

AMENDMENT TO DECLARATION OF RESTRICTIONS AND  
INDENTURES CREATING A HOMEOWNERS ASSOCIATION AND  
ESTABLISHING RESTRICTIONS FOR WINDSONG SUBDIVISION WITHIN  
O'FALLON, MISSOURI

THIS AMENDMENT TO THE DECLARATION OF RESTRICTIONS AND INDENTURES CREATING HOMEOWNERS ASSOCIATION AND ESTABLISHING RESTRICTIONS FOR WINDSONG is made this \_\_\_\_\_ day of \_\_\_\_\_, ~~2018~~.**2019**

WITNESSETH:

**WHEREAS**, a Declaration of Restrictions and Indentures Creating a Homeowners Association and Establishing Restrictions for Windsong was filed on or about October 1, 1997.

**WHEREAS**, This Declaration amends ~~and restates in its entirety~~ the Indentures of Trust and Restrictions of Windsong filed of record with the St. Charles County Recorder of Deeds Office.

**WHEREAS**, Those persons collectively referred to as Declarant, are the owners in fee simple title to the requisite lots shown on the recorded plat of Windsong Plat One, recorded in Plat Book 29, Pages 161 and 162 of the St. Charles County Records; Windsong Plat Two recorded in Plat Book 30, Pages 123 and 124 of the St. Charles County Records; Windsong Plat Three, recorded in Plat Book 30, Page 305 of the St. Charles County Records; Windsong Plat Four recorded in Plat Book 30, Pages 395 and 396 of the St. Charles County Records and the Directors are those persons named as Trustees in that instrument known as the Indenture of Trust and Restrictions of Windsong filed of record with the St. Charles

**WHEREAS, Section 7.4 Amendments:** (within original Indentures) Allows for the following: The provisions hereof may be amended, modified, or changed from time to time by recording an instrument of amendment in the Office of the Recorder of Deeds for St. Charles County, Missouri. The provisions herein may be amended, modified, or changed with written consent of two-thirds (2/3) of all the Owners, with any such amendment or change being recorded in the Office of the Recorder of Deeds for St. Charles County Missouri.

**WHEREAS**, two-thirds (2/3) of the owners have provided written consent to this amendment; a copy of the consenting owners is attached.

NOW, THEREFORE, the Board of Trustees hereby amends the Declaration of Restrictions and Indentures Creating Homeowners Association and Establishing Restriction for Windsong as follows:

SECTION 6 (REVISED) RESTRICTIONS ON USE

6.1 **In General ~~It~~.** In addition to the limitations and restrictions imposed by other provisions of this declaration and ordinances, the following restrictions are imposed upon and against the Property and each Lot now or hereafter existing therein:

6.2 **Building Use.** No building or structure shall be used for a purpose other than that for which the building or structure was originally designed.

- 6.3 Resubdivision. No lot shall be resubdivided nor shall a fractional part of any lot be sold.
- 6.4 Commercial Use. No commercial activities of any kind shall be conducted on any lots, nor the conduct of a home occupation in strict accordance with the provisions of the applicable zoning ordinances.
- 6.5 Nuisances. No noxious or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon be or become a nuisance or annoyance to the neighborhood. No exterior lighting shall be directed outside the boundaries of a lot or other parcel.
- 6.6 Maintenance. Each owner shall maintain and keep his **or her** Lot in good order and repair, and shall do nothing which would be in violation of law.
- 6.7 Obstructions. There shall be no obstruction of any portion of the Common Property or any storage or construction of planting thereon by an owner. No clothes, laundry or other articles or equipment shall be placed, hung, exposed or stored in any portion of the Common Property or in any portion of the exterior or yard area of any Lot or on or about the exterior of any building.
- 6.8 Animals. No animals, reptiles, birds, horses, rabbits, fowl, poultry, cattle or livestock of any kind shall be brought onto or kept on the Properties; except that no more than three dogs, cats or other household pets (except house pets with vicious propensities) may be kept or maintained on any Lot provided that such pets are not kept for any commercial purpose and provided that such pets are at all times leashed and no "runs" or other outside structures are erected or installed therefore. Dog houses may be constructed only upon the issuance of a permit from the Board, Dog houses must be in conformity with the construction of the Owner's residence and may be located not more than ten (10) feet from the rear wall of a residence. The keeping of any pet which by reason of its noisiness or other factor is a nuisance as determined by the Board in its sole judgment or annoyance to the neighborhood is prohibited.
- 6.9 Trucks, Boats, Commercial Vehicles, Etc. Commercial vehicles shall be defined as greater than 1 ton designation ~~and~~ more than two (2) axles and/or **with excessive lettering and/or advertising as determined by the Board.** Commercial vehicles, box trucks, boats, campers, house trailers, boat trailers or trailers of any other description shall not be permitted to be parked or stored on any Lot for longer than a total 72 cumulative hours in a calendar month, unless they are parked or stored in an enclosed garage or in such other enclosure approved by the Board (open or otherwise).
- 6.10 Abandoned Vehicles. No abandoned cars, motorcycles, jeeps, trucks or motor vehicles of any kind whatsoever that are unable to move under their own power may be stored or suffered to remain upon any of the Common Property ~~or~~ on any lot **or parked on any street within Windson.** If any such motor vehicle is so stored or remains on the aforesaid premises **for longer than \_\_\_\_ continuous day, it shall be deemed abandoned and** the Trustees may take the necessary steps to remove the same at the owner's expense.
- 6.11 Vehicular Sight Lines. No fence, wall, tree, hedge or shrub planting shall be maintained in such manner as to obstruct sight lines for vehicular traffic.
- 6.12 Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, barn or other out building shall be used on any Lot at any time as a residence either temporarily or permanently.

