

B. 4920 PG 439

STATE OF MISSOURI  
COUNTY OF ST. CHARLES  
RECORDER OF DEEDS  
FILED FOR RECORD

FEB - 1 2008

By *Barbara J. Hall*  
Time \_\_\_\_\_

**FIRST AMENDMENT TO THE RESTRICTIONS FOR EAST ASHLEY PLACE, A  
SUBDIVISION IN ST. CHARLES COUNTY, MISSOURI**

**THIS FIRST AMENDMENT** to the Restrictions of East Ashley Place, is made as of the date hereinafter set forth,

**WITNESSETH:**

**WHEREAS**, East Ashley Place is a platted subdivision in St. Charles County, Missouri, as per plat dated November 18, 1999, in Book 36, Page 228, of the St. Charles County Land Records, hereinafter "Subdivision", and that such Subdivision, and the lots contained therein, are encumbered and subject to the Restrictions of East Ashley Place, as recorded in Book 2332, Page 1242, of the St. Charles County Land Records, hereinafter "Restrictions", and

**WHEREAS**, the Restrictions allow for the Restrictions to be amended if an instrument affirming the amendment(s) to the Restrictions is signed by a majority of the Subdivision owners, and

**WHEREAS**, the Subdivision owner are desirous of amending the Restrictions in the manner hereinafter set forth and have affixed their signatures hereto in affirmation thereof, and

**NOW THEREFORE**, the owners of lots within East Ashley Place subdivision hereby amend the Restrictions in the manner hereinafter provided, that said amendments shall operate as a covenant running with the land into whomever hands it or any part of it shall come and does hereby declare that all lots in East Ashley Place shall be held, sold and conveyed subject to the

following amended Restrictions, with the express understanding that any term, condition, representation or covenant, currently contained within said Restrictions, shall remain unchanged and shall stand as originally recorded unless specifically and expressly referenced herein as amended.

**A. Restriction ASSESSMENTS 1. a.b.c. currently reads:**

The Trustees and their successors are authorized, empowered, and granted the right to make assessments upon and against the several lots and said parcels of land of Subdivision for the purpose and at the rates hereinafter provided, in the manner and subject to the provisions of the instrument:

1. a. The Trustees and their successors are authorized to make uniform assessment except as hereinafter provided, not to exceed One Hundred and fifth Dollars (\$150.00) per lot in each year upon and against the several lots or parcels of land in said Subdivision for the purpose of carrying out any and all of the general duties and powers of the Trustees as herein described and for the further purpose of carrying out any and all of the general duties and powers of the Trustees as herein described and for the further purpose of carrying out any and all of the general duties and powers of the Trustees and herein described and for further purpose of enabling the Trustees to defend and enforce the restrictions adequately, to maintain streets, if required, utilities, parking spaces and trees in the crosswalks, and to dispose of garbage or rubbish, to perform or execute any powers or duties provided for in this instrument, or otherwise properly to protect the health, safety and general welfare of the property owners.

b. The Trustees and their successors are authorized pursuant to the exercise of their powers and duties, to make such assessments as are herein below provided for and upon each and every one of the record owners of the fee simple title of all lots. If at any time, or from time to time, the Trustees desire to exercise their powers and duties, then a meeting of the record holders of the fee simple title of all lots according to all then recorded Plats of East Ashley Place shall be called for that purpose upon written notice signed by all the trustees and sent by registered mail or delivered to the residence of each of the record holders of the fee simple title of the lots according to all then recorded Plats of east Ashley Place not more than twenty( 20) nor less that ten (10) days prior to the date fixed for said meeting. Said notice shall specify the time and place for meeting and the place of meeting shall be in S1. Charles, Missouri. A two-thirds majority vote of the then recorded holders of the fee simple title of all lots according to all the recorded plats of east Ashley Place present, in person or by proxy at said meeting shall have the power to authorize the Trustees to make a uniform assessment pursuant to this paragraph upon and against the several lots and parcels of land in the Subdivision in such amount or amounts

determined by two-thirds (2/3) majority vote if the recorded holders of the fee simple title of all the lots according to all then recorded plats of East Ashley Place present, in person or by proxy as said meeting. The Trustees and their successors are hereby authorized, again pursuant to the exercise of their powers and duties. It is expressly understood that the limit of \$150.00 per lot per year of general purposes shall not apply to any assessments made under the provisions of this paragraph.

c. If at any time the Trustees shall consider it necessary to make any expenditures requiring an assessment additional to the assessments provided, they shall submit, in writing to the owners of the lots for approval, an outline of the plan for the project contemplated and the estimated amount required. If such project and the assessment so stated be approved, at a meeting of the lot owners duly called and held in the manner provided on reference to the election of the Trustees, by a two thirds (2/3) majority vote of those present in person or by proxy, at a meeting of the lot owners in said tracts of the additional assessments. The limit of \$150.00 per lot per year for general purpose shall not apply to any assessments made under the provisions of this paragraph, but no special assessment shall exceed \$200.00 or not more than \$200.00 total during any calendar year.

