

# APPENDIX A

## STAFF MEMORANDUM & ATTACHMENTS

### CASE NO. WC-2006-0363

Note: To browse through this document by item, click on the "Bookmark" tab at the top of the menu bar to the left of the screen and then click on the item that you want to see.

#### Official Case File Memorandum

#### Attachments:

1. Asset Purchase Agreement, dated July 15, 2004 and signed February 3, 2005 between FCSC and the LLC
2. General Warranty Deed, dated March 11, 2005, FCSC as the Grantor and the LLC as the Grantee.
3. Assignment and Transfer of Stock Shares, dated May 9, 2003 transferring shares of FCSC from Pat Price to Melody Lake Ranch Board of Governors
4. Selected records for FCSC from the Secretary of State internet site
5. Order Denying Request for Public Hearing and Canceling Certificate of Convenience and Necessity, from Case No. WD-93-307, Rocky Ridge Ranch
6. Indenture, Melody Lake Ranch subdivision, dated May 21, 1965 (unsigned copy)
7. Operating Agreement of Melody Lake Water and Sewer, LLC, dated April 29, 2004 (unsigned copy)

## Official Case File Memorandum

## **MEMORANDUM**

TO: Missouri Public Service Commission Official Case File  
Case No. WC-2006-0363 - - - Franklin County Service Company

FROM: Dale W. Johansen – Project Coordinator  
Water & Sewer Department  
Jim Merciel – Water & Sewer Department

<u>/s/ Dale W. Johansen</u>	<u>08/08/06</u>
Project Coordinator	Date
<u>/s/ Robert V. Franson</u>	<u>08/08/06</u>
General Counsel's Office	Date

SUBJECT: Staff Recommendation Regarding Resolution of Complaint  
and Approval of Asset Transfer

DATE: August 8, 2006

### **EXECUTIVE SUMMARY**

The Staff's intent is to provide the framework of a resolution of Case No. WC-2006-0363 regarding the transfer of utility assets of Franklin County Service Company (FCSC) to Melody Lake Water and Sewer, LLC (the LLC). While three formal complaints filed by individual customers of FCSC, docketed as Case Numbers WC-2006-0128, WC-2006-0130 and WC-2006-0152, are tangentially related to the present case, the Staff's recommendation only deals with WC-2006-0363, because much of the focus of the customer-filed cases is on matters outside the jurisdiction of the Public Service Commission (Commission). The Staff suggests that those three cases should not be joined to this case, but rather should be resolved separately since those cases primarily deal with the internal operations of the Melody Lake Ranch Associates, Inc. (the Association).

The Staff proposes that the Commission approve the transfer of FCSC to the LLC on a prospective basis. The Staff further suggests that changes should be made to the LLC's Operating Agreement that would allow the LLC to be operated without Commission regulation. These changes include giving more power to the LLC's board, provide that persons serving on the LLC's board be customers of the utility, and provide for utility customers to have complete and exclusive control over the selection of the LLC's board members. With these changes, the LLC could operate consistent with what the Staff refers to as the Rocky Ridge Ranch Points (WD-93-307), and the Staff believes that the LLC would not be subject to Commission jurisdiction.

As an alternative, the Staff believes that if appropriate changes are not made to the LLC's Operating Agreement, then the asset transfer should still be approved, but the LLC would then be subject to regulation, with a need to file appropriate tariffs, and file a rate case if the LLC's board sees a need to increase rates.

If the Commission accepts either of these proposals, then the Complaint in this case should be dismissed.

### **HISTORY AND OVERVIEW OF FRANKLIN COUNTY SERVICE COMPANY**

Melody Lake Ranch is a subdivision in Franklin County near Leslie, MO that was developed in the 1960s. Franklin County Service Company (FCSC) became certificated as a water utility for Melody Lake Ranch in Case No. 16,492 on June 13, 1968. In Case No. 16,526, FCSC sought to acquire certain existing sewer assets, and it became certificated as a sewer utility in Case No. 16,529 on July 24, 1968. FCSC remains certificated today, with approximately 52 water customers and 65 sewer customers.

FCSC was owned and operated by Harold Horsley for many years until his death in 2002. Ill health caused problems with the business for some time before his death as well, both with regard to operation of the facilities, and administrative paperwork. The last annual report filed with the Commission was the calendar year 1997 report. Assessments through the 2004 fiscal year are paid. There are no assessments shown as due for 2005, 2006 and 2007, but that is based on zero revenue. FCSC also became administratively dissolved as a corporation on February 13, 2004.

During Mr. Horsley's declining health, the homeowners in the subdivision began operating the utility systems. During 2002, Mr. Robert (Bob) White, who was then the president of the Association, initiated contact with the Staff to discuss the possibility of the homeowners, or presumably more specifically the Association, permanently acquiring the water and sewer systems. There were a few telephone conversations between the Staff and Mr. White, some correspondence with financial information, and one meeting between the Staff, Mr. White, and Mr. Gerald (Jerry) Johnston, who was the vice president of the Association at the time.

Subsequently, Mr. Johnston became the Association president, and a few more telephone conversations took place between him and the Staff. Discussions during this time addressed the fact that the homeowners could operate as a non-regulated utility, the need for some type of contract to transfer assets from FCSC to the Association (which at the time the Staff assumed would follow probate action regarding Mr. Horsley's estate), and the need for the Commission to approve such a transfer of assets along with cancellation of FCSC's certificates and tariffs.

The Staff expected that, barring any complications of probate action, a fairly simple transfer of assets could take place, and that either Mr. Horsley's estate and/or the Association would file a case seeking authorization to transfer assets and cancel FCSC's certificates and tariffs. The Staff offered to assist in reviewing documents and getting a proper filing prepared. However, after the Staff received documents from the homeowners indicating a more complicated and controversial transfer of assets (which had already taken place involving the newly formed LLC, without Commission approval), the Staff advised the Association's officers that FCSC and the LLC needed to prepare and file its own case showing the chain of ownership and the legitimacy of customer control of the LLC.

So, to summarize the current status of the FCSC: it is owned by the Association's Board of Governors; it is active as a regulated water and sewer utility, but has transferred its assets and ceased providing utility service, without authorization to do so; it is not current on the submission of its Commission annual reports; and it is administratively dissolved as a corporation.

### **OVERVIEW OF THE STAFF'S FORMAL COMPLAINT**

After the three above-mentioned customers filed their formal complaints, the Staff filed its Complaint, docketed as WC-2006-0363, on March 22, 2006. The Staff's Complaint is against FCSC, the LLC, the Association, and Gerald Johnston. The Staff's Complaint alleges that the assets of FCSC were transferred without Commission authorization and that a water and sewer utility is being operated without the necessary Certificates of Convenience and Necessity from the Commission. Gerald Johnston was the president of the Association at the time the case was filed, and oversaw most or all of the activity pertaining to formation of the LLC and the transfer of assets. Mr. Johnston has since resigned as president.

On April 24, 2006, Respondents FCSC and the LLC filed a Joint Application for the Sale of Water and Sewer Supply System (Joint Application) in the Staff's formal complaint case, seeking authority for the transfer of assets and seeking to cancel FCSC's certificate to provide water and sewer service. Included in the Joint Application as Exhibit 2, (attached hereto as Attachment 1), is an Asset Purchase Agreement dated July 15, 2004, between FCSC and the LLC. In addition to this document, there is a General Warranty Deed, dated March 11, 2005, purporting to transfer several parcels of real estate, with FCSC as the Grantor and the LLC as the Grantee (attached hereto as Attachment 2). The Staff also learned that Mr. Horsley's widow, Pat Price, had transferred the stock of FCSC to Mr. Johnston and/or the Association by an Assignment and Transfer of Stock Shares dated November 9, 2003 (attached hereto as Attachment 3). Records on the Secretary of State's website indicate that there has been no change of registered agents or officers of FCSC, nor reinstatement of FCSC's corporate status since Mr. Horsley's death (attached hereto as Attachment 4).

## **THE STAFF'S POSITIONS**

The Staff believes that the appropriate result in this case is for the utility customers in Melody Lake Subdivision, through the LLC, to own and control the utility system, which is substantially as proposed in the Joint Application. Utility operations owned and controlled by the customers normally are not subjected to the jurisdiction of the Commission, if the customers actually have legitimate control over the utility. Often, however, developers have as much or more control of homeowners associations than customers do, or some customers may have more powerful votes than other customers. In such cases, the homeowners association may still be subject to regulation.

The Staff believes that the Commission decision *In the matter of the application of Rocky Ridge Ranch Property Owners Association for an order of the Public Service Commission authorizing cessation of PSC jurisdiction and regulation over its operations*, Case No. WD-93-307, July 7, 1993 (attached hereto as Attachment 5) is helpful in this situation. This Commission decision outlined several characteristics of associations that would not be subject to regulation.

These are generally referred to as the "Rocky Ridge Ranch Points" and are as follows:

1. The association must have as membership all of its utility customers, and operate the utility only for the benefit of its members;
2. The association must base the voting rights regarding utility matters on whether or not a person is a customer, as opposed to, allowing one (1) vote per lot which would not be an equitable situation if one (1) person owned a majority of lots irrespective of whether each of those lots subscribed to the utility service; and
3. The association must own or lease the utility system so that it has complete control over it.

The Indenture of the "Melody Lake" subdivision which sets up a Board of Governors, an unsigned copy of which, as provided by one of the Complainants, is attached hereto as Attachment 6, and an "Operating Agreement" for the LLC, an unsigned copy of which, as provided by counsel for the LLC, is attached hereto as Attachment 7. Having reviewed these documents, the Staff believes that the proposal contained in the Joint Application in this case may not meet the first of the Rocky Ridge Points, and that it probably does not meet the second. The reason is that the LLC is controlled by the Board of Governors, which is elected by property owners in Melody Lake, some of whom may not have a home on their lot and thus not be utility customers, and who cast a number of votes that is based on the number of lots that they own.

The Staff believes that the LLC's Operating Agreement could be modified to give more power to the LLC's board, provide that persons serving on the LLC's board be customers of the utility, and provide for utility customers to have complete control over the selection of the LLC's board members. If these changes are made, then the LLC may operate consistent with the Rocky Ridge Ranch Points. The Staff believes that the LLC could then be relieved of regulation as a water and sewer utility. The Staff has discussed this matter with the attorney for the LLC and believes that this may be favorably received.

The Staff therefore recommends that, subject to the LLC providing evidence of modification of its Operating Agreement to be consistent with the Rocky Ridge Ranch Points, the Commission approve the Transfer of Assets from FCSC to the LLC on a prospective basis, cancel the Certificate of Convenience and Necessity held by FCSC, and cancel the tariffs in effect for FCSC. Notably, as a utility not subject to PSC jurisdiction and controlled by the Customers, the LLC would be free to set rates as it deems appropriate. The Staff notes that FCSC's existing approved rates have been in effect since March 1, 1986. FCSC's approved rates for water service are \$5 per month plus \$2.29 per 1,000 gallons usage, and the approved flat rate for sewer service is \$7.20 per month.

Alternatively, the Staff believes that if the LLC does not or cannot modify its Operating Agreement to be consistent with the Rocky Ridge Ranch Points, then the LLC is subject to Commission jurisdiction, and the Staff would thus recommend that the Commission approve the Transfer of Assets, order the LLC to file, within ten (10) days after the effective date of the Commission's order, a notice adopting FCSC's water and sewer tariffs (or submit new tariffs, thereby allowing cancellation of FCSC's existing tariffs), and order the LLC to immediately institute existing rates that were approved for service provided by FCSC. After the effective dates of approval of the Transfer of Assets and adoption notices or tariffs, the LLC could file an informal rate case if it desires to do so. The Staff recognizes that the LLC, if it will be a regulated utility, would likely wish to file an informal rate case.

### **OTHER MATTERS**

As stated, the last annual report FCSC filed with the Commission was the calendar year 1997 report. All reports since then are therefore past due, although the Staff knows that, from a practical standpoint, FCSC has not been actively operating the facilities for several years. The Staff believes no benefit would be obtained by requiring the past reports to be filed, or by seeking penalties for failure to file the required reports. The reasons are that the past several annual reports would report zero revenue and zero expense, and for earlier past due reports the person or persons responsible for the operation of FCSC at the time the reports were due are deceased or no longer involved with any aspect of the operations; operating records are not readily available, meaning the reports may not be completely accurate; and the burden of preparation or penalties would, from a practical standpoint, be upon the present customers who have assumed the responsibilities of operating the utility systems.

