

**SECOND AMENDED AND RESTATED RESTRICTION INDENTURE
OF COUNTRY CREEK SUBDIVISION
COUNTY OF ST. CHARLES, MISSOURI**

THIS **SECOND** AMENDED AND RESTATED RESTRICTION INDENTURE ("*Indenture*"), made and entered into this _____ day of _____, 2019, by the three (3) trustees of Country Creek Subdivision, hereafter referred to as "*Trustees*".

WITNESSETH, THAT:

WHEREAS, R. G. McKelvey Building Co., recorded a certain Indenture Creating Restrictions, Covenants, Easements, and Limitations on August 22, 1977 at Book 773 Page 224 of the St. Charles County Recorder of Deeds (referred to hereafter as the "*Original Indenture*");

WHEREAS, R. G. McKelvey Building Co., recorded Country Creek Plat One (1) in Plat Book 20 page 22 of the St. Charles County Record of Deeds;

WHEREAS, R. G. McKelvey Building Co., pursuant to Original Indenture recorded at Book 773 Page 224, recorded Country Creek Plats Two (2) through Six (6) as amended by Book 832 Page 1572; Book 832 Page 1574; Book 901 Page 665; Book 929 Page 581; and Book 997 Page 1893;

WHEREAS, Trustees, pursuant to Original Indenture recorded at Book 773 Page 224, recorded Plat One (1) as Plats One (1) through Six (6) as amended by Book 977 Page 1893;

WHEREAS, Trustees, pursuant to Original Indenture recorded at Book 773 Page 224, recorded annual assessment fee increase as amended by Book 6208 Page 1649;

WHEREAS, Trustees, documented and recorded the Amendment to Indentures Creating Restrictions, Covenants, Easements and Limitations on Property Known as Country Creek Plats 1-6 in the County of St. Charles, City of St. Peters, Missouri in Book 6208 Page 1649 after being approval by two-thirds (2/3) of all record owners of the Lots pursuant to Article VI, paragraph 2 of the Original Declaration.

WHEREAS, all the land subjected to the Original Indenture and amendments shown on map described in Exhibit A attached hereto shall collectively **continue to** be referred to hereafter as the "*Subdivision*" or "*Country Creek Subdivision*";

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

~~WHEREAS, the preceding restrictions may be changed, amended or repealed by written consent of two-thirds (2/3) of the record Owners, whether one or more persons or entities, of Subdivisions Owners responding or voting, the changes in restrictions must be duly signed and acknowledged and filed for record in the Recorder of Deed office of St. Charles County, Missouri;~~

WHEREAS, the Owners of ~~two-thirds (2/3)~~ ~~fifty-one percent (51%)~~ of the ~~eligible voters~~ ~~record owners~~ have approved this Amended and Restated Restriction Indenture pursuant to Article VI, paragraph 2 of the Original Declaration ; and

NOW, THEREFORE, in consideration of mutual advantages to accrue to the Owners and mortgage holders of the premises comprising of the said Subdivision at the time of the recording in the Recorder of Deeds Office of St. Charles County, Missouri, as well as to the future Owners of said premises, there is hereby imposed on said Subdivision certain easements, conditions, restrictions, reservations and limitations, which are hereby made a part of said Country Creek Subdivision and subject to the rights, powers and duties of the Trustees as hereafter set forth.

ARTICLE I DEFINITIONS

“Assessment”: An amount of money levied by a Subdivision on its Owners for the maintenance and upkeep of the Subdivision and its Common Property.

“Common Ground”: That land set aside for open space or recreational use for the Owners of the residential Lots in a Subdivision, which land is conveyed by the Developer to Trustees whose trust Indenture provides that said common ground be used for the sole benefit, use and enjoyment of the Lot Owners present and future. No Lot Owner shall have the right to convey interest in the common ground.

“Declarant/Developer”: Refers to R. G. McKelvey Building Co., and its successors acquiring one or more unimproved Lot(s) for construction of a residence and thereafter for sale.

“Easements”: Areas of land set aside for public utilities (gas, electricity, phone, TV, cable), storm sewers, sanitary sewer and water main lines, and surface drainage. Easements give utility companies, municipal and county workers, etc. the right to conduct work on the property within the easement boundaries.

“Indenture”: A recordable document by which Common Ground is held and maintained or assessments in a Subdivision are levied for the administration of specific maintenance obligations or both. An Indenture creates the common ownership of common land and defines the covenants, use restrictions, access agreements, insurance requirements, the rights of Owners and the authority of the Trustees. It also details processes for amending associations regulations and documents, as well as assessing and collecting assessment fees. Indentures are private, contractual agreements between a Subdivision and an individual property Owner and no Owner can avoid being subject to the provisions of a trust Indenture.

