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Betsy Reichman

## MISSOURI RECORDING COVER SHEET

**NAME OF DOCUMENT:** DECLARATION WITH RESPECT TO COVENANTS AND  
RESTRICTIONS AFFECTING EASTTOWNE BUSINESS PARK

**DATE OF DOCUMENT:** December 22, 2009

**GRANTOR:** St. Joseph Business Park Corporation, a Missouri corporation

**GRANTOR'S ADDRESS:** 3003 Frederick Avenue  
St. Joseph, MO 64506

**GRANTEE:** ~~N/A~~ To whom it may concern

**GRANTEE'S ADDRESS:** ~~N/A~~ To whom it may concern

**LEGAL DESCRIPTION OF PROPERTY:** See Exhibit 1

**REFERENCE BOOK & PAGE:**

**DECLARATION WITH RESPECT TO COVENANTS AND  
RESTRICTIONS AFFECTING EASTOWNE BUSINESS PARK**

THIS DECLARATION is made as of this 22<sup>nd</sup> day of December, 2009, by ST. JOSEPH BUSINESS PARK CORPORATION, a Missouri Corporation (hereinafter called Declarant).

WHEREAS, this Declaration relates to a tract of land situated in the City of St. Joseph, County of Buchanan, State of Missouri, legally described as set forth in Exhibit 1 hereto, fee simple title to which is vested in Declarant, hereinafter referred to as the Entire Tract; and,

WHEREAS, Declarant proposes to develop said tract as an integrated business development for office, commercial, and industrial purposes, and desires to fix and establish certain covenants, conditions and restrictions upon and subject to which the Entire Tract, or any part thereof, shall be improved, held, leased, sold and/or conveyed.

NOW THEREFORE, Declarant, as owner of the land described in Exhibit 1 hereto, for itself and its successors and assigns, hereby declares as follows:

**ARTICLE 1**  
**Certain Definitions**

1.01 The following terms shall, except where the context otherwise requires, have the respective meanings hereinafter specified.

(a) The term "Building" shall mean any structure which (i) is permanently affixed to the land, (ii) has one or more floors and a roof, and (iii) is bounded by either an open area or the lot lines of a Building Site. A Building shall not include such free-standing structures as billboards, fences, or radio towers, or free-standing structures with interior surfaces not normally accessible for human use, such as tanks, smokestacks, or similar structures.

(b) The term "Building Line" shall have the meaning given to such term in Section 4.01 hereof.

(c) The term "Building Site" shall mean a portion of the Entire Tract on which a Building is erected or on which a Building could be constructed within the terms of this Declaration. If a Building is one of a group of Buildings constructed upon a contiguous portion of the Entire Tract according to an integrated plan approved by the Trustees, then the portion of the Entire Tract utilized for such development may be designated a Building Site for purposes of these Restrictions.

(d) "Common Properties" shall mean and refer to those areas of land shown on any recorded plat or its equivalent, or any area of land designated by recorded document in Buchanan County, Missouri, comprising a portion of the Entire Tract, including Wetland

Mitigation Sites and Riparian Corridors, which are identified thereon as "Common Properties of the Eastowne Business Park Association."

(e) The term "Declarant" shall mean St. Joseph Business Park Corporation, a Missouri Corporation, its successors and assigns, but not any unaffiliated third party who is or becomes a Record Owner.

(f) The term "Floor Area" shall mean the aggregate area of all floors within all Buildings erected on any Building Site. Each floor shall be measured to the exterior side of each outside wall where such floor extends to an outside wall and shall be measured to the interior side of the supporting pillars or walls where such floor does not extend to an outside wall. The term "floor Area" shall not include truck ramps or shipping or delivery areas situated outside any Building, improvement or other structure.

(g) The term "Person" shall mean an individual, corporation, trust, partnership or unincorporated organization.

(h) The term "Record Owner" shall mean the owner at the time of any part or the Entire Tract as shown on the records of the Recorder for the County of Buchanan, State of Missouri, as of the date of any action to be taken by such Record Owner under the provisions of this Declaration, and shall also mean and include any person designated in writing, whether in a lease or otherwise, by any such Record Owner to act in the manner provided herein with complete authority and in the place of such owner in the matter for which action is taken.

(i) The term "Restrictions" shall mean the covenants, conditions and restrictions upon and subject to which the Entire Tract, or any part thereof, shall be improved, held, leased, sold and/or conveyed, all as hereinafter set forth.

(j) The term "Sign" is any writing (including letter, word, or numeral); pictorial representation (including illustration or declaration); emblem (including device, symbol or trademark); flag (including banner or pennant); or any other figure of similar character, which (i) is a structure or any part thereof, or is attached to, painted on or in any other manner affixed to or represented on a Building or other structure, (ii) is used to announce, direct attention to, or advertise, and (iii) is visible from outside a Building. A Sign shall include writing, representation, or other figure of similar character within a Building only when regularly visible from outside the Building. The following shall not be deemed to be a Sign within the meaning as hereinabove set forth: (i) signs of a duly constituted governmental body, including traffic or regulatory devices, legal notices or warnings; (ii) small signs displayed for the direction or convenience of the public, including signs which identify restrooms, freight entrances, parking areas or the like, but these shall also be subject to the approval of the Trustees.

(k) The term "Structure" shall mean any physical object temporarily or permanently affixed to the land or to any Building, except grass, shrubbery, trees or other landscaping or Signs.

(l) The term "Subsidiary" shall mean any corporation at least a majority of the outstanding voting stock of which shall at the time be owned by a Record Owner.

(m) The term "Trustee" shall mean those persons selected and elected as members of the Board of Trustees as hereinafter provided.

(n) The term "Unavoidable Delays" shall mean delays due to strikes, lockouts, acts of God, casualty, boycotts, governmental restrictions, war, national emergency, inability to obtain labor or materials or other cause beyond the reasonable control of the Record Owner or the person claiming under such Record Owners; provided, however, delay due to lack of funds, lack of or delays in obtaining financing or insolvency or bankruptcy proceedings shall not be deemed an Unavoidable Delay.

(o) "Riparian Corridor" shall mean those Common Properties comprising any stream channel/banks, jurisdictional wetlands, wildlife habitat buffer, or detention ponds as delineated in an approved wetland mitigation plan in accordance with a U.S. Army Corps of Engineers permit.

(p) "Wetland Mitigation Site" shall mean those Common Properties that have been set aside and managed in accordance with a U.S. Army Corps of Engineers permit for replacement of waters of the U.S. that were disturbed by the Eastowne Business Park development.

## ARTICLE 2

### General Purposes of Restrictions

2.01 The Entire Tract is hereby subject to the Restrictions for the following purposes:

(a) To encourage development in a manner which is free from danger of fire, explosion, toxic and noxious matter and other hazards, and from offensive noise, vibration, smoke, dust, odorous matter and other objectionable influences.

(b) To protect the Entire Tract against congestion by limiting the bulk of Buildings in relation to the land around them and to one another, and providing for off-street parking and loading facilities.

(c) To promote the proper and most desirable use and development of the various parts of the Entire Tract in accordance with a well considered plan.

(d) To conserve the value of Building Sites and Buildings of Owners in the Entire Tract.

(e) To protect against construction of improvements on Building Sites which are of poor design or quality and to encourage construction of improvements utilizing good quality and attractive material and good architectural and planning standards, compatible with other improvements in the Entire Tract.

(f) To ensure compliance with all applicable federal, state and local laws and regulations.

(g) To provide for the continuing care and maintenance of all land, Buildings and Structures in the Entire Tract so that Eastowne Business Park may be, and continue to be, a location which provides an aesthetically pleasing workplace for Record Owners, their tenants, employees and invitees.