Assessments through the 2004 fiscal year are paid. There are no assessments shown as due for 2005, 2006 and 2007, but that is based on zero reported revenue, since FCSC was actually not functioning as a corporation while Melody Lake Ranch Associates, Inc. was operating the utility systems.

The Missouri Department of Natural Resources (DNR) has had issues with recent construction of water and sewer pipeline facilities that the Association and/or the LLC have caused to be constructed for undeveloped lots. One of the DNR's issues is similar to the Staff's issue, in that FCSC simply ceased operating, with no approved utility available to take its place. Other issues include constructing facilities without proper construction permits, and construction that would not meet standards for issuing a construction permit, such as constructing water and sewer pipelines in the same trench. However, DNR personnel have advised the Staff that they believe the people presently in control of the Association and the LLC are aware of the need for proper permitting, and are working with them to correct improper construction, which may be somewhat costly. DNR personnel have also advised the Staff that they are satisfied with the progress being made with regard to the DNR's issues.

### **THE STAFF'S CONCLUSIONS**

The Staff believes that, given the status of FCSC, service should be provided in some legal and appropriate manner by the customers, and the proposal for the LLC to own the utility is reasonable. FCSC's certificates of convenience and necessity can be canceled, after the transfer of the assets to the LLC is approved. Recognizing that the by-laws of the Association, and actions of its board members (even those that may have allegedly been improper with regard to the by-laws) do not fall within the jurisdiction of the Commission, the Staff believes that the best resolution to this matter would be for the Commission to either ensure that the LLC is properly set up to provide utility service under the complete control of the customers, or grant the LLC a Certificate of Convenience and Necessity as a regulated utility, and for the Commission to then grant approval of a transfer of assets and cancel FCSC's certificates and tariffs. After either scenario has taken place, the Staff believes that its formal complaint will be resolved and may be dismissed.

### **THE STAFF'S RECOMMENDATIONS**

Due to the status of FCSC, as discussed above, and having reviewed all available information with regard to the current proposal, the Staff recommends:

1. That the Commission, on a prospective basis, approve a transfer of assets from FCSC to the LLC;
2. If the LLC can show a modification of its Operating Agreement so that it is consistent with the Rocky Ridge Ranch Points, then the certificates and tariffs of FCSC may be canceled, and the LLC will operate as a utility that is not subject to regulation;



3. If the LLC cannot show such a modification of its Operating Agreement, then the Commission may issue a Certificate of Convenience and Necessity to the LLC, to become effective on the effective date(s) of tariff sheets adopting FCSC's water and sewer tariffs, or on the effective date(s) of new tariffs filed by the LLC;
4. If tariff sheets are filed, as contemplated by Paragraph 3 above, then FCSC's certificate and tariffs may be canceled on the effective date of the LLC's tariff sheets, as appropriate; and
5. If the Commission approves the transfer of assets from FCSC to the LLC, then after any and all matters ancillary to the transfer, certificates and tariffs are completed, the Staff believes that other allegations with respect to this case, including the Staff's Complaint, could be considered to be resolved and the case closed.

#### **LIST OF ATTACHMENTS**

1. Asset Purchase Agreement between FCSC and the LLC, dated July 15, 2004 and signed February 3, 2005
2. General Warranty Deed, dated March 11, 2005, with FCSC listed as the Grantor and the LLC listed as the Grantee
3. Assignment and Transfer of Stock Shares, dated May 9, 2003, transferring shares of FCSC from Pat Price to Melody Lake Ranch Board of Governors
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(unsigned copy)
7. Operating Agreement of Melody Lake Water and Sewer, LLC, dated April 29, 2004  
(unsigned copy)

## Memo Attachment 1

### Asset Purchase Agreement

## **ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT ("agreement") dated this 15 day of July, 2004, by and between MELODY LAKE WATER & SEWER LLC ("Purchaser") and FRANKLIN COUNTY SERVICE COMPANY ("Seller")

### **WITNESSETH:**

WHEREAS, Seller owns and operates a utility company providing water and sewer service exclusively to Melody Lake Ranch Subdivision, Franklin County Missouri and conducts such business under the name of Franklin County Service Company;

WHEREAS, the parties desire to provide for the sale and transfer of the business, **including the personal property located at, used in connection with, or arising out of such Business, together with the real estate utilized in the Business**, in exchange for the relinquishment of debts and services provided by Buyer, and upon the terms and subject to the conditions herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions to which the parties have agreed and further contemplates the execution and delivery of certain documents and deeds, all as hereinafter described.

NOW, THEREAFTER, in consideration of the promises and mutual covenants, agreements, representations and warranties herein contained, the parties intending to be legally bound hereby agree as follows:

### **ARTICLE I**

Section 1.1 - Transfer of Assets - Subject to the terms and conditions of this agreement, Seller does hereby agree to sell, transfer and convey and deliver to Purchaser, and Purchaser does hereby agree to purchase and accept from Seller the following property and rights:

- a) all water and sewer lines, valves, pumps, lift stations, equipment, meters, reservoirs, lagoons, water towers, pump houses and accounts receivable used in connection with the operation or arising out of the business, including without limitation the items set forth on Schedule A & B of this Agreement:
- b) all licenses, permits, easements or rights of easements, prescriptive easements, rights of egress and ingress, supplies and work in progress of the Seller in the operation of the Business as well as all contractual rights of the Business, bank accounts and cash therein and any and all interest to water and sewer fees accrued in the past, present or future:
- c) all account ledgers, record books, copies of deeds or any and all other business records generated in the operation of the Business:
- d) All real property set forth in Schedule B:

All property to be sold and transferred by Seller to Purchaser described above and herein shall be hereinafter collectively referred to as the "Assets". In addition by separate deeds, Seller agrees to contemporaneously convey to Purchaser the real property owned by the Business located in Franklin County Missouri and set forth in Schedule B which is attached hereto and incorporated herein by this reference.

Section 1.2 - Consideration for Assets Payable at the Closing - In reliance on the representations and warranties of Seller herein contained, and on the terms and subject to the conditions of this Agreement, Purchaser, in consideration for the transfer and delivery to it of the Assets as herein provided, will as and for consideration cancel the debt for services and material provided to Seller, at the time of closing in the amount of Eleven Thousand Nine Hundred Dollars (\$11,900)(the "Purchase Price". Purchaser will pay any sales, use or transfer taxes incurred by this transaction.

Section 1.3 - Assumption of Liabilities - Except as specifically set forth below in this Section, Purchaser shall not assume and does not agree to pay, perform or discharge any debt, expense or liability of Seller of any nature whatsoever, whether fixed or contingent. From and after the Closing date, Purchaser agrees to perform the service previously provide by Seller.

Section 1.4 - Effective Date and Time - The effective date and time of the transfer of the

Assets shall be at 12:01 a.m. on the closing date of August 2, 2004.

## ARTICLE II

Section 2.1 - Closing - The closing of the transaction provided for in this Agreement (the "Closing") shall take place at the offices of Hansen, Stierberger, Downard, Melenbrink & Schroeder, 80 North Oak Street, Union, MO 63084 on the 2nd day of August, 2004, or at such other time and date as the parties shall mutually agree.

Section 2.2 - Instruments of Conveyance and Transfer - At the Closing, Seller shall deliver to purchaser such deeds, bills of sale, endorsements, assignments and other good and sufficient instruments of transfer, conveyance and assignment as shall be effective to vest in Purchaser good and marketable title to the Assets, free and clear of all liens, claims, and encumbrances. Seller shall take all steps as may be required to put Purchaser in actual possession and control of the Assets and the Business as of the Closing.

## ARTICLE III

Section 3.1 - Title and Condition of Assets - Seller has good and marketable title to all of the Assets subject to no mortgage, lien, security interest, easement, right-of-way, or to any other encumbrance. All items of personal property are being sold AS-IS, where-is condition. Seller offers no warranties either express or implied and expressly disclaims any and all warranties whatsoever implied by law.

Section 3.2 - Environmental Matters - Seller has all permits and approvals necessary for Seller to conduct the Business as now being conducted. Seller is informed and believes it has operated and is presently operating in compliance with all applicable federal, state and local environmental statutes and regulations and to Seller's actual knowledge, there is no existing regulatory requirement with a future compliance date that will require operational changes or capital expenditure at the Business. Seller is not actually aware that any "Hazardous Substance," as that term is defined in the Federal Comprehensive Environmental Response, Compensation and Liability Resource Conservation and Recovery Act, is present, has been leaked, spilled deposited or otherwise released on the real property. Seller is not

aware of any asbestos, PCB's, or underground storage tanks on or in the real property.

#### ARTICLE IV

Section 4.1 - Authority - Purchaser is fully authorized to deliver and perform this Agreement. No other or additional consent or authorization is required by law. The Closing of the transaction contemplated by this agreement will not result in a breach, violation, or default by Purchaser of or under any judgement, decree, mortgage, agreement, indenture, or other instrument applicable to Purchaser. Upon execution and delivery hereof, this agreement shall constitute the valid and binding obligation of Purchaser enforceable in accordance with its terms.

Section 4.2 - Further Assurances - From time to time after the Closing, at the request of the Purchaser, and without further consideration, Seller will execute and deliver such additional instruments and will take such other actions as Purchaser reasonably may require to convey, assign, transfer and deliver the Assets and the Business and otherwise carry out the terms of this Agreement.

Section 4.3 - Bulk Sales Compliance - Purchaser hereby waives compliance by Seller with the Bulk Transfer Provisions of the Uniform Commercial Code as in effect in the State of Missouri to the extent such laws may be deemed applicable to the transaction.

Section 4.4 - Entire Agreement - This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri.

IN WITNESS WHEREOF, the undersigned parties hereto have duly executed this Agreement on the date first above written.

SELLER:

BY:

Gerald L Johnston

DATE:

2/3/05

PURCHASER:

BY:

Gerald L Johnston

DATE:

2/3/05

## **EXHIBIT "A"**

Water tower

Pumps

Trunk lines

Hydrants

Shut-off vales

Tools

Manholes

Manhole covers

Meters

All personal property associated with the operation of the sewer and water line facilities and plants



## **EXHIBIT "B"**

### **TRACT 1:**

A tract of land being part of the South half of the Northwest Quarter and part of the North half of the Southwest Quarter of Section 27, Township 42 North, Range 3 West in Franklin County, Missouri being more fully described as follows: Commencing at a concrete post at the Northeast corner of lot L36 of Melody Lake Subdivision; thence S 75 degrees 44' E 119.0 feet; thence S 4 degrees 54' E on the east side of a roadway over the dam of Melody Lake 1,183.72 feet to the point of beginning; thence N 21 degrees 32' E 134.7 feet to an iron pipe; thence N 5 degrees 43' W 502.32 feet; thence S 75 degrees 00' E 348.50 feet to an iron pipe; thence N 84 degrees 37' E 377.49 feet; thence S 2 degrees 32' E 321.25 feet; thence S 84 degrees 54' W on the property line 625.40 feet to an iron pipe; thence S 21 degrees 32' W 268.2 feet; thence N 4 degrees 54' W 56.08 feet to the point of beginning, containing 5.70 acres more or less as per survey by Norbert Wunderlich recorded in Surveyor's Record 24, Page 210.

### **TRACT 2:**

Lots 16 and 52 of the FIRST ADDITION TO MELODY LAKE SUBDIVISION as per plat thereof recorded in Plat Book J, Page 60 of the records of the Recorder of Deeds of Franklin County, Missouri.

### **TRACT 3:**

A lot in THE 1<sup>ST</sup> ADDITION TO MELODY LAKE SUBDIVISION and designated RESERVED as per plat thereof found in Plat Book J, Page 60, found in the records of the Recorder of Deeds of Franklin County, Missouri.

### **TRACT 4:**

Lots 11, 27, 65, 85 and 86 of the SECOND ADDITION to MELODY LAKE SUBDIVISION as per plat thereof recorded in Plat Book K, page 3 of the records of the Recorder of Deeds of Franklin County, Missouri.

