

AMENDMENT OF RESTRICTIONS  
AND INDENTURE OF TRUST  
FOR ENCHANTED FOREST SUBDIVISIONS  
(INCLUDING WINDSWEPT ADDITION TO  
ENCHANTED FOREST SUBDIVISION)

WHEREAS, Ralph N. Smith and Mildred E. Smith, his wife, hereinafter referred to as Grantors, caused to be laid out and subdivided certain real estate situated in Sections 21, 22, 27 and 28, Township 43 North, Range 5 East, Jefferson County, Missouri, which said real estate is now known as Enchanted Forest Subdivision as shown by plat thereof filed for record in Book 24, Page 30, in the Recorder's Office of Jefferson County, Missouri, Enchanted Forest Subdivision #2 as shown by plat thereof recorded in Plat Book 25, Page 29 of the aforesaid office, Enchanted Forest Subdivision #3 as shown by plat thereof recorded in Plat book 33, Page 2 of the aforesaid office, Enchanted Forest Subdivision #4 as shown by plat thereof recorded in Plat Book 33, Page 3 of the aforesaid office, Enchanted Forest Subdivision #5 as shown by plat thereof recorded in Plat Book 33, Page 4 of the aforesaid office, Enchanted Forest Subdivision #6 as shown by plat thereof recorded in Plat Book 33, Page 5 of the aforesaid office, Enchanted Forest #10 as shown by plat thereof recorded in Plat Book 54, Page 18 of the aforesaid office, and Windswept Addition to Enchanted Forest Subdivision as shown by plat thereof in Plat Book 55, Page 15 of the aforesaid office (all of which are collectively referred to herein as the "Subdivision"); and

WHEREAS, we the undersigned, being the owners of at least sixty percent (60%) of the land area of Enchanted Forest Subdivisions, #1, #2, #3, #4, #5 and #10, and the owners of at least sixty percent (60%) of the lots in Enchanted Forest Subdivision #6 and Windswept Addition to Enchanted Forest Subdivision, desire to replace all of the aforesaid terms and conditions of the deed of restrictions recorded in Book 373, Page 289, and Book 319, Page 362 and the restrictions for the Windswept Addition recorded in Book 479, Page 855.

NOW THEREFORE, in consideration of the premises and for the mutual benefits to be derived by the present and future owners of lots in the Subdivision, the undersigned hereby replace all of the aforesaid deed of restrictions recorded in Book 373, Page 289 and Book 319, Page 362 and Book 479 Page 855 and Book 778, Page 72 with the following restrictions which shall be imposed and shall apply against all of the Lots in the Subdivision from this day forward:

**DEFINITIONS**

"Board of Trustees" shall mean the Board of Trustees of the Enchanted Forest Subdivision, including the Windswept Addition to Enchanted Forest Subdivision.

"Common Areas" shall collectively mean and refer to the easements, licenses and other occupancy or use rights which the Subdivision and/or the Board of Trustees may have in any portion of the Subdivision, or in other land or properties adjacent thereto, whether as an appurtenance thereto or otherwise, which are intended to be devoted to or for the common benefit and enjoyment of some or all of the residents of the Subdivision, and/or maintained, improved, managed, serviced, replaced or repaired by the Board of Trustees, all as more fully described herein below, including, without limitation:

- (i) open spaces, Subdivision entrance areas and monuments, gates, street poles and lights, and storm water control easement areas and facilities;

(ii) all sanitary and storm sewer facilities, including any detention and/or retention basins, and all utility installations, lines and connections for gas, electricity, light, telephone, water and plumbing, cable television wires, as located in any utility easements, including proposed detention area or drainage easements on any of the Final Plats, including those utilities located within a Lot except to the extent such utility therein is exclusively servicing such Lot (unless or until such time that, with respect to all or any of the foregoing, such a facility, as described above, has been accepted for maintenance by a municipal or quasi-municipal entity);

(iii) all apparatus and installations, now or hereafter, erected on the Common Areas and intended for common use or benefit;

(iv) any auxiliary buildings, parks and recreational facilities (if any) and other structures which may, at any time, be erected on the Common Areas and which are intended for common use or benefit; and

(v) all streets until such time as they have been dedicated to and accepted by a municipal or other governmental entity or body. Common Areas shall not include any item that solely serves a particular Lot or single-family dwelling.

"Lot" or "Lots" shall mean and refer to the subdivided parcels of land shown on the Plat Books as set forth above, both individually and collectively.