### **ARTICLE 3** **Review and Approval of Improvements**

3.01 No Building or Structure, or other improvement including, but not limited to, any Signs, poles or towers, paved areas or fences shall be erected, placed or altered on any Building Site in the Entire Tract until the plans and specifications therefor, and a plot plan showing the location thereof on the particular Building Site and a landscaping plan shall have been submitted to and approved in writing by the Trustees. In reviewing such plans, specifications, plot plans and landscaping plans (sometimes hereinafter collectively referred to as the "plans and specifications"), the Trustees shall give consideration to conformity and harmony of exterior design with existing Buildings, Structures and other improvements in the Entire Tract, and to the location of existing Buildings, Structures and other improvements on the Building Site, giving due regard to the anticipated use thereof, as the same may affect adjoining Buildings, uses and operations, and as to location of such proposed Buildings, Structures and improvements with respect to topography, grade and finished ground elevation. The Trustees shall also consider the extent to which such plans, specifications, plot plans and landscaping plans are consistent with the purposes set forth in Article 2.01 above. In the event the Trustees fail to approve or disapprove such specific plans and specifications, in writing, within sixty (60) days after the same have been submitted to the Trustees, then such specific plans and specifications, shall be deemed to have been approved in particular; provided, however, that such failure by the Trustees with regard to specific plans and specifications shall not waive, except as to such specific plans and specifications, any express covenants contained herein.

3.02 Neither the Trustees, nor Declarant nor any member, employee or agent of any of them shall be liable to any Record Owner or tenant or to any other party in connection with (i) the approval, disapproval or failure to approve any plans and specifications submitted to the Trustees; (ii) any other action or inaction in connection with the duties of the Trustees pursuant to this Declaration; or (iii) any attempt to enforce or failure to enforce the provisions of this Declaration. Likewise, anyone so submitting plans to the Trustees for approval, by submitting such plans, and any person when he or it becomes a Record Owner or tenant, agrees that he or it

will not bring any action or suit to recover any damages against the Trustees, Declarant or any member, employee or agent of any of them, arising or in any way connected with this Declaration or the approval or failure to approve any plans submitted by anyone.

3.03 After approval of the aforementioned plans and specifications by the Trustees, no deviation shall be made during construction which would materially change the nature or scope of the Building, Structure or other improvements, and no changes in exterior quality or appearance thereof shall be made without prior written approval of the Trustees.

3.04 The Trustees may require all or any part of the following information to be submitted to them in connection with their consideration of any plans and specifications, submittal or application.

(a) Architectural plans for the proposed Building, Structure or other improvement, which shall include outline specifications designating materials and mechanical, electrical and structural systems, and samples of external colors.

(b) A site plan for traffic engineering analysis, showing the location and design of buildings, driveways, driveway intersections with streets, parking areas, loading areas, maneuvering areas and sidewalks designated.

(c) A grading plan and planting plan, including screen walls and fences for analysis of adequacy of visual screening, erosion control, drainage and landscape architectural design.

(d) A site plan showing utilities and utility easements.

(e) Plans for all Signs to be erected, including details of materials, location, design, size, color and lighting.

(f) Plan showing exterior illumination of the Building, as well as parking and loading areas.

(g) A description of the proposed business operation, including a detailed description and evaluation covering (i) the extent of any noise, odor, glare, vibration, smoke, dust, gases, hazard, radiation, radio-activity, liquid wastes or other wastes or hazardous substances that may be created; and (ii) whether or not the proposed operation includes only uses permitted under the terms of any existing zoning ordinances and this Declaration and other applicable laws and governmental regulations, including but not limited to all applicable federal, state and local environmental laws and regulations.

(h) Any other information as may be reasonably requested by the Trustees in order to insure compliance with the covenants contained herein.

3.05 The Trustees shall have the right to approve a variance from conformance to these Restrictions which does not, in the sole reasonable judgment of the Trustees, violate the spirit and intent of these Restrictions.

3.06 Once the Trustees have approved plans and specifications for a Building or other Structure or improvement and such Building or other Structure or improvement is being or has been constructed in conformity with such plans and specifications, the approval shall not be withdrawn and such Building or other Structure shall thereafter be deemed to be in compliance with these Restrictions as then in effect or thereafter amended.

3.07 In no event shall the review and approval by the Trustees of any plans and specifications, or any information submitted in connection therewith, be deemed or construed to be a determination that such plans and specifications are in compliance with all applicable laws, regulations and ordinances, or any of them, nor shall such review and approval relieve the party submitting such plans and specifications from any liability or responsibility in connection with such compliance.

#### **ARTICLE 4** **Building and Setback Lines**

4.01 Except as hereinafter provided, no Building or other Structure shall at any time be erected on a Building Site nearer than fifty feet ( 50') to the right-of-way line of any street adjoining the Building Site. Likewise, no Building or other Structure shall be nearer than thirty feet (30') to any side boundary line or rear boundary line of such Building Site, except as provided herein. The foregoing are each designated as a Building Line.

4.02 No parking or loading areas nor vehicle maneuvering areas shall at any time be constructed or maintained nearer than twenty feet (20') to the right-of-way line of any street adjoining the Building Site nor nearer than ten feet (10') to any other side or rear boundary line of a Building Site, but the same may be permitted on other portions of a Building Site between the property lines and the Building Lines.

4.03 Incidental improvements, such as flagpoles, light standards, electric substations, sign standards, meter pits, fire hose houses, sidewalks, patios and similar accessory structures, may be permitted between property lines and Building Lines upon the prior written approval of the Trustees.

4.04 Except as provided above, the area between property lines and Building Lines shall be used for landscaped areas, lawn, driveways to parking and loading areas, and walks in accordance with other provisions of this Declaration.

#### **ARTICLE 5** **Parking and Loading**

5.01 No parking of automobiles, trucks, trailers, or other vehicles will be permitted on any public or private streets in the Entire Tract, and it will be the responsibility of each Record Owner to provide sufficient parking and loading facilities on its Building Site in compliance with at least the minimum standards set forth herein, and each Record Owner shall be responsible for compliance with the provisions of this Article by its employees, customers, visitors, invitees, and motor carriers serving the Building Site. Each Record Owner shall maintain on its Building Site paved areas, or shall keep available land for future permitted paved areas, at least as set forth below:

(a) Four (4) parking spaces per thousand (1,000) square feet of Floor Area devoted to office, administrative, or similar purposes ancillary to the light industry operated on the Building Site.

(b) Four (4) parking spaces per thousand (1,000) square feet of Floor Area devoted to retail or commercial purposes ancillary to the light industry operated on the Building Site.

(c) Two (2) parking spaces per thousand (1,000) square feet of Floor Area devoted to distribution or manufacturing purposes.

5.02 No loading dock or loading door used for the frequent receipt or shipment of goods or materials shall be erected fronting on any public street without the prior written permission of the Trustees in each case. Any loading docks or loading doors so permitted shall be constructed so that any exposed sides of a loading space so created shall be appropriately and effectively screened by landscaping or otherwise and to the extent considered reasonable by the Trustees. The front of the loading space so created shall be screened by landscaping or berms so as to minimize the view thereof from public streets and adjacent Building Sites as determined by the Trustees.

5.03 All portions of any Building Site used for driveways, parking areas and loading areas shall be paved with a dust-free, all-weather surface at least equal to the required specifications of the City of St. Joseph and shall be kept by the Record Owner in a good condition and state of repair at all times.

5.04 With respect to any Building devoted to industrial purposes and involving (in the judgment of the Trustees) the frequent loading and unloading of products and materials at the building Site on which such Building is erected, the Record Owner shall provide, or at the option of the Trustees may reserve land for future provision, off-street loading space on the basis of space for loading and unloading one (1) truck for the first ten thousand (10,000) square feet of Floor Area devoted to such industrial purposes and space for loading and unloading one (1) additional truck for each succeeding twenty thousand (20,000) square feet of Floor Area devoted to such industrial purposes. Each truck loading space shall have a minimum horizontal width of twelve feet (12'), a minimum depth of seventy-two feet (72') and a minimum vertical clearance of fourteen feet (14').



**ARTICLE 6****Building Construction**

6.01 All Buildings erected on a Record Owner's Building Site shall be masonry construction or its equivalent, or better as determined by the Trustees.