“Lot”: Any parcel of land shown upon any recorded Subdivision map or Plat of the Subdivision which depicts the location and dimensions and establishes the legal boundaries of the Lot and describes that portion of the Subdivision upon which a single residence is to be located. Each Lot, as created, constitutes a separate parcel of real estate and is separately assessed and taxed.

“Owner/Lot Owner/Homeowner”: The record Owner, whether one or more persons or entities, of fee simple title to any Lot which is part of the Subdivision and is intended for single building residence. This does not include parties renting/leasing the Lot/residence.

"Trustees": Governing body of the Subdivision Indentures.

ARTICLE II
DESIGNATION AND SELECTION OF TRUSTEES
MEETINGS OF LOT OWNERS

1. Declarant ~~has~~ conveyed all authority and control of Country Creek Subdivision to three (3) Trustees elected by the Owners **before withdrawing and turning all authority over to the Trustees**. The Trustees for Country Creek Subdivision are currently those individuals attesting to this document.
2. Elected Trustees must be a Homeowner and reside in the Subdivision. Trustees serve for a term of three (3) years.
3. In the event of the death, resignation, refusal or inability to act, or if a Trustee ceases to be a Homeowner in Country Creek Subdivision, the remaining Trustees have the power to appoint a successor for the unexpired portion of the term, provided the replacement is a ~~Homeowner~~ **both a record owner and full-time resident of a Lot** in Country Creek Subdivision. Any Trustee shall have the right to resign at any time upon giving written notice to the remaining Trustees, and the successor shall be appointed in the same manner by the remaining Trustees. Upon the expiration of the term of office of a Trustee or the appointed successor, the Homeowners shall elect a replacement Trustee at the next annual meeting of the Homeowners.
4. On an annual basis in August, the Trustees shall call an annual meeting of the Lot Owners of the Subdivision for electing Trustee(s) whose term is expiring, and for transacting other business as may become before the meeting. Notice of date, time, place and purpose of the meeting shall be given by mail to each Lot Owner at least ten (10) days prior to the date of the meeting.
5. Meetings of the Lot Owners, whether for the election of Trustees or otherwise, shall consist of Lot Owners present, in person, by ballot or by proxy. Each Owner, whether attending in person, by ballot or by proxy shall be entitled to one (1) vote for each Lot owned. **Those Owners in attendance at any duly scheduled meeting of the Lot Owners shall constitute a quorum of all the Lot Owners and actions of the Lot Owners shall be decided by majority vote of the Lot Owners in attendance**. When more than one (1) person holds an interest in any Lot, all such persons must be Owners. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
6. With respect to the election of a Trustee, the person receiving the majority votes cast shall be deemed elected, and upon their acceptance, be named a Trustee with all rights, privileges, duties and powers granted in this Amended Indenture document.
7. Any Owner who has failed to pay any assessments due shall not be entitled to vote at the annual meeting of Lot Owners.
8. At any meeting of the Trustees, a majority of Trustees shall constitute a quorum and said majority is

competent to act for all the Trustees and to exercise all the rights, privileges, duties and powers granted in this Amended **and Restated** Indenture document.

9. In addition to the annual meeting of Country Creek Subdivision, Lot Owners may hold a special meeting from time to time for consideration of any matter(s) of general interest to Lot Owners, and for advising the Trustees as to the wishes of said Lot Owners. Special meetings may be called at the request of ~~any five (5)~~ **ten (10) percent of all the** Lot Owners in the Subdivision. In the event of such request, the Trustees shall give notice to all Lot Owners in the same manner as the annual meeting of Lot Owners. Any action taken by Lot Owners at a special meeting shall be considered advisory only and shall not be binding upon the Trustees.

ARTICLE III TRUSTEES' DUTIES AND POWERS

The Trustees and their successors are invested with the rights, powers and authorities described in this document, and with the following rights, powers and authorities:

1. To exercise such control over the easements, streets, and roads (except for those easements, streets and roads which are now, or in the future be dedicated to public bodies or agencies), entrances, lights, gates, Common Ground, park areas, shrubbery, storm water sewers, sanitary sewer trunks and lateral lines, pipes and disposal and treatment facilities as may be shown on the Plats as is necessary to maintain, repair, rebuild, supervise and insure the proper use of said easements, streets, and roads, etc., by the necessary public utilities and others, including the right (to themselves and 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 services to the Lots in Country Creek Subdivision.
2. To exercise complete control over the Common Ground as shown on the Plats; to grant easements which may be necessary for the property use and development of said Common Ground; to maintain and improve **the Common Ground** with shrubbery, vegetation, decorations, buildings, recreational facilities of any kind or description, other structures, and any and all other types of facilities in the interest of health, welfare, safety, ~~morales~~, recreation, entertainment and general use of the Lot Owners in the Subdivision, all in conformity with all applicable laws; to prescribe by reasonable rules and regulations the terms and conditions of the use of said Common Ground, all for the benefit and use of Lot Owners in the Subdivision and according to the discretion of the Trustees.
3. Authority to, on a case by case basis, use discretion to adjust a regulation for an individual homeowner as it pertains to the use of their property. This provision is intended to be cumulative and not to restrict the right of any Lot Owner to proceed in their own behalf, but the power and authority herein granted to the Trustees is intended to be discretionary and not mandatory.
4. To clean up rubbish and debris and remove grass and weeds from, and to trim, cut back, remove, replace and maintain trees, shrubbery and flowers upon any vacant or neglected Lots or property,

and the Lot Owners may be charged with the reasonable expenses incurred to do so. The Trustees, their agents or employees shall not be deemed guilty or liable for any matter of trespass or any other act for any such injury, abatement, removal or planting.

5. To consider, approve or reject any and all plans and specifications for any and all buildings or structures, fences, detached buildings, outbuildings, swimming pools or other structures proposed for construction on said Lots, proposed additions to such buildings or alterations in the external appearance of buildings already constructed, it being provided that no buildings or structures, fences, detached buildings, outbuildings, swimming pools or other structures may be erected or structurally altered on any of said Lots unless there shall first be written approval of a majority of the Trustees. **Architectural improvements shall be considered approved if the Trustees fail to respond within thirty (30) days from the date of any application.**
6. To create any rules or regulations related to the interpretation or enforcement of this Indenture as the Trustees deem necessary.
7. All rights, duties, powers, privileges and acts of every nature and descriptions 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.
8. The Trustees shall have the right to enforce, by any proceeding at law or in equity, all covenants, conditions, easements, restrictions, reservations, liens and charges now or hereafter imposed by the provision of this Indenture. Failure by the Trustees to enforce any covenant, conditions, easement or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
9. A policy of insurance will be maintained by the Trustees to protect the Trustees and Lot Owners from liability in the amount felt necessary to cover risks pertaining to the Common Ground and the duties of the Trustees under this Indenture. The Trustees are also authorized and empowered to procure additional insurance as needed, including but not limited to public liability and property damage as they deem necessary and proper.
10. The Trustees, in exercising the rights, powers and privileges granted to them and in discharging the duties imposed upon them by the provision of this Indenture, may from time to time enter into contracts, employ agents, servants and labor as they may deem necessary, and employ counsel to institute and prosecute such suits as they may deem necessary or advisable, and to defend suits brought against them individually or collectively in their capacity as Trustees.
11. Should the Trustee(s) at any time be sued for damages for personal injuries or death sustained by any person or for damages to property sustained by any person or should the Trustee(s) be sued as a Trustee in consequence of anything done or neglected to be done by such Trustee(s), or by any other person, firm, associations or corporation acting on behalf of the Trustee(s), ~~then, the Trustee or Trustees so involved are authorized to employ counsel to defend any such suit or~~ **action Country Creek shall indemnify and hold harmless, and pay all expenses including reasonable attorney fees**

ARTICLE IV
ASSESSMENTS AND ENFORCEMENT

Trustees shall be empowered to levy assessments against the Lot Owners as the need may arise to provide general improvements in the manner and subject to the provisions of this Indenture as follows:

1. At the beginning of each calendar year (January 1st), assessments in the amount not to exceed \$85.00 and shall be due from the Owners of each Lot and will be collected on an annual basis. ~~Should the Trustee's increase the assessment to \$85.00 per year and thereafter the Trustees determine this amount to be insufficient to raise the necessary funds, then the Trustees shall have the authority to increase the annual assessment, on a cumulative basis, by one percent (1%) per year from the last year's assessment (but rounded up to nearest full dollar amount).~~
2. If at any time the Trustees shall consider it necessary ~~to increase the annual assessment amount,~~ or to make any expenditure requiring an assessment additional to the annual assessment above, they shall submit in writing to the Lot Owners for approval an outline of the plan for the project contemplated and the estimated amount required for completion of same and total assessment required. The additional assessment shall be approved by fifty-one percent (51%) of eligible Lot Owners, with the vote either in person, by ballot or by proxy. Owners ~~who are not in good standing because they are not current with payments of assessments or are otherwise in violation of another covenant or restriction herein~~ will not have any voting power.
3. Notice of all assessments shall be given by mail addressed to the last known or usual post office address of the Owner ~~sent by email to the last known email address of the Owner,~~ or may be given by posting a brief notice of the assessment on the Lot itself. ~~on the front door of any home structure.~~
4. Every assessment shall become due and payable within thirty (30) days after notice is given. Failure to pay from the date payment is due will result in a penalty ~~the addition of a interest at the rate of eight~~ ~~fifteen~~ percent ~~(8%)~~ ~~(15%)~~ per annum until paid.
5. Any assessments not paid within thirty (30) days after written notice directed to the last known address of the Lot Owner, shall constitute a lien against the property of such delinquent Lot Owner. The Trustees may, upon majority vote, ~~execute and acknowledge~~ ~~cause for~~ an instrument reciting the levy of the assessment with respect to any one or more Lots and cause same to be recorded the Recorder of Deed's Office in the County of Saint Charles, Missouri and the Trustees may, upon payment, ~~cause the cancellation~~ ~~cancel~~ or release any one or more Lots from the liability of assessments (as shown by recorded instrument) by ~~authorizing the execution~~ ~~executing, acknowledging~~ and recording (at the expense of the Owner of property affected) a release of such assessment with respect to any Lot(s) 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 any assessments.
6. Should an Owner or occupant of any Lot violate ~~any covenant, condition or restriction of~~ this

Indenture, the Trustees may levy a **reasonable** fine of ~~Ten Dollars (\$10.00)~~ per week upon the Owners of the applicable Lot until the violation has ceased or been cured. **All fines shall be established, and as may be updated periodically, by a majority of the Trustees and shall be incorporated into a written fine schedule which shall be distributed and made available to the Lot Owners.** Before such fine is levied, the Trustees will send a notice to the Owner detailing the violation and allowing them fifteen (15) days to cure the violation. Should after fifteen (15) days the violation not be cured, a second notice to the Owner detailing the violation and allowing them fifteen (15) days to cure the violation. Should after the fifteen days following the second notice the violation not be cured, the Trustees may begin to levy the fine. Notice that the fine has been levied and will continue to accrue until the violations is cured will be sent to the Owner. ~~The fine~~ **All fines** shall be treated in the same manner as an assessment, **shall and** be added to **the account ledger of said Lot Owners next annual assessment and shall be both the personal obligation of the Lot Owner and a lien upon their Lot.** The rights and remedies available for enforcing assessments are equally available for fine collection.

7. The Trustees additionally shall be entitled to bring an action in equity for injunctive relief to enforce these covenants and restrictions of this Indenture without the necessity of posting a bond. In addition to above referenced assessments, interest and late charges, delinquent Owner(s) shall be responsible for any collection fees, court costs, attorneys' fees, arbitration fees, recording and release fees incurred or relating to collection of assessments or enforcement of any of the covenants, conditions, easements, restrictions, reservations, liens and charges set forth in this Indenture and interest thereon at the rate of eight percent (8%) per annum on any such costs or fees.

ARTICLE V INDENTURE OF RESTRICTIONS

All the Lots and Common Ground in Country Creek Subdivision shall be subject to the following restrictions and conditions:

1. No building shall be erected on any Lot in the Subdivision for any purpose other than a single-family residence. No building shall be occupied by more than one family. No more than one main building shall be erected on each Lot.
2. All residential buildings must have a main floor area (exclusive of porches) of not less than One Thousand (1,000) square feet of living space.
3. All detached garages and other out buildings are expressly prohibited unless the same is approved in writing by the Trustees.
4. No building shall be erected on any Lot which has a flat or false roof, unless the same is approved in writing by the Trustees.
5. No person shall be permitted to live on any Lot in the Subdivision in a garage, outbuilding, trailer,

temporary building or tent or other structure not designated as permanent. A residence shall have construction completed prior to any occupancy.

