

The Indenture of Trust and Deed Restrictions and Amendments are provided as a courtesy. Certified copies can be obtained from the St. Louis Co. Recorder of Deeds.

**Indenture of Trust and Deed Restrictions  
Rush Creek  
St. Louis County, Missouri**

THIS INDENTURE made and entered into this 22<sup>ND</sup> DAY OF January, 1976, by and between TRENDSETTER HOMES, INC., hereinafter called "First Party", and Charles Deutsch, Norma Jean Orr, and Eugene L. Wolff, all of the State of Missouri, Second Parties, hereinafter referred to as "Trustees";

WITNESS THAT

WHEREAS, First Party has recorded the plat of Rush Creek Subdivision, on this 22<sup>nd</sup> day of January, 1976, as Daily No. 222 in the St. Louis County Recorder's Office, in conformity with the Ordinances of the County of St. Louis; and, reserved as indicated on said plat in Rush Creek subdivision, and

WHEREAS, common land for a tennis court, bathhouse, multi-purpose court, swimming pool and recreational, buffer areas, and all that part of the property not within the 100 lots has been reserved as indicated on said plat in Rush Creek Subdivision, and

WHEREAS, there may be designated, established and recited on the recorded plats of Rush Creek Subdivision certain streets, sidewalks, common land, easements, and any other non-public items which are for the exclusive use and benefit of the residents of Rush Creek Subdivision except those streets, sidewalks or easements which are or may be hereafter dedicated to public bodies and agencies, and which have been provided for the purpose of constructing, maintaining and operating sewers, pipes, poles, wires, storm water drainage, and other facilities and public utilities for the use and benefit of the residents of Rush Creek Subdivision; and

WHEREAS, it is the purpose and intention of the Indenture to preserve the remainder of said tract of land as a restricted neighborhood and to protect the same against certain uses by the adoption of a sound urban environment plan and scheme or restrictions, and to apply that plan and scheme or restrictions to all of said land and every parcel, including all common land, and mutually to benefit, guard and restrict future residents of Rush Creek Subdivision and to foster the health, welfare, safety and morals of all who own or reside in said area, and,

WHEREAS, all reservation, limitations, conditions, easements and covenants herein contained, any and all of which are sometimes hereafter termed "restrictions," are jointly or severally for the benefit of all persons who may purchase, hold or reside from time to time any of the several lots covered by this instrument; and,

WHEREAS, First Party, by Deed simultaneously herewith, has conveyed by deed properly executed to the Trustees herein designated, the common real estate of Rush Creek Subdivision, situated in the County of St. Louis, State of Missouri, a true copy of said deed is marked Exhibit A, attached hereto and made a part hereof.

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WHEREAS, said deed conveys the property described therein to said Trustees for a period of fifty (50) years after which fee simple title to said property will vest in all the then record owners of the lots and dwelling units in all recorded plats of Rush Creek Subdivision as tenants in common, but the rights of such tenants in common will only be appurtenant to and in conjunction with their ownership of lots and dwelling units in Rush Creek Subdivision, and any conveyance or change of ownership of a lot or dwelling unit in Rush Creek Subdivision will carry with it ownership in common property, so that none of the owners of the common property will have such rights of ownership as will permit them to convey their interest in the common property except as is incidental to the ownership of such lots or dwelling unit, and any sale of any lot or dwelling unit in Rush Creek Subdivision will carry with it, without need for specifically mentioning it, all the incidents of ownership of the common property; PROVIDED, HOWEVER, that all rights, powers, and authority conferred upon the Trustees of Rush Creek Subdivision shall continue to be exercised by the Trustees.

NOW THEREFORE, in consideration of the promises and of the mutual promises, covenants and agreements made by the Parties hereto each to the other, the Parties hereto covenant and agree to and with each other, collectively and individually, for themselves, their heirs, successors and assigns, and for and upon behalf of all persons who may hereafter derive title to or otherwise hold through them, together with their heirs, successors, or assigns, any of the lots or parcels of land in Rush Creek Subdivision, and in such further plats of Rush Creek Subdivision (for which these restrictions are adopted) from the aforescribed property, all as described herein as follows, to-wit:

I

**RESERVATION OF EXPENDITURES**

First Party reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided by them for sewers, gas pipes, conduits, poles, wires, street lights, road, streets, recording fees, subdivision fees, consultation fees, or fees, charges and expenses incurred with respect to the creation of any subdivision in the tracts described in Exhibit A attached hereto and made a part hereof.

II

**DESIGNATION AND SELECTION OF TRUSTEES**

The initial trustees shall be \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, designated herein as Trustees, who by their signatures to this instrument consent to serve in such capacity, subject to the terms and provisions of this paragraph. Whenever any Trustee resigns, refuses to act, becomes disabled or dies, the remaining Trustees or Trustee shall have the power to appoint a successor or successors. Such power shall exist until such time as the Party of the first Part no longer owns any of the property described in Exhibit A hereto attached or no longer owns any property in any plat of Rush Creek Subdivision, at which time, a meeting of the then record owners in fee simple title to lots in all plats of Rush Creek Subdivision, shall be called by notice of meeting signed by at

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least three (3) lot owners, sent by first class mail to, or personally served upon, all of such record lot owners at least ten (10) days before the date fixed for the meeting, for the purpose of electing new Trustees. The notice shall specify the time and place of meeting, which place shall be in St. Louis county, Missouri. At such meeting, or any adjournment thereof the majority of the record owners attending such meeting, in person or by proxy, shall have the power to elect such Trustees until their successors have been duly appointed or elected and qualified. After three (3) have been elected, it shall be determined by lot that one shall serve for a term of one (1) year, one for a term of two (2) years, and one for a term of three (3) years, their successors being elected to terms of three (3) years each. At such meeting, each such lot owner, whether attending in person or by proxy, shall be entitled to one vote for each full lot owned by him. Any person owning a fraction of a full lot shall be entitled to a fraction of a full vote commensurate with his fractional interest in said lot. The results of such elections shall be certified by the persons elected Chairman and Secretary of the meeting. A majority of the lot owners attending, whether present in person or by proxy, shall constitute a quorum. Meetings thereafter shall be called by the Trustees, with notices given in the same manner as herein provided and any business relevant or pertinent to the affairs of Rush Creek Subdivision may be transacted at any meeting of lot owners in conformity with this procedure. Further, the Trustees shall call without excuse at least one (1) meeting a year wherein the Trustees shall estimate the coming year's costs and resulting assessments. The above-described procedure shall also be employed if all the Trustees, whether herein named or hereafter appointed, resign, refuse to act, become disabled or die.

To the contrary notwithstanding, one-third (1/3) of the Trustees shall be chosen by owners of developed lots after fifty per cent (50%) of the lots have been sold; two-thirds (2/3) of the Trustees shall be chosen by owners of developed lots after ninety-five per cent (95%) of the lots have been sold; all of the Trustees shall be chosen by owners of the developed lots after all of the lots have been sold.

[See Amendment 3]

### III

#### **TRUSTEES' DUTIES AND POWERS**

First Party hereby invests the Trustees and their successors with the rights, powers and authorities described in this instrument, and with the following rights, powers and authorities:

1) To acquire and hold the common land hereinabove described and conveyed to Trustees by separate instrument on even date herewith, which said common land is set forth and shown on the plat of Rush Creek Subdivision, and in accordance with and subject to the provisions of this instrument, and to deal with any common lands so acquired under the provisions hereinafter set forth.

2) To exercise such control over the easements, streets and roads (except for those easements, streets and roads which are now or hereafter may be dedicated to public bodies or agencies), cul de sac islands, entrance lights, street lights, common land, park areas, courts, bath house and swimming pool (including restriction of use of

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same), entrance markers and any other non-public items, storm water sewers, sanitary sewer trunks and lateral lines, pipes, and disposal and treatment facilities as may be shown on any recorded plat of Rush Creek Subdivision as is necessary to maintain, repair, rebuild, supervise and insure the proper use of said such easements and property 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 shown on said plat.

3) To exercise control over the common land shown on said plat; to pay real estate taxes and assessment herein provided; to repair, maintain and improve same 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, morals, recreation, entertainment, education and general use of the owners of lots in Rush Creek Subdivision, all in conformity with applicable laws; to prescribe by reasonable rules and regulations the terms and conditions of the use of common land, all for the benefit and use of the owners of the lots in Rush Creek Subdivision and according to the discretion of the Trustees.

4) To prevent, as Trustees of an express trust, any infringement and to compel the performance of any restriction set out in this Indenture or established by law, and also any rules and regulations issued by said Trustees conveying the use of said common land or any matters relating thereto. This provision is intended to be cumulative and not to restrict the right of any lot owner to proceed in his own behalf, but the power and authority herein granted to the Trustees is intended to be discretionary and not mandatory.

