of  
 the aforesaid subdivision as the same is provided in Ordinance # 1099, or as  
 hereinafter amended; and

WHEREAS, the Ordinance provides inter alias that the final plat of the said  
 subdivision may be approved by the City Council of the CITY upon the DEVELOPER  
 submitting a satisfactory escrow agreement guaranteeing the construction of the said  
 subdivision improvements in accordance with the approved plans;

NOW, THEREFORE, in consideration of the covenants, promises and agreement  
 herein provided;

IT IS HEREBY MUTUALLY AGREED:

1. That the DEVELOPER has deposited the sum of Five Hundred and One  
Thousand and 10/100 DOLLARS (\$501,000.10) lawful money of the United  
 States of America, herein called ESCROW SUM, with the ESCROW HOLDER, as an escrow  
 guaranteeing the construction, installation and completion of the required  
 subdivision improvements in Highland Forest Subdivision, all in  
 accordance with the approved plans therefore and in accordance with the ordinances  
 of the CITY regulating the same.

2. That the ESCROW SUM will be held in escrow by the ESCROW HOLDER in a special escrow account, subject to the special audit of the CITY.

3. That the ESCROW SUM guarantees the construction, installation and completion of the improvements in the aforesaid subdivision in accordance with the report of the said Department of Planning dated \_\_\_\_\_, a copy of which is attached hereto as Exhibit A and made a part hereof as per plans and specifications for the said subdivision which have been filed with the Department of Planning of the City of Chesterfield, Missouri, all of which are also made a part hereof as though set forth herein word for word.

4. That in the event the City should determine that the ESCROW SUM herein provided is insufficient to complete the said Subdivision Improvements, the City will so notify the Developer who shall deposit within thirty (30) days of said notice with the ESCROW HOLDER that additional sum of lawful money of the United States of America that will be required to complete the said improvements and said additional sum will be subject to the terms of this Escrow Agreement. Failure to provide said sum will be cause for cessation of all work on said subdivision until the additional amount is paid.

5. That the DEVELOPER guarantees that all required utilities and improvements will be installed, constructed and completed within two (2) years from the date of the approval of the said Subdivision Plat and the DEVELOPER shall furnish, upon the completion of said improvements, a Certificate of Completion by a licensed engineer engaged to supervise the construction, installation and completion of said improvements, all as provided in Ordinance # 1099.

6. That the ESCROW HOLDER shall only release or disburse the ESCROW SUM, or portion thereof, upon receipt and in the amount set forth in a written authorization from the said Department of Planning addressed to the ESCROW HOLDER: which authorization may be for the payment of labor and materials used in the construction, installation and completion of the said improvements; as the work progresses under the supervision of a qualified, licensed engineer, as provided in Ordinance # 1099, said engineer to certify such work and materials to the Department of Planning.

7. That in the event the developer shall abandon the subdivision or fail to complete the improvements within two (2) years hence from the date of the CITY'S approval of the said subdivision plat, whichever shall first occur, the CITY shall present to the ESCROW HOLDER a certified statement from the City Engineer estimating the cost for the repair or completion of the project as originally set out. Upon receipt of this certification, the ESCROW HOLDER shall disburse said funds directly



resources, the said improvements. The ESCROW HOLDER shall disburse the escrow sums therefore as ordered and directed by the City, and upon such disbursement shall be relieved of all liability under the terms of this agreement.

6. That the CITY hereby accepts this agreement as a satisfactory Escrow Agreement under the provisions and requirements of Ordinance # 1019.

8. IT IS HEREBY FURTHER AGREED by the ESCROW HOLDER: (A) That in full consideration of its covenants, promises and agreements, the ESCROW HOLDER has received the sum of ONE AND NO/100 DOLLARS (\$1.00) lawful money and other valuable considerations, receipt thereof from the DEVELOPER being hereby admitted and acknowledged; and (B) That the ESCROW HOLDER hereby acknowledges the receipt and deposit of the ESCROW SUM and guarantees that the same shall be held as hereinabove provided and shall be released only in accordance with the terms herein set forth.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 1st day of October A.D. 19 97.