"Subdivision" shall have the same meaning as set forth in the first paragraph of this document.

## INDENTURES

### I. USE

No Lot shall be used except for private single-family residential purposes. Except as otherwise provided for herein, no structure shall be erected, placed, altered or permitted to remain on any Lot except one single dwelling designated for the occupancy of one family. A new home constructed on a Lot may be used by the builder thereof as a model home for display or for the builder's own Project office, provided said use terminates within one (1) year from substantial completion of the home.

No commercial activity of any kind shall be conducted on any Lot, but nothing herein shall prevent the maintenance of such facilities incidental to the sale of residences nor the carrying on of promotional activities by builders or developers relating to the sale of residences within the Subdivision, nor shall anything herein prevent the conduct of a home occupation in strict accordance with the provisions of the applicable zoning ordinances. Moreover, duly licensed professional persons may maintain in their residence in the Subdivision a consultation room for patients or clients, and may display a modest and appropriate sign not exceeding eight-by-twenty four inches (8" X 24") upon the exterior of their residence, with the approval of Trustees. Professionals rendering a service from their residence may not operate a business which would violate any of the restrictions herein with regard to parking.

## II. DWELLINGS, IMPROVEMENTS AND ARCHITECTURAL CONTROL

**DWELLINGS.** No building shall be erected, altered, placed or permitted to remain on any Lot other than one single family dwelling, not to exceed two stories in height, and a private attached garage which shall be faced with the same exterior material as the dwelling. Residences must have a main floor (including porches, garages and breezeways) of not less than one thousand two hundred fifty (1250) square feet and have a solid, continuous foundation of either stone, concrete, concrete blocks or brick. No modular, remanufactured or mobile homes are permitted. No duplexes, apartments or condominiums are permitted.

**ROOFING.** Roll tarpaper or large sheets of barn roofing type metal shall not be used as roofing or on outer exposed walls of any building. All roofs must be of approved shingle type or equivalent. Built up roofs of tar and gravel or asphalt, are permitted on roofs commonly referred to as flat roofs.

**GARAGES.** No separate garages shall be erected or constructed on any lot. Any garage, which is to be constructed, shall be attached to and become a part of the main building. A storage shed or outbuilding may be erected or constructed on any lot provided that said structure does not exceed 120 square feet. Plans for said structures shall be submitted to the Board of Trustees for approval prior to construction. This paragraph applies to newly constructed structures only.

**UTILITIES.** A five foot (5') strip running along the inside of all lot boundaries is hereby set aside for the installation, operation and maintenance of water mains, gas mains, sewerage and drainage structures or other utilities provided for the welfare of the Lot owners in the Subdivision. The installation and maintenance of said items shall not be deemed the obligation of the Lot owners.

**DRIVEWAYS AND ROADWAYS.** Driveways shall be finished concrete, asphalt, solid pavers or like material.. Any additional roadways constructed in the Subdivision shall be of the same material and quality as the existing roadways in the Subdivision. This paragraph applies to newly constructed driveways only.

**LANDSCAPING/YARD MAINTENANCE.** Each Lot owner shall maintain and keep their Lot in good and neat order and repair, mowed at all times to a height of not more than four inches (4"). All newly constructed homes shall have grass planted within six (6) months of completion of said home.

**FENCING.** No fencing or screening of any kind may be erected in the front of any home without the prior written approval of the Board of Trustees as to location, material, height and appearance. No chain link fencing on the front portion of any Lot is allowed. Nothing herein shall prevent placement of fences by the Board of Trustees on any Common Areas.

**OTHER EXTERIOR IMPROVEMENTS.** Above ground swimming pools shall not extend beyond the front of any dwelling. Any outdoor pole or building mounted security lighting must be aimed down and installed so as not to shine directly onto an adjacent Lot. Fencing or Lot boundary markers, such as owner or resident installed rocks, railroad ties, logs or shrubbery shall not be located on the road right of way. The width of the road right of way if forty feet (40'), i.e. the distance between Lot boundaries on opposite sides of the road is forty feet (40').

**ANIMALS.** No animals of any kind shall be brought onto or kept on any portion of any Lot in the Subdivision, except that a Lot owner may keep or maintain on their Lot the usual kind and number of domestic pets which are customarily found in single home households and as otherwise permitted by local codes and ordinances. Such animals may not be kept, bred or maintained on any Lot for any commercial or breeding purposes. Pets shall be kept on a leash at all times or accompanied by the owner when not on the owner's Lot. Pets shall not commit waste upon any roadways, Common Areas, or any Lot not owned by the pet's owner. Owners of all animals are responsible for any and all recommended vaccinations. Failure to comply with these requirements will result in Jefferson County Animal Control being contacted.