5) To dedicate to public use any private streets constructed or to be constructed on the aforescribed tract of land, whenever such dedication would be accepted by a public agency, in the event the recorded plat does not provide for public use and maintenance.

6) 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 owners thereof may be charged with the reasonable expense so incurred. 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.

7) To consider, approve or reject any and all plans and specifications for any and all buildings or structures, fences, detached buildings, outbuildings, accessory buildings, swimming pools or any type of courts proposed for construction and erections 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, accessory buildings, swimming pools, courts or other structures may be erected or structurally altered on any of said lots unless there shall be first had the written approval of a majority of the Trustees to the plans and specifications therefore and to the grade proposed therefor. In the event the Trustees fail to approve or disapprove within thirty (30) days after building plans or other

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specifications for fences, swimming pools or tennis courts, accessory buildings and other outbuildings have been submitted to them hereunder, approval will not be required and the related restrictions shall be deemed to have been fully complied with. EXCEPT THAT the First Party and any person, firm, corporation or partnership to whom First Party sells, assigns or transfers a vacant lot shall not be governed by the terms and provisions of this Paragraph and First Party may construct any building structure that it may desire so long as it complies with the ordinances of St. Louis County.

8) To require a reasonable deposit in connection with the proposed erection of any building or structure, fence, detached building, outbuilding, swimming pool, court or other structure or any of said lots in order to provide that upon the completion of the project, all debris shall be removed from the site and from adjacent lots, and that any and all damages to subdivision improvements shall be repaired.

9) To establish rules and regulations for the operation of the swimming pool, clubhouse, tennis court, the recreational facilities and the common ground when the same have been provided in common areas and employ personnel to supervise and operate the same. The regulations shall include the conditions under which residents may entertain guests in such facilities, including the charges to residents for their guests.

10) To purchase and maintain in force:

- a) a policy of property insurance in an amount equal to the full replacement value of the common facilities owned by the Trustees according to the FNMA requirements.
- b) A comprehensive policy of public liability insurance covering all of the common areas and commercial spaces located in the Rush Creek Subdivision insuring the Trustees according to FNMA requirements.
- c) The Trustees of Rush Creek Subdivision shall be required to maintain adequate fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of such Subdivision and all others who handle, or are responsible for handling funds of the Subdivision. Such fidelity bonds shall meet FNMA requirements.
- d) Said policies shall be held in the custody of the Trustees.
- e) Further, to supervise and enforce that a policy of property insurance meeting FNMA requirements shall be obtained with respect to each dwelling unit.

11) In exercising the rights, powers and privileges granted to them and discharging the duties imposed upon them by the provisions of this Indenture, to enter into contracts, employ agents, servants and labor as they may deem necessary or advisable, including the hiring of a manager and maintenance personnel on a regular basis, and to defend suits brought against them individually or collectively in their capacity as Trustees.

12) In the event it shall become necessary for any public agency to acquire all or any part of the property herein conveyed to the Trustees, for a public purpose, the Trustees, during the period of Trust as well as the times fixed for the appointment or election of Trustees, are hereby authorized to negotiate with such public agency for such acquisition and to execute instruments necessary for that purpose. Should acquisitions

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by eminent domain become necessary, only the Trustees need by made parties, and in the event that proceeds received shall be held by the Trustees for the benefit of those entitled to the use of the common property, roads or easements.

13) Notwithstanding any other condition herein, the Trustees shall make suitable provision for compliance with all subdivision and other ordinances, rules and regulations of St. Louis County or any other municipality of which the subdivision may become a part and for such purposes shall not be limited to the maximum assessment provided for herein. Specifically and not by way of limitation, the Trustees shall make provisions for the maintenance and operation of all easements, streets and roads, entrance lights, street lights, common land, park areas, courts, clubhouse, swimming pool, entrance markers, trees on common land and any and all other non-public items on and apart of the common land (including , but not limited to storm water sewers, sanitary sewer trunks and all other items used by the owners of the lots in Rush Creek Subdivision) and including snow removal from non-public streets and leaf removal from the common land and the cutting and caring of the lawn and shrubs of the common land.

14) Notwithstanding any other condition herein, according to the sole discretion of the Trustees, when the Trustees find the exterior surfaces of the dwellings of Rush Creek Subdivision to be in need of painting and other repair, to paint and repair said surfaces in a manner and color approved by the majority of the Trustees and further, according to the sole discretion of the Trustees, to cut the lawn and grass of the lots of the individual dwellings and to clean the gutters of the dwellings. The costs of such painting and repair, grass cutting and gutter cleaning shall be assessed against each lot and no approval of the assessment for the lot owners is necessary. Further, the Trustees are authorized to so asses the lot owners in a manner to provide a contingency fund for the above maintenance set forth in this paragraph and for all approved additional assessments.

At such time, fifty (50) years after the date of any warranty deed by which the Trustees acquired the common land) as the then lot owners of Rush Creek Subdivision become owners of part or all of the common land heretofore conveyed to and held by the Trustees, the Trustees shall continue to exercise all the same rights and authorities and have the same duties and responsibilities with respect to the said common land as hereinbefore set forth, and particularly, the Trustees shall continue to collect for and make payment of the real estate taxes which may be levied on the common land by St. Louis County and/or by other governmental body or agency.

#### IV

#### **ASSESSMENT**

The Trustees and their successors in office are hereby authorized, empowered and granted the right to make regular assessments upon and against the lots of Rush Creek Subdivision for the purposes herein stated and in the manner and subject to the provisions of this instrument:

1. (a) The Trustees and their successors in office are authorized to make uniform assessments per lot upon and against each lot in a plat of Rush Creek

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Subdivision upon which a residence has been constructed and sold either by the Party of the First Part or by another builder, for the purpose of carrying out any and all of the general duties and powers of the Trustees hereunder and for the further purpose of enabling the Trustees to defend and enforce restrictions, adequately, to maintain streets, if required, common land, utilities, common parking spaces, street lights, courts, bathhouse, swimming pool, entrance gates and markers, and trees on common land, 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 residents of Rush Creek Subdivision.

(b) If at any time the Trustees consider it necessary to make any expenditures requiring an assessment additional to the annual assessment, they shall submit a written outline of the contemplated project and the amount of the assessment required, to the owners of each lot in the Subdivision. This additional assessment must then be approved in writing by 55% of the record owners of the lots in the Subdivision. The approval may be obtained by the Trustees by securing the signatures of not less than 55% of the owners of lots in the Subdivision to an agreement authorizing the additional assessments or by the affirmative vote of at least 55% of the owners of lots in the Subdivision at a meeting called for such a purpose. Notice of such special assessment shall be given with such assessment becoming delinquent thirty (30) days after date of such notice. Voting procedures shall be the same as those set forth in Section III above.

2. All assessments shall bear interest at the rate of ten per cent (10%) per annum from the date of delinquency and such assessment together with interest, shall constitute a lien upon the property against which it is assessed until the amount, together with interest and charges, is fully paid. As an assessment becomes delinquent, the Trustees may execute and acknowledge an instrument reciting the levy of the assessment and cause the same to be recorded in the Recorder's Office of St. Louis County, Missouri. Such assessment may be enforced in the same manner as is provided by law for the enforcement of special tax liens against real estate, except that such assessment shall not have priority over existing mortgages, or deeds of trust. Should an owner pay an assessment after the recording of a notice thereof, as herein provided, the Trustees shall release said lien (as shown by recorded instrument) by executing, acknowledging and recording (at the expense of the owner of the property affected) a release of such assessment with respect to any lot or lots affected, and the Trustees shall cause to be noted from time to time in the minutes of their proceedings, the payments made on account of assessments. Assessments will initially commence as soon as a new owner acquires title in Rush Creek Subdivision and will be due at the beginning of each quarter commencing April 1, 1976. [See Amendment 2 – 2(A).] The first year's annual assessment is estimated at \$160.00.

[See Amendment 2(A)]

3. The Trustees shall deposit the funds coming into their hands as Trustees in a bank protected by the Federal Deposit Insurance Corporation or in a savings and loan association protected by the Federal Savings & Loan Insurance Corporation. The treasurer shall be bonded for the proper performance of his duties in an amount fixed by the Trustees.

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4. The Trustees are authorized and empowered to procure such insurance, including but not limited to public liability and property damage, as they may deem necessary and proper.

5. The Trustees are authorized and empowered to cooperate and to contract with the Trustees of adjoining or nearby tracts in the development and maintenance of facilities inuring to the benefit and general welfare of the inhabitants of the entire area.

## V

### **INDENTURE OF RESTRICTIONS**

The party of the First Part, being the owner of the following described real estate lying and being situated in St. Louis County, Missouri, and being more particularly described in Exhibit A attached hereto and made a part hereof, by this Indenture does impose upon all lots and common land in Rush Creek Subdivision, the following restrictions and conditions to-wit:

1. Terms: These restrictions shall run with the land and shall be binding on all parties and all persons claiming under them for a period of fifty (50) years from the date these covenants are recorded, after which time these covenants shall be automatically extended for continuing successive terms of ten (10) years each unless an instrument, signed by the then owners of a majority of the lots in all plats of Rush Creek Subdivision has been recorded, agreeing to change these covenants in whole or in part.