**Restriction ASSESSMENTS 1. a. b. c. shall be amended to read:**

The Trustees and their Successors are authorized, empowered, and granted the right to make assessments upon and against the several lots and said parcels of land of Subdivision for the purpose and at the rates hereinafter provided, in the manner and subject to the provisions of the instrument:

1. a. The Trustees and their successors are authorized to make uniform assessment except as hereinafter provided, not to exceed One Hundred and fifth Dollars (\$150.00) per lot in each year upon and against the several lots or parcels of land in said Subdivision for the purpose of carrying out any and all of the general duties and powers of the Trustees as herein described and for the further purpose of carrying out any and all of the general duties and powers of the Trustees as herein described and for the further purpose of enabling the Trustees to defend and enforce the restrictions adequately, to maintain streets, if required, utilities, parking spaces and trees in the crosswalks, and to dispose of garbage or rubbish, to perform or execute any powers or duties provided for in this instrument, or otherwise properly to protect the health, safety and general welfare of the property owners.

b. The Trustees and their successors are authorized pursuant to the exercise of their powers and duties, to make such assessments as are herein below provided for and upon each and everyone of the record owners of the fee simple title of all lots. If at any time, or from time to time, the Trustees desire to exercise their powers and duties, then a meeting of the record holders of the fee simple title of all lots according to all then recorded Plats

of East Ashley Place shall be called for that purpose upon written notice signed by all the trustees and sent by registered mail or delivered to the residence of each of the record holders of the fee simple title of the lots according to all then recorded Plats of east Ashley Place not more than twenty( 20) nor less that ten (10) days prior to the date fixed for said meeting. Said notice shall specify the time and place for meeting and the place of meeting shall be in St. Charles, Missouri. A two-thirds majority vote of the then recorded holders of the fee simple title of all lots according to all the recorded plats of east Ashley Place present, in person or by proxy at said meeting shall have the power to authorize the Trustees to make a uniform assessment pursuant to this paragraph upon and against the several lots and parcels of land in the Subdivision in such amount or amounts determined by two-thirds (2/3) majority vote if the recorded holders of the fee simple title of all the lots according to all then recorded plats of East Ashley Place present, in person or by proxy as said meeting. The Trustees and their successors are hereby authorized, again pursuant to the exercise of their powers and duties. It is expressly understood that the limit of \$150.00 per lot per year of general purposes shall not apply to any assessments make under the provisions of this paragraph.

c. If at any time the Trustees shall consider it necessary to make any expenditures requiring an assessment additional to the assessments provided, they shall submit, in writing to the owners of the lots for approval, an outline of the plan for the project contemplated and the estimated amount required, If such project and the assessment so stated be approval, at a meeting of the lot owners duly called and held in the manner provided on reference to the election of the Trustees, by a two thirds (2/3) majority vote of those present in person or by proxy, at a meeting of the lot owners in said tracts of the additional assessments. The limit of \$150.00 per lot per year for general purpose shall not apply to any assessments made under the provisions of this paragraph, but no special assessment shall exceed \$200.00 or not more than \$200.00 total during any calendar year.

**B. The following shall be inserted as an additional restriction and shall be enumerated as Restriction Assessments 1. d.**

d. The Trustees agree to reduce the annual assessments beginning year 2008 to \$110.00 based on the approval of the East Ashley Place Homeowners Association however this does not eliminate the possibility of the Trustees to request a Special Assessment or change in the annual assessments amounts in the future as it is stated above.

**C. Restriction 3 currently reads:**

3. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two stories, and not to exceed thirty five (35) feet in height, and private garage for a minimum of two car, and one prefabricated metal building having not more than one

hundred and forty-four (144) square feet in of floor space. No business activity shall be permitted upon any lot. No carport shall be erected on any lot.

**Restriction 3 shall be amended to read:**

3.

a. No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed two stories, not to exceed thirty five (35) feet in height, a private garage for a minimum of two cars, and one prefabricated storage shed comprised of a wood or vinyl material having not more than one hundred and forty-four (144) square feet in of floor space. No business activity shall be permitted upon any lot. No carport shall be erected on any lot.

b. Prior to the construction upon any lot of any structure, but for a prefabricated storage shed comprised of a wood or vinyl material, including but not limited to an addition or extension to the existing single family residence, a room addition, sun porch, or sunroom, complete plans and or drawings for the proposed construction shall be submitted to the Trustees for review. The Trustees shall, within thirty (30) days of the owner's submission of said plans or drawings, either approve the construction or deny the construction and, if denied, shall provide the owner with a written statement indicating the reasons for denial. The owner may reapply for construction approval if the prior objections of the Trustees have been cured. Failure on the part of the Trustees to respond within thirty (30) days of the owner's submission for construction approval shall be deemed to be construction approval by default, but construction approval by default shall be limited to the manner and design of construction proposed by the plans and or drawings so approved by default. It shall be the responsibility of the owner to obtain the approval of the City of St. Charles and secure all necessary construction permits, if any.

c. Prior to the construction of any in-ground or above ground swimming pool, complete plans and or drawings for the proposed construction shall be submitted to the Trustees for review. The construction approval process shall be the same as is listed within paragraph 3b. above. Galvanized metal swimming pools shall not be allowed within the Subdivision. Nothing contained herein shall be interpreted to prohibit inflatable or plastic swimming pools designed for small children.