The keeping of any pet which by reason of its noisiness or other factor is a nuisance or annoyance to the Subdivision is prohibited. Barking at night is hereby deemed a nuisance for purposes of this Indenture.

This Subdivision is deemed to be a bird and game sanctuary. No hunting or trapping of any kind shall take place in the Subdivision.

EXPLOSIVES. The use of firearms or the use or storage of explosives on any Lot is prohibited; provided, however, that if the use of explosives is reasonably required during construction activities in the Subdivision, said use is permitted if reasonable precautionary measures are employed to prevent damage or injury to the person or property of others.

SIGNS. No signs, advertisements, billboards, or advertising structures of any kind may be erected, maintained or displayed on any Lot; provided, however, that nothing herein shall prohibit (A) Owners from placing one "For Sale" sign (not to exceed 2 feet by 4 feet (2'X4') in dimension) on a Lot to advertise the sale of the Lot and home, (B) signs erected or displayed by a builder or developer in connection with the development of the Lots and the sale, rental, and/or construction of improvements on the Lots, or (C) signs advertising a garage sale, yard sale, or the like, except that such signs shall not be allowed more than seventy two (72) hours before said sale is to begin and must be removed immediately upon completion of the sale. No signs may be placed at the entrance to Enchanted Forest Subdivision, directly in front of the entrance sign, so as to block the visibility of said entrance sign.

REFUSE AND GARBAGE. No junked or abandoned vehicles, objects or materials shall be permitted on any Lot, nor shall there be permitted the accumulation of garbage, trash or other debris.

No Lot or Common Areas shall be used for the dumping of rubbish, trash or other waste. Garbage, trash and other waste shall be properly deposited and stored in sanitary containers placed out of the view of neighbors.

Each Lot owner is responsible for obtaining a waste removal service to be paid for at the Lot owner's expense. No garbage, rubbish, or discarded material of any kind shall be permitted to remain or accumulate on any premises or Lots and must be removed at frequent intervals as may be necessary to keep the property clean and sanitary. No accumulation of trash, rubbish, lumber, bricks, tin, steel, derelict vehicles, derelict motorcycles, construction equipment, appliances, broken furniture or any other material deemed to be a nuisance shall be allowed. Failure to comply with this will result in a complaint being filed by the Board of Trustees with the Jefferson County Commission, or other local authorities.

VEHICLES AND PARKING. No commercial vehicle licensed for gross vehicle weight exceeding 18,000 pounds shall be kept or parked on any Lot (other than in a garage) or on any street for any period of time in excess of six (6) hours in any given twenty four (24) hour period, except when used as a part of a temporary construction or repair activity on a Lot. No motor vehicle shall habitually or continuously park on any roadway, right of way or Common Area of the Subdivision, nor shall any motor vehicle park at any time on any street in such a manner that it obstructs the passage of vehicles thereon.

Parking of vehicles in yard or grass area is strictly prohibited, except in limited circumstances when private events occur and the applicable garage and driveway cannot accommodate additional parking.

All vehicles must be currently licensed and personal property taxes paid. Any vehicle that is not properly licensed or is improperly parked or stored in violation of this section will result in a letter being sent by the Board of Trustees to the Lot owner advising the owner of an allotted time frame to correct said problem. Failure to comply will result in vehicle being towed at the vehicle owner's expense. No parking is allowed at the bus stop area except in case of inclement weather.

CULVERTS. Metal or concrete culverts, when necessary and required by the Board of Trustees, shall be of sufficient capacity for the proper drainage of the streets and roads and must be installed and maintained by Lot owners at their expense at all private entrances. Nothing whatsoever shall be dumped into these culverts or ravines. Residents are prohibited from disposing of leaves, grass or other yard waste into the culverts and ravines. Any resident who violates this restriction by placing or dumping any materials of any kind into a culvert or ravine will be subject to paying the cost of removal of the materials. Failure to make such payment shall result in a lien being filed against the Lot. All drainage of sewer and/or septic waste must be properly directed to a sewer line or drain field consistent with an approved septic system. No drainage of sewer or septic whatsoever shall be directed by any lot owner into a culvert creek or ravine. Any lot owner who violates this section will be subject to a complaint being filed with the Jefferson County Health Department and any other necessary party by the Board of Trustees.