2. Land Use and Building Type: All lots in Rush Creek Subdivision shall be used only for single-family residential dwellings, approved by the Trustees, each dwelling being occupied as a residence, either by one (1) family or by not more than four (4) unmarried individuals of the same sex.

3. Dwelling Cost, Quality and Size: The constructions cost of each residential dwelling in Rush Creek Subdivision shall not be less than Twenty-Seven Thousand (\$27,000.00) Dollars based upon cost levels prevailing on the date these covenants are recorded, it being the intention and purpose of the covenant to assure that all dwellings shall be of quality and workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size. The living area of the main structure, exclusive of one-story open porches and garages, shall be not less than 1,000 square feet.

4. Placement of Improvements: Buildings shall be placed on lots only in the manner approved by the Trustees, subject to terms and provisions of Article III, Paragraph 7, and in conformity with the building lines as established by Exhibit A, attached hereto and made a part hereof.

5. Easements: Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear five (5) feet of each lot. Within these easements, no structure, planting or other materials shall be placed or allowed to remain which may damage or interfere with the installation or



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maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

Through construction, settlement or shifting of any building, should any part of a dwelling encroach upon any common element or upon any other dwelling, perpetual easements for the maintenance of any such encroachment and for the use of the space required thereby are hereby established and shall exist for the benefit of the dwelling owner of the common element, as the case may be, PROVIDED HOWEVER, that no easement shall be created in the event the encroachment is due to the willful conduct of the apartment owner. Further, regarding all dwellings which share common walls, each owner on either side of the common wall will own the entire interior surface of the common wall extended to a depth of one-half (1/2) of the thickness of the entire common wall and also owns a perpetual easement for the use of structural support, running with the land, appurtenant to all dwellings, to the other one-half (1/2) of the same wall.

6. Signs: No sign shall be erected or displayed in public view on any lot except the one (1) sign, not larger than five (5) square feet, advertising the property for sale or rent, EXCEPT, THAT, any sign may be erected by the Party of the First Part in the development of the subdivision. Should the Party of the First Part not develop all the lots and should he convey lots to other builders, the Trustees may grant such other builder or developers the right to place suitable signs on lots and at the entrances of Rush Creek Subdivision during construction and prior to initial sale of the building constructed thereon.

7. Animals: No animals, livestock or poultry shall be raised, bred or kept on any lot, EXCEPT, THAT, two (2) household pets may be kept, provided they are not maintained for any commercial purpose.

8. Fences: Fences on owners' lots are prohibited unless the written consent of the Trustees as to locations, materials used and heights of fence is obtained. The decision of the Trustees shall be conclusive.

9. Vehicles: No abandoned cars, motorcycles, jeeps, trucks or motor vehicles of any kind whatsoever that are unable to move under their own power or boats or recreational vehicles or commercial trucks or large vans may be stored or suffered to remain upon any of the streets, common ground or the lots of this subdivision. If the above said vehicles and boats are so stored or remain on the aforesaid premises, Trustees shall take the necessary action to remove same.

10. Liability of Trustees: Trustees Not to be Compensated: The Trustees shall not be personally responsible for any act in which they are empowered to exercise their judgment and discretion, and shall only be held accountable for their willful misconduct. They shall not be required to expend any money for payment of taxes, maintenance of common ground, courts, clubhouse, swimming pool, storm and sanitary sewers, parkways, street lighting or any other improvements, or any other non-public items in excess of the assessments collected by them. They may retain a reasonable cash

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reserve from such assessments and expend only such sums for maintenance and improvements as they, in their sole discretion deem necessary. Neither the Trustees nor their successor Trustees shall be entitled to any compensation for services performed pursuant to this covenant.

11. Slope Control Areas: Slope control areas are reserved as shown on the recorded Subdivision Plat. Within these slope control areas, no structure, planting or other material shall be placed or permitted to remain, or other activities undertaken which may damage or interfere with established slope ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope control areas of each lot and all improvements in them shall be maintained continuously by the owner of the lots, except for those improvements for which public authority or utility company is responsible.

12. Sight Distance at Intersections: No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street property lines extended. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

13. Front: All garage doors shall be kept closed and no hanging laundry or clothes or other obstructions shall be placed on or about the front of the lots.

14. Amendment: This Indenture of Trust and Restrictions and any part thereof may be altered, amended or discontinued by a written agreement signed by the then record owners of the fee simple title of two-thirds (2/3) of the lot owners in the subdivision then included under the terms of this Indenture or until 100% of the lots are sold, said Indenture may be amended by the Trustees. Any such amendments, alterations, change or discontinuance shall, when duly certified and acknowledged by the Trustees and recorded with the Office of the Recorder of Deeds for the County of St. Louis, Missouri, become a part of the provisions and restrictions of this Indenture, provided, however, that any such amendment, alteration, change or discontinuance shall require the consent of the Party of the First Part so long as it is an owner of one lot in any plat of Rush Creek Subdivision. Any amendment so adopted prior to the completion of the Development shall be reviewed by the proper authorities.

The Trustees shall have the right to add additional tracts of land which shall be subject to the terms and provisions of this Indenture of Trust and Restrictions and whose owners shall have the right to use the common ground, lakes, streets, and all other non-public items and those owners of lots in the tract of land described in Exhibit A shall have the right to the use of the common ground, lakes, and other non-public items of any tracts of land that the Trustees may add.

15. Invalidation: Invalidation of any of these covenants of this Indenture by judgment or court order shall in no way affect any other provisions hereof, which shall remain in full force and effect.

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16. Enforcement: Enforcement shall be by proceedings at law or in equity against any person or person violating or attempting to violate any covenant either to restrain violation or to recover damages.

17. Liens: All liens against any and all of the property of Rush Creek Subdivision shall be secondary to an FHA mortgage or any other first mortgage.

[See Amendment 1]

18. Damage and Reconstruction: In case of fire or any other disaster the insurance proceeds, if sufficient to reconstruct the dwelling on the owner's lot or any building on the common land shall be applied to such reconstruction. Reconstruction of the building, as used herein, means restoring the building to substantially the same condition in which it existed prior to the fire or other disaster, with each unit and the common elements having the same vertical and horizontal boundaries as before. If the dwelling on the owner's lot is not reconstructed within 180 days from the date of damage or destruction, the Trustees shall have the right to reconstruct said dwelling unit and charge the record owner all costs incurred including but not limited to the actual reconstruction costs, the removal of debris, all overhead at 20% of the actual building costs and an additional 20% service charge of said costs for their services.

19. Cul De Sac Islands: No above-ground structure, other than required street lights, may be erected within a cul de sac island or street median without written approval of the Director of Highways and Traffic of St. Louis County, Missouri.

IN WITNESS WHEREOF, the Parties have hereunto executed this Indenture the day and year first above written.

FIRST PARTY:

SECOND PARTIES:

TRENDSETTER HOMES, INC.

By [Charles Deutsch]  
President

[Charles Deutsch]

[Eugene L. Wolff]

[Norma Jean Orr]  
Secretary

[Norma Jean Orr]

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**CORPORATE EXECUTIVE OFFICIAL'S ACKNOWLEDGMENT**

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

On this 22<sup>nd</sup> day of January, A.D., 1976, before me appeared Charles Deutsch, to me personally known, who, being by me duly sworn, did say that he is the President of TRENDSETTER HOMES, INC., a Missouri Corporation and that he executed the foregoing agreement pursuant to the authority given him by the Board of Directors of the aforesaid corporation, and that said agreement was signed and sealed by him in behalf of the aforesaid corporation by authority of its Board of Directors and said Charles Deutsch as President of the said corporation, acknowledged said agreement to be the lawful, free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year above written.

My commission expires 7/10/79.

\_\_\_\_\_  
Alan G. Wolff  
Notary Public

**CORPORATE SECRETARY'S ACKNOWLEDGMENT**

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

On this 22<sup>nd</sup> day of January, A.D., 1976, before me appeared Norma Jean Orr, to me personally known, who, being by me duly sworn, did say that she is the Secretary of the TRENDSETTER HOMES, INC., a Missouri Corporation and that Charles Deutsch, who executed the foregoing agreement as President of the aforesaid corporation is in fact the President of that Corporation and was authorized and directed by the Board of Directors of the aforesaid corporation to execute the foregoing agreement.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year above written.

My commission expires 7/10/79.

