

ORCHARD HILLS HOMEOWNERS ASSOCIATION

**BYLAWS
AND
AMENDMENTS**



Research Room
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2011/11/24
#1063

DECLARATION OF INDENTURE
AND ESTABLISHING RESTRICTIONS
ORCHARD HILLS SUBDIVISION

ST. CHARLES COUNTY, MISSOURI

THIS INDENTURE, made and entered into this 1st day of September, 1971, by and between CONCORD HOMES, INC., a corporation, Party of the First Part, and JOHN J. FISCHER, JAMES GREEN and ROBERT J. PARR, all of the County of St. Louis, Missouri, Parties of the Second Part,

WITNESSETH THAT:

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

Part of Lots 3, 4 and 5 of the John McDonald Partition in U.S. Survey 1779, Township 47 North, Range 4 East, St. Charles County, Missouri, described: Beginning at the intersection of the North line of said Lot 3 with the West line of Jungermann Road 40 feet wide; said point being also a point in the South line of property now or formerly of Raymond Koenig and wife as described in Book 405 page 707 of the St. Charles County records; thence Southwardly along said West line of Jungermann Road South 0°38'40" West 851.01 feet to a point; thence along a curve to the right, having a radius of 20 feet, a distance of 28.39 feet to a point; thence South 81°59' West 205.55 feet to a point in the South line of said Lot 3 of the John McDonald Partition; thence Westwardly along said South line and along the North line of Le-Jer Manor Plat One, a subdivision in St. Charles County, Missouri, as per plat thereof recorded in Plat Book 10 page 31 of the St. Charles County records; South 89°58'10" West 820.36 feet to the Northwest corner of said LeJer Manor Plat One; thence Southwardly along the West line of said Plat, South 3°33'25" West 479.51 feet to the Southwest corner thereof; thence North 83°46'33"

West 661.62 feet to a point; thence North 4°36'39" East 407.74 feet to a point in the aforesaid South line of Lot 3; thence Westwardly along said South line North 89°37'46" West 1024.69 feet to a point in said South line of Lot 3; said point being the Northwest corner of Lot 5 of the John McDonald Partition; thence North 3°06'10" West 107.18 feet to a point in the South line of said Lot 3; thence Westwardly along the South line of Lot 3, North 89°34'17" West 322.65 feet to the Southeast corner of property conveyed to Elmer W. Bereuter and wife as described in Book 455 page 626 of the St. Charles County records; thence Northwardly along the East line of said Bereuter property North 4°35'43" East 188.90 feet to a point in the center of a creek; thence continuing Northwardly along the said East line of the Bereuter property, being along the center of said creek the following courses and distances; North 31°16'17" West 80.5 feet; North 10°59'43" East 103.4 feet; North 65°23'43" East 95.0 feet; North 31°33'43" East 132.2 feet; North 14°17'17" West 206.4 feet; North 77°53'43" East 170.9 feet; and North 14°47'43" East 69.10 feet to a point in the South line of aforementioned property now or formerly of Raymond Koenig and wife; said point being in the North line of Lot 3 of the John McDonald Partition; thence Eastwardly along said North line of Lot 3 and said South line of the Koenig property South 89°23'36" East 2775.09 feet to the point of beginning.

WHEREAS, Party of the First Part intends to cause the above-described tract of land to be subdivided and the subdivision thus created to be known as Orchard Hills, which may be in the form of plats of portions of said property, separately numbered; and

WHEREAS, there have been or may be designated, established and recited on said subdivision plat or plats certain easements (excluding driveway easements) and certain common areas which are for the purpose of constructing, maintaining and operating sewers, pipes, poles, wires, storm water drainage,

open space, parks, recreational area and other facilities and public utilities for the benefit of the owner or owners of the lots shown on said subdivision plat or plats; 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 lands, all in the interest of fostering and enhancing their health, safety and welfare and to establish a harmonious atmosphere and common interest, 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 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 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 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 Parties 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 parties of the Second Part to act as Trustees hereunder, the Party of the First Part hereby grants, bargains, sells, conveys and confirms unto the Parties of the Second Part as Trustees and as joint tenants and not as tenants in common, and to the successor or successors of them;

A. All open space, park, recreational and common property, public utility easements, storm water sewers and drainage facilities, if any, not otherwise dedicated or conveyed on the plat or plats of the aforesaid property, contained in said land covered by this Indenture;