### III. APPROVAL OF BUILDING PLANS/CONTRACTOR REQUIREMENTS

Plans and specifications for all new homes must be submitted to the Board of Trustees for written approval before any building operations are started. The exterior of all homes must be substantially completed within six (6) months after said written approval is granted, and must be completed in accordance with the approved plans and specifications. Said home may not be occupied as a dwelling prior to final completion of the exterior of said home. Plans and specifications must include and show the location of all improvements to be constructed on the Lot; the grade elevation, including front, rear and side elevations; the type of exterior material (of which the Board of Trustees may request a sample) and their location; and the location and design of driveway. Such plans shall also include a schedule for completion of the construction.

Each Lot owner shall keep all roadways, rights of way and adjacent Lots free of debris and mud from construction of any structure upon their Lot.

Each Lot owner shall follow good and proper site and construction management techniques for minimizing erosion, dust, noise, and other nuisances associated with construction, and shall comply with the ordinances, rules and regulations of all applicable governmental agencies and authorities.

Each lot owner shall pay a deposit of five thousand dollars (\$5,000.00) per lot, to the Board of Trustees upon receiving construction plan approval. The deposit shall be retained by the Board of Trustees in order to pay for damage to roadways, Common Areas, utilities and drainage structures by construction operations or construction vehicles, and to ensure that all debris is removed from the Lot. If any such damage is caused (in whole or in part) by reason of the construction on the Lot, or if any debris is not removed by the Lot owner, the deposit may be used to repair such damage or remove such debris. Remaining funds (if any) shall be refunded upon completion of construction. If the deposit is not sufficient to cover the cost of any such damage or debris removal, the Lot owner must immediately tender payment of the shortfall.

If a Lot owner fails to pay any such additional amount as charged by the Board of Trustees, the Board of Trustees may make such payment and assess the Lot owner for such charge or damage repair costs. The owner of that Lot shall, within ten days after receipt of such statement, reimburse the Board of Trustees for such charge or costs, together with an allowable statutory interest. The Board of Trustees shall have a lien on that Lot and the improvements thereon equal in priority to the lien for assessment.

Any new homes constructed or added to any lot in Enchanted Forest Subdivision, including the Windswept Addition to Enchanted Forest, shall become a part of said Subdivision and shall be bound by all restrictions, indentures, covenants and provisions herein provided.

#### IV. ASSESSMENTS

Each Lot shall hereby be subject to, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or their conveyance, shall be deemed to and does hereby without reservation covenant and agree to pay to the Association (i) annual assessments or charges, and (ii) special assessments or charges with such assessments or charges to be determined, set, established and collected from time to time as hereinafter provided.

Any and all annual and special assessments, and any other charges or fines provided herein together with statutory interest thereon and any attorney's fees and other costs of collection thereof, shall be a charge against the title of each Lot and shall be a continuing lien upon the Lot against which such assessment or charge is made, which shall bind such Lot in the hands of the then Owner, his or her heirs, devisees, personal representatives, successors and assigns without the need or requirement of filing any additional documentation with respect to such liens. Recording of this Indenture constitutes record notice and perfection of such lien. Further recording of a claim for assessment and/or charge under this Section is not required. The Board of Trustees shall be entitled to enforce collection of any and all of such assessment(s) and/or charge(s), interest and costs through enforcement of such liens, whether by foreclosure or otherwise. Each such assessment and/or charge, together with such interest thereon and cost of collection thereof including attorneys fees as herein provided, shall also be the personal obligation of the Owner of such Lot at the time when the assessment became due.

The assessments levied under this Section shall be used for the purpose of promoting the recreation, health, safety and welfare of the residents of the Subdivision, for maintaining the market value of the Lots in the Subdivision, for the rendering of services in the furtherance of such purposes, including the carrying out of all functions herein authorized and/or required, and for the improvement, maintenance, operation, repair and replacement of all Common Areas (including any and all utilities, facilities, improvements, gates, material, structures, landscaping, services, repair of roadways, snow removal, or other items or matters therein or related thereto), including, but not limited to, the payment of taxes and insurance thereon, debt service and repair, maintenance, replacements, repairs and additions thereto, and for such other needs as may arise and for maintenance of reserves for the benefit of the Subdivision.