\_\_\_\_\_  
Alan G. Wolff  
Notary Public

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AMENDMENT OF INDENTURE OF TRUST AND  
DEED RESTRICTIONS OF RUSH CREEK  
ST. LOUIS COUNTY, MISSOURI

THIS AMENDMENT TO THE INDENTURE OF TRUST AND DEED RESTRICTIONS OF RUSH CREEK, made and entered this 27<sup>th</sup> day of February, 1978, by the Trustees of said Indenture of Trust and Deed Restrictions governing the subdivision of Rush Creek, said instrument being recorded in Book 6842, Page 2131, of the St. Louis County Recorder's office, and

WHEREAS, there is a certain Indenture of Trust and Deed Restrictions governing the subdivision of Rush Creek, said instrument being recorded in Book 6842, Page 2131, of the St. Louis County Recorder's office, and

WHEREAS, the undersigned, as Trustees of said Indenture, are granted the right and authority to amend and alter the said Indenture and provisions thereof by Article V, Section 14, of said instrument, and

WHEREAS, the Trustees desire to amend and alter Article V, Section 18, of said Indenture.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants, agreements and powers granted the Trustees in this instrument and in the Indenture of Trust and Deed Restrictions of Rush Creek, the Trustees hereby amend said Indenture of Trust and Deed Restrictions in the following manner:

1. Article V, Section 18, shall be stricken in its entirety and in place thereof, the following shall be inserted and shall heretofore be known as Article V, Section 18, and shall read as follows:

"Each owner of a parcel of property in the subdivision of Rush Creek, by acceptance of the Deed of Conveyance to said property from the Developer or from any other persons, consents, covenants, and agrees as follows:

a. In the case of fire or other disaster which in whole or in part destroys the owners building, any insurance proceeds payable to said owner by reason of said fire or other disaster, shall be assigned to the Trustees hereof and said Trustees, if said proceeds are sufficient, may apply same to the reconstruction of said building. "Reconstruction of said building" as used herein means the restoring of the building to substantially the same condition in which it existed prior to the fire or other disaster.

In order to effect the purpose and intent of this provision each owner shall cause his insurance policy to be endorsed in such a manner that the proceeds thereof shall become payable to the Trustees of this Indenture for the purpose set forth herein.

b. In the event that the insurance proceeds are insufficient to reconstruct said building, or the Trustees elect not to reconstruct said building, the insurance proceeds shall be paid over to the owner of the building without restriction.

The Indenture of Trust and Deed Restrictions and Amendments are provided as a courtesy. Certified copies can be obtained from the St. Louis Co. Recorder of Deeds.

c. Each owner further agrees to produce a certificate of insurance upon demand by the Trustees, and at least annually, setting forth sufficient insurance coverage against fire and other disaster to provide for the reconstruction of said owners building as herein defined, and bearing an endorsement as set out in subparagraph (a) above.

In the event that any owner fails to comply with the provisions above, and does not produce the required certificate of insurance, or produces a certificate in an amount that is, in the Trustees best judgment, insufficient for the purposes contained herein, the Trustees may secure a policy of insurance in an amount sufficient to provide the necessary coverage as contemplated hereunder, and they may assess the cost thereof against the owner of the building. Said assessment shall be subject to all the terms and conditions of Article IV pertaining to assessments of the Indenture of Trust and Deed Restrictions of Rush Creek.”

IN WITNESS WHEREOF, the parties have hereunto executed this Amendment the day and year first above written.

David Seip Trustee]

Charles Haig Trustee]

Sandra Ferlisi Trustee]

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

On this 27th day of February, A.D., 1978, before me appeared David Seip, Charles Haag, and Sandra Ferlisi, to me personally known, who, being by me duly sworn, did state that they are the Trustees named in the certain Indenture of Trust and Deed Restrictions of Rush Creek, and that they have executed the foregoing Amendment pursuant to the authority given them by said Indenture of Trust and that said Amendment was signed by them of their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial seal, the day and year above written.

My commission expires January 30, 1979.

Billie R. Loxley  
Notary Public

Consent to the above Amendment to the Indenture of Trust and Deed Restrictions of Rush Creek is hereby acknowledged by Trendsetter Homes, Inc. in accordance with Article V Section 14 of said Indenture.

TRENDSETTER HOMES, INC.

BY: CHARLES DEUTSCH, President

The Indenture of Trust and Deed Restrictions and Amendments are provided as a courtesy. Certified copies can be obtained from the St. Louis Co. Recorder of Deeds.

**CORPORATE EXECUTIVE OFFICIAL’S ACKNOWLEDGMENT**

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

On this 27th day of February, A.D., 1978, before me appeared Charles Deutsch, to me personally known, who, being by me duly sworn, did say that he is the President of TRENDSETTER HOMES, INC., a Missouri Corporation and that he executed the foregoing Amendment pursuant to the authority given him by the Board of Directors of the aforesaid corporation, and that said Amendment was signed and sealed by him in behalf of the aforesaid corporation by authority of its Board of Directors and said Charles Deutsch as President of said corporation, acknowledged said Amendment to be the lawful, free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year above written.

My commission expires January 30, 1979.

          [Billie R. Loxley]            
Notary Public

**CORPORATE SECRETARY’S ACKNOWLEDGMENT**

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

On this 27th day of February, A.D., 1978, before me appeared Norma Orr, to me personally known, who, being by me duly sworn, did say that she is the Secretary of the TRENDSETTER HOMES, INC., a Missouri Corporation and that Charles Deutsch, who executed the foregoing Amendment as President of the aforesaid corporation is in fact the President of that Corporation and was authorized and directed by the Board of Directors of the aforesaid corporation to execute the foregoing Amendment.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year above written.

My commission expires January 30, 1979.

          [Billie R. Loxley]            
Notary Public

Reviewed and approved by the Director of Planning St. Louis County.

[JOHN R. BAGGS 3/1/78]  
Director of Planning  
St. Louis County Planning Commission

The Indenture of Trust and Deed Restrictions and Amendments are provided as a courtesy. Certified copies can be obtained from the St. Louis Co. Recorder of Deeds.

AMENDMENT NO. 2(A) TO RUSH CREEK SUBDIVISION  
DECLARATION ST. LOUIS COUNTY, MISSOURI

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, RUSH CREEK SUBDIVISION, also known as Rush Creek Condominium, hereinafter referred to as "Rush Creek Subdivision" by instrument styled "Indenture of Trust and Deed Restrictions" recorded in Book 6842 at page 2131 in the Office of the Recorder of Deeds of St. Louis County, Missouri, which is by reference thereto made a part hereof, established certain covenants, conditions and restrictions for property therein designated as Rush Creek Subdivision; and

WHEREAS, under the provisions of said Declaration, Section 14, page 16, covering amendments, it is provided that said Declaration may be amended by a written agreement signed by the then record owners of the fee simple title of two-thirds (2/3) of the lot owners in the subdivision; and

WHEREAS, more than two-third (2/3) of the lot owners in said subdivision have approved the following amendment by written instrument on file with the Board of Managers of said subdivision.

NOW THEREFORE, pursuant to such power in said Declaration, the undersigned hereby make the following amendment to the aforesaid Rush Creek Declaration by adding the following paragraph relating to attorneys fees to be known as New Section 2(A):

New Section 2(A), page 11, Item IV of the Declaration:

ATTORNEYS FEES

If any matter requiring legal advice or action shall be referred to an attorney at law for legal advice or action, the necessary and reasonable attorney's fees, costs and expenses shall be chargeable to and the obligation of, the unit and unit owner so causing or requiring such referral, and be collectible and enforceable in the same manner as maintenance fees are now collectible and enforceable in this Declaration.

The foregoing amendment shall be effective forthwith and all present provisions of the Declaration, amendments and by-laws shall wherever the same are in conflict with the above be hereby repealed, changed or altered in conformity with the above amendment and change.



The Indenture of Trust and Deed Restrictions and Amendments are provided as a courtesy. Certified copies can be obtained from the St. Louis Co. Recorder of Deeds.

IN WITNESS WHEREOF, this instrument of amendment has been executed on behalf of said Rush Creek Subdivision of St. Louis County, Missouri by its President of the Board of Managers and attested by its Secretary this 21 day of June, 1981.

RUSH CREEK SUBDIVISION  
ST. LOUIS COUNTY, MISSOURI

By George Lenz  
President

ATTEST:

By Lester Jacobs  
Secretary

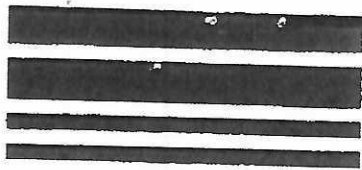
STATE OF MISSOURI        )  
  ) SS  
COUNTY OF ST. LOUIS    )

On this 21st day of June, A.D., 1981, before me appeared George Lenz, to me personally known, who, being by me duly sworn, did state that he is the President of the Board of Managers of Rush Creek Subdivision of St. Louis County, Missouri, a condominium of the State of Missouri, and that said instrument was signed and sealed in behalf of said Rush Creek Subdivision by authority of its Board of Managers; and acknowledged said instrument to be the free act and deed of said Subdivision.