6. No building shall be erected, reconstructed or altered on any Lot in the Subdivision unless the plans and specifications shall have first been submitted to the Trustees for their approval and been approved by them in writing. The Trustees shall have the right to refuse to approve any plans and specifications for buildings or alterations of buildings which in their opinion are unsuitable or undesirable, taking into consideration the type of material, the harmony of the structure(s) with the surroundings and the effect of the building on neighboring or adjacent property, and any other factors involved which in their judgment may have an injurious effect upon the desirability of the Country Creek Subdivision as a first class residential community.
7. No building or Lot in the Subdivision shall be used for any purpose prohibited by law or ordinance.
8. No grade or any Lot in the Subdivision shall be raised or lowered more than two (2) feet from the existing grade without the written consent of the Trustees.
9. No fences or screening of any kind shall be erected or maintained on any Lot without the prior written consent of the Trustees as to location, material and height, and the decision of such committee to approve or reject a fence shall be conclusive. Notwithstanding the above, no fence shall be made of chain link and no fence shall be constructed greater than six (6) feet in height. Fences shall be placed around swimming pools or along the perimeter of the back yards of Lots. No fence shall extend forward beyond the front end of the building and shall not enclose side yards or corner Lots.
10. No items or equipment of any kind shall be stored on front of Lots, including driveways, that do not contribute to an esthetically pleasing environment.
11. No fruit or vegetable or other field crops shall be planted in the front of building on any Lot. All ~~grasses and weeds~~ lawns shall be cut and trimmed by the Lot Owners so as not to grow greater than six (6) inches.
12. No fractional part of any Lot in the Subdivision shall be sold, leased, assigned or subleased without the written consent of the Trustees.
13. With respect to any corner Lot located at the intersection of any two streets of the Subdivision, no shrubbery, trees, flowers, vegetation or structure greater than two (2) feet in height shall be permitted within the triangular area bounded by the property lines on each street and a line connecting said property lines thirty (30) feet from the intersection; provided, however that tree branches or limbs may overhang such area so long as they do not extend lower than seven (7) feet from the ground. The Trustees may, in their discretion, waive this restriction, but the Trustees shall have the absolute right to enter upon any Lot in the Subdivision for removing or trimming any shrubbery, trees, vegetation or other structure which shall constitute a violation of this restriction.

14. No signs, advertisements, billboards or advertising structures of any kind shall be ~~built~~ erected or maintained on any Lot, except for the erection and maintenance of not more than one (1) sign on each lot, not exceeding five (5) square feet in size and used for the sole and exclusive purpose of advertising for sale the Lot on which it is erected.
15. Pigeons, birds, poultry, cattle, hogs, rabbits, horses or livestock of any kind shall not be kept or permitted on any part of the Subdivision. Pets, except those above excluded, shall be kept on the premises provided they are kept primarily within the main residence and are not objectionable by reason of noises, flies, odor and unsanitary conditions or permitted to become a nuisance or annoyance to neighbors.
16. No residence, accessory building or any portion of any Lot in the Subdivision may be used as a boarding house, nursing home, business or professional office, rooming house or clubhouse, nor shall any residence, accessory building or any Lot be used or devoted to any manufacturing, industrial, professional business or commercial activity what so ever.
17. No noxious or offensive activity shall be carried on at any time on any Lot or in any building thereon. Nothing shall be done or permitted to be done which may or shall become an annoyance or nuisance, in the judgment of the Trustees, to other Lot Owners or diminish the enjoyment by any Lot Owner of their Lot. No Lot shall be permitted to become over grown with weeds or other vegetation to such an extent that, in the judgment of the Trustees, such Lot detracts from the beauty and harmony of the property subject to this Indenture. No Lot Owner shall cause or permit an accumulation of refuse of any kind on any Lot, including the storage or parking of derelict vehicles and parts thereof. In addition to any other remedies available to them, the Trustees may, through their agents or representatives, and after reasonable notice to the Owner, enter said Lot, whether occupied or vacant, to cut down and removed such weeds and vegetation or to remove such refuse, derelict vehicles and parts. The cost of such cutting and/or removal shall be collected from the individual Lot Owner upon whose premises the expenses incurred, by special assessment against such Lot in the manner provided in Article IV for the collection of assessments.
18. All restrictions, covenants, limitations and conditions of these Indentures shall be construed independently, and if any of them should be declared void, or for any reason unenforceable, the validity and binding effect of the other restrictions shall not be affected.
19. The waiver or failure to enforce any breach of any restrictions by the Trustees or by the Lot Owner shall not be taken as a waiver of any subsequent breach of any restriction.

IN TESTIMONY WHEREOF, the said Trustees have hereunto executed this Indenture the day and year first above written.

, Trustee

, Trustee

, Trustee

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

On this ___ day of _____, 2019, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he/she is a current Trustee of Country Creek Subdivision and that he/she signed the foregoing instrument as his/her free act and deed in such capacity.
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first signed above written.

Notary Public

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

On this ___ day of _____, 2019, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he/she is a current Trustee of Country Creek Subdivision and that he/she signed the foregoing instrument as his/her free act and deed in such capacity.
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STATE OF MISSOURI)
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COUNTY OF ST. CHARLES)

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

Notary Public

Exhibit A
To
AMENDED AND RESTATED RESTRICTION INDENTURE
OF COUNTRY CREEK SUBDIVISION
COUNTY OF ST. CHARLES, MISSOURI