6.02 Exterior walls of Buildings shall be finished with face brick, stone, modern metal paneling with enduring finish, glass, concrete panels painted or finished with a permanent and attractive surface, or their equivalent, as determined by the Trustees. With the written permission of the Trustees, exterior walls of Buildings not facing streets may be constructed of painted concrete blocks, provided returns of twenty feet (20') are constructed from walls facing streets of the same material as the material on walls facing streets.

6.03 The improvements on each Building Site shall include a flagpole flying the American flag or the flag of national origin of the occupant of the Building (after Trustees' approval of the same) on a Building Site.

6.04 A portion of the exterior of the primary Building on a Building Site shall be illuminated according to a plan approved in writing by the Trustees. Said exterior illumination shall include provisions for aesthetic illumination of the office area or the Building or other appropriate architectural features, as well as appropriate illumination of parking and driveway areas, all as determined by the Trustees in conjunction with said approval.

6.05 In the event that any Building or other improvement on a Building Site is to be constructed or otherwise improved with an exposed metal roof, such as a standing seam metal roof or similar installation, the Trustees may require that said roof be finished with an enduring finish in a color approved by the Trustees to achieve an aesthetically pleasing appearance of said roof from the viewpoint of other portions of the Entire Tract.

**ARTICLE 7****Landscaping and Maintenance  
of Grounds and Buildings**

7.01 The maintenance of all land, Buildings, Structures, Signs and other improvements in the Entire Tract is the continuing responsibility and obligation of each Record Owner thereof and each Record Owner covenants and agrees with the other Record Owners and the Trustees to keep and maintain the same in accordance with the provisions of this Declaration. The standards of maintenance of all Buildings, Structures, Signs and other improvements in the Entire Tract shall be determined by the Trustees in their sole reasonable judgment and shall be based upon the terms and provisions of these Covenants and the intent of these Covenants to create and maintain a modern and prestigious industrial park consistent with the provisions of Article 2 hereof.

(a) All land areas between required Building Lines and property lines (including non-paved portions of street rights-of-way adjoining the same) of a Building Site which has been improved with a Building, not used for drives, walks or parking areas, must be attractively landscaped and maintained in a neat and attractive manner as lawn and landscaped areas. Notwithstanding the foregoing, the responsibility of a Record Owner relating to the nonpaved portions of street rights-of-way adjoining Building Sites shall be limited to the maintenance of landscaping originally installed by Declarant on said rights-of-way, as provided in Article 7.04 below. Weeds and undergrowth must be kept mowed to a height of not more than twelve inches (12") on all other unimproved land areas. Notwithstanding the foregoing, unimproved land areas may, with the written permission of the Trustees, be planted in an agricultural crop such as wheat, alfalfa, milo, soybeans, wild flowers, native grasses or other low growing crop pending development of such land. Common areas shall be kept in a clean and orderly condition as determined by the Trustees and in accordance with the provisions of Article 16 hereof.

(b) It shall be the responsibility of each Record Owner to conduct its business in a manner which will not result in the generation, storage or accumulation of trash, debris or litter on its or other Building Sites in amounts that would be reasonably objectionable to other Record Owners, or as provided in Article 8.02 hereof.

(c) Exterior surfaces of Buildings, Structures and other improvements, including all paved areas, must be kept in a good condition and state of repair and otherwise in conformity with the intent of these Restrictions. Said exteriors shall be maintained and renewed or replaced as necessary to keep the same consistent with the plans therefore originally approved by the Trustees. Color or finish of exterior surfaces other than by normal fading shall not be changed except as the same may be approved by the Trustees.

7.02 Improved Building Sites shall be landscaped in accordance with a plan submitted to and approved in writing by the Trustees; and no tenant or Record Owner shall occupy the Building or Structure until such plan, together with adequate provisions for implementing the same, has been so approved. The plan shall include the use of conifers and tall evergreens, particularly in the screened areas defined in Article 5.02 above, as well as in other areas of the site that require plantings. The Trustees, in their sole reasonable judgment, may require the Record Owners to also provide groupings of conifers and tall evergreens in areas between property lines and Building Lines along streets and abutting Common Properties to provide year round screening in these areas.

Minimum size of trees to be installed on improved Building Sites at the time of initial or replacement planting shall be as follows:

Shade Trees - 2-2 1/2" calipers  
 Flowering and ornamental trees - 6-8' high  
 Conifers - 5-6' high  
 Upright evergreens - 5-6' high

7.03 It is the intent of Declarant that landscaping shall be provided in a manner and to an extent to properly complement the Building, Structures and other improvements on each Building Site and to properly screen parking and loading areas. Initial planting, exclusive of sodding, seeding, and lawn sprinkler system, shall be included at a cost or value of not less than two percent (2 %) of the estimated cost of the Building, Structures and other improvements up to \$250,000; and one percent (1%) of the estimated cost over \$250,000 and up to \$500,000; and one-half percent (1/2 %) for any cost or value over \$500,000.

7.04 The landscaping for each Building Site and public rights-of-way adjacent thereto, having been installed, shall be maintained by the Record Owner or tenant of the Building Site in a neat, attractive, and adequate manner. Maintenance of the landscaping for each Building Site shall include replacement of all plant material included in the approved landscaping plan, as well as replacement of any street trees on or adjacent to a Building Site originally provided by Declarant.

7.05 The approved plan for landscaping any Building Site may not be altered without prior written approval by the Trustees.

7.06 Each Record Owner and tenant shall keep its premises, Buildings, Structures, Signs and other improvements and appurtenances in a safe, sightly, sanitary, clean, neat and wholesome condition, and shall cause the same and the operation of its business to comply in all respects with all applicable governmental, health and police requirements. Each Record Owner and tenant shall remove at its own expense any litter, debris, waste, rubbish or trash of any character which may be produced in connection with the operation of its business or which may accumulate on its property and shall keep unlandscaped areas mowed as required by these Restrictions. Rubbish and trash shall not be disposed of on any part of the Entire Tract by burning in open fires. Use of any incinerators shall only be with written approval of the Trustees. In no event shall the Trustees or the Declarant have any responsibility for, or have any liability to any party in connection with, the failure of any Record Owner or any tenant to comply with the requirements of this Article 7.06.

7.07 Each Record Owner shall be responsible for the implementation and maintenance of an erosion control program on its Building Site. This program shall be designed to ensure that, to the greatest extent deemed practical by the Trustees, measures shall be taken to minimize water discharge from a Building Site onto the Common Properties and to regulate such discharge in a manner to prevent erosion of banks or silting in of any storm water retention facilities that may be located on said Common Properties.

7.08 In the event any Record Owner or tenant does not commence compliance with the provisions of this Article within ten (10) days after written notice by the Trustees, and thereafter proceed with due diligence to effect prompt compliance, the Trustees and their agents, representatives or employees shall have the right, but not the obligation, to enter on such Building Site and perform the work specified in such notice and the Record Owner or tenant

shall pay the cost thereof upon demand. If the cost of such work is not paid within ten (10) days after demand is made therefor upon such Record Owner or tenant, it shall become a lien on such land the same as and enforceable to the extent provided for assessment in this Declaration.

## **ARTICLE 8**

### **Outside Storage**

8.01 No outside storage of any type, including but not limited to materials, supplies, equipment, vehicles, finished or semi-finished products, raw materials or articles of any nature shall be stored or permitted to remain on any Building Site outside of the Building or Buildings constructed thereon, without the written approval of the Trustees unless such storage is required by law. Any permitted storage or storage required by law shall be reasonably screened and/or fenced subject to the approval of the Trustees, and shall be continued only in accordance with the terms of the Trustees' approval.

8.02 Facilities for storage of trash, debris, litter, waste and rubbish shall be maintained within a screened area in closed metal or plastic containers of a type approved by the Trustees in writing and only in locations approved by the Trustees in writing.