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

My commission expires September 9, 1981.

Harry Gorshenson  
Notary Public



\* 2011011800734 \*

JANICE M. HAMMONDS, RECORDER OF DEEDS  
ST. LOUIS COUNTY MISSOURI  
41 SOUTH CENTRAL, CLAYTON, MO 63105

TYPE OF INSTRUMENT: **AMDT**  
GRANTOR: **RUSH CREEK**  
TO:   
GRANTEE:

PROPERTY DESCRIPTION: **RUSH CREEK AMENDED DEV. PB: 169 PG: 86**

Lien Number

Notation  
**X**

Locator

NOTE: I, the undersigned Recorder of Deeds, do hereby certify that the information shown on this Certification Sheet as to the TYPE OF INSTRUMENT, the NAMES of the GRANTOR and GRANTEE as well as the DESCRIPTION of the REAL PROPERTY affected is furnished merely as a convenience only, and in the case of any discrepancy of such information between this Certification Sheet and the attached Document, the ATTACHED DOCUMENT governs. Only the DOCUMENT NUMBER, the DATE and TIME of filing for record, and the BOOK and PAGE of the recorded Document is taken from this CERTIFICATION SHEET.

RECORDER OF DEEDS DOCUMENT CERTIFICATION

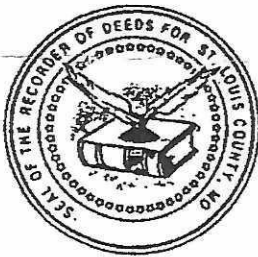
STATE OF MISSOURI )  
SS.  
COUNTY OF ST. LOUIS )

Document Number  
**00734**

I, the undersigned Recorder of Deeds for said County and State, do hereby certify that the following and annexed instrument of writing, which consists of 7 pages, (this page inclusive), was filed for record in my office on the 18 day of January 2011 at 03:32PM and is truly recorded in the book and at the page number printed above.

In witness whereof I have hereunto set my hand and official seal the day, month and year aforesaid.

MLM2  
Deputy Recorder



*Janice M. Hammonds*

St. Louis County, Missouri

Mail to:

MARVIN J NODIFF PC LAW OFFICE  
500 N SKINKER BLVD  
ST LOUIS, MO 63130

Destination code: 1771 M

RECORDING FEE **39.00**  
(Paid at the time of Recording)

6 ✓

NOTATION

**RECORDING MEMORANDUM**

Instrument: 3<sup>rd</sup> Amendment to Indenture of Trust and Deed Restrictions  
Rush Creek

Grantor: Lot Owners of Rush Creek Homeowners Association  
c/o AAS Community Management, Inc.  
P.O. Box 4382  
St. Louis, MO 63123

Grantee: Rush Creek Homeowners Association  
c/o AAS Community Management, Inc.  
P.O. Box 4382  
St. Louis, MO 63123

Date: January 12, \_\_\_\_\_, 20 11

Legal Description: "Indenture of Trust and Deed Restrictions" recorded on January 23,  
1976 in Book 6842, Page 2131 of the records of St. Louis County,  
Missouri (Exhibit "A" attached hereto)

County: St. Louis County, Missouri

Return to: Mr. Marvin J. Nodiff, Esq.  
Law Office of Marvin J. Nodiff, P.C.  
500 N. Skinker Boulevard  
St. Louis, MO 63130  
(314) 727-8989

**3<sup>rd</sup> AMENDMENT  
TO  
INDENTURE OF TRUST AND DEED RESTRICTIONS  
RUSH CREEK**

THIS AMENDMENT is made this 12 day of January, 2011 by Rush Creek Homeowners Association ("Association").

WHEREAS, Rush Creek is a residential subdivision ("Subdivision") created under the Indenture of Trust and Deed Restrictions as recorded January 23, 1976 in Book 6842, Page 2131, as amended by instrument recorded March 1, 1978 in Book 7035, Page 168 ("1<sup>st</sup> Amendment") and by instrument recorded June 23, 1981 in Book 7340, Page 1229 ("2<sup>nd</sup> Amendment"), of the records of St. Louis County, Missouri, as may be further amended ("Indenture"); and

WHEREAS, certain real property comprising the Subdivision was subdivided into 100 Lots and common land by virtue of the Plat of Rush Creek recorded in Plat Book 169, Pages 86-87 of the records of St. Louis County, Missouri ("Plat"); said property is more particularly described in Exhibit "A" attached to the Declaration and on the Plat, which are incorporated by reference herein; and

WHEREAS, the Association is the homeowners association of the Subdivision; all Owners of Lots in the Subdivision are members of the Association; and

WHEREAS, the Owners are authorized under Article V, Section 14 of the Indenture to amend the Indenture by written agreement signed by at least two-thirds (2/3rds) of the Owners; and

WHEREAS, the Owners desire to amend the Indenture to foster the Association's financial stability by modifying payment of assessments and providing effective collection authority.

NOW THEREFORE, the Indenture is amended as follows:

A. *Section 2 of Article IV, relating to assessments, is deleted in its entirety and a new Section 2, relating to the same subject, is inserted in lieu thereof, to read as follows:*

**"2. Payment and Collection of Assessments.** The provisions of this Section 2 of Article IV shall be effective in accordance with Section "C" below.

**"(a) Covenant to Pay Assessments.** Each Owner, while he is Owner of a Lot, regardless of the manner in which he acquired title, covenants to pay and shall be personally liable for all assessments made under this Indenture.

**"(1) Personal Liability.** The Owner of a Lot at the time any assessment, fine, fee, or other charge imposed under this Indenture is due is personally liable for payment. Personal liability shall not pass to a successor in title unless he agrees to assume the obligation.

**"(2) No Waiver of Liability.** Liability for assessments shall be an independent and affirmative covenant, and may not be avoided by a waiver of the use or enjoyment of any common land or services, or by abandonment of the Lot against which the assessment was made, or by reliance upon assertion of any claim against the Trustees, another Owner, or any third party.

**"(b) Budget.** The Trustees shall prepare the annual budget and mail or personally deliver a copy of the budget to the Owners at least 30 days before the start of each fiscal year.

**"(c) Payments.** The annual assessment allocated to each Lot shall be an annual obligation of the Owner and may be paid in equal monthly installments due on the first (1<sup>st</sup>) day of each month. Any additional or special assessment shall be due as set forth in the notice of such assessment.

**"(d) Failure to Pay Assessments.** If an Owner fails to pay any assessment or installment thereof by the date due, the following shall apply:

**"(1) Late Fees.** If any payment is not received by the fifteenth (15<sup>th</sup>) day after the date due, a late fee shall be added in the amount of twenty-five dollars (\$25.00) or such other reasonable amount which the Board may adopt by resolution.

**"(2) Interest.** The unpaid amount shall be subject to interest at the rate of twelve percent (12%) per annum, or such other reasonable rate (not to exceed the legal rate) which the Board may adopt by resolution.

**"(3) Acceleration.** The unpaid balance of the annual assessment, or any other assessment payable in periodic installments, may be accelerated and the entire amount collected in the same manner as unpaid assessments.

**"(4) Withdrawal of Privileges.** An Owner who is not current in payment of any assessment, together with late fees, interest, costs and attorney's fees incurred in connection with such delinquency, shall not be entitled to use any recreation facility, serve as Trustee, or vote in the election or removal of Trustees.

**"(5) Certificate of Account.** Upon written request by an Owner, the Trustees shall furnish to the Owner a statement of the amount of unpaid assessments, fines, fees, and other charges against the Lot, within ten business days after receipt of the request.

**“(e) Lien for Assessments.** In addition to each Owner’s personal liability under Section 2(a) above, the Trustees shall have a continuing lien against a Lot for any delinquent assessments, fines, fees and other charges imposed under this Indenture, and acceleration of unpaid assessments.

“(1) A lien under this subsection (e) is prior to all other liens and encumbrances on a Lot except (i) a first security interest on a Lot for the purchase of the Lot and recorded before the date the Owner’s delinquency first arose and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. This subsection (e) shall not affect the priority of mechanics’ or material men’s liens. A lien under this subsection (e) is not subject to Section 513.475, Mo. Rev. Stat. (homestead exemption).

“(2) Recording of this Amendment constitutes record notice and perfection of the lien. Further recording of a claim of lien is not required, but may be done in the Board’s discretion.

“(3) If an Owner of a Lot subject to a lien under this subsection (e) files a petition for relief under the United States Bankruptcy Code, the period of time for instituting proceedings to enforce the lien shall be tolled until 30 days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

“(4) The lien may be foreclosed by judicial proceeding or publication in the same manner as a mortgage on real estate or power of sale under Chapter 443, Mo.Rev.Stat.

“(5) Reasonable notice of foreclosure of the lien shall be given to each lien holder of a Lot whose interest would be affected.

“(6) The Trustees may acquire title to a Lot in foreclosure under this subsection (e) or by deed in lieu of foreclosure, or at a Sheriff’s sale in execution of a judgment.