Memo Attachment 2

General Warranty Deed

SHARON L. BIRKMAN  
RECORDER OF DEEDS  
FRANKLIN COUNTY  
STATE OF MISSOURI



85  
PAGES: 3  
FEE: \$30.00  
REFERENCE #  
DATE: 04/18/2005  
TIME: 04:16PM

2005-09009

CK 10076-30.00

**GENERAL WARRANTY DEED**

Date: March 11, 2005

Grantor: FRANKLIN COUNTY SERVICE COMPANY

Address: 13930 Manchester Road - St. Louis, MO 63011

Grantee: MELODY LAKE WATER &amp; SEWER, LLC

Address: 333 Playmor Drive - Leslie, MO 63056

This Deed Witnesseth, that as of the above date, the above Grantor for and in consideration of One and more Dollars in hand paid, does by these presents, GRANT, BARGAIN and SELL, CONVEY and CONFIRM unto the above Grantee, its heirs or successors and assigns, the following described land situated in Franklin County, Missouri, to-wit:

SEE ATTACHED LEGAL *Page 3*

TO HAVE AND TO HOLD, the same together with all rights and appurtenances to the same belonging, unto the said Grantee and to the heirs or successors and assigns of such Grantee forever. The said Grantor hereby covenanting that said Grantor and the heirs and personal representatives of said Grantor shall and will WARRANT and DEFEND the title to the premises unto the said Grantee, and to the heirs, successors and assigns of such Grantee forever, against the lawful claims of all persons whomsoever, excepting, however, the general taxes for the calendar year 2004 and thereafter, and special taxes becoming a lien after the date of this deed.

IN WITNESS WHEREOF, the Grantor has executed these presents the same effective as of the day and year first above written.

## FRANKLIN COUNTY SERVICE COMPANY

BY:

Jerry Johnston  
JERRY JOHNSTON, President

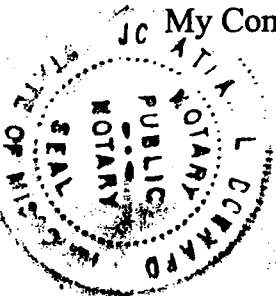
BY:

Pat Smits  
PAT SMITS, Secretary

STATE OF MISSOURI, County of Franklin, ss.:

On March 11, 2005, before me personally appeared JERRY JOHNSTON, President, and PAT SMITS, Secretary, to me personally known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

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

Jonathan L. Downard  
Notary Public - Jonathan L. Downard  
Franklin County, MOMy Comm. Expires: 4/16/05

TRACT 1:

A tract of land being part of the South half of the Northwest Quarter and part of the North half of the Southwest Quarter of Section 27, Township 42 North, Range 3 West in Franklin County, Missouri being more fully described as follows: Commencing at a concrete post at the Northeast corner of lot L36 of Melody Lake Subdivision; thence S 75 degrees 44' E 119.0 feet; thence S 4 degrees 54' E on the east side of a roadway over the dam of Melody Lake 1,183.72 feet to the point of beginning; thence N 21 degrees 32' E 134.7 feet to an iron pipe; thence N 5 degrees 43' W 502.32 feet; thence S 75 degrees 00' E 348.50 feet to an iron pipe; thence N 84 degrees 37' E 377.49 feet; thence S 2 degrees 32' E 321.25 feet; thence S 84 degrees 54' W on the property line 625.40 feet to an iron pipe; thence S 21 degrees 32' W 268.2 feet; thence N 4 degrees 54' W 56.08 feet to the point of beginning, containing 5.70 acres more or less as per survey by Norbert Wunderlich recorded in Surveyor's Record 24, Page 210.

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## Memo Attachment 3

### Assignment and Transfer of Stock Shares

x July 9, 2003

### ASSIGNMENT AND TRANSFER OF STOCK SHARES

For Value Received, I, PAT PRICE, of St. Louis County, Missouri hereby assign and transfer to MELODY LAKE RANCH BOARD OF GOVERNORS of 58 North Lake Drive - Leslie, MO one thousand one hundred (1,100) shares (all shares) of the stock of FRANKLIN COUNTY SERVICE COMPANY represented by the certificates held herein (or if any certificates are not available then all interest to all stock that I may have in said company), and I do hereby appoint Bob White as attorney to transfer such stock on the books of the abovenamed corporation with full power of substitution.

Dated: x July 9, 2003

x Pat Price  
PAT PRICE

In the presence of :

Bob White of Kirkwood, Missouri  
Jay K Mueller of St Louis, Missouri

## Memo Attachment 4

Selected records for FCSC from the Secretary of State  
Internet Site



# Missouri Secretary of State, Robin Carnahan

SOS Home :: Business Services :: Business Entity Search

**Search**

- By Business Name
- By Charter Number
- By Registered Agent
- For New Corporations
- Verify
- Verify Certification
- Annual Report
- File Online
- File Fictitious Name
- Registration
- File Online
- File LLC Registration
- File Online
- Online Orders
- Register for Online
- Orders
- Order Good Standing
- Order Certified Documents

**Filed Documents**

**Date:** 8/4/2006 (Click above to view filed documents that are available.)

**Business Name History**

Name	Name Type
FRANKLIN COUNTY SERVICE COMPANY	Legal

**General Business - Domestic - Information**

<b>Charter Number:</b>	00128386
<b>Status:</b>	Admin Dissolved Profit
<b>Entity Creation Date:</b>	3/21/1968
<b>State of Business.:</b>	MO
<b>Expiration Date:</b>	Perpetual
<b>Last Annual Report Filed Date:</b>	3/29/2002
<b>Last Annual Report Filed:</b>	2002
<b>Annual Report Month:</b>	January

**Registered Agent**

<b>Agent Name:</b>	HAROLD E. HORSLEY, JR.
<b>Office Address:</b>	6934 SOUTH LINDBERG ST. LOUIS MO 63125
<b>Mailing Address:</b>	

Attachment 4 – 1

**McDougal, Sara**

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**From:** Herron, Janice  
**Sent:** Monday, June 13, 2005 3:43 PM  
**To:** Rescissions  
**Subject:** 00128386-Franklin County Service Company

John Downard  
80 N. Oak St.  
Union, MO 63084  
636-583-5118

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State of Missouri  
Correspondence 1 Page(s)



T0516513507

6/13/2005

Attachment 4 – 2



ROBIN CARNAHAN  
SECRETARY OF STATE

Office of the Secretary of State  
State of Missouri  
Jefferson City  
65101

CORPORATIONS DIVISION  
(866) 223-6535 TOLL FREE

**TO AVOID PROCESSING DELAYS, CAREFULLY READ AND FOLLOW THE INSTRUCTIONS!**

Re: FRANKLIN COUNTY SERVICE COMPANY 00128386

Forfeited/Administratively Dissolved on: **2-13-04**

THE FOLLOWING ITEMS MUST BE SUBMITTED IN ORDER TO RESCIND THE  
FORFEITURE/ADMINISTRATIVE DISSOLUTION.

1. The completed Application for Rescission.
2. A Certificate of Tax Clearance issued by the Department of Revenue must accompany the completed Application of Rescinding Forfeiture/Administrative Dissolution and the correct rescission fee to the Secretary of State's Office.

To obtain a Certificate of Tax Clearance complete the enclosed request for tax clearance, form DOR-943 (blue form), in its entirety and mail it to the Department of Revenue, Tax Clearance Unit, P.O. Box 3666, Jefferson City, MO 65105-3666. The telephone number is (573) 751-9268. **Do not send this form to the Secretary of State's Office.** The Department of Revenue will process your request for tax clearance and issue a statement that no state taxes are due when all tax liabilities have been resolved.

3. Annual registration report (s) for the year(s) **2003 thru 2005**, inclusive.
4. Rescission fee made payable to the Secretary of State in the amount of **\$ 310.00**.
5. Other:

The Certificate of Tax Clearance and the information requested above must be submitted to the Missouri Secretary of State's Office at PO Box 778, Jefferson City, MO 65102. If you have any questions concerning your reinstatement you may contact our office at (573) 751-4153 or toll free at (866) 223-6535.

## Memo Attachment 5

Order Denying Request for Public Hearing and Canceling  
Certificate of Convenience and Necessity, from Case No.  
WD-93-307, Rocky Ridge Ranch

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 7th  
day of July, 1993.

In the matter of the application of Rocky Ridge )  
Ranch Property Owners Association for an order )  
of the Public Service Commission authorizing ) Case No. WD-93-307  
cassation of PSC jurisdiction and regulation )  
over its operations. )

ORDER DENYING REQUEST FOR PUBLIC HEARING AND  
CANCELLING CERTIFICATE OF CONVENIENCE AND NECESSITY

On May 10, 1993, Rocky Ridge Ranch Property Owners Association  
(Applicant or POA) filed an Application requesting an order cancelling its  
certificate of convenience and necessity pursuant to Section 393.190 RSMo. POA  
is a provider of water service to property owners in Rocky Ridge Ranch, a  
subdivision of Ste. Genevieve County, Missouri. POA was a co-applicant in Case  
No. WM-93-136 involving the transfer of the assets and the certificate from the  
previous water company to the Property Owners Association. In that case, the  
Commission approved the sale of the assets, and transfer of the certificate to  
the POA but declined to release the POA from the jurisdiction of the Commission  
based upon a finding that the POA would continue to serve customers who were not  
members of the Association.

POA has now submitted an Application with documentation which reflects  
changes in the bylaws of the POA such that all Rocky Ridge Ranch lot owners are  
now eligible for membership in the Association without any requirement for  
membership dues. The provisions now state that any property owner who is a water  
customer is entitled to vote on matters pertaining to the water department of the  
Rocky Ridge Ranch Property Owners Association. POA is a not-for-profit  
corporation and as such does not distribute or sell water "for gain."

On May 18, 1993, the Commission issued an Order and Notice and an Order for Staff Investigation. This Order established an intervention date of June 14, 1993 and also established a deadline for the filing of a Staff investigation on June 16, 1993. The Commission received no applications for intervention.

On June 16, 1993, the Missouri Public Service Commission Staff (Staff) filed its Memorandum in which it recommended the cancellation of the certificate of convenience and necessity. The Staff Memorandum set out the criteria for a legitimate association as follows:

- 1) It must have as membership all of its utility customers, and operate the utility only for the benefit of its members;
- 2) It must base the voting rights regarding utility matters on whether or not a person is a customer, as opposed to, allowing one (1) vote per lot which would not be an equitable situation if one (1) person owned a majority of lots irrespective of whether each of those lots subscribed to the utility service; and
- 3) It must own or lease the utility system so that it has complete control over it.

The Staff Memorandum went on to state that the POA is an association which meets all of the Staff criteria for recognition as a legitimate association operating a utility strictly for the use of its own members. The Staff Memorandum did note that a number of individuals had signed a petition which arrived at the Commission offices on June 14, 1993 and in which the signatories requested a public hearing in this case. Pursuant to an evaluation of the evidence and testimony which was offered at the local public hearing in Case No. WM-93-136, the Staff has taken the position that the majority of the members of the Property Owners Association did indeed favor the proposal for the Property Owners Association to operate as a legitimate unregulated utility.

On June 21, 1993, the Office of Public Counsel (OPC) filed a Request for Local Public Hearing and in support of this request recited the receipt of the aforementioned petition. OPC further stated in its motion that if a local public hearing were scheduled in this case it would, inter alia, "hopefully serve the purpose of educating interested customers about the nature of Commission

jurisdiction and the specific changes made to the Property Owners Association bylaws."

On June 22, 1993, POA filed its Response to the Motion for Public Hearing in which it objected to the setting of a public hearing and stated that ordering a public hearing "to serve the purpose of educating interested customers about the nature of Commission jurisdiction and the specific changes made to the POA bylaws . . .", as asserted by OPC, was not justification to support an order for a public hearing. POA stated that it has complied with the requirements set out in the Order from WM-93-136. POA also stated that it had examined the petition and identified only thirty-five (35) signatories who might be water customers of POA. The Applicant stated that it had arrived at this number by the elimination of husband/wife duplicate signatures and signatures of non-customers. POA went on to state that these thirty-five (35) customers may well be among the same number who unsuccessfully voted against changing the bylaws so that POA would qualify for the cancellation of its certificate. Lastly, POA has indicated that the cover letter to the petition suggests that it is offered from the City of Rocky Ridge and reflects the date of June 9, 1993. However, it has been brought to the attention of the Commission that one (1) day earlier, on June 8, 1993, the voters of the City of Rocky Ridge voted to disincorporate the city and for that reason a trustee has been appointed to wind up the affairs of the city and dispose of its assets. This may raise some question about the continuing authority of the city clerk of a city which has ceased to exist. However, this issue is not dispositive of the motion before the Commission.