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 open space, park, recreational and 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 regulating the use thereof in the interest of health, welfare and safety of the present or future residents of said subdivision; and of laying, constructing, maintaining and operating thereon, either above or underground, suitable supports or conduits for telegraph, telephone and electric wires and suitable pipes, conduits or other means of conducting steam, electricity, gas, water, sewage or other useful agencies;

TO HAVE AND TO HOLD the same to said Trustees 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 itself, its successors and assigns and for and in behalf of all persons who may hereafter derive title or otherwise hold through said Party of the First Part, its successors or assigns, to any part of the said property hereinabove described hereby provides 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 Trustees by this Indenture and shall be availed of and enjoyed only under and subject to such reasonable rules and regulations as said Trustees 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

SELECTION OF TRUSTEES: MEETINGS OF LOT OWNERS

The Parties of the Second Part named herein shall serve as the Trustees hereunder, the first named to serve for a term of three years and fraction thereof, the second named to serve for a term of four years and fraction thereof and the third named to serve for a term of five years and fraction thereof. During said period of office of the said Parties of the Second Part as Trustees hereunder, one or more of same shall be subject to removal by Party of the First Part with or without cause, and Party of the First Part shall have the exclusive right to designate the successor to such removed member for his unexpired period of service as provided for hereunder. Should any of the Parties of the Second Part, or their appointed successors die, resign or cease to hold office as above set out, or decline to act or become incompetent or unable for any reason to discharge the duties or avail of or exercise the rights and powers hereby granted

or bestowed upon them as Trustees under this Indenture, then and thereupon, Party of the First Part shall have the exclusive right to designate the successor thereto for his unexpired period of service provided for hereunder. The Board of Trustees shall designate one of its number to serve as Chairman, one of its number to serve as Secretary and one of its number to serve as Treasurer of the Board. After the expiration of the terms of office of the Trustees herein named, all Trustees elected as provided for herein shall serve for terms of three (3) years.

There shall be an annual meeting of lot owners to be held on the FIRST Saturday of MARCH of each year during the term of this instrument, said meeting to be held at a convenient place in the City or County of St. Charles, and there may be special meetings of said lot owners as may be called by any one Trustee, also to be held at a convenient place in the City or County of St. Charles. 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 Trustees, or by the Trustee calling a special meeting, by depositing same in the United States mail, postage prepaid, addressed to the last known address of such lot owner.

The successor to the Trustee whose term has expired shall be elected by the lot owners at the annual meeting. At each election, the owner or owners of each lot shall be entitled to one (1) vote for each full lot owned, which vote may be cast in person or by proxy. The person or persons receiving the highest number of

votes 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 joint tenant, but not as tenant in common, with the remaining Trustees, all of 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 due and payable shall not be entitled to vote at any annual or special meeting provided for herein.

In the event that any of the elected Trustees shall die, or become incompetent for whatever reason to discharge the duties or avail himself or exercise the rights and powers herein granted or bestowed upon him or them as Trustee under this Indenture, then and thereupon, it shall be the duty of the remaining Trustees to select a successor to fill the unexpired term of such deceased or incompetent Trustees.

Any business relevant or pertinent to the affairs of the subdivision may and shall be transacted at any annual or special meeting described above.

All actions of the lot owners at annual or special meetings shall be by a majority of votes cast at such meetings. All actions of the Trustees shall be by a majority vote.

II

RESERVATION OF EXPENDITURES

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, deposited,

placed in escrow or subsequently provided by it for sewers, gas pipes, water pipes, conduits, poles, wires, street lights, electrical service, roads, streets, recording fees, subdivision fees, engineering fees, consultation fees or for any other purpose of any nature or description related to any part of the property which is now or may in the future be made subject to the terms of this Indenture. Party of the First Part further reserves the right to receive and retain any money consideration, damage payments or condemnation award for any easement or other interest granted or condemned as to any street or common property within said subdivision.

III

TRUSTEES' DUTIES AND POWERS

The Party of the First Part hereby vests the Trustees with the rights, powers and authorities described in this instrument and with 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, streets, entrances, lights, gates and common property, not otherwise dedicated or conveyed on the subdivision plat or plats, ~~as is necessary to improve, maintain, supervise, repair and insure the proper use of said easements, streets, entrances, lights, gates and common property by the necessary public utilities and others, 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 and streets, sewers, pipes, poles, wires and other facilities and public utilities for service to the lots shown on said plat.

