

DRAFT

NEW INDENTURE FOR
ST. CHARLES HILLS SUBDIVISION

This New Indenture, having been duly adopted by vote of the owners of St. Charles Hills Subdivision, ["the Subdivision"] pursuant to a Final Judgment and Order of the St. Charles County Circuit Court of March 23, 2010 in Cause #0911-CV8066, is hereby declared to be a covenant running with the land, **superseding and replacing entirely the earlier Subdivision Indenture recorded at Book 417, Page 462 et seq of the St. Charles County Records.**

ARTICLE I
GOALS OF THIS NEW INDENTURE

This New Indenture has been implemented by the property owners of the Subdivision to provide a modernized community structure with the goals of maintaining strong property values and a decent living environment in the Subdivision.

ARTICLE II
THE SUBDIVISION COMMON LAND
AND OWNER LOTS DEFINED

2.1 THE PROPERTY COMPRISING THE SUBDIVISION. The entire real property comprising the Subdivision is fully described in the plat and documents filed by the original Developer in the St. Charles County Records. The Subdivision is divided into common land and individually-owned lots.

2.2 THE COMMON LAND. The Subdivision is the owner of the common land and property and is responsible for its maintenance and repair. Included in the common ground under Board control are the following features located on common ground: All trees, grass and landscaping, any common boundary fencing installed by the Association, any retaining walls, any surface water runoff controls or basins and any community markers, lighting, monuments or signs. The Board shall have no power to sell or give an easement over common ground without the prior vote of approval from 2/3 of the lots voting in person or by absentee ballot.

2.3 INDIVIDUAL LOT AND HOME. A Lot under this New Indenture is a separate space for a free-standing home owned by an Owner for residential purposes as indicated on the plats and drawings of record. Maintenance and repair of a home and Lot shall be the Owner's responsibility exclusively, subject to the terms of this New Indenture. There shall be no change in Lot boundaries unless the two adjacent Lot Owners, the Subdivision and the requisite governmental authorities all consent in writing to such change.

**ARTICLE III
THE SUBDIVISION BOARD OF TRUSTEES**

3.1 THE BOARD OF TRUSTEES. The Board of Trustees shall consist of three (3) members. The existing Board at the adoption of this New Indenture shall be assimilated as the Board under this New Indenture, holding the same staggered terms of office. Each subsequently elected Trustee shall serve a term of three (3) years.

3.2 QUALIFICATIONS OF BOARD MEMBERS. Only a person at least 21 years old who is a record owner of a Lot directly or is a designated representative of an entity owning a Lot and is current in all payments to the Subdivision may run for the position of Trustee. Should a Trustee be unable to serve or resign or abandon the position or move from the Subdivision or be in default on Subdivision payments or be convicted of a felony or have misdealt with community funds or have more than 3 unexcused absences from meetings, the position shall be vacant and the remaining Trustees shall appoint a person to serve for the remainder of the vacated term.

3.3 ELECTIONS OF BOARD MEMBERS. The Board has staggered terms, so that at each annual election one Board position is on the ballot for a 3-year term. Notice of the annual election shall go out to all Owners at least 30 days prior to the date. Candidates for the Board shall file with the Board no later than 15 days before the election. Candidates shall be listed on the ballot in the order they filed.

Candidates will be given fair opportunity to speak before the vote. Owners may vote in person or by Subdivision-issued absentee ballot. The candidate receiving the most votes shall be elected. A tie will be broken by coin flip. If there is no candidate for a slot, the Board shall appoint a homeowner to fill slot for the whole term.

3.4 GENERAL BOARD OPERATION. The Board shall decide questions by majority vote, unless this Indenture requires more. Fair notice shall be given to all Board members of any meeting. Two members shall constitute a quorum for any meeting on due notice. The Board shall be empowered to elect its own officers and set its general operating rules.

The Board shall meet at least once a year and may consolidate that meeting with the Owners' Annual Meeting. The Board may close a portion of its meeting dealing with confidential personnel or legal questions. Owners may attend Board meetings additional to the Annual Meeting by making prior written request to the Board. Written minutes shall be made of all Board and Owners' meetings. Board meetings may be conducted by phone or computer connection where all members can hear one another, so long as minutes are maintained of the meeting.