The annual assessment shall be two hundred forty dollars (\$240.00) per year on Lots without streetlights, and two hundred ninety five dollars (\$295.00) per year on Lots with lighted streets. The Board of Trustees reserves the right to increase or decrease the amount of the annual assessment. Nothing contained herein shall abridge or limit the rights or responsibilities of Mortgagees and nothing herein shall be construed to require a Mortgagee to collect the assessments provided for herein.

In addition to the annual assessment, the Board of Trustees may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a capital improvement within or upon the roadways and Common Areas of the Subdivision. Any such assessment must be approved by at least sixty percent (60%) of the Lot Owners.

In addition, the Board of Trustees may levy a special assessment, charge and/or lien against any Owner and/or Lot(s) for all costs and expenses incurred, including costs of collection, interest, attorney's fees and other associated costs for purposes of enforcing compliance with the terms and requirements of these Indentures, payment of any then unpaid assessment, payment for any repairs or maintenance to a Lot or improvements thereon, which the Owner failed or refused to make and which the Board of Trustees performed, or payment for repairs of any damage caused by an Owner or such Owner's employees, agents, or invitees.

VI. BOARD OF TRUSTEES

**SELECTION.** The Board of Trustees shall consist of three (3) members, each serving a term of three (3) years. An annual election shall be held each year in November to elect one (1) trustee for a term of three (3) years. The trustees shall be selected from owners of Lots in the Subdivision. Voting for said trustees shall be made in person or by proxy. Any Lot owner(s) who has not paid the assessments will not be eligible to cast any vote. Current Trustees and Secretary/Treasurer are not permitted to vote.

**AUTHORITY.** The Board of Trustees shall have the right, power and authority to manage, control direct and provide for the maintenance and operation of all Common Areas, roadways and any utilities, facilities or improvements and services located in the Subdivision. Said trustees are granted full power and authority to prevent any violations of these restrictions and to institute such action or actions, whether at law or in equity, which they may deem appropriate in order to secure compliance with these restrictions and to enforce the collection of the assessments made for the maintenance of the Subdivision. Said trustees shall be further authorized to file liens for any assessment remaining delinquent sixty (60) days after it shall become due and said delinquent assessment shall bear interest at the rate of eighteen percent (18%) per annum until paid, together with all costs of collection and shall constitute a lien against the property of the delinquent Lot owner or owners, their successors and assigns. Any Lot owner taking title voluntarily or involuntarily shall take the same subject to any unpaid assessment and subject to the right and power of the trustees to levy assessments as above provided. In the event such assessment is placed in the hands of an attorney for collection, a reasonable attorney's fee shall be paid by the Lot owner or owners in default.

One person shall be appointed by the Board of Trustees to retain the position of Secretary/Treasurer. Said person shall be responsible for collection of assessment, balancing of accounts and funds and distribution of payments.

**INDEMNIFICATION.** The members of the Board of Trustees shall not be personally liable to any Lot owner(s) for any mistake in judgment made in good faith or for any other acts or omissions of any nature whatsoever while acting in their official capacity and while acting in good faith.

**INSURANCE.** The board of Trustees shall obtain and maintain comprehensive liability insurance in such amounts and with such endorsements and coverage as shall be considered sound insurance coverage for properties similar in construction insuring the Board of Trustees for claims arising out of or in conjunction with the good faith performance of their duties.

VI. DURATION/AMENDMENT

All covenants, restrictions, provisions, easements, and all other matters provided for, or referred to in this indenture, shall remain in force for twenty five (25) years, and shall operate as covenants running with the land unto whomsoever said lots or any part thereof shall come. Any one or more of all of the provisions may be extended beyond that time, provided that before said date the consent shall be obtained of the owners of sixty percent (60%) of the Lots in the Subdivision; such consent shall be evidenced by written instrument executed, acknowledged and recorded as required by law for instruments affecting real estate.

Upon termination of said restrictions either by lapse of time or release by Lot owners as herein provided, the Trustees shall dedicate the streets in this Subdivision to public use and they shall dispose of any property which they may hold as Trustees in a manner beneficial to the Lot owners in the Subdivision and their Trusteeship shall thereupon cease. These restrictions and provisions are to be construed as independent and in the event that any of them shall be unenforceable or otherwise fail, the valid binding effect of the others shall not be affected.

Any or all of these restrictions may be modified, amended, released or extinguished in writing at any time by the written consent of owners of at least sixty percent (60%) of the Lots in the Subdivision.

SO AGREED this 24<sup>th</sup> day of November, 2003