8.03 The bulk storage of any liquids or materials on the outside of Buildings shall be permitted only in locations, in a manner and to such extent as may be approved in writing by the Trustees.

## **ARTICLE 9**

### **Minerals**

9.01 No oil or gas drilling, oil development, mining or quarrying operations of any kind shall be permitted upon the Entire Tract, or any part thereof, nor shall oil wells, gas wells, tanks, tunnels, mineral excavations or shafts be permitted upon the Entire Tract or any part thereof without prior written approval of the Trustees.

## **ARTICLE 10**

### **Signs**

10.01 No Sign shall be erected, placed or otherwise installed upon a Building Site or affixed to a Building, Structure, or other improvement erected on a Building Site until the plans for such Sign shall have been approved in writing by the Trustees. All signs, whether included or excluded from the definition of such term in Section 1.01 (j) hereof (except such Signs as may be wholly within a building and not visible from outside thereof) shall be conservative and in good taste, shall be identification signs as distinguished from promotional signs or billboards, and shall comply with the general purposes of this Declaration as set forth in Section 2.01 hereof. Flashing or moving Signs shall be prohibited. Product or service replicas or models shall be prohibited unless the same are conservative and in good taste, are for identification purposes as distinguished from promotional purposes, and shall comply with the general purposes of this

Declaration as set forth in Section 2.01 hereof. Declarant, or its agent, or authorized agents of Record Owners, shall be permitted to erect a reasonable number of Signs, which shall be conservative and in good taste, for the purpose of identifying the development and advertising the availability of Buildings and Building Sites therein, but the same shall only be permitted as specifically authorized by the Trustees.

## **ARTICLE 11**

### **Performance Standards**

11.01 No operation shall be conducted on any Building Site or any part thereof which results in (i) the emission of noise, vibration, smoke, fumes or gases, dust, dirt, fly ash or odor; or (ii) the generation, emission, storage, discharge or disposal of any hazardous or toxic waste or substance; to the extent any of the above are in violation of any applicable federal, state or local law, ordinance or regulation.

11.02 It shall be the sole responsibility and obligation of each Record Owner to ensure that all operations conducted on any Building Site owned by such Record Owner are at all times in compliance with all applicable federal, state and local laws, regulations and ordinances, including but not limited to those relating to environmental matters such as the generation, emission, storage, discharge or disposal of hazardous or toxic waste or substances. Each Record Owner agrees to indemnify and hold harmless the Declarant and the Trustees from and against any and all claims, suits, proceedings, liabilities, losses, damages and expenses (including but not limited to reasonable attorneys fees) which may be asserted or brought against Declarant and/or Trustees, or which Declarant and/or Trustees may suffer or incur, in connection with any failure by such Record Owner to fully comply with the foregoing obligation.

## **ARTICLE 12**

### **Right to Repurchase**

12.01 If, after the expiration of two (2) years from the date of conveyance of any Building Site within the Entire Tract, any Record Owner (or anyone claiming under such Record Owner) shall not have begun in good faith (subject, however, to Unavoidable Delays) the construction of an acceptable and approved Building upon such Building Site for the uses permitted hereunder, and thereafter, with diligence, prosecuted such construction to completion in strict compliance with the provisions hereof, Declarant may within a two (2) year period thereafter, at its option, require the Record Owner to reconvey the Building Site to Declarant, free and clear from all liens, charges, encumbrances, tenancies and other such title exceptions except those in existence at the time of such original conveyance (collectively, the "Permitted Exceptions"), and upon such reconveyance, Declarant shall refund to the Record Owner the purchase price plus any reasonable costs incurred by Record Owner in preparing the Building Site for construction pursuant to specific plans and specifications previously approved by the Trustees pursuant to these Restrictions and enter into possession of said Building Site. In connection with such reconveyance, Declarant may require the Record Owner to furnish and pay for an ALTA Owner's Policy of Title Insurance - Form B in the amount of said purchase price

and containing no exceptions other than the Permitted Exceptions. At any time Declarant in its sole discretion may extend, in Writing, the time in which such Building may be commenced and/or completed. Such right to repurchase shall be an additional material consideration to Declarant for the conveyance of any Building Site. A notice of such right to repurchase or an agreement with respect to such right may be included in contracts for sale or in deeds by which Declarant conveys title, but the failure in any particular transaction so to include either the notice or the agreement or both shall not deprive Declarant of such right without specific recitation to such effect in such contracts and deeds. Declarant shall execute any release of this right to repurchase reasonably requested by a Record Owner upon completion of an acceptable and approved building.

### **ARTICLE 13** **Utility Connections**

13.01 All public utility connections and installations of wires and conduits to Buildings shall be made underground from the nearest available power source. No transformer, electric, gas or other meter of any type or other apparatus shall be located on any power pole but the same shall be placed on or below the surface of the land or hung on the outside of a Building on a wall not facing a street, and where placed on the surface of the land shall be adequately screened and fenced, and all such installations shall be subject to prior written approval of the Trustees.

13.02 The provisions of this Article 13 shall not operate to prohibit or modify overhead electrical distribution lines of Kansas City Power and Light Greater Missouri Operations across the Entire Tract existing as of the date of this Declaration.

### **ARTICLE 14** **Subdivision**

14.01 No Building Site shall be subdivided, nor shall any portion be separately sold, leased or rented, unless and until a plan for such proposed subdivision or separate sale, leasing or renting, shall have been submitted to and approved by the Trustees in writing. Nothing herein shall be deemed to require or obligate the Trustees to approve any such plan. Any Record Owner submitting any such plan shall be responsible at its sole cost for ensuring that the same complies with all applicable governmental regulations (including the ordinances of the City of St. Joseph) and for obtaining all necessary governmental approvals and consents.

### **ARTICLE 15** **Certain Utility Facilities Excepted**

15.01 Certain electrical facilities, including electrical substations are exempt from certain otherwise common obligations under these covenants, as provided below.

(A) As defined in Section 1.01(A), "Building" shall not include any equipment or control enclosures as commonly used in electrical substations.

(B) As provided for by Section 1.01(J) and Section 10 or elsewhere, no prohibition upon the display or use of signs shall apply to any sign posted on or in an electrical substation where such sign is functional in that it promotes safety, provides emergency contact information, identifies equipment or is otherwise useful in the operation of a substation.

(C) As provided for in Section 3.01, 3.02 and 3.03, before initial construction of or before substantial modification to any existing substation, the owner of such lots shall submit an overall plan showing the general design, including landscaping elements to the Trustees. While the lot owners shall attempt to accommodate the Trustees' reasonable requests regarding design, including landscaping, the lot owner, applying commonly applicable standards complying with applicable codes shall have the final say on every design element relating to operational reliability and safety or which would place an undue financial burden upon the general ratepayers. The Trustees may not condition any approval upon any act or omission that would require the lot owner to violate any general rule, regulation, law or tariff or violate any duty owed ratepayers or the public in general. As provided in Section 3.04, the lot owner will supply drawings showing the information requested in subsection (c), (d), (f) and (h) only.

(D) As provided for in Section 4.01, substation tracts shall have an outer perimeter fence set back from the lot on the front lot line sufficient to provide temporary parking by utility crews and contractors. Otherwise, the perimeter fence shall set back at least three (3) feet from the south and east property lines, and thirty (30) feet from the north and west property lines. No building setbacks shall apply to substations, electrical equipment, or equipment enclosures within the substation perimeter fence, except as required by applicable safety codes.

(E) As provided for in Section 4.02 and 5.01, lots housing an electrical substation shall not be required to provide any paved parking areas or any number of parking stalls. However, the substation shall accommodate off-street parking of vehicles routinely expected for service and other routine needs. Occasional and emergency parking on the street is allowed.

(F) Lots housing an electrical substation shall have a concrete apron. However, the substation pad and drive shall be gravel, in good grade, condition and quantity.

(G) Nothing provided for in Section 6.01 and 6.02 regarding the construction of buildings and exterior wall requirements shall apply to substation equipment or control enclosures.