3.5 COMPENSATION STATUS. The Board members shall serve without compensation. However, the Owners, upon 30 days prior notice that the subject will be voted upon at an annual meeting, may by vote of a majority of the lot owners voting in person or by subdivision-issued absentee ballot at said meeting, agree to authorize compensation and approve the amount.

3.6 ETHICAL STANDARDS. The Trustees shall maintain high standards of integrity and dedication to the best interests of the community as fiduciaries in handling Subdivision resources and business. No Trustee shall engage in self-dealing, nepotism or conflict of interest, and no Trustee shall give contracts or benefits to himself/herself nor to any relative or business associate. Any Trustee who has a personal interest or a potential conflict of interest in a Subdivision transaction shall disqualify himself/herself from voting on such matter. All Subdivision funds shall be used solely for Subdivision business and shall be honestly and faithfully accounted for.

3.7 INDEMNIFICATION OF BOARD. The Subdivision shall indemnify and hold harmless the Trustees from any liability incurred from their service in good faith or on advice of counsel as Trustees, except for reckless or intentional misconduct. The Board shall be specifically insulated from individual liability for allegation of harm caused by failure to maintain common facilities properly.

**ARTICLE IV
OWNER MEETINGS AND RIGHTS OF PARTICIPATION**

4.1 NOTIFICATION OF ANNUAL AND SPECIAL MEETINGS. The Trustees shall be responsible to mail written notice of the time and place of the Annual Meeting to all Lot Owners at their last known address to be mailed at least Sixty days prior to the meeting. The notice shall also specify the procedures for Subdivision-issued absentee ballots for those unable to attend the meeting and shall include the proposed new budget and assessment for the upcoming year and the expense statement for the previous year.

Likewise, the Trustees shall be responsible to provide appropriate mailed notice to all Lot Owners at least sixty days before any duly called special meeting.

4.2 QUORUM AND PARTICIPATION REQUIREMENTS. No quorum shall be necessary for any meeting duly called upon 60 days prior written notice. Each Lot shall have one vote. One person per lot attending the meeting shall vote by a show of hands or by printed ballot. All Subdivision-issued absentee ballots must be received by the time of the vote or the ballot will not be counted.

4.3 THE ANNUAL MEETING. The Subdivision Annual Meeting of the Owners shall occur on the first Monday in November of each year at a site to be stated in the notice of the meeting sent to all Owners.

The procedures for the Annual Meeting shall be as follows:

- a) The Board shall make its report to the community.
- b) All candidates for Trustee shall be permitted to speak before the vote.
- c) The election shall then proceed for the Trustee slot up for election that night. The person duly elected shall take office at the conclusion of the meeting.
- d) The proposed budget and assessment for the upcoming year and prior year expense statement will be discussed, with Owners permitted to ask questions. The budget and assessment for the upcoming year shall then be put to a vote. Unless 2/3 of the Owners voting in person or by absentee ballot at the meeting vote against the proposed budget and assessment

for the new year, said budget and assessment shall be adopted. If they are rejected by the Owners, the prior year's budget and assessment shall govern for the new year.

e) The Owners shall then have time to ask questions and make comments.

4.4 SPECIAL MEETINGS. Special meeting of the Lot Owners may also be called upon 60 days prior written notice by action of a majority of the Trustees or by request in writing to the Trustees of the Owners of at least 5% of all the Lots. The agenda for the Special Meeting shall be stated in the notice.

4.5 ACCESS TO RECORDS. The current and the previous year's financial records of the Subdivision shall be open to review by any Lot Owner. All requests for records must be made by a 15 day prior written notice to the Board. The Trustees may charge a reasonable fee for the making of any copies requested and to reimburse the Subdivision for any other costs incurred. Executive minutes of closed Board meetings may only be reviewed by protective order.