The Commission, having considered all of the competent and substantial evidence upon the whole record, finds that the POA has met its burden by qualifying as an association which does not require regulation under the rules and statutes of the state of Missouri. In Case No. WM-93-136, the Commission found it necessary to continue to retain jurisdiction over the Property Owners

Association based upon the finding that the Association would continue to serve customers who were not members of the Association. The Commission now finds changed circumstances due to the changes in the bylaws of the Property Owners Association. Pursuant to those changes, the Commission finds that the Property Owners Association does and will only provide water service to members of the Association. As such, POA does not qualify as a "water corporation" as defined by 386.020(51) RSMo 1992. For this reason, the Commission finds that it may no longer exercise jurisdiction over the POA. In the Report and Order which was issued in WM-93-136, the Commission stated that it exercises jurisdiction over entities which provide water to persons other than their members even if the entity provides the water "not for gain." The Commission retained jurisdiction on that basis and it was implicit in that order that the Commission would entertain a motion to cancel the Certificate for Convenience and Necessity once the POA could establish that it was only serving its members. The Commission now finds that the POA has satisfied that requirement. Having found that the POA no longer qualifies as a "water corporation" under the Missouri Statute(s) and having further found that the Commission no longer has jurisdiction over the POA water system, the Commission will cancel the certificate as requested. The Commission further makes the finding that it would not be detrimental to the public interest for the Certificate of Public Convenience and Necessity herein to be cancelled. The Commission will deny the Motion for Local Public Hearing and will order the Rocky Ridge Ranch Property Owners Association's Certificate of Public Convenience and Necessity, along with its accompanying tariff, to be cancelled.

**IT IS THEREFORE ORDERED:**

1. That the Motion of the Office of Public Counsel for a public hearing is hereby denied.



2. That the Certificate of Public Convenience and Necessity previously granted to Rocky Ridge Ranch Property Owners Association in Case No. WM-93-136, and the accompanying tariff, is hereby cancelled.

3. That, included in its next billing, Rocky Ridge Ranch Property Owners Association shall advise all of its customers affected thereby that Rocky Ridge Ranch Property Owners Association is no longer regulated by the Missouri Public Service Commission. Such notice shall state that "beginning (date), our rates and charges for water and other services will no longer be regulated by the Missouri Public Service Commission."

4. That this order shall become effective on the July 20, 1993.

BY THE COMMISSION

*Brent Stewart*

Brent Stewart  
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,  
Kincheloe and Crumpton, CC., Concur.

## Memo Attachment 6

Indenture, Melody Lake Ranch Subdivision

# Original Indentures

THIS INDENTURE, made and entered into this twenty-first day of May, 1965, by and between NORMAN F. RATHERT and FLORENCE RATHERT, his wife, and ROBERT WEBB and JOAN WEBB, his wife, collectively referred to herein as "Party of the First Part," and NORMAN F. RATHERT and ROBERT WEBB, of the County of St. Louis, State of Missouri, collectively referred to herein as "Party of the Second Part," and such other persons who shall hereinafter be elected as members of the Board of Governors hereunder, herein referred to as the "Board of Governors,"

## WITNESSETH THAT:

WHEREAS, the Party of the First Part is the owner of a tract of land situated in Franklin County, State Missouri, and described as:

A tract of land consisting of part of the Southwest quarter and part of the Southeast quarter of the Northeast quarter; and part of the Northwest quarter and part of the Northeast quarter of the Southeast quarter, Section Twenty-eight (28); and part of the Southwest quarter of the Northwest quarter, and part of the Northwest quarter of the Southwest quarter, Section Twenty-seven (27), all in Township Forty-two (42) North, range Three (3) West of the 5th P.M., being more fully described as follows; to-wit:

Commencing at an old found stone located at the Southwest corner of the Northwest quarter of the Southeast quarter of Section 28, Township 42 North, Range 3 West, thence N 0°-44' W a distance of 1485.30 feet to a point in the centerline of Missouri State Route C, thence N 89°-16' E a distance of 30.00 feet to an iron pin set in the East line of said State Route C, this being the point of beginning; thence continuing N 0°-44' W a distance of 1228.70 feet to a point at the Northwest corner of the Southwest quarter of the Northeast quarter of Section 28, thence N 88°-46' E a distance of 1249.00 feet to a point at the Northeast corner of the Southwest quarter of the Northeast quarter of Section 28, thence S 0°-44' E a distance of 264.40 feet to a point, thence S 76°-02' E a distance of 834.25 feet to a set iron pin, thence S 75°-44' E a distance of 968.16 feet to a set iron pin, thence N 82°-31' E a distance of 107.50 feet to a set iron pin, thence S 5°-30' E a distance of 148.50 feet to an iron pin set at the intersection of the Melody Lake Dam and the projected lake waterline, thence S 65°-34' W a distance of 100.00 feet to a point at the waters edge. All of the following points are located at the lake waterline or waters edge until further noted;

Thence S 67°-33' W a distance of 100.00 feet, thence S 70°-40' W a distance of 100.00 feet, thence S 80°-38' W a distance of 100.00 feet, thence S 83°-15' W a distance of 100.00 feet, thence S 84°-27' W a distance of 100.00 feet, thence S 89°-58' W a distance of 100.00 feet, thence N 85°-24' W a distance of 100.00 feet, thence N 75°-59' W a distance of 100.00 feet, thence N 84°-58' W a distance of 100.00 feet, thence N 77°-51' W a distance of 100.00 feet, thence N 79°-53' W a distance of 100.00 feet, thence N 79°-16' W a distance of 100.00 feet, thence N 83°-32' W a distance of 100.00 feet, thence N 89°-49' W a distance of 100.00 feet, thence S 82°-20' W a distance of 100.00 feet, thence N 77°-50' W a distance of 100.00 feet, thence S 77°-49' W a distance of 100.00 feet, thence N 58°-36' W a distance of 85.00 feet, thence West a distance of 100.00 feet, thence N 87°-43' W a distance of 100.00 feet, thence N 89°-38' W a distance of 100.00 feet, thence S 79°-21' W a distance of 77.00 feet, thence S 38°-02' W a distance of 61.00 feet, thence

S 57°-31' W a distance of 13.60 feet, thence S 62°-21' E a distance of 38.40 feet, thence S 32°-21' E a distance of 100.00 feet, thence S 33°-35' E a distance of 100.00 feet, thence S 56°-55' E a distance of 100.00 feet, thence S 58°-24' E a distance of 65.00 feet, thence S 30°-19' E a distance of 58.90 feet, thence N 68°-16' S a distance of 50.00 feet, thence S 81°-11' E a distance of 100.00 feet, thence S 85°-54' E a distance of 100.00 feet, thence S 75°-56' E a distance of 100.00 feet, thence S 76°-32' E a distance of 100.00 feet, thence S 56°-52' E to a distance of 100.00 feet, thence S 38°-20' E a distance of 100.00 feet, thence S 0°-49' E a distance of 100.00 feet, thence S 12°-13' W a distance of 50.00 feet, thence S 34°-10' W a distance of 27.00 feet, thence N 82°-22' E a distance of 56.00 feet, thence S 58°-40' E a distance of 17.00 feet, thence N 27°-59' E a distance of 100.00 feet, thence N 62°-44' E a distance of 100.00 feet, thence S 76°-48' E a distance of 100.00 feet, thence S 51°-58' E a distance of 50.00 feet, thence S 47°-03' E a distance of 100.00 feet, thence S 58°-46' E a distance of 100.00 feet, thence S 50°-25' E a distance of 100.00 feet, thence S 43°-31' E a distance of 50.00 feet, thence S 4°-46' W a distance of 62.00 feet, thence N 71°-01' E a distance of 25.00 feet, thence S 35°-59' E a distance of 24.00 feet, thence N 24°-51' E a distance of 39.00 feet, thence N 38°-16' E a distance of 100.00 feet, thence N 70°-4' E a distance of 50.00 feet, thence S 68°-01' E a distance of 100.00 feet, thence S 33°-42' E a distance of 50.00 feet, thence S 13°-52' E a distance of 30.00 feet, thence N 89°-36' E a distance of 70.00 feet, thence S 69°-48' E a distance of 100.00 feet, thence S 35°-37' E a distance of 100.00 feet, thence S 20°-18' E a distance of 100.00 feet, thence S 2°-34' W a distance of 44.0 feet, thence S 23°-52' E a distance of 20.00 feet, thence S 80°-26' E a distance of 55.00 feet, thence S 73°-36' E a distance of 81.00 feet, thence S 41°-30' E a distance of 60.00 feet, thence N 14°-06' E a distance of 80.00 feet, thence N 13°-21' E a distance of 35.00 feet, thence N 57°-26' E a distance of 85.00 feet, thence N 53°-33' E at the intersection, a distance of 73.90 feet to an iron pin set at the intersection of the centerline of the Melody Lake Dam with the projected lake waterline, thence, leaving said lake waterline or waters edge, S 5°-30' E a distance of 930.50 feet to a set iron pin, thence N 80°-46' W a distance of 517.50 feet to a set iron pin, thence N 63°-46' W a distance of 1136.48 feet to a set iron pin, thence N 74°-12' W a distance of 385.00 feet to a set iron pin, thence N 60°-27' W a distance of 730.00 feet to a set iron pin, thence N 54°-02' W a distance of 944.00 feet to an iron pin set in the East right-of-way line of Missouri State Route C; this being the place of beginning.

Above described tract contains 99.68 acres more or less; and

WHEREAS, the Party of the First Part has caused the above tract of land to be subdivided and the subdivision thus created, being known as "MELODY LAKE" in plat thereof, recorded, in the Office of the Recorder of Deeds of Franklin County, State of Missouri, in Plat Book 240 . . . Page Eight (8); and WHEREAS, there have been or may be designated, established and recited on said plat, certain easements and common areas which have been provided for the purpose of constructing, maintaining and operating sewers, pipes, poles, wires, storm water drainage, parks, community center, a lake, docks, boating facilities, recreational areas, and other facilities and public utilities for the benefit of the owner or owners of the lots shown on said plat; and

WHEREAS, it is the purpose and intention of this indenture to create a means of cooperation between present and future lot owners and home owners in said subdivision among themselves and under certain circumstances with lot owners and home owners in adjacent and adjoining land, all in the interest of fostering and enhancing their health, safety and welfare and for the establishing of a harmonious atmosphere and common interests, facilities and recreational activities directed to making for a wholesome spirit of neighborly understanding and cooperation; to preserve said tract of land and possible adjacent and adjoining land as a restricted neighborhood and to protect same against certain uses by the adoption of a common neighborhood plan and scheme of restrictions; to apply that plan and restriction not only to all of said land and possible adjacent and adjoining land and every parcel thereof as it may be sold from time to time, but also in favor of or against each said parcel as against or in favor of any and all other parcels within said residential area in the hands of the present or subsequent owners thereof, and mutually to benefit, guard and restrict present or future title holders or occupants of any or all said parcels and to foster the health, welfare, safety and morals of all who own lots or reside in said area; and

WHEREAS, all reservations, limitations, conditions, easements and covenants herein contained, any and all of which are hereafter termed "restrictions," are jointly and severally for the benefit of the Party of the First Part and of all persons who may purchase, hold or own from time to time any of the several lots covered by or to be covered by this instrument;

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements contained herein and the sum of One Dollar (\$1.00) to Party of the First Part in hand paid by the Party of the Second Part, the receipt of which is hereby acknowledged, and further, in consideration of the advantages to accrue to Party of the First Part as well as to future owners of said lots, and with the agreement and consent of the Party of the Second Part to act as "Board of Governors" hereunder, the Party of the First Part hereby grants, bargains, sells, conveys and confirms unto the Party of the Second Part as "Board of Governors" and as joint tenants and not as tenants in common, and to the successor or successors of them, and to such other members of the Board of Governors as shall be elected hereunder the provisions hereof:

A. Melody Lake, the dam, all docks and related areas, all recreational facilities, all community centers, paths, parks, playgrounds, common property, public utility easements, storm water sewers and drainage facilities, if any, contained in said land covered by this Declaration;

B. Easements in, over, upon and across such portions of said land as may be now or hereinafter designated, as follows:

The rights, benefits and advantages within said subdivision of having ingress and egress to and from, over, along and across such common property, public utility easements, storm water sewers and drainage facilities and appropriately beautifying, maintaining, improving, rebuilding, reconstructing, adding to or otherwise changing or altering the same; also of constructing, maintaining, reconstructing and repairing sewer, gas and water pipes and connections therewith on same; also of using the same and of regulating the use thereof in the interest of the health, welfare, safety, and morals of present or future residents of said subdivision; and of laying, constructing, maintaining and operating thereupon, either above or underground, suitable supports or conduits for telegraph and telephone wires and suitable pipes, conduits or other means of conducting steam, electricity, hot water or other useful agencies;

TO HAVE AND TO HOLD the same to, said Board of Governors and their successors forever IN TRUST for the Party of the First Part and the present or future owners of each of the said lots, and said lots and all of them shall forever remain subject to the burdens and entitled to the liens involved in said easements and the said party of the First Part for themselves, their executors, administrators and assigns and for and in behalf of all persons who may hereinafter derive title or otherwise hold through said Party of the First Part, their executors, administrators, or assigns, to any part of the said property hereinabove described, hereby provided that the liens and burdens of said easements and restrictions shall be and remain attached to each and all of said parcels as may be purchased in said subdivision and any other lands which may hereafter become subject and subservient to this Indenture and as appurtenant thereto; provided, however, that said easements are created and granted subject to the powers and rights granted to the said Board of Governors by this Indenture and shall be availed of and enjoyed only under and subject to such reasonable rules and regulations as said Board of Governors and their successors may make and prescribe or as may be made and prescribed under and by authority of the provisions of this Indenture.