6.13 Signs. No signs, advertisements, billboards, or advertising structures of any kind may be erected, maintained, or displayed on any Lot; provided however, nothing herein shall prohibit a sale sign of residences therein and nothing herein shall prohibit a sale sign erected by any future Owner attempting to market their individual house, provided such sign is not in excess of six (6) square feet.

6.14 Trash and Recyclable Receptacles. No rubbish, trash, recycling, or garbage receptacle shall be placed on the front exterior of a Lot earlier than 6 P.M. the evening prior to the day of a scheduled collection. Receptacles are to be removed from the curbside no later than 10 p.m. on the day of the scheduled pickup. When not in use, receptacles are to be stored on the side or rear of the primary living structure. At no time shall receptacles be stored on the front side of the structure facing the street. Owners may install a visibility barrier or fence enclosure, both no shorter than four feet tall, if so choose.

6.15 Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. Service to the individual's residences shall be underground.

6.16 Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or portion of the Properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot or portion of the Properties. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or portion of the Properties.

6.17 Cul-De-Sac Etc. No above-ground structure, other than required street lights, may be erected upon a cul-de-sac, divided street entry island or median strip without the written approval of St. Charles County, the City of O'Fallon or other appropriate Governmental Authority.

6.18 Fences. No fences or screening of any kind shall be erected or maintained on any Lot between the rear of the residence constructed on such Lot and the Street which such lot fronts. Fences may be maintained on other portions of the lots only with written consent of the Board as to location, material, and height. The decision of the Board to approve or reject a fence shall be conclusive. Nothing herein contained shall prevent replacement of fences by the Board on the Common Ground. Existing fences as of the date of the ratification of this Amendment shall be "grandfathered". Fences constructed after said date shall be constructed with vinyl, wood, wrought iron, or aluminum materials and meet the code and standards of the City of O'Fallon. The decision of the Board to approve or reject a fence shall be conclusive. Nothing herein contained shall prevent replacement of fences by the Board on the Common Ground.

**Fences. All shall be installed on the perimeter of all lots or as may be required around an approved structure such as a swimming pool. Fence enclosures must be by permit and have a minimum of four sides and with a ~~maximum~~ minimum height of four (4) feet and a maximum fence height allowed by the City of O'Fallon. Fencing will be of a closed slat design and be constructed from vinyl (white only), wood materials (cedar, treated lumber... but must be stained) or wrought iron/steel (painted black or similar dark color)**

OR

**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.**

6.19 Television Antennae. No exterior television or radio antennae, or towers of any size or dimension or similar structures will be allowed on any Lot in the Properties.

~~6.20~~ Satellite Dishes. Satellite dishes shall not exceed 39" (one meter) at the widest point. Satellite dishes may be installed only with written consent of the Board as to location and the decision of the Board to approve or reject the location shall be conclusive.

~~6.24~~ Living Space. Garage and basement shall be not less than 860 square feet for a one-story dwelling and the upper floor of split foyer or bi-level homes, nor less than 576 square feet for two story homes on the ground level. No more than one dwelling shall be built on any Lot or building site.

The "Enforcement" provision of Section IV is deleted, revoked and removed in its entirety and a new "enforcement" provision is adopted in lieu thereof, as follows:

#### ENFORCEMENT

The Board of Directors shall have the authority to **levy a reasonable find upon any Owner or Lot owner(s)** ~~fine any owner(s)~~ of any portion thereof in this subdivision for violations of Section 6, "Restrictions On Use." Upon approval by the Board of ~~Trustees~~ **Directors**, any adoption, amendment or repeal regarding the fines shall be mailed to the owner(s) of the lot and a copy thereof shall be made available to any member of the Association upon request.