4.6 POWER TO CALLBACK RULE OR SPECIAL ASSESSMENT. The Owners by petition of 5% of the Lots or by vote of the majority of the Trustees may set a special meeting to vote on whether a rule or a special assessment made by the Board should be called back and nullified. The vote shall occur on 60 days prior mailed notice to all Owners stating the matter to be voted. If 2/3 of the Lots voting in person or by Subdivision-issued absentee ballot vote to callback and nullify the rule or special assessment at issue, then it ends as of that date. Any payments made on a nullified special assessment shall be refunded. If there is not a 2/3 negative vote, then the rule or special assessment at issue stays in full force and effect.

4.7 REMOVAL OF A TRUSTEE. By petition of Owners owning 5% of all the Lots in the Subdivision, the Owners may call for an election to remove a Trustee prior to the expiration of the Trustee's term. The meeting shall be held upon 60 days prior written notice. At the meeting fair opportunity shall be given for both sides to speak before the vote. If 2/3 of the Lots, voting in person or by subdivision-issued absentee ballot, vote to remove the Trustee in question, then that Trustee shall immediately cease holding office and a vacancy shall exist to be filled by the Board of Trustees. If there is not a 2/3 negative vote, then the Trustee

serves for the remainder of the term.

ARTICLE V

POWERS AND RESPONSIBILITIES OF THE TRUSTEES

The Trustees shall have the following authority and responsibilities:

5.1 PREPARING ANNUAL ASSESSMENT AND BUDGET. The Trustees shall prepare the budget for the next year and shall set the assessment rate for the next year. The annual budget shall fairly indicate all projected expenditures and revenues for the year and the status of all reserve and operating accounts as of the date of preparation. The proposed budget, the proposed assessment for the next year and the expense statement for the previous year will be included in the notice of the Subdivision annual meeting mailed to all Owners at least 30 days prior to the annual meeting. Assessments shall be equal for all lots.

At the annual meeting, a vote of a majority of the Owners voting at said meeting in person or by Subdivision-issued absentee ballot shall be required to pass the annual budget for the upcoming year. If rejected, the assessment and budget for the upcoming year shall remain the same as for the current year.

5.2 COLLECTING ASSESSMENTS AND OTHER SUMS OWED. Owners shall make payment of the assessment due on the date stated in the payment notice sent to Owners. If payment is not received within 5 days of the due date, the delinquent Owner shall be charged a late fee of \$15 per month for each calendar month that payment is late, plus interest on the whole sum at 9% per annum. Such late fees and interest shall also apply to any other sum owed the Subdivision, such as fines. If any delinquent assessment or other sum owed have not been paid within 60 days of the due date, a lien for the full amount due shall automatically apply to the Lot of the Owner in default.

The Trustees shall have the responsibility/ authority to collect assessment sums or any other sums, such as fines, owed the Subdivision through legal or equitable action and to charge the wrongdoer for all costs and attorney fees incurred as an additional lien on the defaulting Lot.

5.3 MAKING SPECIAL ASSESSMENTS. If at any time the Trustees face a surge in Subdivision costs beyond the applicable

budget, the Trustees by unanimous vote shall have the authority to impose a special assessment equally on each Lot, with said sum to be due within 90 days, unless a bona fide emergency necessitates a shorter time frame. However, said special assessment shall be subject to the discretion of the Owners to call back and cancel it per Section 4.6 above.

5.4 MANAGING FUNDS AND RESERVES. The Trustees shall deposit and invest Subdivision funds only in accounts or investments that are insured by the U.S. Government.

The Trustees shall in their sole discretion determine what funds shall be allocated to reserves and when reserves shall be used to meet Subdivision financial requirements.

5.5 MAKING SUBDIVISION RULES. The Trustees shall have the power to make rules consistent with this Indenture, which they deem necessary and proper for control and use of the common elements, for conducting Subdivision business and for maintenance of good appearance, sound property values and decent community standards for the Subdivision. Such rules may specify fines and other sanctions for noncompliance. However, any rule shall be subject to the discretion of the Owners to call back and cancel it per Section 4.6 above.

5.6 CONTROLLING THE COMMON ELEMENTS AND EASEMENTS. The Trustees shall, on behalf of the Subdivision, hold title to the common elements to maintain them in good condition. The Trustees shall have the responsibility to set rules for use and enjoyment of the common elements. The Trustees shall represent the Subdivision on any regulatory question regarding the common elements, including but not limited to drainage and responsibility to grant access or easements over the common elements as required to provide service to Subdivision residents.