I.

#### CREATION OF "THE MELODY LAKE HOME OWNERS' ASSOCIATION"

All of the present and future lot owners or home other lands which may hereafter become subject and future subject to this Indenture, shall, as a group, hereby be established and hereby be known as "THE MELODY LAKE HOME OWNERS' ASSOCIATION," and as such lot owners or home owners, shall have all of the rights, privileges, duties, obligations and liabilities as are prescribed under the terms and provisions of this instrument.

II.

#### SELECTION OF BOARD OF GOVERNORS; MEETINGS OF LOT OWNERS

The Board of Governors named above shall serve as such until the first annual meeting of the Lot owners occurring after all of the lots in said subdivision have been sold, residences erected thereon and occupied. If one or more of said above named members of the Board of Governors shall fail or refuse to continue to serve as such because of death, incompetency or for any other reason the remaining or surviving members of the Board shall appoint a successor to serve until such time as all lots are sold, residences erected thereon and occupied. Successors to the above named members of the Board of Governors shall be elected at the aforesaid annual meeting. The successor to the first Board member named above shall serve for a term of three (3) years; successor to the second Board member for a term of two (2) years; and the successor to the third Board member for a term of one (1) year. After the expiration of said respective terms, all members of the Board elected as provided for herein shall serve for terms of three (3) years. Following each annual meeting of the lot owners as provided for herein the Board of Governors shall designate one of their number to serve as Chairman, one member to serve as Secretary and one member to serve as Treasurer of the Board of Governors until the time of the next following said annual meeting. There shall be an annual meeting of said lot owners to be held on the second Saturday of May of each year during the term of this instrument, said meeting to be held at a convenient place in Franklin County, State of Missouri, and there may be special meetings of said lot owners as may be called by any one member of the aforementioned Board of Gov-

arnors, also to be held at a convenient place in the County of Franklin, State of Missouri. Ten (10) days' notice in writing to the owner of each lot of the time and place of any annual or special meeting shall be given by the Board of Governors or by the member of said Board calling said meeting by depositing same in the United States mail properly addressed and with postage prepaid. The successor to the member of the Board of Governors whose term has expired shall be elected by the lot owners at the annual meeting each year and the owner or owners of each lot shall be entitled to one vote for each full lot owned, which vote may be cast in person or by proxy. The person or persons receiving the highest number of votes or ballots shall be deemed elected and shall upon his or their acceptance in writing at once and by force of this Indenture imposed succeed to be vested with and possess and enjoy as a joint tenant, but not as a tenant in common, with the remaining member or members of the Board of Governors, all the estate, rights, interest, privileges and powers by this Indenture granted to his or their predecessor. Any lot owner who has failed to pay any assessments then due and payable shall not be entitled to vote at any annual or special meeting as provided for above. In the event that any member of the Board named herein or elected hereunder shall die or become incompetent for whatever reason to discharge the duties or avail himself of or exercise the rights and powers herein granted, or bestowed upon him or them as members of the Board of Governors under this Indenture, then and thereupon it shall be the duty of the survivor or remaining members of the Board to select a successor to fill the unexpired term of such deceased or incompetent member of the said Board. Any business relevant or pertinent to the affairs of the subdivision may and shall be transacted at any annual meeting or special meeting as described above. "Robert's Rules of Order" shall govern proceedings at all meetings of the lot owners or the Board of Governors hereunder. All actions of the lot owners and of the Board of Governors at annual or special meetings shall be by a majority of votes cast at such meetings. A majority of the lot owners or Board of Governors respectively shall constitute a quorum at the respective meetings of each.

#### III. RESERVATION OF EXPENDITURES

The Party of the First Part 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 it for joint main sewers, gas pipes, water pipes, conduits, poles, wires, street lights, roads, streets, the lake, docks, piers, facilities, recording fees, engineering fees, subdivision fees, engineering fees and consulting fees, and consultation fees with respect to any subdivision or land which is now or may in the future be made subject hereto.

#### IV. THE BOARD OF GOVERNORS

The Party of the First Part hereby vests the Board of Governors with the rights, powers and authorities described in this Instrument including the following rights, powers, and authorities with respect to all of the land which is now or which may in the future be made subject hereto under the terms and provisions hereof:

A. To exercise such control over the easements which are now or in the future to be dedicated to public bodies or agencies, public utilities or others furnishing common services to occupants of the land subject hereto, as is necessary to maintain, supervise and insure the proper use of said easements by the necessary public utilities, including the right (to themselves and to others to whom they may

grant permission) to construct, operate and maintain on, under and over said easements, sewers, pipes, poles, wires and other facilities and public utilities for service to the lots shown on said plat.

B. Publicly to dedicate the common property and easement rights of any portion or portions thereof whenever the majority of the property owners in the land subject hereto shall consent thereto in writing and whenever such dedications would be accepted by a proper public or private agency.

C. Abandon an easement or portion thereof by executing and recording a proper and appropriate instrument in the Office of the Recorder of Deeds of Franklin County, Missouri.

D. To prevent in their own names as the Board of Governors, any infringement and to compel the performance of any restriction set out in this Indenture or established by law. This provision is intended to be cumulative and not to restrict the right of any lot owner to proceed in his own behalf, but the power and authority herein granted to the Board of Governors is intended to be discretionary and not mandatory.

E. To clean up rubbish and debris and remove, replace and maintain trees, shrubbery and flowers upon any vacant or neglected lots or property, and the owners thereof may be charged with the reasonable expenses so incurred. The Board of Governors or their officers, agents or employees shall not be deemed guilty or liable for any manner of trespass for any such entry, work, abatement, removal or planting.

F. To consider, approve or reject any and all plans and specifications for any and all buildings or structures, fences, detached buildings or outbuildings, proposed for erection on said lots, proposed additions to such buildings or alterations in the external appearance of the buildings already constructed, it being provided that no building, fence, detached building, outbuilding or other structure may be erected or structurally altered on any of said lots unless there shall be first had the written approval of a majority of the Board of Governors to the plans and specifications therefor and to the grade proposed therefor. The Board of Governors shall approve such plans if the building or buildings reflected thereby comply with the terms of this Indenture and the subdivision plat and are reasonably consistent as to appearance, materials, type of construction and position on the lot with the other and existing construction in the subdivision. This subparagraph shall be applicable to all docks, piers, cradles or other structures or facilities placed in the lake.

G. To require a reasonable deposit in connection with the proposed erection of any building, fence, detached building, outbuilding or other structure on any of said lots in order to provide that upon completion of the project, all debris shall be removed from the site and from adjacent lots and any and all damages to subdivision improvements shall be repaired.

H. To establish and fix minimum costs which shall apply to buildings and structures which may be erected on said lots as the Board of Governors deem necessary and desirable in order to maintain an appropriate high character of the buildings and structures which may be erected on said lots. Minimum costs so established and effected shall at all times be subject to revision or abandonment at the discretion of the Board of Governors in order to provide that the buildings and structures which may be erected on said lots shall be fairly uniform in character irrespective of cost or other circumstances.

*Full Board approval*

I. The Board of Governors may receive, hold, convey, dispose of and administer in trust for any purpose mentioned in this indenture any gift, grant, conveyance or donation of money or real or personal property.

J. The Board of Governors in exercising the rights, powers and privileges granted to them in discharging the duties imposed upon them and in furnishing any services or other items, of every nature and description, directed or authorized by the provisions of this indenture, may from time to time enter into contracts, employ agents, servants, clerks, other employees and labor as they deem necessary and employ counsel to institute and prosecute such suits as they may deem necessary or advisable, and defend suits against them individually or collectively in their capacity as Board of Governors. Such contracts may be for such periods of time as the Board of Governors shall deem appropriate and may extend for periods of time beyond the term of office of any or all of the members of such Board of Governors.

K. The right and power is hereby given to the Board of Governors to grant additional easements not exceeding ten (10) feet in width along any lot line whenever same is necessary for public utility purposes.

L. At the discretion of the Board of Governors, in the interest of the health, welfare, safety and morals of the lot owners and home owners of the land now or in the future subject to this indenture, and provided that same is not prohibited by law or federal, state, county or municipality regulations, said Board of Governors shall have the right and power:

(i) To provide lights on streets, parks, gateways, entrances, common property and other public or semipublic places; to erect and maintain signs for the marking of streets; to repair, oil, maintain, repave and reconstruct paved streets or roads, lanes and pedestrian ways and to clear streets, gutters, sidewalks and pedestrian ways; to provide for the plowing and removal of snow and ice from sidewalks and streets; to plant, care for, maintain, spray, trim and protect trees, shrubbery and vegetation on streets, public property, common property and elsewhere in the interest of health, welfare, safety and morals within the land subject hereto;

(ii) To provide at suitable locations, receptacles for the collection of rubbish and for the disposal of such rubbish as is collected, and for the collection and disposal of garbage;

(iii) If same is not furnished adequately, in the sole judgment of the Board of Governors, by a governmental agency, public utility or other source, to provide for furnishing police protection, fire protection, water, gas, electricity, sewer facilities, telephone services, school and other transportation, services for the purpose of obtaining heating, power, lighting and other utilities, trash, rubbish and garbage collection and disposal, and services to the lot owners and home owners in the land subject to this indenture and for such purposes to purchase such services and utilities from persons, firms, corporations and governmental agencies and authorities and to distribute and render same under contract to lot owners and home owners within the land subject to this indenture, which contract shall describe the services to be rendered, the price to be paid therefor and such other terms and conditions as apply thereto, to fix the charges for such services rendered and to collect for the same from such lot owners and home owners, it being the intent of this instrument that no moneys collected or received by the Board of Governors as assessments hereunder shall be expended for the purposes of

~~this subparagraph.~~ The Board of Governors shall have the right in collecting charges imposed hereunder to employ all means and aids to collection as are provided for as to assessments. This paragraph is intended to foster public health, welfare, safety and morals in the event that normal state, county or municipal services are not rendered to the land subject hereto.

M. The right and power to establish, operate, conduct, regulate, maintain, repair, add to or reduce such community center property, buildings and facilities as may exist or be established on the land subject hereto; to make rules and regulations, not inconsistent with law and this indenture, for the use and operation thereof and in every and all respects govern the operation, functioning and government thereof. The Board of Governors shall have the further right and power to provide for and maintain the lake, dam, docks, piers, recreational facilities, tennis courts, playgrounds, gateways, entrances, drinking fountains, streams and ornamental features on common property or elsewhere at the discretion of the Board of Governors; to make rules and regulations, not inconsistent with law and with this indenture for the use and operation thereof and in every and all respects govern the operation, functioning and government thereof, including hours of use, charges for use, regulation and charges for guests, security requirements, safety requirements, (all of the above being descriptive and not by way of limitation) and in all other respects to regulate same.

N. The Board of Governors and their successors are hereby authorized, empowered and granted the right to make assessments upon and against the several lots and said parcels of land in the subdivision for the purpose and at the rates hereinafter provided, and in the manner and subject to the provisions of this instrument:

1. The Board of Governors shall during the first year of operation make an annual assessment of One Hundred Dollars (\$100.00) per lot and thereafter shall have the right to make uniform assessments (except as hereinafter provided) of not to exceed One Hundred Dollars (\$100.00) per lot in any one year upon and against the several lots or parcels of land subject to this instrument for the purpose of carrying out the general duties and powers of the Board of Governors as herein described and for the further purpose of enabling the Board of Governors to defend and enforce restrictions, adequately to maintain and operate the lake, dam, docks, piers, tennis courts, recreational areas, community centers, parks, roads, paths, easements, sewers, utilities, parking spaces and trees on common property or otherwise properly protect the health, safety and general welfare of the property owners and to perform any of their duties or rights hereunder, except as expressly limited hereunder.