**“(f) Costs and Attorney’s Fees.** A lien, judgment or decree in any action brought under this Article IV shall include the Trustees’ costs, attorney’s fees, paralegal fees, and management fees incurred in the action, including costs and fees incurred in the execution of a judgment or decree.

**“(g) Fiscal Year.** The fiscal year of the Trustees shall be the calendar year ending December 31, or such other fiscal year as the Trustees may adopt by resolution.


**“(h) Priority of Mortgagees.** Nothing in this Article IV shall abridge or limit the rights or responsibilities of any holder of a security interest on a Lot as set forth in the Indenture.”

B. The officers of the Association are authorized to execute, attest, and record this Amendment upon its adoption in accordance with the procedures in Article V, Section 14 of the Indenture and, by their signatures below, certify that the signatures of the Owners attached hereto as Exhibit "A" constitute at least two-thirds of the Owners of Lots in the Subdivision, and certify that this Amendment has been duly adopted in accordance with said procedures.

C. Except as otherwise expressly stated in this Amendment, this Amendment shall be effective upon its recording in the records of the Office of Recorder of Deeds, St. Louis County, Missouri, and shall be applicable to events and circumstances occurring after said effective date.

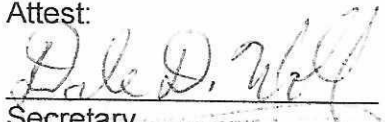
RUSH CREEK HOMEOWNERS ASSOCIATION.  
a Missouri nonprofit corporation

By:

  
\_\_\_\_\_  
President Scott Cant

[No Seal]

Attest:

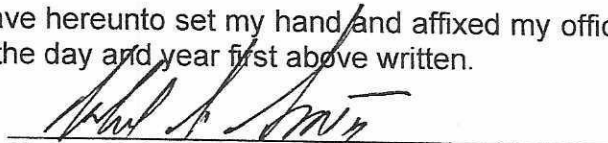
  
\_\_\_\_\_  
Secretary

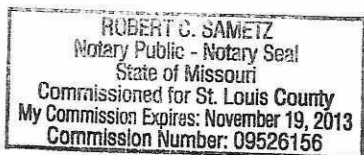
STATE OF MISSOURI            )  
  ) SS  
COUNTY OF ST. LOUIS        )

On this 12 day of January, 2011, before me appeared SCOTT CANT, to me personally known, who, being by me duly sworn, did say that he/she is the President of Rush Creek Homeowners Association, a Missouri nonprofit corporation, which has no seal, and that said instrument was signed in behalf of said corporation, and that said President acknowledged said instrument to be the free act and deed of said corporation.

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.

My Commission Expires:

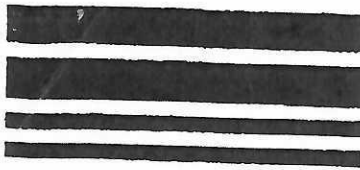
  
\_\_\_\_\_  
Notary Public



**RUSH CREEK HOMEOWNERS ASSOCIATION  
EXHIBIT "A"  
LEGAL DESCRIPTION**

Plat of Rush Creek recorded in Plat Book 169, Pages 86-87 of the records of St.  
Louis County, Missouri.





\* 2011050200221 \*

JANICE M. HAMMONDS, RECORDER OF DEEDS  
ST. LOUIS COUNTY MISSOURI  
41 SOUTH CENTRAL, CLAYTON, MO 63105

TYPE OF INSTRUMENT: **AMDT**  
GRANTOR: **RUSH CREEK HOMEOWNERS ASSN**  
TO: [blank]  
GRANTEE: [blank]  
PROPERTY DESCRIPTION: **RUSH CREEK PB 169 PG 86**

Lien Number

Notation  
**X**

Locator

NOTE: I, the undersigned Recorder of Deeds, do hereby certify that the information shown on this Certification Sheet as to the TYPE OF INSTRUMENT, the NAMES of the GRANTOR and GRANTEE as well as the DESCRIPTION of the REAL PROPERTY affected is furnished merely as a convenience only, and in the case of any discrepancy of such information between this Certification Sheet and the attached Document, the ATTACHED DOCUMENT governs. Only the DOCUMENT NUMBER, the DATE and TIME of filing for record, and the BOOK and PAGE of the recorded Document is taken from this CERTIFICATION SHEET.

RECORDER OF DEEDS DOCUMENT CERTIFICATION

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

Document Number  
**00221**

I, the undersigned Recorder of Deeds for said County and State, do hereby certify that the following and annexed instrument of writing, which consists of 5 pages, (this page inclusive), was filed for record in my office on the 2 day of May 2011 at 11:41AM and is truly recorded in the book and at the page number printed above.

In witness whereof I have hereunto set my hand and official seal the day, month and year aforesaid.

CLB2  
Deputy Recorder



*Janice M. Hammonds*  
St. Louis County, Missouri

Mail to:

MARVIN J NODIFF PC LAW OFFICE  
500 N SKINKER BLVD  
ST LOUIS, MO 63130

Destination code: 1771 M

RECORDING FEE 33.00  
(Paid at the time of Recording)

4  
Notation

### RECORDING MEMORANDUM

Instrument: 4<sup>th</sup> Amendment to Indenture of Trust and Deed Restrictions  
Rush Creek

Grantor: Lot Owners of Rush Creek Homeowners Association  
c/o AAS Community Management, Inc.  
P.O. Box 4382  
St. Louis, MO 63123

Grantee: Rush Creek Homeowners Association  
c/o AAS Community Management, Inc.  
P.O. Box 4382  
St. Louis, MO 63123

Date: May 2, 2011

Legal Description: "Indenture of Trust and Deed Restrictions" recorded on January 23,  
1976 in Book 6842, Page 2131 of the records of St. Louis County,  
Missouri (Exhibit "A" attached hereto)

County: St. Louis County, Missouri

Return to: Mr. Marvin J. Nodiff, Esq.  
Law Office of Marvin J. Nodiff, P.C.  
500 N. Skinker Boulevard  
St. Louis, MO 63130  
(314) 727-8989

4<sup>th</sup> AMENDMENT  
TO  
INDENTURE OF TRUST AND DEED RESTRICTIONS  
RUSH CREEK

THIS AMENDMENT is made this 13<sup>th</sup> day of APRIL, 2011 by Rush Creek Homeowners Association ("Association").

WHEREAS, Rush Creek is a residential subdivision ("Subdivision") created under the Indenture of Trust and Deed Restrictions as recorded January 23, 1976 in Book 6842, Page 2131, as amended by instrument recorded March 1, 1978 in Book 7035, Page 168 ("1<sup>st</sup> Amendment") and by instrument recorded June 23, 1981 in Book 7340, Page 1229 ("2<sup>nd</sup> Amendment"), of the records of St. Louis County, Missouri, as may be further amended ("Indenture"); and

WHEREAS, certain real property comprising the Subdivision was subdivided into 100 Lots and common land by virtue of the Plat of Rush Creek recorded in Plat Book 169, Pages 86-87 of the records of St. Louis County, Missouri ("Plat"); said property is more particularly described in Exhibit "A" attached to the Declaration and on the Plat, which are incorporated by reference herein; and

WHEREAS, the Association is the homeowners association of the Subdivision; all Owners of Lots in the Subdivision are members of the Association; and

WHEREAS, the Owners are authorized under Article V, Section 14 of the Indenture to amend the Indenture by written agreement signed by at least two-thirds (2/3rds) of the Owners; and

WHEREAS, the Owners desire to amend the Indenture to facilitate meetings by amending the quorum procedure.

NOW THEREFORE, the Indenture is amended as follows:

A. *The first paragraph of Article II is amended as follows:*

The following sentence is deleted: "A majority of the lot owners attending, whether present in person or by proxy, shall constitute a quorum."

And a new sentence is inserted in lieu thereof, to read as follows:

**"Quorum.** The presence at the beginning of any duly called meeting of the Owners, in person or by proxy, of Owners comprising thirty-five percent (35%) of all the Owners shall constitute a quorum."



**RUSH CREEK HOMEOWNERS ASSOCIATION  
EXHIBIT "A"  
LEGAL DESCRIPTION**

Plat of Rush Creek recorded in Plat Book 169, Pages 86-87 of the records of St.  
Louis County, Missouri.