The Board shall have no power to sell any common ground or to give an easement over common ground without the prior vote of approval from 2/3 of the Lots voting in person or by Subdivision-issued absentee ballot.

5.7 HIRING CONTRACTORS AND PROFESSIONALS. The Trustees shall have the responsibility to hire contractors and professionals (accountants, attorneys, engineers, etc) as needed for Subdivision purposes. The Trustees shall also have the responsibility to hire a professional management company to assist in operation of the Subdivision.

5.8 PREVENTING OR ABATING NUISANCES. The Trustees shall have the responsibility to prevent and correct any nuisance or safety or health violations endangering the property values or quality of life of the Subdivision. The Trustees shall have the responsibility to cause to be removed or abated any newly constructed or placed structure or item which is lewd, dilapidated or grossly abrasive to reasonable community standards and maintenance of property values.

The Trustees shall have the responsibility in their discretion on due notice to trim or remove excess vegetation and debris from abandoned or neglected Lots and to charge the Owner for such work. The Trustees, their agents and the community shall not be liable for trespass or damages for any such action.

5.9 DEALING WITH PUBLIC AUTHORITIES. In conjunction with appropriate public authorities, the Trustees shall have the responsibility to speak and act for the Subdivision regarding streets, police and fire protection, lighting, signage, markers and drainage and sewer systems for the safety and benefit of the Subdivision. The Trustees are responsible on behalf of the community to deal with public authorities on any question of demands from said authorities regarding easement or condemnation rights affecting common land. Any proceeds obtained from condemnation of common land or easements shall go into the Subdivision treasury.

5.10 OBTAINING AND MAINTAINING INSURANCE. The Trustees are responsible for obtaining and maintaining insurance at levels they deem appropriate, including but not limited to comprehensive, property loss, liability, and Trustee errors and omissions insurance.

5.11 ENFORCING THE INDENTURE AND RULES. The Subdivision may be joined as a defendant in any action by obtaining personal service on all three Trustees. The Subdivision may commence any legal action by having at least two Trustees join in official capacity as Plaintiffs on behalf of the Subdivision.

The Board shall be responsible for establishing rules a fair process to decide alleged violations. A person accused of violating a rule or Indenture provision shall be given fair notice and an opportunity to be heard before the Board makes any final decision on the alleged violation. If the accused fails to respond or answer, the Board may treat such failure as an indication there is nothing to be said on behalf of the accused.

The Trustees shall have full authority to enforce the provisions of this Indenture and the Rules. The Trustees shall have the authority assess fines for violations or to place a lien on the Lot of any Owner in violation or default. The Trustees may seek enforcement of this Indenture or Rules in any appropriate court through legal or equitable action and may charge the wrongdoer for all costs and attorney fees incurred in enforcing the Indenture and/or the Rules.

5.12 ARCHITECTURAL AND DESIGN PRIOR APPROVAL. This community is intended to be comprised of homes and improvements which are reasonably compatible in design, style, appearance and value to maintain strong property values and a good quality of life. Consequently, any new construction and any significant change in a Lot or the exterior of an existing building or structure shall require prior review and approval by the Board.

Accordingly, any person or entity intending to construct or install any building or other improvement on any Lot or to remove or alter the exterior of any existing building or improvement or to alter the grade or slope of the land or to make major landscaping changes shall not commence any such work without seeking the prior written consent of the Board to such work.

The party seeking approval of any such work shall submit to the Board plans and specifications of the proposed work showing the particulars of the project.

The Board in its sole discretion shall have the authority to approve such work or to disapprove such proposed work if the plans are inadequate or if the proposed work is incompatible with the requirements of this Indenture or of the existing general style of the community. If the Board fails to act within 21 days of submission, the proposed work shall be considered to be denied. If the proposed work is not approved by the Board, the proposed work shall not go forward.

The Board shall have the authority in its sole discretion to cause any such work undertaken by a party without first obtaining the prior approval of the Board to be corrected or removed at the expense of the violating party, who shall also pay all attorney fees and costs incurred by the Board. Approval

of the proposal by any government entity shall not excuse the Lot Owner from acquiring Board Approval.