B. Abandon an easement or portion thereof by executing and recording a proper and appropriate instrument in the office of the Recorder of Deeds of St. Charles County, Missouri, but such easement or portion thereof may be abandoned only when all the Trustees unanimously agree that it is in the best interest of the subdivision that same be abandoned.

C. To prevent in their own names as Trustees, 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 Trustees is intended to be discretionary and not mandatory.

D. To clean up rubbish and debris and remove grass and weeds from and trim, cut back, 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 expense so incurred. The Trustees or their officers, agents or employees shall not be deemed guilty or liable for any manner of trespass for any such injury, abatement, removal or planting.

E. To consider, approve or reject any and all plans and specifications for any and all buildings or structures, fences, detached buildings or out-buildings 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, out-building or other structure may be erected or structurally altered on any of said lots unless there shall first be written approval of a majority of the Trustees of the plans and specifications therefor and to the grade proposed therefor, provided that in the event said plans, specifications and grades are not disapproved within thirty (30) days following submission of all such documents to the Trustees, they shall be deemed approved. In approving or rejecting such plans or specifications, the Trustees shall consider their compliance with applicable laws and the terms and provisions of this Indenture, together with the consistency and suitability of same in light of the existing structures in the subdivision and the impact of same upon the lots in the subdivision, the value thereof and the welfare and safety of the occupants thereof.

F. To require a reasonable deposit, bond or escrow agreement (in form satisfactory to the Trustees) in connection with the proposed erection of any building, fence, detached building, out-building 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 damage to subdivision improvements shall be repaired. Such deposit, bond or escrow agreement shall be in such reasonable amount as shall be fixed by the Trustees.

G. To establish and fix minimum costs which shall apply

to buildings and structures which may be erected on said lots as the Trustees deem necessary and desirable in order to maintain a high character of the buildings and structures which may be erected on said lot. Minimum costs so established and effected shall at all times be subject to revision or abandonment at the discretion of the Trustees 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.

H. The Trustees may provide for the collection and disposal of trash, rubbish or garbage, and may otherwise provide for the public health, safety and welfare of the property owners and residents of said subdivision and may enter into and assume contracts for such purposes covering such periods of time as they may consider advisable.

I. The Trustees 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 Trustees in exercising the rights, powers and privileges granted to them, and in discharging the duties imposed upon them 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 or advisable, and employ counsel to advise the Trustees or institute and prosecute such suits as they may deem necessary or advisable, and defend suits brought against them individually or collectively

in their capacity as Trustees.

K. At the discretion of the Trustees, in the interest of the health, welfare and safety of the lot 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 Municipal regulation, the Trustees shall have the right and power to provide lights on streets, parks, gateways, entrances, common property and other public or semi-public places; to erect and maintain signs for the marking of streets; to repair, oil or maintain streets, lanes and pedestrian ways and to clear streets, gutters, sidewalks, and pedestrian ways; to plant, care for, maintain, spray, trim and protect trees, shrubbery and vegetation on streets, public property, common property and elsewhere.

L. The right and power to establish, maintain, repair, add to, reduce or improve common property and any buildings or facilities as may exist or be established thereon; to make rules and regulations, not inconsistent with the law and this Indenture, for the use and operation thereof and in every and all respects govern the operation, functioning and government thereof.

M. The right and power to maintain and repair the driveway improvements located on the driveway easements as same are designated and created on the plat or plats of the subdivision of the land herein described and for such purposes the Trustees, their agents, employees and contractors shall have the right and power to enter in and upon said easements and the lots adjacent thereto, and the Trustees shall further have the right and

power to prescribe reasonable regulations as to the use of said driveway easements so as to effectuate their joint and mutual use by the owners of the lots on which they are located and the lots to which they provide access, and to arbitrate any disputes between the owners of such lots as to the use of such driveway easements and the decision of the Trustees shall be final and binding.

N. The Trustees and their successors are hereby authorized, empowered and granted the right to make assessments upon and against the several lots and 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 Trustees shall have the right to make uniform assessments (except as hereinafter provided) not to exceed Seventy-Five Dollars (\$75.00) per lot in any one year upon and against the several lots or parcels of land subject to this Indenture for the purpose of carrying out the general duties and powers of the Trustees as herein described and for the further purpose of enabling the Trustees to defend and enforce restrictions, adequately to maintain and operate common property, easements, sewers, utilities, parking spaces, trees and other facilities, to dispose of garbage or rubbish, or otherwise properly protect the health, safety and general welfare of the property owners, and not to exceed an additional Twenty-five Dollars (\$25.00) per lot in any one year upon and against the lots on which driveway easements are located and lots to which driveway easements provide access for the purpose of enabling the Trustees adequately to maintain and repair the said driveway easements and driveway improvements located thereon.