- In no case shall the amount of any fine, imposed by any singular violation, be in excess of \$100.00 for first offense.
- In no case shall the amount of any fine, imposed by any singular violation, be in excess of \$300 for a repeated or recurring offense within any thirty (30) day period.
- Wherein each violation will be imposed its own fine and such fines will be continually imposed every thirty (30) days from date of initial violation until such time that violations have been cured to within the guidelines of the Indentures of Windsong.
- The Board of Directors may assess a fine against any owner(s) who, or whose guest, is determined to have violated Section 6, "Restrictions On Use."
- The owner(s) may have a hearing before the Board of Directors by filing a written request with the Board of Directors within fifteen (15) days from the date violation and fine notice from the Association. Said request must be submitted by certified mail to either the President of the Association Board or the Associations registered agent.
- The Board of Directors will consider general purpose meeting rooms within O'Fallon as suitable locations for any said hearing; i.e. libraries, schools, O'Fallon City Hall.

- If no written certified request is made for a hearing and or payment of the fine is not received within thirty (30) days of the Association giving of notice, or if a hearing is requested and if determined that the fine is warranted and payment of a fine is not received within (30) days of the decision of the Board of Trustees, the fine shall become **both the personal obligation of the owner(s) as well as a lien against the lot and ma be collected in the same manner as assessments, together with Windsong's reasonable attorney fees and costs,** ~~or lawsuit against the owner(s) property and enforceable as set out herein for assessments and lien.~~

All notices, demands or writings under the Declaration of Restrictions and Indentures Creating Homeowners Association and Establishing Restriction for Windsong and any subsequent amendments provided to be given, or made, or sent, or which may be given or may be sent, shall be deemed to have been fully given or made or sent by the Board of Trustees or any agent acting on behalf of the Board of Trustees in any of the following manners listed:

- A. In writing and deposited in the regular U.S. mail to the address provided to the Homeowners Association by the owner or on the Deed of any owner recorded in the Office of the Recorder of Deeds of the County of St. Charles;
- B. In writing and recorded in the Office of the Recorder of Deeds in St. Charles County;
- C. In writing and mailed to the lot of the owner(s); or
- D. In the event of an absentee owner, in writing and published in a newspaper of general circulation in St. Charles County.
- E. By e-mail if owner shall sign authorization allowing e-mail communication.

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 hereinafter owning any of said lots or portion thereof shall infringe or attempt to infringe or omit to perform any covenant or restriction aforesaid which is by its provision 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 or trust or contract or option for purchase) or for the said Board of ~~Trustees~~ **Directors** on behalf of or for the benefit of themselves or any of said owner, or for any or either of them 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 and to recover damages, including reasonable attorney's fees, court costs, collections costs or other dues for such infringement or omissions. It is hereby declared and provided that while the covenants of aforesaid shall be valid and binding, ~~and~~ **all restrictions, rules and regulations** must be observed, kept and performed by every owner and occupant of any parcel of land, or any part thereof subject to said covenants, ~~unless said Parties of the First Part while owning or controlling some parcel of land or part thereof.~~ It is, and is hereby declared to be, the intention that each of the covenants and restrictions herein contained shall attached to and remain with each parcel of land within the tract subject hereto and to end with all titles, interests and expressly contained in proper obligatory covenants and conditions in each contract and covenant of and concerning such parcel of land or any part thereof.

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

In all other respects, the Declaration of Restrictions and Indentures Creating Homeowners Association and Establishing Restriction for Windsong shall remain in full force and effect.

Trustees:

\_\_\_\_\_  
Oscar Lares- President

\_\_\_\_\_  
Angie Lowrey- Vice President

\_\_\_\_\_  
Pam Hertel- Secretary

State of Missouri        )  
                                  ) ss.  
County of St. Charles    )

On this \_\_\_ day of \_\_\_\_\_, ~~2018~~**2019**, before me personally appeared Oscar Lares, Angie Lowrey and Pam Hertel, to me personally known, who, being by me duly sworn, did say that they are the ~~Trustees~~ **Directors** of Windsong Homeowners Association, and that instrument was signed and sealed on behalf of said Homeowners Association, by authority of its Board of Trustees; and Oscar Lares, Angie Lowrey, and Pam Hertel acknowledged said instrument to be the free act and deed of said Homeowners Association.

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

\_\_\_\_\_  
Notary Public

My Commission Expires:

Fee Schedule for Windsong specific restrictions

Violated Restriction	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense
Section 6.9	\$100	\$300
Section 6.14	\$10	\$20
Section 6.18	\$10	\$20

WINDSONG HOMEOWNERS ASSOCIATION

Consent of Owners

The following owners of Windsong Homeowners Association consent to the Amendment to Declaration of Restrictions and Indentures Creating Homeowners Association and Establishing Restriction for Windsong.

	Owner Name and Address (Print)	Date	Signature
1	_____	_____	_____
2	_____	_____	_____
3	_____	_____	_____
4	_____	_____	_____

5	_____	_____	_____
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____

Total Number of Owner Signatures \_\_\_\_\_

Total Number of Owners \_\_\_\_\_

Percentage of Owners that Consented \_\_\_\_\_