5.13 INCORPORATING THE SUBDIVISION. The Trustees shall have the responsibility to cause the Subdivision to be incorporated as a nonprofit community association to limit liability and to transfer all Subdivision assets to said entity, with this Indenture being the operational guideline for such association and the Trustees becoming Directors of said association.

**ARTICLE VI
SCOPE OF PERMITTED USES AND
ACTIVITIES BY ALL LOT OWNERS**

All lot owners shall be bound by the following provisions, and the Trustees shall have full responsibility to enforce these provisions:

6.1 NO NUISANCE. No Owner or guest may carry on any practice, or permit any practice to be carried on, which constitutes a nuisance or unreasonably interferes with the quiet enjoyment of the occupants of any other Lot by way of excessive noise, litter, foul odors, garish lighting, health hazards, vandalism, illegal or dangerous activity, threats or messes from animals, intimidating activity, traffic congestion or safety hazards. Because maintenance of a reasonable range of community appearance is crucial to maintenance of sound property values and a good quality of life, no Owner shall place on or about the exterior of the Lot any structure, coloration, drawing or item which is vulgar, which is grotesquely in disharmony with the style of the community or which has negative impact upon property values. Each Owner shall maintain its Lot in a clean and sanitary condition in general harmony with community standards.

6.2 SINGLE-FAMILY RESIDENTIAL USE. All Lots shall be used only for single-family residential use in accordance with St. Charles County and City ordinances.

6.3 COMMERCIAL USE. No commercial/business activity shall be overtly conducted with signs or advertising on site, or throughout the subdivision, nor shall commercial activity occur within the Subdivision which would cause excessive foot or vehicle traffic to a Lot or be a nuisance to other Lot Owners. Commercial activity

by computer or phone that causes no such problems is permissible.

6.4 ANIMALS AND PETS. Lot owners shall not have livestock or farm animals or poultry or dangerous animals on their premises. No animals of any kind shall be raised for profit as a business. Lot Owners or residents may have ordinary house pets, so long as the Owner or resident does not have more than four. Lot Owners and residents are expected to clean up regularly after said pets and to prevent them from roaming on the property of others or on common ground.

6.5 VEHICLE RESTRICTIONS. Lot owners, residents and their guests shall store any derelict or unlicensed vehicle in a garage/carports. No truck greater than 1 ½ ton or longer than 20 feet shall be regularly parked in the Driveway.

All motor homes, campers, trailers or watercraft must be parked in the garage/carports or parked to the rear of the front line of the building, and screened from view from the street and neighbors by a garage/carport not to extend beyond the front building line. Commercial vehicles or vehicles with commercial markings directly used in the livelihood of a resident may be parked in the driveway; however if the vehicle is greater than a half-ton, it shall be parked in the driveway and not parked on the street.

6.6 FENCING. The Board has the responsibility to give prior approval for all new or reworked fences before any installation. No fence shall be permitted in a front yard, the side of the front yard and/or on a corner lot except in the case of a corner lot it shall not extend beyond the side building line. Unless previously determined by a property line survey, fence ownership will be determined by the placement of the fence post to be inside of the said property line. There shall not be two fences on the same adjacent lot line without prior approval of the trustees and agreement of the adjacent lot owner. Fences shall be either full perimeter back-yard or less than full perimeter back yard screening of patios or pools. No new fence shall be higher than 72 inches in height above the ground or installed in the front portion of the lot. In cases of unusual topography or site conditions the Board may allow a greater height for a fence. The Owner shall be responsible to maintain any fence in good appearance and condition. The Trustees will not approve unless assessments are paid in full and kept current.

6.7 EXTERNAL CONSTRUCTION AND GROUND CONTOURS. Any change in the exterior appearance [exclusive of normal maintenance or

repainting] of an existing building or any new outbuildings or exterior structures, pools, significant new systems or major alteration of ground contours shall require the prior approval of the Board before implementation. Pools may be in-ground or above-ground and must have adequate water and run-off controls. New outbuildings or sheds shall not be higher than eleven feet nor nearer than 3 feet to the adjacent property line nor greater than 120 square feet in size nor used as a residence. There shall be no permanent tents or dog run structures.