(H) Due to safety concerns, the requirement imposed in Section 6.03 shall not apply.

(I) The requirements requiring "enduring finish" imposed by Section 6.05 and elsewhere shall not apply to equipment or control enclosures part of a substation.

(J) With respect to the landscaping requirements imposed by Sections 7.01, 7.02, 7.03 and 7.04, the lot owner of a substation:

1. may utilize wild flowers and natural grasses in the area outside of the fence and is not required to utilize any landscaping within the fence or underneath any overhead lines.
2. may use its own employees or its own contract crews to perform routine landscape maintenance, including the mowing of any non-native grasses and flowers.
3. will work with the Trustees to implement a low-maintenance, reasonably priced landscape plan including, where appropriate, shrubbery, trees and flowers; and
4. will substantially complete the work called for in the plan within two growing seasons of substation construction.
5. is not subject to monthly or annual fees for landscape maintenance performed on lots housing electrical substations.

The landscaping obligations contained in this Section and Article 7 shall not be construed to impose any landscaping requirements on a lot owner of a substation that would jeopardize the safety of individuals or result in non-compliance with any applicable safety regulations. Nothing in these covenants obligate the installation or use of irrigation equipment on a substation tract. Due to significant safety concerns and the risk of life, notwithstanding contrary language in Section 7.08, no person shall enter the gated or fenced portion of an electrical substation without the consent of the substation owner.

(K) A lot containing an electrical substation shall be allowed to store a reasonable amount of necessary materials in a neat and tidy fashion, for a reasonable amount of time. Any storage facilities erected and maintained on an on-going basis shall be neat and tidy and shall conform to the overall appearance of the substation or better. The foregoing notwithstanding the provisions contained in Section 8.01 and 8.02 or elsewhere.

(L) The prohibitions generally applicable in:

1. Section 8.03 shall not apply to fluids normally used and stored in the operation of an electrical substation, specifically including without limitation, transformer oil and diesel fuel.
2. Section 9.01 shall not apply to tanks and vessels used in the operation of an electrical substation, specifically including without limitation, transformers and diesel or propane fuel tanks.

(M) Section 13.01 shall not apply to the owner of any lot containing an electrical substation.

## ARTICLE 16



### **The Board of Trustees**

16.01 There hereby is established a Board of Trustees, for all purposes set forth in these Restrictions, which shall consist of four members. Declarant hereby appoints Ted Allison, David Bradley, Terry Steinbecker, and Patt Lilly as the initial Board of Trustees, the appointment to be effective upon the recordation of this Declaration in the Office of the Recorder of Deeds for Buchanan County, Missouri, who shall hold office until their respective successors are appointed and qualified, unless sooner removed pursuant hereto.

16.02 So long as fifty percent (50%) or more of the acreage subject to these Restrictions (exclusive of public rights-of-way and Common Properties) is owned by Declarant or by any subsidiary or other affiliate of Declarant, the four (4) members of the Board of Trustees shall be appointed by Declarant and shall include one representative of a Record Owner other than Declarant. So long as twenty percent (20%) to forty-nine percent (49%) of the acreage subject to these Restrictions is owned by Declarant, three (3) members shall be appointed by Declarant and one (1) member shall be elected by the other Record Owners. So long as five percent (5%) to nineteen percent (19%) of the acreage subject to these Restrictions is owned by Declarant, one (1) member shall be appointed by it and three (3) members shall be elected by the other Record Owners. If less than five percent (5%) of the acreage subject to these Restrictions is owned by Declarant, all of the members of the Board of Trustees shall be elected by vote of the Record Owners as provided in Article 15.03 below.

16.03 Subject to the provisions of Article 15.02, in all elections for members of the Board of Trustees, every Record Owner shall have the right to vote in person or by proxy, having one (1) vote for each full acre owned, and for each fraction of an acre owned in excess of one-half (1/2) acre, for as many persons as there are Trustees to be elected, or to accumulate said votes and give one (1) candidate as many votes as the number of Trustees multiplied by the total number of full acres and fractional acres in excess of one-half (1/2) of an acre shall equal, or to distribute such votes on the same principal among as many candidates as a Record Owner shall see fit.

16.04 The term of office of the members of the Board of Trustees shall be for two (2) years and shall run from January 1st of the first year through December 31st of the second year or until their successors are elected and/or appointed and qualified; provided, however, that upon written notice by the Record Owners of over fifty percent (50%) of the square foot land area of the Entire Tract (exclusive of public rights-of-way and Common Properties) the term of any Trustee shall automatically terminate and the unexpired term shall be filled in accordance with provisions of this Article within thirty (30) days from the date of said termination.

16.05 Three (3) members of the Board of Trustees shall constitute a quorum, and actions of the Board shall be by majority vote of those members in attendance at any meeting at which there is a quorum present. The Board of Trustees shall promulgate operating procedures for the conduct of its affairs, which procedures shall provide for written notice to all Trustees of meetings, given at least three (3) days prior to any such meeting, provided that such notice may

be waived. However, if all Trustees severally or collectively consent in writing to any action to be taken by the Trustees, such consents shall have the same force and effect as a unanimous vote of the Trustees or a resolution unanimously passed by the Trustees at a meeting duly held, and may be hereinafter referred to as such. Such consent shall be filed with the minutes of the meeting of the Trustees.

16.06 The Board of Trustees shall provide for the enforcement of the Restrictions herein set forth, shall establish policies and procedures for the review and approval of plans and the like required by the Restrictions, shall have the right to provide for any improvements or maintenance of improvements, or services, which they may deem necessary or desirable, shall have the power as hereinafter provided to levy assessments, shall set dates for the election of Trustees when such elections are required pursuant to this Declaration, and shall otherwise establish such procedures and policies as they may deem necessary or desirable to provide for the general welfare of the Entire Tract, in accordance with the spirit and letter of the Restrictions set forth in the Declaration.

16.07 Without limiting the generality of the foregoing, the Board of Trustees shall have the following powers and duties:

(a) To enforce, either in the name of one or more Trustees, or in the name of any Record Owner within the Entire Tract, any and all Restrictions herein contained. The expenses and costs, if any, in such proceedings shall be paid out of the funds of the Trustees raised by assessments or otherwise.

(b) To provide for the plowing or removal of snow and ice from sidewalks and streets.

(c) To plant, care for, protect and replant trees, shrubbery, grass and other improvements on all streets, Common Properties and in other public places.

(d) To mow, care for and maintain Common Properties in front of vacant or other property and to cut and remove weeds and grass from such vacant property or other places; to pick up and remove therefrom loose material, trash and rubbish of all kinds and to do such other things necessary or desirable to keep vacant and unimproved property neat in appearance and in good order.

(e) To provide and maintain such lights as the Trustees may deem advisable on streets, parks, gateways, entrances or other features, Common Properties and in other public or semi-public places.

(f) To exercise such control over streets, sidewalks, parks, Common Properties and pedestrian ways as they may lawfully do including the cleaning of the same, and the erection and maintenance of street signs.

(g) To acquire and hold the title in the name of the Board of Trustees, or the name of one of the Trustees or a nominee or otherwise, to such real estate and easements as may be reasonably necessary to carry out purposes of this Declaration, or to the Common Properties, and to grant such easements over, upon, under or across the Common Properties as may be reasonably necessary to carry out such purposes, and to pay taxes on such real estate as may be so used by it, as well as such taxes as may be assessed against land in public or semi-public places or the Common Properties.

(h) To provide for grounds and lawn maintenance, snow and ice removal, trash removal or other services to be performed for Record Owners on their Building Sites, all of said services to be billed to and paid for by said Record Owners. If the Trustees so determine, said services may be mandatory on all Building Sites and shall be according to a degree and specification consistent with the intent of these Restrictions. Said services may be performed by employees of the Trustees or their agents, or may be performed under contract with third parties, or both. The charges for such services shall be comparable to prevailing charges for similar services in the area and shall be equitably billed to each Record Owner. Said billings shall be in a manner determined by the Trustees and may include reasonable charges for administration and supervision, as well as for other direct and indirect costs approved by the Trustees. The Trustees may, in their sole discretion, exempt any Record Owner from the obligation to accept such services. All charges billed in accordance with this Section shall be collectible in the manner called for regarding payment of assessments and shall constitute liens as hereinafter provided.