2. If at any time the Board of Governors shall consider it necessary to make any expenditure requiring an assessment additional to the assessments above provided and the charges made under paragraph L (ii) of this Article IV, they shall submit in writing to the owners of lots for approval an outline of the plan for the project contemplated and the estimated amount required for completion of the same and the total assessment required. If such project and the assessment so stated be approved, either at a meeting of the lot owners duly called and held in the manner provided with reference to the election of members of the Board of Governors by a majority vote of all of the lot owners, voting by written ballot in person or by proxy; or by the written consent of the owners of a majority of the lots, the Board of Governors shall notify all owners in said tracts of

IMPORTANT

Bonded

the additional assessments; the limit of One Hundred Dollars (\$100.00) per lot per year for general purposes shall not apply to any assessment made under the provisions of this paragraph. The procedures described herein shall not be applicable to the contract charges described in Article IV, Paragraph L (iii) above.

3. All assessments, either general or special made by the Board of Governors for the purpose hereinabove enumerated shall be made in the manner and subject to the following procedure, to-wit:

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

(b) Every assessment shall become due and payable within thirty (30) days after notice is given as hereinabove provided. From and after the date when said payment is due, it shall bear interest at the rate of eight per cent (8%) per annum until paid and such payment and interest shall constitute a lien upon said lot and said lien shall continue in full force and effect until said amount is fully paid. At any time after the passage of the resolution levying an assessment and its entry in its minutes, the Board of Governors may, in addition, execute and acknowledge an instrument reciting the levy of the assessment with respect to any one or more lots and cause same to be recorded in the Recorder's Office of Franklin County, State of Missouri, and the Board of Governors may, upon payment, cancel or release any one or more lots from the liability of assessment (as shown by recorded instrument) by executing, acknowledging and recording (at the expense of the owner of the property affected) a release of such assessment with respect to any lot or lots affected, and the Board of Governors shall cause to be noted from time to time in the minutes of their proceedings, the payments made on account of assessments.

(c) All statutory laws and rights for enforcing and collecting general taxes in the State of Missouri now existing or which may hereafter exist, are hereby referred to and made a part of this instrument.

(d) Except as otherwise provided, no assessments shall be made except upon resolution duly adopted by a majority of the Board of Governors at a meeting of the Board of Governors, which resolution shall be incorporated into and made a part of the minutes of said meeting. Minutes shall be kept of all Board of Governors' meetings.

(e) The lien or liens for assessment hereunder shall be subordinate and junior to any first mortgage or deed of trust of record if insured by the Federal Housing Administration, the Veterans' Administration or any other agency of the United States or the State of Missouri, and to any other bona fide first mortgage or deed of trust if given for a valid consideration and if not placed of record for the purpose of defeating creditors and of evading assessments provided for herein; provided, however, that the terms and provisions shall be and remain fully applicable to all of the land subject hereto after foreclosure of any deed of trust or mortgage and any and all lot owners subsequent to such foreclosure shall be fully subject to any assessments provided for herein and made subsequently to such foreclosure.

0. The Board of Governors shall deposit the funds coming into their hands, as the Board of Governors, in a State or National Bank, protected by the Federal Insurance Deposit Corporation, at the best rate of interest obtainable. The Board of Governors shall designate one of their number as "Treasurer" of the

subdivision funds collected under this instrument and such funds shall be placed in the custody and control of such Treasurer. The Treasurer shall be bonded for the proper performance of his duties in an amount to be fixed by the majority of the Board of Governors.

P. The Board of Governors shall have the full and unqualified right, power and authority concerning all of the property, real, personal or mixed, owned or held by said Board of Governors to:

(i) make all contracts and incur liabilities necessary, related or incidental to exercise of the Board of Governors' powers and duties hereunder including the construction of improvements;

(ii) purchase insurance against all risks, casualties and liabilities of every nature and description;

(iii) to borrow money on same; encumber and hypothecate same; make and execute promissory notes or incur liabilities and obligations secured by deed of trust, mortgage, lien or encumbrance on same;

(iv) to make all types of permanent, temporary, construction or other loans;

(v) to use, handle, manage, control, operate, hold, deal in and in all respects treat with same, limited only as provided in this instrument.

Q. The Board of Governors shall have the right to make contracts and agreements not to exceed twenty (20) years in term for the furnishing of any and all services, for any maintenance and repair of all subdivision improvements and facilities, and for the performance of any work or function pursuant to the powers, rights and duties with the Board of Governors. Such contract or contracts may be made with Party of the First Part, with any corporation owned or operated wholly or in part by Party of the First Part or with any other company suitable and qualified in the opinion of the Board of Governors.

R. All rights, duties, powers, privileges and acts of every nature and description which said Board of Governors might execute or exercise under the terms of this Indenture may be executed or exercised by a majority of said Board of Governors unless otherwise provided in this Indenture. Members of the Board of Governors shall not be personally liable for their acts in the performance of their duties save for dishonesty or acts criminal in nature.

#### RESTRICTIONS

The party of the First Part herewith covenants with the Board of Governors, their successor or successors in trust, and all owners of lots in this subdivision, their grantees, lessees, assignees and heirs, that the following general restrictions shall apply to all land subject hereto and each owner or owners of such land, their grantees, lessees, assignees and heirs covenant:

A. That no person may dwell in or occupy on any of said lots, any garage or other structure not designed as permanent or stationary, nor may any person use any of said lots or any building or structure thereof attached thereon for any purpose prohibited by law or ordinance or for the commission or maintenance of any nuisance.

B. That the height of buildings, the minimum dimensions of yards and the minimum lot area for families shall be as follows:

1. No building hereafter erected or structurally altered shall exceed, twenty-five (25) feet in height.

2. Every building, other than accessory buildings, that are hereafter erected or structurally altered shall provide a front yard of at least fifty (50) feet in depth; a rear yard of not less than fifty (50) feet in depth. Accessory buildings hereafter erected or structurally altered shall not be located within forty (40) feet of the rear line of the said lot nor within ten (10) feet of any side line of said lot.

3. There shall be a side yard on each side of the principal building having a width of not less

than ten (10) feet.

4. Every single family dwelling hereafter erected or structurally altered shall be erected on a minimum lot area of not less than that prescribed in the above-described subdivision plat.

C. That all platted lots in this subdivision shall be restricted to one family residences only and not more than one main building shall be erected on any lot in the subdivision.

D. That no pigeons, birds, fish or poultry, cattle, hogs, rabbits or other animals (excepting dogs and cats, not in the aggregate totaling more than three in number, and fish or birds kept permanently within residential building on each lot) may be kept in or on any part of said property unless written permission be obtained from the Board of Governors, and such permission, if granted, shall be revocable at the pleasure of said Board of Governors.

E. That no residence, necessary building or any portion of any lot shall be used as a boarding house, nursing home, rooming house, club house or road house, nor shall any residence, accessory building or any lot be used or devoted to any manufacturing, industrial or commercial activity whatsoever, nor shall any building or premises be used for any purpose prohibited by law or ordinance nor shall anything be done in or on any premises which may be or become a nuisance, in the judgment of the Board of Governors, to the owners or inhabitants of lots in land subject hereto, based upon the health, welfare, safety and morals of said owners and inhabitants.

F. No part of a lot shall be sold, leased, subleased or resubdivided nor shall a fractional part of any lot be sold without the consent of the Board of Governors. This provision shall not, however, require the consent of the Board of Governors for the sale of an entire lot as shown on the recorded plat.

G. No trash, rubbish or garbage receptacle or can shall be placed on the premises outside of the buildings thereon except upon the day of the week or month upon which regularly scheduled collections of the same are to take place. Such receptacle shall be covered with a tight fitting lid or cover. Burning of rubbish, trash or debris except in a commercially produced incinerator or the equivalent thereof is prohibited.

H. No one story main building shall be erected (i) as to lots, any boundary line of which abuts Melody Lake, (first tier lots) with a foundation area of less than 640 square feet excluding garage and porches, said measurements to be made at the outside wall:

(ii) as to lots which are separated from Melody Lake by only one other tier of lots (second tier lots), with a foundation area of less than 550 square feet excluding garage and porches, said measurements to be made at the outside wall:

(iii) as to all other lots, with a foundation area of less than 400 square feet excluding garage and porches, said measurements to be made at the outside wall.

I. No one will be permitted to live on any lot in a temporary building, a trailer, a mobile home, or a tent erected or placed thereon.

J. No fence may be erected without consent in writing of a majority of the Board of Governors. Said Board of Governors may approve, unless good cause to the contrary exists, fences located behind the front building line if such fence is less than four (4) feet in height and is at least fifty per cent (50%) open and except also that a privacy fence (located entirely behind the building lines of a given lot) may be erected if such privacy fence is less than feet in length. In the event that any fence shall be six (6) feet in height; not more than forty-five (45) permitted to deteriorate and fall into disrepair, the Board of Governors may, in their discretion, repair

or restore such fence and charge the cost of same to the then owner of such lot, with all power of collection and creating of a lien as exists in the case of assessments.

K. No lot owner shall park a truck on any lot other than in a garage or car port, for a period in excess of one hour per day. No motor vehicle shall be displayed as being for sale in said subdivision and no vehicle shall be parked or displayed therein bearing a "For Sale" sign or other sign indicating that said vehicle is being offered for sale.

L. With respect to any corner lot there shall be no shrubbery, trees, flowers, vegetation, walls and fences greater than two (2) feet in height within a triangular area bounded by the property lines on each street and a line connecting said property lines, fifty (50) feet from the intersection thereof or in a case where the intersection is rounded fifty (50) feet from the point where a straight projection of property lines would intersect; provided, however, that tree branches or boughs may overhang such area so long as they do not extend lower than seven (7) feet from the ground. In the event of violation of this restriction, the Board of Governors, their agents, servants and employees shall have the absolute right to enter upon the lot involved and remove, trim, cut or destroy any shrubbery, trees, other vegetation or other structures or obstacles in violation of this restriction.

M. No signs, advertisements, billboards or advertising structures of any kind may be erected or maintained on any of the lots on the land subject now or in the future hereto except for the erection and maintenance of not more than one advertising board on each lot, said advertising board not to be more than five (5) square feet in size and used for the sole and exclusive purpose of advertising for sale the lot or tract for which it is erected.

N. There shall be no swimming permitted in the lake. Motor boats and other motor, engine or mechanically propelled vessels except electric trolleys shall be prohibited on the lake; that is to say only row boats, canoes or sail boats shall be permitted on the lake.

O. There shall be no hunting of birds or animals with guns, bows and arrows, traps or any other devices and no discharge or firing of any firearms in the subdivision.

## VI. ENFORCEMENT

It is further provided, declared and agreed that if the owner or owners of said parcel of land subject hereto or any lot or portion thereof, their heirs, executors, administrators, grantees or assigns, or any one of them, hereinafter owning any of the parcels of land or part thereof embracing any one or more of such covenants shall infringe or attempt to infringe or omit to perform any covenant or restriction aforesaid which is by its provisions to be kept and be performed by it, or him or them, it shall be lawful for any person or persons owning any parcel of land embraced in said covenant, or having a legally recognizable interest in said land (by lien, mortgage, deed of trust or contract or option for purchase), for the said Board of Governors in behalf of or for the benefit of themselves or any of said owners or for any agent or agents chosen by the property owners aforesaid, or for any or either of them, to proceed in law or in equity against the person or persons infringing or attempting to infringe or omitting to perform such covenant either to prevent it, him or them from doing so or to recover damages or other dues for such infringement or omission. It is hereby declared and provided that while the covenants aforesaid shall be valid and binding, and must be observed, kept and performed by every owner and occupant of said parcels of land, or any part thereof, embraced in such cove-



nant or covenants, yet they are not to be enforced personally against the Party of the First Part or against their heirs, executors, administrators and assigns, unless they, while owning or occupying or controlling some parcel of land or part thereof, shall have violated or failed to perform the covenant or covenants embracing such parcel or part thereof. It is and is hereby declared to be the intention that each of the covenants and restrictions herein shall attach to and remain with each parcel of land in said area and to and with all titles, interest and estates in same, and be binding upon every owner or owners, leases and their occupants, or any parcel of land as fully as if expressly contained in proper and obligatory covenants and conditions in each contract and covenant of and concerning such parcels of land or any part thereof.