ATTEST: (SEAL)

Curtis G. Barry  
Secretary

Type Name: CURTIS G. BARRY

ATTEST: (SEAL)

David E. Pierce  
Secretary

Type Name: David E. Pierce  
Vice President

BY Richard J. Barry  
DEVELOPER (Name/Address)

Type Name: RICHARD J. BARRY

Richard J. Barry PRESIDENT 14954 Claymont Est. D.  
NationsBank N.A. Chesterfield MO 63017

BY Donn P. Hackmann  
ESCROW HOLDER (Name/Address)

Type Name: Donn P. Hackmann  
Vice President

CITY OF CHESTERFIELD, MISSOURI

BY \_\_\_\_\_  
Director of Planning

APPROVED:

CITY OF CHESTERFIELD

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

N.B. The signatures of the DEVELOPER and ESCROW HOLDER are to be acknowledged before a Notary Public. In the case of a partnership, all partners must sign. In the case of a corporation, the affidavits of the corporation act must be attached.

Approved by City of Chesterfield  
Planning Commission  
[Updated 10/91]

[Revised by Dept. of Planning 3/94]

[FORM E-SUBD]

CORPORATE EXECUTING OFFICIAL'S ACKNOWLEDGMENT

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

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the President of \_\_\_\_\_, a Missouri Corporation and that he executed the foregoing agreement pursuant to the authority given him by the Board of Directors of the aforesaid corporation, and that said agreement was signed and sealed by him in behalf of the aforesaid corporation by authority of its Board of Directors and said \_\_\_\_\_, as President of the said corporation, acknowledged said agreement to be the lawful, free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year above written.

My commission expires \_\_\_\_\_.

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

CORPORATE SECRETARY'S ACKNOWLEDGMENT

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

On this 1st day of October, A.D., 1997, before me appeared Donn P. Hackmann, to me personally known, who, being by me duly sworn, did say that he is the <sup>Vice President</sup> ~~Secretary~~ of the NationsBank N.A., a Missouri Corporation and that Donn P. Hackmann, who executed the foregoing agreement as <sup>Vice</sup> President of the aforesaid corporation is in fact the <sup>Vice</sup> President of that Corporation and was authorized and directed by the Board of Directors of the aforesaid corporation to execute the foregoing agreement.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year above written.

My commission expires Susan M. Depoutot

SUSAN M. DEPOUTOT  
Notary Public - Notary Seal  
STATE OF MISSOURI  
St. Louis County  
My Commission Expires: Aug. 23, 1999

CORPORATE EXECUTING OFFICIAL'S ACKNOWLEDGMENT

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

On this 3 day of October, A. D., 1997, before me appeared Richard J Barry, to me personally known, who, being by me duly sworn, did say that he is the President of RJ Barry Construction, a Missouri Corporation and that he executed the foregoing agreement pursuant to the authority given him by the Board of Directors of the aforesaid corporation, and that said agreement was signed and sealed by him in behalf of the aforesaid corporation by authority of its Board of Directors and said Richard J Barry, as President of the said corporation, acknowledged said agreement to be the lawful, free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year above written.

My commission expires TRACI L. TEAGUE  
NOTARY PUBLIC - STATE OF MISSOURI  
ST. LOUIS COUNTY  
MY COMMISSION EXPIRES OCT. 2, 2000



Traci L. Teague  
Notary Public

CORPORATE SECRETARY'S ACKNOWLEDGMENT

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

On this 3 day of October, A. D., 1997, before me appeared Curtis Barry, to me personally known, who, being by me duly sworn, did say that he is the Secretary of the RJ Barry Construction, a Missouri Corporation and that Richard J Barry, who executed the foregoing agreement as President of the aforesaid corporation is in fact the President of that Corporation and was authorized and directed by the Board of Directors of the aforesaid corporation to execute the foregoing agreement.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year above written.

My commission expires TRACI L. TEAGUE  
NOTARY PUBLIC - STATE OF MISSOURI  
ST. LOUIS COUNTY  
MY COMMISSION EXPIRES OCT. 2, 2000



Traci L. Teague