(i) Implement, maintain and manage any approved Wetland Mitigation Sites that are located within the Common Properties pursuant to a U.S. Army Corps of Engineers permit.

(j) Implement, maintain and manage any Riparian Corridors that are located within the Common Properties pursuant to a U.S. Army Corps of Engineers permit.

(k) such other powers as may be set forth elsewhere in these Restrictions.

16.08 The Trustees shall have power to levy assessments upon and against the Record Owners and against the Building Sites themselves for the purpose of carrying out the general duties and powers of the Board of Trustees set forth in this Article and elsewhere in these Restrictions. In making such assessments, the Trustees may levy a charge of not more than \$.005 per square foot of land area in the Entire Tract in anyone (1) calendar year against the Record Owners of property and the Building Sites themselves within the Entire Tract, apportioned to and against such property and Building Sites according to the square foot area of land contained therein. Such maximum amount may not be exceeded, provided, however, that such maximum amount shall be changed, if the change results in an increase, but not if the change results in a decrease, on the fifth (5th) anniversary of the date of the recording of this Declaration in the Recorder of Deeds of Buchanan County, Missouri, and on each successive fifth (5th) anniversary thereof, to an amount in each case, which is the product of one-half cent ( $1/2\phi$ ), multiplied by a fraction, the numerator of which shall be the Consumer Price Index for All Urban Consumers,

All Items (1982 - 84 = 100) published by the Bureau of Labor Statistics, United States Department of Labor ("CPI-U"), or its successor or other comparable index in the event of the discontinuance of CPI-U, for June of the calendar year in which each fifth (5th) anniversary falls, and the denominator of which shall be the CPI-U as defined above for December, 2007. Any charge pursuant to Article 7.09 or 16.07 (h) enforceable as an assessment lien shall not be limited as herein set forth, but shall be in the amount as set forth in said Articles. All assessments shall be made in the manner and subject to the following provisions.

(a) Notice of the levying of all assessments shall be given by mail, addressed to the address for such Record Owner as set forth in the deed from Declarant conveying title to the Building Site in question or to such other address as the Record Owner may have given notice pursuant to Section 19.01 hereof and deposited in the United States mail with postage prepaid, or may be given by posting a brief notice of the assessment upon the Building Site itself.

(b) Every assessment shall become due and payable upon the date set forth in the notice thereof, which shall not be less than thirty (30) days after such notice. From and after the date when said payment is due, the same shall bear interest until fully paid at a rate of 10% per annum or the maximum rate permitted under Missouri law, whichever is lower, and such payment with accrued interest shall constitute a lien on the affected property which shall continue in full force and effect until the amount is fully paid. At any time after the passage of the resolution (whether at a meeting or by consent) levying an assessment and its entry in its minutes, the Board of Trustees or anyone of the Trustees acting in behalf of the Board, may, in addition, execute and acknowledge an instrument reciting the levy of the assessment with respect to anyone or more Building Sites and cause the same to be recorded in the Buchanan County, Missouri Recorder's office; and the Board of Trustees may upon payment cancel or release anyone or more Building Sites from the liability of the assessment (as shown by recorded instrument) by recording (at the expense of the affected Record Owner) a like instrument releasing such assessment with respect to any property affected. The Trustees shall cause to be noted from time to time in the minutes of their proceedings or in other appropriate records the payments made on account of assessments. All statutory laws and rights for enforcing and collecting general taxes in the State of Missouri, now or hereafter existing, are conferred upon the Trustees, and the Trustees may bring suits to collect such assessment or enforce such liens. Such liens shall continue for a period of three years from the date of delinquency, unless within such time suit shall have been instituted for the collection of the assessment, in which event the lien shall continue until termination of the suit and satisfaction of the judgment resulting therefrom.

16.09 In addition to the annual charges permitted in Section 15.08 above, the Trustees shall have the right to levee special assessments on all of the Building Sites in the Entire Tract for the sole purpose of reconstruction, repair or replacement of any improvements within the Common Properties of Eastowne Business Park when the same is required to maintain the quality and character of the Common Properties, in the judgment of the Trustees. Such special assessments shall only be levied after at least thirty (30) days notice to each Record Owner specifying the nature and amount of such proposed special assessment and the approval of the

same by vote representing approval by the Record Owners of a majority of the acreage in the Entire Tract. After approval as set forth herein, special assessments shall be allocated on a per square foot basis and shall be subject to collection in the same manner as annual charges set forth in 16.08 above.

16.10 The Board of Trustees shall have all powers and authority necessary or desirable to carry out the spirit and letter of the Restrictions set forth in this Declaration even though such powers and authority are not specifically granted in this Declaration.

16.11 The Board of Trustees shall have one or more bank accounts in which shall be deposited the funds of the Board of Trustees, whether raised by assessment or otherwise, and requiring such signatures for withdrawal as the Board of Trustees shall determine. The Board of Trustees shall keep books of account relating to the collection and disbursement of funds.

16.12 The Board of Trustees may, at any time, and from time to time, create and terminate an association or associations to be composed of Record Owners or their tenants or both in the Entire Tract. The association shall be incorporated or unincorporated as the Trustees shall determine, shall have such duration and such articles and bylaws as the Trustees shall determine, and shall have such duties, powers and responsibilities as the Trustees shall determine and assign to it, including, but not limited to, such of the powers and duties of the Trustees as are set forth in this Article.

## **ARTICLE 17**

### **Common Properties**

17.01 Common Properties, as the same may be vested in Eastowne Business Park, shall be held by the Trustees for the use and benefit of all Record Owners and their employees and invitees in the Entire Tract, and others as may be determined by the Trustees. The Trustees may hold the Common Properties in fee simple, by easement, or in any other manner approved by the Trustees.

17.02 The Trustees shall establish such rules and regulations for the use of Common Properties by Record Owners and others as they shall deem to be appropriate and shall have the right to enforce the same with the same authority granted by these Covenants.

17.03 The Trustees shall establish standards of maintenance for the Common Properties which shall be consistent with the intent of these Restrictions and shall maintain the same in accordance with such standards.

17.04 The Trustees shall have the right to enter into contracts with the City of St. Joseph, State of Missouri or other appropriate public bodies for the maintenance, use, control, development, and operation of the Common Properties, all in the sole discretion of the Trustees. The rights referred to in this Article may include conveyance by easement, contract, or in fee simple of all or any part of the Common Areas as determined by the Trustees.

**ARTICLE 18****Additional Land to be Made Subject Hereto**

18.01 So long as any existing Record Owner's costs or rights are not materially adversely affected thereby, Declarant, from time to time, shall have the right at any time before it has conveyed all of the land then subject hereto to render other lands also subject and subservient to the Restrictions, if such land is contiguous, adjoining or adjacent to the Entire Tract or some point thereof, or if separated from the Entire Tract only by a dedicated street, by executing, delivering to the Board of Trustees, and recording a supplement to the Restrictions stating:

- (a) A description of the land to be added and made subject to the Restrictions.
- (b) A statement that Declarant is the owner in fee simple of such land; or, in lieu thereof, a statement that all persons joining in such supplement constitute the entire fee simple ownership of such land.
- (c) A statement of any additional restrictions or burdens to which the land to be added shall be subjected, if any, and a statement of any restrictions or provisions of the Restrictions which shall in whole or in part not be applicable to such land to be added, or which shall be applicable in modified form, if any; provided, however, that such land to be added must be subject to assessment as herein provided.