6.8 OWNER MAINTENANCE DUTY. Deteriorated conditions have a negative impact on the property values of the Subdivision. If an Owner fails to maintain features which are the responsibility of the Owner in good order, or an Owner allows deteriorated or unsightly conditions to develop, the Board shall have the responsibility to require the Owner to do the corrective work at the Owner's expense, to fine the Owner and/or to do the corrective work and charge the Owner's account for all such costs plus any attorney fees or court costs incurred by the Trustees.

6.9 RESPONSIBILITY FOR DAMAGE. If either the Subdivision or the Owner, directly or through another, negligently or intentionally, damages the property of the other, the party who caused the damage shall pay for all repairs. An Owner shall be responsible for all damage caused by the Owner, residents of the household, guests, renters, invitees or contractors.

6.10 LEASE RESTRICTIONS. Owners may lease or rent their homes but must provide the Board 30 days prior written notice. The Board shall be informed of the tenants on site for emergency notification purposes. Any lease shall be expressly subject to this Indenture and all rules adopted by the Board. Conduct of a tenant shall be subject to the guidelines of this Indenture and the rules set by the Board. The Board shall have the responsibility upon its descretion to impose a security deposit on a tenancy to cover any damage done to common elements.

6.11 SIGNAGE AND LIGHTING. Signs shall not exceed five (5) square feet in size. Political signs shall be taken down by one week after election day. Commercial contractor signs shall be taken down two weeks after the work is completed. Garage sale signs shall be removed from every location within 24 hours after the sale. Holiday lighting and decorations should not cause traffic congestion or be intrusive on neighbors and shall be removed by 30 days after the holiday.

6.12 PLANTINGS AND ORNAMENTS. All plantings shall be neatly maintained and shall avoid blocking vision at intersections and driveways. Dead branches shall be regularly trimmed from trees. Boundary hedges shall be subject to the general height limitations applicable to fences. Lawn ornaments shall be neatly maintained and shall not be excessive in number. No vegetable or fruit gardens shall be planted in any front yard.

6.13 Dumping. There shall be no unauthorized dumping of construction materials, lawn clippings, tree branches or any other debris in or about the parks and common ground of the subdivision. An Owner shall be responsible for all damage and the cost of clean up caused by the Owner, residents of the household, guests, renters, invitees or contractors.

ARTICLE VII NOTICES

7.1 OWNER RESPONSIBILITY FOR CURRENT ADDRESS. The Lot Owner shall be responsible to keep its notification address current.

7.2 NOTIFICATION ADDRESSES. The Board shall be notified by mail addressed to an address designated by the Board for communications. Notice to an Owner shall be valid if mailed to its last address registered with the Board.

VIII AMENDMENT OF THIS INDENTURE

This New Indenture may be amended according to the following procedures:

8.1 PROPOSING AN AMENDMENT.

A. **TRUSTEE PROPOSED.** The Trustees by unanimous vote may submit to the Owners a proposed amendment, which shall be submitted to the Owners for a vote according to Section 8.2 below.

B. **OWNER PROPOSED BY PETITION.** By written petition signed by 5% of all the Lot Owners, the Owners can submit a proposed amendment to the Owners for a vote according to Section 8.2 below.

C. **SUBMITTED BY AN OWNER.** An Owner may submit to the

Trustees a proposed amendment in writing. If the Trustees agree unanimously to submit the proposed amendment to a vote, it will be submitted to the Owners according to Section 8.2 below. If the Trustees do not vote unanimously to submit the proposed amendment, they shall deliver to the submitting Owner their reasons.

8.2 VOTING ON A PROPOSED AMENDMENT. Any proposed amendment shall be subject to approval by the Owners at a duly called meeting. Notice of this meeting, along with a written statement of the proposed amendment, shall be given at least 60 days prior to the meeting by delivering the same, U.S. postage prepaid, to the Owners at their official address as kept in the Subdivision records. An affirmative vote of two-thirds [2/3] of the Owners who are voting, in person or by Subdivision-issued absentee ballot, is required to approve any proposed amendment. If the amendment is approved, the Trustees shall execute and file the amendment with the Recorder of Deeds of St. Charles County.

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