(2) If at any time the Trustees shall consider it necessary to make any expenditure requiring an assessment additional to the assessments above provided, 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 Trustees by a majority vote of all 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 Trustees shall notify all owners in said tract of the additional assessment; the limits established in subparagraph (1) hereinabove shall not apply to any assessment made under the provisions of this subparagraph.

(3) All assessments, either general or special, made by the Trustees for the purposes 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 assessment 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 Trustees may, in addition, execute and acknowledge an instrument reciting the levy of the assessment and the amount due with respect to any one or more lots and cause same to be recorded in the Recorder's Office in the County of St. Charles, State of Missouri, and the Trustees 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 Trustees 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, and the Trustees shall have the right to employ any procedures described therein to effectuate collection of any assessments hereunder.

(d) The declaration of assessments shall be made by resolution duly adopted by a majority of the Trustees at a meeting of the Trustees, which resolution shall be incorporated into and made a part of the minutes of said meeting.

(e) The lien or liens for assessments hereunder shall be subordinate and junior to any first mortgage or deed of trust of record insured by the Federal Housing Adminis-

tration, 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 on record for the purpose of defeating creditors and of evading the 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 subsequent to such foreclosures.

O. The Trustees 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 to enter into any and all contracts and incur all liabilities necessary, related or incidental to the exercise of the powers and duties herein conferred upon said Trustees, including the construction of the improvements; to purchase insurance against all risks, casualties and liabilities of every nature and description; to borrow money on said property, 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; to make all types of permanent, temporary, construction or other loans; to use, handle, manage, control, operate, hold, deal in and in all respects treat with same, limited only as provided in this Indenture.

P. The Trustees shall deposit the funds coming into their hands as Trustees in a State or National Bank, protected by the

Federal Deposit Insurance Corporation, or in a State or Federal Savings and Loan Association protected by the Federal Savings and Loan Insurance Corporation, at the best rate of interest obtainable. The Trustees 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 Trustees.

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

IV

RESTRICTIONS

The Party of the First Part herewith covenants with the Trustees, 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 that:

A. No person may dwell in or occupy, or live on any

lot, in a temporary building, trailer or tent, garage or out-building.

B. No person may use any of said lots or any building or structure located on any lot for any purpose prohibited by law or ordinance or for the commission or maintenance of any nuisance.

C. The yard and set-back area on any lot shall be in accordance with local ordinance and as designated on the recorded plat.

D. That no use shall be made of any lot or portion thereof except in conformity with local ordinance, provided further that no residence, building or any portion of any lot shall be used as a boarding house, nursing home, rooming house, clubhouse or roadhouse, nor shall any building or any lot or part thereof be devoted to any manufacturing, industrial or commercial activity whatsoever.

E. That no pigeons or poultry, cattle, hogs, rabbits or other animals (except dogs, cats or other household pets may be kept if not bred or maintained for any commercial purpose) may be kept in or on any part of any lot unless written permission be obtained from the Trustees and such permission, if granted, shall be revocable at the discretion of the Trustees.

F. No lot shall be resubdivided, nor shall a fractional part of any lot be sold or leased without the consent of the Trustees.

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 the regularly scheduled collections of same are to take place. Such receptacle, however, may be used if same is completely recessed and sunk into the ground and equipped with a permanent cover. Burning of rubbish, trash or debris is prohibited.

H. No lot owner shall park, or permit the parking of, a boat, canoe, camper, truck, trailer or any part thereof on any lot or any other part of the property subject to the restrictions of this Indenture, except in that portion of the subdivision designated as storage area for the benefit of all lot owners.

I. No motor vehicle of any type 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.

J. No signs, advertisements, billboards, or advertising structures of any kind or description may be erected or maintained on any lot, except for the erection and maintenance of not more than one (1) sign per lot, not exceeding five (5) square feet in size, advertising the property on which same is located for sale or lease.

K. No fence may be erected without the written consent of a majority of the Trustees. Said Trustees may approve, unless good cause to the contrary exists, fences located behind the front building line, (1) if such fence is less than four (4) feet in height and is at least fifty per cent (50%) open or, (2) a privacy fence, if same is less than six (6) feet in height and

not more than forty-five (45) feet in length. In the event that any fence deteriorates or falls into disrepair, the Trustees may, in their discretion, repair or restore such fence and charge the cost of same to the then owner of such lot.