18.02 Following the execution, delivery and recording of such supplement, but subject to its terms, such land to be added and the then or future owners thereof shall in all respects be fully subject to the Restrictions and all rights, privileges, obligations and the like set forth herein, except as otherwise provided in such supplement, including, but not limited to, the right to serve as and elect members of the Board of Trustees and the payment of assessments as though said land had originally been included in and subject to these Restrictions.

**ARTICLE 19****Enforcement and Duration**

19.01 The conditions, covenants, restrictions and reservations herein contained shall run with the land, and be binding upon and inure to the benefit of Declarant and the now and future Record Owners of every part of the land now or hereafter covered by the provisions hereof; shall create mutual, equitable servitudes upon each Building Site in favor of every other such Building Site; and shall create reciprocal rights and obligations between and among Declarant and the respective Record Owners and tenants of all Building Sites and privity of contract and estate between Declarant and all grantees of said Building Sites, their heirs, successors and assigns.

19.02 These conditions, covenants, restrictions and reservations may be enforced as herein provided and by Declarant, any Record Owner, or any tenant with approval of the Record Owner of the Building Site of which the tenant occupies in whole or in part, as well as by the

Trustees acting on behalf of Declarant and Record Owners, and violation of any conditions, covenant, restriction or reservation herein contained shall give to Declarant, the Trustees, the Association and to the Record Owners or any of them, the right to bring proceedings at law or in equity against the party or parties violating or attempting to violate any of said covenants, conditions, restrictions and reservations; to enjoin them from so doing; to cause such violation to be remedied; or to recover damages resulting from any such violation. Notwithstanding the foregoing, in no event shall Declarant be subject to any liability under these Restrictions in connection with the condition of any part of the Entire Tract as of the date of the recording hereof, nor shall the Trustees, the Record Owners, the Association or any tenants or occupants of any of the Buildings have the right to bring any suit, action or proceeding against Declarant under these Restrictions in connection with any such condition existing as of the date of recording hereof or as of the date of any conveyance, transfer or dedication of any part of the Entire Tract by Declarant. Every act, omission to act, or condition which violates the covenants, conditions, restrictions and reservations herein contained shall constitute a nuisance and every remedy available at law or in equity for the abatement of public or private nuisances shall be available to Declarant, the Record Owners, the Association and the Trustees. In any legal or equitable proceeding to enforce the provisions hereof or to enjoin their violation, the party or parties against whom judgment is entered shall pay the reasonable attorneys' fees of the party or parties for whom judgment is entered in such amount as may be fixed by the court in such proceeding. Such remedies shall be cumulative and not exclusive.

19.03 It is understood that from time to time Declarant or other Record Owners may dedicate portions of the Entire Tract to various governmental bodies to be used as public streets, parks, or for similar purposes essential to the use and development of the Entire Tract. It is further understood that Declarant may also from time to time designate certain portions of the Entire Tract to be used for private roads or Common Properties, without dedication to governmental bodies. So long as any of the foregoing are dedicated or conveyed by deed or easement for purposes as set forth above, and are used for such purposes, they shall be automatically released from this Declaration including the obligation for assessments set forth in Article 16. In the event, however, that any of the foregoing are vacated, and revert to and become a part of adjoining Building Sites, they shall automatically come under the terms and provisions of this Declaration.

19.04 All restrictions and other provisions herein contained shall be deemed prior and superior to all mortgages and deeds of trust hereafter executed upon land subject to this Declaration, and to all leases covering part or all of any Building Site; provided, however, the violation of these restrictions shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and for value, nor the leasehold estate of any tenant except to the extent otherwise expressly provided in its lease. If any portion of the land is sold under foreclosure of any mortgage or deed of trust, any purchaser at such sale, and his successors and assigns, shall hold any and all of such properties purchased subject to all of the restrictions and other provisions hereof as fully as if he were an original party to this Declaration.

19.05 The failure of Declarant, the Trustees, the Association or any Record Owner to take action to enforce the provisions hereof or to enjoin their violation shall in no event be deemed a waiver of its right to subsequently do so, nor shall it be deemed a waiver of any subsequent default or of the continuation of any existing default. The failure of Declarant or the Trustees to enforce the provisions hereof against any Record Owner shall not subject them to any suit for damages by any Record Owner, tenant or other occupancy of a Building Site.

19.06 Invalidity of any part or parts of this Declaration by judgment or court action shall in no way affect any of the other provisions which shall remain in full force and effect.

19.07 These Restrictions shall run with the land and shall be binding upon and shall inure to the benefit of all parties and all persons claiming under or through Declarant or any Record Owner until December 31, 2033, at which time the Restrictions shall be automatically extended for successive periods of ten (10) years; provided, however, that at any time the Record Owners of more than fifty percent (50%) of the acreage in the Entire Tract, and Declarant (whose acreage may be included for the fifty percent (50%) computation) may, by written declaration signed and acknowledged by them and recorded in the office of the Recorder of Deeds for Buchanan County, Missouri, alter, amend, modify or terminate these Restrictions, except that no amendment shall be made which shall change Section 3.06, or the provisions protecting mortgages, deeds of trust, and leasehold estates in Section 19.04, without the agreement of one hundred percent (100%) of the Record Owners. In the event these Restrictions are terminated by Declarant pursuant to the Article 19.07, no action or proceeding relating to or based in whole or in part upon any violation of or non-compliance with these Restrictions shall be instituted or maintained against Declarant from and after the date of such termination.

## ARTICLE 20

### Miscellaneous

20.01 All notices, consents, approvals or other communications (herein called Notices) required or permitted to be given hereunder shall be in writing and shall be deemed to have been properly given if sent by registered or certified mail, postage prepaid, if to Declarant, or the Trustees, addressed to Declarant:

Mr. Ted Allison  
President  
St. Joseph Area Chamber of Commerce  
3003 Frederick Avenue  
St. Joseph, Missouri 64506

with a copy to:  
Mr. Mark R. Woodbury  
Polsinelli Shughart PC  
3101 Frederick Avenue  
St. Joseph, Missouri 64506



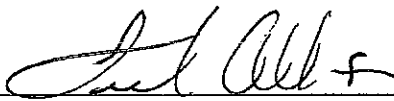
or to any Record Owner at the address specified in the deed from Declarant to the Record Owner owning the Building Site in question, or at such other address as shall be furnished to Declarant by a Record Owner in accordance with the terms of this Section 19.01 or the street address of a Building located on a Building Site. Declarant, the Trustees, or any Record Owner may change the address to which Notices are to be sent in the manner hereinbefore provided. Notices shall be deemed given on the date of the registration or certification thereof. Declarant shall not be bound by any change in record ownership of any Building Site until it has been given notice of such change in ownership in the manner herein provided for the giving of Notices.

20.02 Every person who now or hereafter owns or acquires any rights, title, estate or interest in or to any portion of the property covered hereby is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not reference to this Declaration is contained in the instrument by which such person acquired an interest in said property.

20.03 This Agreement and the separate provisions thereof shall be construed and enforced in accordance with the laws of the State of Missouri.

IN WITNESS WHEREOF, St. Joseph Business Park has caused this Declaration to be duly executed as of the date first above written.

**ST. JOSEPH BUSINESS PARK CORPORATION**

By:   
Ted Allison  
Its: President

STATE OF MISSOURI       )  
                                      ) SS.  
COUNTY OF BUCHANAN )

On this 22<sup>nd</sup> day of December, 2009, personally appeared Ted Allison to me personally known, who being duly sworn, did say that he is President of St. Joseph Business Park Corporation, that the seal affixed to the foregoing instrument was signed and sealed in behalf of said corporation and said Ted Allison acknowledged said instrument to be the free act and deed of said corporation.

IT WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal at my office in St. Joseph, Missouri, the day and year last above written.