The restrictions herein contained and the provisions of this Indenture are to be construed independently, and in the event any of them should be declared void or for any reason unenforceable, the validity and binding effect of the other restrictions and provisions of this Indenture shall not be thereby impaired or affected.

#### VII.

##### DURATION, AMENDMENTS, MODIFICATIONS

All the foregoing provisions and restrictions shall continue and remain in full force and effect at all times against said property for fifty (50) years from the date of the Indenture and shall, as then in force, be continued automatically, without further notice, for successive periods of ten (10) years each unless, within six (6) months prior to the expiration of any of said periods, notice is given to the Board of Governors by at least twenty-five per cent (25%) of the owners of lots platted on the land then subject hereto of their intention to terminate this Indenture, in which event same shall be terminated and ended at the end of such period.

Until Party of the First Part has conveyed all of the lots in the land subject hereto, now or in the future, but in no event for a period in excess of ten (10) years, they shall have the absolute right to amend this Indenture by executing such amending instrument and recording same in the Office of the Recorder of Deeds of Franklin County, State of Missouri, and during such period this instrument may not be amended in any other manner. Thereafter, any of the terms and provisions of this Indenture may be altered, amended, changed or discontinued by a written agreement signed by not less than the record owners of two-thirds (2/3rds) of all the lots in

the land subject hereto and none of whom being at the time in arrears with the duly levied assessments against any lots owned by the signers thereof, and such written and signed alteration, amendment, change or discontinuance shall become a part of the provisions and restrictions of this Indenture whenever filed in the Office of the Recorder of Deeds of the County of Franklin, State of Missouri.

It is further expressly agreed and understood that any modification, amendment, change or elimination of any one or more of the lots or part or parts thereof may be made at any time by the written consent of two-thirds (2/3rds) of the owners of the lots in the land subject hereto, subject to the approval of a majority of the then Board of Governors.

#### VIII.

##### ADDITIONAL LAND MAY BE MADE SUBJECT HERETO

The Party of the First Part, from time to time, shall have the right at any time before Party of the First Part has conveyed all of the land then subject hereto to render other land also subject and subservient to this Indenture in all respects if such land is contiguous, adjoining or adjacent to land or some point thereof then subject to this instrument by executing, delivering to the Board of Governors and recording a supplement to this Indenture stating:

(a) A description of the land to be added to that subject and subservient to this Indenture.

(b) A statement that Party of the First Part is the owner in fee simple of such land; are, in lieu thereof, all other persons, firms or corporations having an interest in such land to be added, may join in such supplement.

(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, burdens or provisions of this Indenture which in whole or in part not be applicable to such land to be added or shall be applicable in modified form, if any.

Following the execution, delivery and recording of such supplement, but subject to its terms, such land to be added and the then or future lot owners thereof shall in all respects be fully subject to this Indenture and all rights, privileges, obligations, duties, liabilities, responsibilities, burdens and restrictions, including but not limited to the right to serve as and elect members of the Board of Governors and to the payment of assessments as though said land had originally been included in and subject to this Indenture, without exception or qualification of any nature or description.

## Memo Attachment 7

Operating Agreement, Melody Lake Water and Sewer, LLC

*Copy -  
original to Jenny  
Johnson  
3/08/06*

**OPERATING AGREEMENT**

THIS AGREEMENT is made and entered into as of the 29<sup>th</sup> day of April, 2004, (the "Effective Date"), by MELODY LAKE RANCH ASSOCIATES, INC. ("the member").

WHEREAS, the corporation hereto has agreed to organize a limited liability company (the "Company"); and

WHEREAS, this Agreement sets forth the understandings with respect to the organization and operation of the Company and the scope and conduct of its business.

NOW, THEREFORE, in consideration of mutual covenants and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, it is agreed as follows:

**1. ORGANIZATION.**

a. **FORMATION OF THE COMPANY.** The Member hereby agree to form the Company and to associate themselves as the member of the company as formed under and pursuant to the provisions of the Missouri Limited Liability Company Act, Sections 347.010, et. seq., of the Revised Statutes of Missouri (the "Act") for the purposes and scope set forth in this Agreement. The Manager shall cause to be filed in the appropriate governmental office Articles of Organization which conform to the requirements of the Act in order to constitute the Company as a valid limited liability company under the Act. The Member shall execute such Articles of Organization and take such further action as may be required to effect such filings.

b. **NAME.** The name of the Company is MELODY LAKE WATER & SEWER, LLC., and all business of the company shall be conducted under that name or any other name, but in any case, only to the extent permitted by applicable law.

c. **Term.** The Company shall continue until December 31, 2096, unless the Company is sooner terminated, as herein provided.

d. **CHARACTER OF BUSINESS: POWERS.** The limited liability company is formed to transact any and all lawful business for which a limited liability company may be organized pursuant to the Missouri Limited Liability Company Act (the "Act") and, in relation to the transaction of such business, to have and exercise any and all of the powers and rights which a limited liability company may lawfully exercise pursuant to the Act.

e. **NAMES AND ADDRESSES OF THE MEMBERS.** The name and mailing address of the Member is as follows:

MELODY LAKE RANCH ASSOCIATES, INC.

f. **PRINCIPAL PLACE OF BUSINESS.** The principal place of business of the Company shall be at 333 Playmor Drive - Leslie, MO 63056 and any or such other locations as may be hereafter determined by the Member:

g. **CERTAIN DEFINITIONS.** As used herein, the following terms have the following meanings:

I. "Business Property" means all property, assets and interests (whether real or personal, tangible or intangible) now or hereafter owned or held by the Company, and includes the company's interest in the Property and the Assets.

ii. "Distribution Percentage" means, for each Member, the percentage set forth opposite such Member's name, as follows:

Member	Distribution Percentage
MELODY LAKE RANCH ASSOCIATES, INC.	100%
TOTAL	100%

iii. A Member's "Interest" in the company means any and all right, title and interest in and to distributions, surplus and capital to which such Member may be entitled as provided in this Agreement, together with the duties and obligations of such Member to comply with all of the terms and provisions of this Agreement.

iv. "Manager" means \_\_\_\_\_,  
and his/her permitted successors as Manager hereunder.

v. "Operating Proceeds" for the applicable period means the gross receipts of the Company during such period plus any reductions in funded reserves arising out of the reversal of such reserves, less the following: (1) cash operating expenses paid during such period, (2) interest and principal paid during such period on any indebtedness of the Company, including loans by any Members (3) cash expenditures for capital improvements and other capital items paid during such period, and (4) additions to funded reserves made during such period. For purposes of the foregoing, (a) gross receipts of the Company shall not include Dissolution Proceeds (as hereinafter defined) or any part thereof nor any proceeds from capital contributions or loans by any Members; (b) reserves for anticipated or contingent liabilities and working capital shall be established by the Company in such amounts as are reasonably determined by the Manager; and (c) no deductions from gross receipts of the Company shall be made for amounts paid out of funded reserves.

h. ADDITIONAL DEFINITIONS. The definitions herein shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine and neuter forms.

## 2. CAPITAL CONTRIBUTIONS.

a. CONTRIBUTIONS OF PROPERTY. The following Member shall contribute to the capital of the Company the property and assets described for each respective member on Exhibit A, attached to this Agreement and made a part hereof by this reference:

MELODY LAKE RANCH ASSOCIATES, INC.	see attached Exhibit "A"
------------------------------------	--------------------------

b. CREDITS TO CAPITAL ACCOUNTS. The contributing Member's Capital Account shall be credited with the cash amounts and the values of the property as set forth above.

3. DISTRIBUTIONS. Subject to the provisions of Section 9.c (governing the application of Dissolution Proceeds), the Company's Operating Proceeds shall be distributed to Member according to its respective Distribution Percentages, at such times as the Member shall determine by Major Decision Approval (but not less frequently than quarterly). Member hereby irrevocably

waives any and all rights that it may have to maintain any action for partition of any of the Company property.

#### 4. ALLOCATION OF PROFITS AND LOSSES.

a. PROFITS AND LOSSES. Subject to Section 4.b, the Company's income, gain, loss, deductions and credits (and items thereof), for each fiscal year of the company, shall be allocated to Member.

##### b. ALLOCATIONS WITH RESPECT TO TAX MATTERS.

i. Solely for tax purposes, income, gain, loss and deduction with respect to property contributed to the Company by any Member shall be allocated in accordance with Section 704(c) of the Internal Revenue Code (the "Code"), Treasury Regulations issued thereunder, and Treasury Regulations 1.704-1(b)(2)(iv)(g), so as to take account of any variation between the basis of the property to the company and its fair market value at the time of contribution.

ii. For purposes of determining Member's respective shares of nonrecourse liabilities of the Company under Treasury Regulations 1.752-3(a)(3), it is hereby specified in accordance with such Treasury Regulations that each Member's percentage interest in Company profits is the same as his Distribution Percentage.

iii. If the Company "revalues" its property under the provisions of Treasury Regulations 1.704-1(b)(2)(iv)(f), the Members' Capital Accounts shall be adjusted in accordance with Treasury Regulations 1.704-1(b)(2)(iv)(g) for allocations to them of depreciation, depletion, amortization and gain or loss, as computed for book purposes, with respect to so much of the Company's property as has been subject to such "revaluation" as that term is used in Treasury Regulations 1.704-1(b)(2)(iv)(f) (the "Revalued Property"). The Member's distributive shares of depreciation, depletion, amortization and gain or loss, as computed for tax purposes, with respect to Revalued Property shall be determined so as to take account of the variation between the adjusted tax basis and book value of such Revalued Property in the same manner as under Section 704(a) of the Code.

iv. If during any taxable year of the Company there is a change in Member's Interest in the Company, then Member shall cause the allocations of the Company's income, gain, losses, deductions and credits (and items thereof) to be made in a manner which takes into account the varying interests of the Member in the Company during such taxable year in accordance with Code Section 706(d) and the Treasury Regulations thereunder.

#### 5. ACCOUNTING.

##### a. ACCOUNTING METHODS AND RECORDS.

i. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with generally accepted accounting methods, consistently applied, except that the Member's Capital Accounts shall be maintained as provided in this Agreement. The Company shall be on the cash basis for both tax and accounting purposes.

\_\_\_\_\_ is hereby designated as the "tax matters partner" (as such term is defined in Section 6231(a)(7) of the Code) or the equivalent representative for the Company.

b. FISCAL YEAR. The fiscal year of the Company shall begin on the 1<sup>st</sup> day of January in each year and end on the 31<sup>st</sup> day of December in each year.

c. CAPITAL ACCOUNTS. A capital account ("Capital Account") shall be established for Member and determined, maintained and adjusted in accordance with Treasury Regulation 1.704-1 (h)(2)(iv) and in accordance with the provisions of this Agreement. The capital Accounts of Member shall be adjusted upon each distribution of property by the Company to Member to the extent required by and in the manner described in Treasury Regulations 1.704-1 (b)(2)(iv)(e).

d. 754 ELECTION. In the case of a transfer of an Interest which is permitted by this Agreement and which is made in the manner provided in section 743 of the Code, then upon the request of the transferee of such Interest, the Company shall file an election under Section 754 of the Code in accordance with procedures set forth in the Treasury Regulations applicable thereto.

## 6. POWERS, RIGHTS AND DUTIES OF MANAGER.

### a. APPOINTMENT OF MANAGER.

I. There shall, at all times, be at least one (1), but not more than two (2) Managers.

ii. The Manager, shall discharge or cause the discharge of his or her duties as a Manager unless and until (1) the Manager resigns or is replaced pursuant to the provisions of this Section, and (2) if necessary, a successor Manager is approved. A Manager may resign and/or be replaced at anytime by a decision to do so approved by Major Decision Approval. In the event of the resignation, removal, death, incapacity or inability to act of a Manager, another person may be designated as a successor Manager by Major Decision Approval and Member and the removed or resigning Manager shall execute such documents and take such actions as may be required to permit the successor Manager to act as Manager in accordance with the provisions of the Agreement.

iii. The Manager shall not be required to devote the Manager's sole and exclusive time and efforts to manage the Company but shall devote whatever time, effort and skill as may be reasonably necessary to conduct the Company's business.

b. MANAGEMENT AUTHORITY AND DUTIES. Subject to the provisions of Section 6.d and the other rights expressly granted to Member under the provisions of this Agreement, the Manager shall have the exclusive right, authority, and responsibility to manage the day-to-day operations and affairs of the Company and to make all decisions with respect thereto, and no Member shall participate in his or its capacity as a Member hereof in the control or management of the Company's business provided however, that all acts, decisions and determinations by the Manager on behalf of the Company may be made by each Manager independently of any other Manager (which shall then be binding on all the Managers). Pursuant to the foregoing provisions of this Section 6 and subject to the other provisions of this Agreement, the Manager shall have all of the rights and powers of a manager as provided under the Act and as otherwise provided by law.