2025030500109

CERTIFIED-FILED FOR RECORD  
3/5/2025 7:04:40AM

Gerald Smith  
Recorder of Deeds  
COUNTY OF ST. LOUIS, MISSOURI

PAGES: 13  
RECORDING FEE: \$57.00

THIS DOCUMENT WAS ERECORDED

Gerald Smith, Recorder of Deeds  
ST. LOUIS COUNTY MISSOURI  
41 S Central Ave, Clayton, MO 63105

Type of Instrument: AMENDMENT  
Grantor: RUSH CREEK HOMEOWNERS' ASSN  
Grantee:

NOTE: I, the undersigned Recorder of Deeds, do hereby certify that the information shown on this Certification Sheet as to the TYPE OF INSTRUMENT, the NAMES of the GRANTOR and GRANTEE as well as the DESCRIPTION of the REAL PROPERTY affected is furnished merely as a convenience only, and in the case of any discrepancy of such information between this Certification Sheet and the attached Document, the ATTACHED DOCUMENT governs. Only the DOCUMENT NUMBER, the DATE and TIME of filing for record of the recorded Document is taken from this CERTIFICATION SHEET.

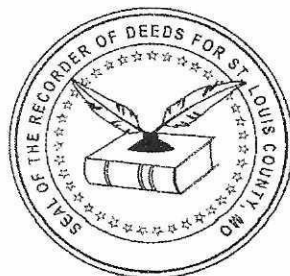
RECORDER OF DEEDS DOCUMENT CERTIFICATION

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

I, the undersigned Recorder of Deeds for said County and State, do hereby certify that the following and annexed instrument of writing, which consists of 13 pages, (this page inclusive), was filed for record in my office on the 5 day of March 2025 at 7:04 am and is truly recorded as the document number printed above.

In witness whereof I have hereunto set my hand and official seal the day, month and year aforesaid.

NEW ALIAS  
Deputy Recorder



*Gerald E. Smith*

Recorder of Deeds  
St. Louis County, Missouri

## RECORDING MEMORANDUM

Instrument: Fifth Amendment to Indenture of Trust and Deed  
Restrictions for Rush Creek

Grantor: Rush Creek Homeowners' Association  
c/o AAS Community Management  
P.O. Box 4382  
St. Louis, MO 63123

Grantee: Rush Creek Homeowners' Association  
c/o AAS Community Management  
P.O. Box 4382  
St. Louis, MO 63123

Date: December 14, 2024

Legal Description: See Exhibit A, which is attached hereto and incorporated  
herein by reference

County: St. Louis County, Missouri

Reference: Book 6482, Page 2131

Return To: Sandberg Phoenix  
120 S. Central Ave, Ste 1600  
St. Louis, MO 63105  
(314) 231-3332

This cover page is attached solely for the purpose of complying with the requirements stated in Mo. Rev. Stat. §§ 59.310.2 and 59.313.2 (2000). The information provided on this cover page shall not be construed as either modifying or supplementing the substantive provisions of the attached instrument. In the event of a conflict between the provisions of the attached instrument and the provisions of this cover page, the attached instrument shall control.

**FIFTH AMENDMENT TO INDENTURE OF TRUST AND  
DEED RESTRICTIONS FOR RUSH CREEK**

THIS AMENDMENT to the Indenture of Trust and Deed Restrictions for Rush Creek is made and entered into as of this 14<sup>th</sup> day of December, 2024 by Rush Creek Homeowners' Association.

WHEREAS, Rush Creek Subdivision ("Subdivision") exists by virtue of the "Indenture of Trust and Deed Restrictions for Rush Creek" as recorded on January 23, 1976 in Book 6482, Page 2131 in the records of St. Louis County, Missouri, as amended ("Indenture"); and

WHEREAS, pursuant to Section 14 of Article V of the Indenture, the Owners are authorized to amend the Indenture by approval of two-thirds of all the Owners; and

WHEREAS, the Owners desire to adopt contemporary provisions related to quorum and election of trustees, lien priority, future amendment procedure, enforcement and rescind insurance disclosure requirement; and

WHEREAS, this Amendment is in the best interests of the community as a whole.

NOW THEREFORE, the Indenture is amended as follows:

A. *Article II of the Indenture related to Designation and Selection of Trustees is deleted in its entirety and a new Article II, related to Meeting, Quorum and Voting, is inserted in lieu thereof to read as follows:*

**II.  
MEETING, QUORUM AND VOTING**

**2(a) Annual Meeting.** The annual meeting of the Association shall be held during the month of June or such later date as practical. At the meeting, the Members shall elect Trustees, the Board shall provide a report on the financial condition of the Association, and may transact such other business as may properly come before them, provided that written notice of such business is given to all Members at least thirty (30) days in advance of the meeting. The annual meeting shall be held within five (5) miles of the Subdivision or at such other convenient location as may be designated by the Board and may also be held virtually via an online platform.

**2(b) Special Meeting.** A special meeting of the Association may be called by a majority of the Board or as provided under the Missouri Nonprofit Corporation Act ("NCA").



- 2(c) Notices.** All notices of meeting shall be provided not less than thirty (30) nor more than ninety (90) days before the meeting. Unless otherwise indicated by an Owner, the Board shall assume that an Owner consents to receipt of notices via email, in which event the notice shall be provided by mail. Should an Owner attend a meeting, he or she waives all objections to any alleged or asserts defects in notice.
- 2(d) Quorum.** At the beginning of any meeting of the Members, quorum shall be 15% of the all the Members by counting those in attendance in-person, via proxy, or having cast an absentee ballot or voting through an online platform as authorized herein. If any meeting of the Association cannot be held because a quorum is not present, the Board shall reschedule the meeting and notify the Members of the rescheduled meeting. Such meeting, quorum shall be reduced to 10% of the Members, and if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. Any proxies or ballots prepared and submitted at the adjourned meeting shall remain valid.
- 2(e) Voting.** Owners may vote by ballot in-person at a meeting of the Owners, via a directed proxy, general proxy so long as no owner has more than two (2) general proxies, absentee ballot, or via an online platform as described herein. Cumulative voting is not permitted. The Board, so long as no meeting is scheduled, may adopt Rules and associated form to administer any vote of the Members. If a form is provided by the Association, no other forms may be used.
- a. Multiple Owners.** Multiple Owners of a Lot shall be deemed to be one Member for purposes of voting and shall collectively be entitled to one vote. If only one of several Owners of a Lot casts a vote, by any means permitted in this Indenture, that Owner is entitled to cast the vote allocated to that Lot. If more than one of the Owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. There is a majority agreement if any one of the Owners casts the vote allocated to the Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. In the event of such protest, the vote allocated to that the Lot shall not be counted.
- b. Legal Entities.** If an Owner is a corporation (or other legal entity recognized at law), any designated officer of such corporation may cast the vote allocated to such Lot. The person presiding over the meeting may require written authorization that the person voting on behalf of such entity is authorized to vote.
- c. One Vote Per Lot.** Each Lot is allocated one vote of equal weight.
- 2(f) Online Platform.** The Association may utilize an online platform to conduct a meeting of the Members and for Owners to cast a ballot on any question to be

determined by the Owners; provided, however, the Association may not compel the use of such an online platform for voting. Any vote cast via such an online platform shall be deemed present for the purposes of determination of quorum.

**2(g) Number, Term, and Qualifications.** Board shall consist of three (3) Trustees. All Trustees shall serve a term of three (3) years, which are staggered so that one (1) Trustee is elected annually. All Trustees shall be qualified as follows:

**(1) General Qualifications.** A member must satisfy the following qualifications to be a candidate and serve on the Board: (1) be an Owner of a Lot according to the records of St. Louis County, Missouri, (2) a resident within the Community, (3) not be engaged in a pending judicial or administrative proceeding adverse to the Association's interests, (4) be at least 21 years of age, (5) be a Member in Good Standing, and (6) have no violation of the Governing Documents that remains unresolved after notice and opportunity to be heard.

**(2) Spouse, Partner and Trusts.** Notwithstanding Section 2(g)(1)(1), a spouse or partner of an Owner is qualified to be a candidate and serve on the Board so long as the spouse or partner permanently resides in the Subdivision with the Owner and the Owner, spouse and partner satisfy the other qualifications. The beneficiary of a trust that owns a Lot shall satisfy Section 2(g)(1)(1).

**(3) Legal Entities.** A legal entity that owns a Lot shall satisfy Section 2(g)(1)(1) by designating an authorized officer ("Authorized Officer"). Regardless of the number of Lots owned by the legal entity, or legal entities having common ownership or affiliation, a legal entity may not have multiple Authorized Officers serving at the same time.

**(4) Current Board Members and Terms.** To facilitate clarity, the current board members are identified along with the year of the annual meeting in which their term expires: Judith Doyle (2025), Judith Woolsey (2025), Joseph Decker (2026), and Ron Medley (2027). Upon the retirement of Judith Doyle, the Board will transition to three (3) Board members.

**2(h) Election Rules.** Prior to any scheduled election at an annual meeting, the Board may adopt Rules which may require a nomination process, prohibit nominations from the floor, and regulate campaigning activities; provided, however, such Rules shall apply equally to all potential candidates.

**2(i) Removal & Vacancies.** A Trustee may be removed by the Members by compliance with the procedure provided in the NCA. Further, a vacancy may be filled by any method permitted under the NCA.