My commission expires:

\_\_\_\_\_  
JOAN M. SUPPLE  
Notary Public - Notary Seal  
STATE OF MISSOURI  
Buchanan County  
Commission# 07386022 Exp: 9/18/2011

\_\_\_\_\_  
*Joan M. Supple*  
Notary Public

**EXHIBIT 1****EASTOWNE BUSINESS PARK – PHASE 1****PROPERTY DESCRIPTION:****TRACT A:**

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 24, TOWNSHIP 57 NORTH, RANGE 35 WEST, ST. JOSEPH, BUCHANAN COUNTY, MISSOURI; THENCE WITH THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION SOUTH 89 DEGREES 18 MINUTES 04 SECONDS WEST, 201.04 FEET TO THE POINT OF BEGINNING, SAID POINT BEING ON THE EASTERN RIGHT-OF-WAY LINE OF MISSOURI ROUTE "AC"; THENCE CONTINUING SOUTH 89 DEGREES 18 MINUTES 04 SECONDS WEST, 1143.16 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25; THENCE ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, SOUTH 00 DEGREES 02 MINUTES 28 SECONDS EAST, 1323.21 FEET TO THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25; THENCE ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, SOUTH 89 DEGREES 15 MINUTES 57 SECONDS WEST, 1343.82 FEET TO THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25; THENCE ALONG THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, NORTH 00 DEGREES 03 MINUTES 30 SECONDS WEST, 1324.03 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 24; THENCE ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 24, NORTH 00 DEGREES 10 MINUTES 21 SECONDS WEST, 2618.01 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF PICKETT ROAD; THENCE ALONG SAID RIGHT-OF-WAY LINE NORTH 89 DEGREES 06 MINUTES 24 SECONDS EAST, 1747.27 FEET TO THE WEST LINE OF A TRACT OF LAND RECORDED IN BOOK 1929 PAGE 410 IN THE OFFICE OF THE RECORDER OF DEEDS FOR BUCHANAN COUNTY; THENCE DEPARTING FROM THE SOUTH RIGHT-OF-WAY LINE OF PICKETT ROAD AND ALONG THE WEST LINE OF SAID TRACT DESCRIBED IN BOOK 1929 PAGE 410, SOUTH 00 DEGREES 13 MINUTES 17 SECONDS EAST, 180.00 FEET TO THE SOUTHWEST CORNER OF SAID TRACT; THENCE ALONG THE SOUTH LINE OF SAID TRACT NORTH 89 DEGREES 06 MINUTES 24 SECONDS EAST, 106.00 FEET TO THE SOUTHEAST CORNER OF SAID TRACT; THENCE ALONG THE EAST LINE OF SAID TRACT NORTH 00 DEGREES 13 MINUTES 17 SECONDS WEST, 120.60 FEET TO THE INTERSECTION OF THE EAST LINE OF SAID TRACT AND THE SOUTH RIGHT-OF-WAY LINE OF PICKETT ROAD; THENCE ALONG SAID RIGHT-OF-WAY LINE OF PICKETT ROAD 175.74 FEET BY ARC DISTANCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 520.00 FEET AND A CHORD BEARING SOUTH 81 DEGREES 01 MINUTES 06 SECONDS EAST, 174.90 FEET; THENCE CONTINUING ALONG SAID

RIGHT-OF-WAY LINE SOUTH 71 DEGREES 20 MINUTES 12 SECONDS EAST, 113.47 FEET; THENCE CONTINUING ALONG SAID RIGHT-OF-WAY LINE 213.84 FEET BY ARC DISTANCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 680.00 FEET AND A CHORD BEARING OF SOUTH 80 DEGREES 20 MINUTES 44 SECONDS EAST, 212.96 FEET TO THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF PICKETT ROAD AND THE WESTERN RIGHT-OF-WAY LINE OF ROUTE "AC"; THENCE ALONG SAID WEST RIGHT-OF-WAY LINE OF ROUTE "AC" THE FOLLOWING COURSES AND DISTANCES: SOUTH 22 DEGREES 39 MINUTES 04 SECONDS EAST, 440.92 FEET; THENCE SOUTH 05 DEGREES 03 MINUTES 55 SECONDS EAST, 100.50 FEET; THENCE SOUTH 00 DEGREES 38 MINUTES 45 SECONDS WEST, 1900.00 FEET; THENCE SOUTH 06 DEGREES 21 MINUTES 23 SECONDS WEST, 51.23 FEET TO THE POINT OF BEGINNING. SUBJECT TO ALL RECORDED AND UNRECORDED EASEMENTS, RESTRICTIONS AND RIGHT-OF-WAY.

**TRACT B:**

ALL OF THE FRACTIONAL SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 57 NORTH, RANGE 34 WEST, BUCHANAN COUNTY, MISSOURI. SUBJECT TO PUBLIC ROADS AND HIGHWAYS.

EXCEPT THEREFROM THE FOLLOWING DESCRIBED TRACT:

A TRACT OF LAND IN THE FRACTIONAL SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 57 NORTH, RANGE 34 WEST, CITY OF ST. JOSEPH, BUCHANAN COUNTY, MISSOURI DESCRIBED AS: BEGINNING AT THE NORTHWEST CORNER OF THE FRACTIONAL SOUTHWEST QUARTER OF SAID SECTION 19; THENCE SOUTH 89°24'01" EAST, ALONG THE NORTH LINE OF SAID QUARTER; 1180.00 FEET; THENCE SOUTH 00°13'17" EAST, 95.00 FEET; THENCE SOUTH 21°31'58" EAST, 318.49 FEET; THENCE SOUTH 00°13'17" EAST 120.00 FEET; THENCE NORTH 89°24'01" WEST, 260.00 FEET; THENCE NORTH 39°26'16" WEST, 320.00 FEET; THENCE NORTH 89°24'01" WEST, 150.00 FEET; THENCE SOUTH 49°06'32" WEST, 400.00 FEET; THENCE NORTH 89°24'01" WEST, 200.00 FEET; THENCE NORTH 00°13'17" WEST, 230.02 FEET; THENCE NORTH 89°24'01" WEST, 180.00 FEET TO THE WEST LINE OF THE FRACTIONAL SOUTHWEST QUARTER OF SAID SECTION 19; THENCE NORTH 00°13'17" WEST, ALONG SAID WEST LINE, 300.03 FEET TO THE POINT OF BEGINNING. SUBJECT TO ALL PUBLIC ROADS, EASEMENTS, RESERVATIONS, RESTRICTIONS, COVENANTS AND CONDITIONS IF ANY NOW OF RECORD.

**TRACT C:**

A TRACT OF LAND IN THE FRACTIONAL SOUTHWEST QUARTER OF SECTION 19, TOWNSHIP 57 NORTH, RANGE 34 WEST, CITY OF ST. JOSEPH, BUCHANAN COUNTY, MISSOURI DESCRIBED AS: BEGINNING AT THE NORTHWEST CORNER OF THE FRACTIONAL SOUTHWEST QUARTER OF SAID SECTION 19; THENCE SOUTH 89°24'01" EAST, ALONG THE NORTH LINE OF SAID QUARTER; 1180.00 FEET;

THENCE SOUTH 00°13'17" EAST, 95.00 FEET; THENCE SOUTH 21°21'58" EAST, 318.49 FEET; THENCE SOUTH 00°13'17" EAST, 120.00 FEET; THENCE NORTH 89°24'01" WEST, 260.00 FEET; THENCE NORTH 39°26'16" WEST, 320.00 FEET; THENCE NORTH 89°24'01" WEST, 150.00 FEET; THENCE SOUTH 49°06'32" WEST, 400.00 FEET; THENCE NORTH 89°24'01" WEST, 200.00 FEET; THENCE NORTH 00°13'17" WEST, 230.02 FEET; THENCE NORTH 89°24'01" WEST, 180.00 FEET TO THE WEST LINE OF THE FRACTIONAL SOUTHWEST QUARTER OF SAID SECTION 19; THENCE NORTH 00°13'17" WEST, ALONG SAID WEST LINE, 300.03 FEET TO THE POINT OF BEGINNING. SUBJECT TO ALL PUBLIC ROADS, EASEMENTS, RESERVATIONS, RESTRICTIONS, COVENANTS AND CONDITIONS IF ANY NOW OF RECORD.