### c. SPECIFIC AUTHORITY OF THE MANAGER

I. Without in any way limiting the general powers and authority of the Manager, and subject to the provisions of Section 6.d and the other rights expressly granted to Member under the provisions of the Agreement, the Manager is hereby specifically authorized for, and in the name of and on behalf of, the Company:

(I) To execute and deliver any and all agreements, contracts, documents, certifications and instruments necessary or convenient in connection with the carrying

on in the usual way of the business and affairs of the Company;

(2) To execute and deliver, in furtherance of any or all of the purposes of the Company, any deed, lease, mortgage, mortgage note, bill of sale, contract or other instrument purporting to convey, exchange or encumber all or any part of the Business Property, or any interest therein for the purpose of carrying on in the usual way of the business and affairs of the Company;

(3) To borrow money and issue evidences of indebtedness and assume existing indebtedness necessary, convenient or incidental to the accomplishment of the purposes of the Company;

(4) To prepay in whole or in part, refinance, recast, increase, modify or extend any mortgage or other indebtedness relating to the Company or the Business Property;

(5) To deal with, or otherwise engage in business with, or provide services to and receive compensation therefor from, any person who provides any services to, lends money to, sells property to or purchases property from, the Company;

(6) To deposit or invest Company funds in such interest-bearing or non-interest-bearing investments or bank accounts as they deem advisable to the extent such funds are not then required for Company operations and are not required to be distributed pursuant to this Agreement;

(7) To retain or employ and coordinate the services of employees, supervisors, accountants, attorneys and other persons necessary or appropriate to carry out the business and purposes of the Company;

(8) To engage in any kind of activity and to perform and carry out such contracts of any kind necessary to, or in connection with, or incidental to in the furtherance of, the carrying on in the usual way of the business and purposes of the Company in accordance with this Agreement;

(9) To the extent that funds of the Company are available therefor, to pay all debts and other obligations of the Company, including amounts due under permanent and other loans to the Company;

(10) To supervise the operation, maintenance, manufacture, management, and repair of the Property, including supervision of the performance of such functions as hiring and termination of employees, leasing and/or selling of the Business Property, collection of rents and receivables, provisions of utilities, cleaning, repairs and maintenance services for the purpose of carrying on in the usual way of the business and affairs of the Company;

(11) To handle all matters in connection with the manufacture and sale of the Business Property, including the securing of all necessary licenses, permits and like consents and securing all necessary financing and the execution of all documents related thereto for the purpose of carrying on the usual way of the business and affairs of the company; and

(12) To perform other duties provided elsewhere in this Agreement to be performed by the Manager .

ii Any person dealing with the Company or the Manager may rely upon a certificate signed by the Manager, thereunto duly authorized, as to:

- (1) The identity of any Manager or Member;
- (2) The existence or nonexistence of any fact which may constitute a condition precedent to acts by the Manager or, in any other manner, be germane to the affairs of the Company;
- (3) The persons who are authorized to execute and deliver any instrument or document of the company; or
- (4) Any act or failure to act by the Company.

d. **RESTRICTIONS ON AUTHORITY OF THE MANAGER; CERTAIN MAJOR DECISIONS.** Notwithstanding the provisions of Sections 6.b and 6.c, no action shall be taken or sum expended or obligation incurred by the Company or the Manager with respect to a matter within the scope of any of the "Major Decisions" (as defined below) affecting the Company, unless such Major Decision has been approved by the majority approval of Member's board. The "Major Decisions" shall be the following:

- I. The employment, compensation and/or removal of a Manager;
- ii. The acquisition by the Company of any real estate or any interest therein (other than the Business Property);
- iii. The sale or transfer of all or substantially all of the business Property;
- iv. The confession of a judgment against the Company in connection with any threatened or pending legal action;
- v. The borrowing of money by the Company; or
- vi. The distribution of Operating Proceeds or Dissolution Proceeds other than strictly in accordance with the provisions of Sections 3 and 9.

e. **MANAGER'S INDEMNIFICATION; COMPENSATION.**

I. The Company shall indemnify and hold harmless the Manager; from any loss, damage, liability or expense incurred or sustained by Manager by reason of any act performed or any omission for or on behalf of the Company or in furtherance of the interests of the Company, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other costs and expenses (which may be advanced by the Company) incurred in connection with the defense of any actual or threatened action, proceeding or claim; provided, however, that the foregoing indemnity shall not relieve the Manager from liability for gross negligence, willful malfeasance or misconduct.

ii. The Manager shall be compensated on such terms and conditions as may be mutually agreed upon and approved by Major Decision Approval.

7. **MEETINGS AND VOTING.** Notwithstanding anything to the contrary in this Agreement, a determination by Member shall be effective whether or not votes are cast at a meeting of Member, or by formal or informal, oral or written instructions of Member, and such determination so made by the Member authorized to do so shall be effective.



## 8. TRANSFERS OF INTERESTS.

### a. RESTRICTIONS.

I. Except as herein provided, no sale, assignment, exchange, transfer, encumbrance or hypothecation, whether voluntary or involuntary (each a "Transfer"), shall be made by Member of the whole or any part of its Interest without the prior written consent of Member's board with majority approval by said Board.

ii. If any Transfer of an Interest (other than a Transfer described in Section 8.c or Section 9) is purported to be made or suffered without complying with the applicable provisions in this section, such purported Transfer shall be void ab initio, and an option to purchase such Interest shall be deemed to have been granted to the Company pursuant to Section 8.b of this Agreement as of the date the Company first has actual knowledge of such purported Transfer. In enforcing this provision, the Company may refuse to transfer any Interest or any claim thereto in addition, and without prejudice, to any and all other rights or remedies which may be available to Member.

b. PERMITTED TRANSFEREES. This Section does not apply to a transfer:

I. To the Company

### c. EFFECT OF ASSIGNMENT; DOCUMENTS.

I. All whole or partial Interests transferred, assigned or bequeathed pursuant to the provisions of this Article shall be subject to the restrictions and obligations set forth in this Agreement. Unless otherwise agreed by Member or expressly provided herein, no Transfer permitted hereunder shall relieve the assignor from any of its obligations under this Agreement accruing prior to such Transfer.

## 9. DISSOLUTION OF THE COMPANY.

### a. DISSOLUTION ACTS.

I. No act, thing, occurrence, event or circumstance shall cause or result in the dissolution of the Company except that the happening of any one of the following events shall work an immediate dissolution of the Company:

(1) The sale or other disposition of all or substantially all of the Business Property;

(2) A Major Decision Approval in writing to dissolve and terminate the Company;

(3) The termination of the term of the Company pursuant to Section 1.c of this Agreement; or

(4) Subject to Section 9.b, the death, retirement, withdrawal, expulsions, bankruptcy or dissolution (each an "Event of Withdrawal") occurring with respect to Member.

ii. Without limiting the other provisions hereof, neither the assignment of all

or any part of a Member's Interest in the Company hereunder nor the admission of a new member shall work the dissolution of the Company.

b. DISTRIBUTION OF PROCEEDS ON DISSOLUTION; WINDING UP; RESERVES.

I. Upon the dissolution and termination of the Company, the Manager shall proceed with the liquidation of the Company as promptly as possible, but in an orderly and businesslike manner so as not to involve undue sacrifice, and the proceeds therefrom and any other assets and funds of the Company (collectively, the "Dissolution Proceeds") shall be applied and distributed in the following order of priority:

(1) First, to the payment of all unpaid secured indebtedness of the Company to the extent of the lesser of the value of the secured property or the amount of the secured indebtedness;

(2) Second, to the payment of the Company's then outstanding unsecured indebtedness, but if the amount available therefor shall be insufficient, then a pro rata amount on account thereof; and

(3) Third, the balance, if any, less such reserves ("Dissolution Reserves") as the Manager reasonably determines are necessary or appropriate for anticipated or contingent expenses of the Company, shall be distributed to Member.

ii. To the extent the Manager subsequently determines Dissolution Reserves (or any part thereof) to be unnecessary for Company expenses, the Manager shall cause such amounts to be distributed or paid to Member under this Section 9.c as if such proceeds had not been used to fund Dissolution Reserves.

10. GENERAL PROVISIONS.

a. IN GENERAL. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri. Each provision of this Agreement shall be considered severable and if for any reason, any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation or affect those provisions of this Agreement which are valid. This Agreement sets forth all of the representations, promises, agreements and understandings among all of the parties hereto with respect to the Company, the Company's business and the property of the Company, and there are no representations, promises, agreements or understandings, written or oral, express or implied, among them other than as set forth herein. Any alteration or amendment of this Agreement shall be in writing and signed by each party to this Agreement.

b. NOTICE. Any notice required or permitted under this Agreement must be in writing and may be hand delivered or sent by registered or certified mail or overnight delivery:

If to the Company: 333 Playmor Drive - Leslie, MO 63056

If to the Member: TO THE ADDRESS FIRST SET FORTH ABOVE

or to any other address or facsimile number of which any party will notify any other in writing.

d. POWER OF ATTORNEY.

I. Member hereby irrevocably makes, constitutes and appoints the Manager as true and lawful attorney-in-fact to make, execute, sign, acknowledge and file with respect to this or any successor Company:

(1) such amendments to or restatements of the Company's Articles of Organization as may be required or appropriate pursuant to the provisions of this Agreement, or otherwise under the Act;

(2) All papers which may be deemed necessary or desirable by the Manager to effect the dissolution and liquidation of the Company after its termination as provided herein; and

(3) All such other instruments, documents and certificates which may from time to time be required by the laws of the State of Missouri, the United States of America, or any political subdivision or agency thereof, to effectuate, implement, continue and defend the valid and subsisting existence of the Company and any other instruments documents or certificates required to qualify the Company to do business in any other State where it is required to so qualify.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures as of the date first above written.

MEMBERS:

MELODY LAKE RANCH ASSOCIATES, INC.

BY: \_\_\_\_\_  
President

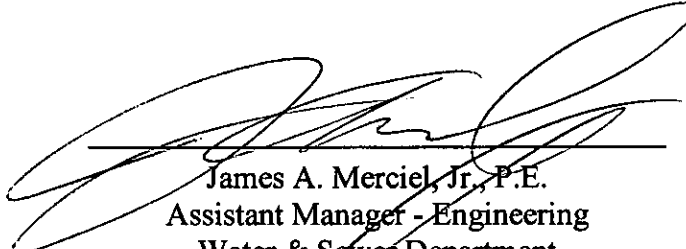
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Secretary

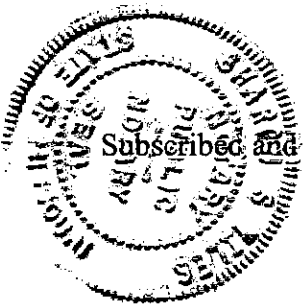
**AFFIDAVIT OF JAMES A. MERCIEL, JR.**

STATE OF MISSOURI     )  
                                      ) ss  
COUNTY OF COLE        )

**Case No. WC-2006-0363**

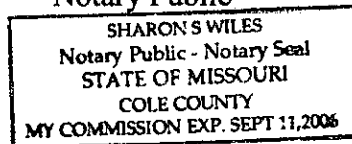
James A. Merciel, Jr., of lawful age, on his oath states: (1) that he is a member of the Staff of the Missouri Public Service Commission; (2) that he participated in the preparation of this Staff Recommendation Regarding Resolution of Complaint and Approval of Asset Transfer and the Attachment thereto (RECOMMENDATION); (3) that he has knowledge of the matters set forth in this RECOMMENDATION; and (4) that the matters set forth in this RECOMMENDATION are true and correct to the best of his knowledge, information and belief.

  
James A. Merciel, Jr., P.E.  
Assistant Manager - Engineering  
Water & Sewer Department  
Utility Operations Division



Subscribed and sworn to before me this 8<sup>th</sup> day of August 2006.

  
Notary Public



My Commission Expires: \_\_\_\_\_