L. On any corner lot, there shall be no shrubbery, trees, flowers, vegetation, walls or 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 forty (40) feet from the intersection thereof, or, in a case where the intersection is rounded, forty (40) feet from the point where a straight projection of property lines would intersect; provided, however, that tree boughs or branches may overhang such area so long as they do not extend lower than seven (7) feet from the ground. In the event of a violation of this provision, the Trustees, 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, all at the expense of the lot owner involved, same to be collectible by the Trustees in the same manner as is provided for assessments.

V

ENFORCEMENT

It is further provided, declared and agreed that if the owner or owners of any lot or portion thereof in this subdivision, their heirs, executors, administrators, grantees or assigns,

or any one of them, hereafter owning any of said lots or part thereof 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 lot or parcel of land subject hereto, or having a legally recognizable interest in said land (by lien, mortgage, deed of trust or contract or option for purchase), for the said Trustees in behalf of or for the benefit of themselves or any of said owners, 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 covenant or covenants, yet they are not to be enforced personally against the Party of the First Part or against its successors and assigns, unless it, while owning or occupying or controlling some parcel of land or part thereof, shall violate or fail to perform the covenant embracing such parcel or part thereof. It is, and is hereby declared to be, the intention that each of the covenants and restrictions herein contained 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, lessees or occupants, of any par-

cel 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 considered 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.

VI

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 thirty (30) 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, a written agreement to amend or cancel any or all of the provisions of this Indenture is executed and acknowledged by the then record owners of two-thirds (2/3) of the total of all the lots platted on the land then subject hereto and is recorded in the Office of the Recorder of Deeds of St. Charles County, Missouri.

It is further expressly agreed and understood that any modification, amendment or change in the terms of this Indenture or the elimination of any one or more of the lots or part or parts

thereof from the coverage of this Indenture may be made at any time by a written agreement signed by the then record owners of not less than fifty per cent (50%) of the lots in the land subject hereto, subject to the approval of a majority of the then Trustees, same to be recorded in the Office of the Recorder of Deeds of St. Charles County, Missouri.

VII

ADDITIONAL PROPERTY MADE SUBJECT HERETO

Party of the First Part shall have the right at any time to render other land also subject and subservient to this Indenture in all respects, if such land is contiguous, adjoining or adjacent to the land subject to this instrument by executing, delivering to the Trustees and recording a supplement to this Indenture stating:

- A. A description of the land to be added.
- B. A statement that Party of the First Part is the owner and fee simple of such land, or, 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 shall, 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 to 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 Trustees and to the payment of assessments as those said lands had originally been included in and subject to this Indenture, without exception or qualification of any nature or description.

IN WITNESS WHEREOF, the Party of the First Part and Parties of the Second Part have executed this Indenture the day and year first above written.

CONCORD HOMES, INC.

BY [Signature]
PARTY OF THE FIRST PART

ATTEST:

[Signature]
Secretary

[Signature]
JOHN J. FISCHER

[Signature]
JAMES GREEN

[Signature]
ROBERT J. PARR

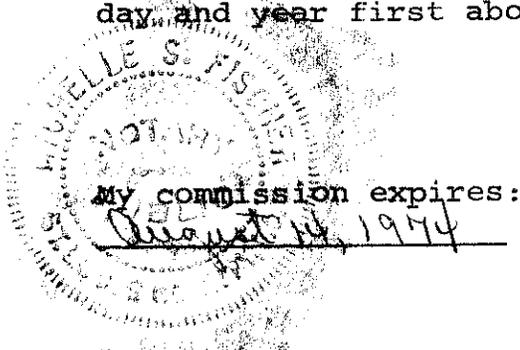
PARTIES OF THE SECOND PART

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

On this 1st day of September, 1971, before me personally appeared John J. Fischer, to me personally known, who, being by me duly sworn, did say that he is the President of CONCORD HOMES, INC., a Delaware corporation authorized to do business in the State of Missouri, and that the seal affixed to the foregoing Instrument is the corporate seal of said corporation, and that said Instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said John J. Fischer acknowledged the said Instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year first above written.

Michelle S. Fischer
Notary Public



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

On this 1st day of September, 1971, before me personally appeared JOHN J. FISCHER, JAMES GREEN, ROBERT J. PARR, to me 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 WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid the day and year first above written.

Michelle S. Fischer
Notary Public