**D. Restriction 4 currently reads:**

4. No fence or wall more than 72" in height shall be erected or placed on any lot and must be constructed of wood or chain link. No fence shall be extended in from in front of the building line of any lot.

**Restriction 4 shall be amended to read:**

4. No fence or wall more than 72" in height shall be erected or placed on any lot. All fencing erected or placed on any lot shall be constructed of wood, vinyl, or iron. Chain link fencing is prohibited. No fence shall be extended in from in front of the building line of any lot.

**E. Restriction 21 currently reads:**

21. There shall be uniform assessments made against each home in East Ashley Place. These assessment fees shall be used for the upkeep of common ground area including the detention basin and to protect the general welfare for the residences in East Ashley Place. The homeowners shall designate one of their members "Treasurer" of the Subdivision funds. These funds shall be placed in the custody and control of the "Treasurer" may be bonded for the proper performance of his duties. The Developer is not required to share any assessment fees with association on any remaining vacant lots or unsold homes that they may own at this time.

**Restriction 21 shall be amended to read:**

21. Assessments.

a. There shall be annual uniform assessments made against each lot in East Ashley Place. These assessment fees shall be used for the upkeep of common ground area including the detention basin and to protect the general welfare for the residences in East Ashley Place. The lot owners shall designate one of their members "Treasurer" of the Subdivision funds. These funds shall be placed in the custody and control of the "Treasurer" who may be bonded for the proper performance of his duties. The Assessments, annual or special, interest, costs, and reasonable attorneys' fees shall be a charge on each Lot and improvements thereon and shall be, upon levying of the same by the Association, a continuing lien upon the Lot against which the Assessment, annual or special, is made. Each such Assessment, annual or special, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the owner of such Lot at the time the same became due.

b. Annual uniform assessments shall be due from each lot owner on the first day of January of the year in which the assessment is due and shall be considered delinquent if not paid by the 15<sup>th</sup> day of February of the year in which the annual assessment is due shall result in that payment being considered delinquent.

c. Any Assessment, annual or special, deemed delinquent shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum. The Association and its Trustees shall have the authority to exercise and enforce any and all rights and remedies as

provided in these Restrictions, or as otherwise available at law or in equity, including, but not limited to, the right to foreclose the lien against the defaulting Owner's Lot in like manner as a mortgage on real estate or a power of sale under chapter 443, R.S.Mo. In addition to the foregoing, any owner's voting rights and the right of such owner, his family, guests and invitees to use the improvements and recreational facilities in the Common Areas shall be automatically suspended for any period during which any assessment against such owner's Lot remains unpaid after the date the same is due. No Owner may waive or otherwise escape liability for the Assessments, annual or special, established herein by non-use or abandonment of such Owner's Lot or the Common area. The Association may, at the sole option, elect to enforce any rights or remedies provided to the Association in these Restrictions or at law or in equity to collect unpaid assessments levied by or on behalf of the Association against any owner who is delinquent, including, but not limited to, the right to foreclose the lien against the defaulting Owner's Lot in like manner as a mortgage on real estate or a power of sale under Chapter 443, R.S.Mo.

**F. The following shall be inserted as an additional restriction and shall be enumerated as Restriction #24.**

The Trustees or any Owner shall have the right to enforce by any proceeding at law or in equity, any of the covenants, conditions, restrictions and provisions hereof, either to restrain or enjoin a violation or threatened violation or to recover damages. Failure or forbearance by the Trustees or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event the Trustees shall bring such an action, in law or in equity, and shall the prevailing party, then the Trustees shall recover from the non-prevailing party all costs, expenses, and reasonable attorneys fees arising from or relating to such action.

**IN WITNESS WHEREOF**, Dwayne A. Johnson, of The Johnson Law Firm, LLC, hereby states that to the best of his knowledge and belief the owners of East Ashley Place subdivision have affirmed, by majority vote, the amendments to the Restrictions contained herein and that the signatures of the owners exhibiting such majority consent have been attached hereto in compliance and in accord with paragraph 20 of the Restrictions.

**BY:**

  
 \_\_\_\_\_  
 Dwayne A. Johnson, Member  
 The Johnson Law Firm, LLC,  
 Counsel to East Ashley Place Subdivision

Date: 1/31/08

**NOTARY PUBLIC-CORPORATE**

ON THIS 31<sup>st</sup> day of Jan, 2008, in the County of St. Charles, State of Missouri, before me appeared Dwayne A. Johnson, to me personally known, who, being by me duly sworn, did say that he is a Member of The Johnson Law Firm, LLC, a Missouri limited liability company, and that said instrument was signed in behalf of said company, by authority of it's members, and said person acknowledged said instrument to be the free act and deed of said company.

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 above written.

Notary Public Mary E. Erhardt

My term expires: 2/13/11



MARY E. ERHARDT  
My Commission Expires  
February 13, 2011  
St. Charles County  
Commission #07391124