**2(j) Board Meetings.** Regular Board meetings shall be held at such time and place as determined by the Board, but such meetings shall be held at least semi-annually. The schedule of regular Board meetings shall be published to the Owners at least ten (10) days prior to such meetings. Special meetings of the Board shall be held when called by notice by a majority of the Board specifying the time and place of the meeting and the nature of any special business to be considered. A majority of the Trustees, present at the beginning of any Board meeting, shall constitute a quorum for the transaction of business, and the votes of a majority of the Trustees present at a meeting at which a quorum is present shall constitute the decision of the Board. Board meetings, if held in-person, shall be held within five (5) miles of the Subdivision or at such other convenient location as may be designated by the Board but may also be held virtually via an online platform.

**2(k) Officers.** The officers shall be elected annually by the Board at the first meeting of the Board following each annual election. The officers of the Board shall be a President, Secretary and Treasurer, all of whom shall be elected by the Board from among the Trustees.

**2(l) Conflict.** Should any provision of the Governing Documents conflict with this Article, this Article shall supersede such provisions and govern.

**2(m) Definitions.** In addition to those terms already defined in the Declaration., the following terms shall apply:

(1) **“Governing Documents”** means this Indenture, the Articles of Incorporation of the Association, and rules and regulations as may be adopted by the Board.

(2) **“Member in Good Standing”** means an Owner does not have an unresolved violation, or has a pending adversarial claim against the Association.

(3) **“Missouri Nonprofit Corporation Act”** or **“NCA”** means the Mo. Rev. Stat., Chapter 355.

*B. Article IV, Section 2(e) of the Indenture related to Liens is deleted in its entirety and a new Section 2(e) related to the same subject is inserted in lieu thereof to read as follows:*

**2(e) Lien.** In addition to each Owner's personal liability under Section 2(a) of this Article IV, the Association has a lien against a Lot for any assessment or fine from the time the assessment or fine becomes due, which shall include any other monies owed to the Association.

- (1) **Priority.** For any liens executed after recording of this Amendment to the Indenture, a lien under this Section 2(e) is prior to all other liens and encumbrances on a Lot (including any mortgage or deed of trust) except for those liens, mortgages or deeds of trust of record at the time of the recording of this Amendment, real estate taxes and other governmental assessments or charges against the Lot. The lien is not subject to the provisions of Mo. Rev. Stat. §513.475 (2000)(homestead exemption).
- (2) **Perfection.** The Association's lien for unpaid assessments and other charges shall be deemed perfected upon the Effective Date of this Amendment. A notice of the Association's lien, in the Board's discretion, may be recorded in the records of St. Louis County, Missouri.
- (3) **Enforcement.** The Association may initiate suit to recover sums for which this Section creates a lien. In addition, and without waiver of any remedies, the Association's lien may be foreclosed by judicial proceeding or by publication in like manner as a mortgage on real estate or power of sale under Mo. Rev. Stat. §§ 443.290 to 443.440 (2010).
- (4) **Conflict.** This Section expressly supersedes Section 17 of Article V of this Indenture.

C. *Section 1 of Article V of the Indenture related to Terms is deleted in its entirety and a new Section 1 related to Termination is inserted in lieu thereof to read as follows:*

**1. Termination of Subdivision.** Except in the case of a taking of all the Subdivision by eminent domain, the Subdivision may be terminated or sold only by agreement of at least 90% of the Members in Good Standing. In the event of termination, fee simple title to the Common Ground shall remain vested in the Association until sold. None of the authority of the Association or Board shall be affected by such termination. No such agreement of termination or sale shall be effective unless made and recorded at least one year in advance of the effective date of such termination or sale, and unless written notice of the proposed agreement of termination or sale is sent to every Owner at least 90 days in advance of any action taken.

Until such time of termination, all Common Ground shall remain vested in the name of the Association for the mutual benefit and enjoyment of the Owners subject to the Indenture and rules as may be adopted by the Board.

D. *Section 14 of Article V of the Indenture related to Amendments is deleted in its entirety and a new Section 14 related to the same subject is inserted in lieu thereof to read as follows:*

**14. Amendments.** The Indenture may only be amended as provided in this Section 14 as follows:

- d. Amendments.** Except as otherwise provided in this Indenture, the Indenture may be amended at any time with substantial compliance of the following procedures: (1) the Association shall send a copy of the proposed amendment to each Owner subject to this Indenture with a ballot; (2) the Owner shall have a minimum of thirty days from the date the proposed amendment is sent to cast a ballot on the proposed amendment; and (3) unless one-third of the votes in the Association reject the proposed amendment, the proposed amendment shall be deemed approved by the Owners. An amendment may change or eliminate any restriction in the Indenture or add new and/or more burdensome restrictions; however, no amendment can: (1) eliminate the requirement that there be an Association, (2) eliminate the power of the Association to levy assessments unless adequate substitution is made, and, unless unanimous consent is obtained, change each Lot's allocated interests, or change a Lot's restricted use (single-family residential).
- e. Limitation of Challenges.** No challenge to the validity of an amendment adopted by the Association pursuant to this Section may be brought more than one (1) year after the amendment is recorded; otherwise, such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provision of this Indenture.
- f. Recording and Execution.** Each amendment shall be executed by signed by an officer of the Board in the presence of a notary and certified by such officer as well as another officer that such amendment was adopted in accordance with this Article. Such amendment shall be recorded in St. Louis County and effective upon recording unless otherwise expressly stated therein.
- g. Board Amendments.** Notwithstanding anything to the contrary, the Board is authorized to amend this Indenture, without further approval, to correct technical or clerical errors or to bring the Association and Governing Documents into compliance with conditions imposed by agencies providing government-insured or guaranteed loans.

*E. Section 16 of Article V of the Indenture related to Enforcement is deleted in its entirety and a new Section 16 related to the same subject is inserted in lieu thereof to read as follows:*

**16. Enforcement.** This Section addresses enforcement, relief and remedies pursuant to this Indenture as follows:

- a. Board Discretion in Enforcement.** The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except

that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case: (1) the Association's position lacks sufficient strength to justify taking any or further action, (2) the covenant, restriction or Rule being enforced is, or is likely to be construed as, inconsistent with applicable law, (3) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources, or (4) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision under this Section shall not be construed as a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or Rule.

- b. Relief & Remedies.** The person, or class of persons, has a claim for relief if he or she is adversely affected by a failure to comply with the Governing Documents of the Association. Pursuant to Mo. Rev. Stat., Section 355.141, all claims against the Association and Board related to administration of the Association and the validity of any actions taken by the Association and the Board shall be derivative except for: (1) claims related to personal injuries, (2) claims related to damage to property, and (3) claims asserting that the Association improperly applied the Governing Documents of the Association as to that individual member.
- c. Attorney's Fees and Costs.** In any dispute, litigation, or other judicial or administrative proceeding ("Claim") related to the Governing Documents of the Association, the parties adverse to the Association agree to make timely payment of all attorney's fees, costs, and expenses incurred by the Association. Upon final adjudication of the Claim, the court shall make a final determination as to the reasonableness of the attorney's fees, costs, and expenses paid by the adverse parties. If a party fails to make timely payment of any attorney's fees, costs or expenses incurred (within 30 days of delivery), the adverse parties agree and consent to a judgment dismissing the Association from the Claim with prejudice. This Section is purposefully intended to protect the financial stability of the Association and its access to the judicial system by preventing any particular party with the financial means to succeed on anything other than the merits of the Claim. Nothing in the Section shall inhibit, impair, hinder, or otherwise limit the parties from agreement to alternative dispute resolution.
- d. Notice of Violation and Opportunity to be Heard.** The Association shall have the power to impose fines and penalties for any violation of the Governing Documents. The following procedures shall apply prior to imposition of fines or penalties (collectively, "penalty"):

**1. Notice.** The Board shall notify the alleged violator ("Respondent") with written notice describing (1) the nature of the alleged violation, (2) the proposed penalty to be imposed, (3) a period of not less than fourteen (14) days within which the alleged violator may request a hearing before Board (which may be reduced if the Board believes that a risk to health or safety is present), and (4) a statement that the proposed penalty shall be imposed as contained in the notice unless a written request for hearing is received within fourteen (14) days of the notice. If a timely request for a hearing is not made, the penalty stated in the notice shall be imposed; provided the Board may, but shall not be obligated to, suspend any proposed penalty. Such suspension shall not constitute a waiver of the right to penalize future violations of the same or other provisions of the Governing Documents by any Person.

**2. Hearing.** If a hearing is timely requested by the Respondent, the hearing shall be held in executive session unless the Respondent requests the hearing be conducted during open session. The purpose of the hearing is to provide the Respondent with an opportunity to be heard and present facts and witnesses in response to the alleged violation prior to the levy of a penalty.

**3. Good Faith Compliance.** Any failure to comply with this Section shall not invalidate any fine levied so long as the Owner had notice of the hearing.

**4. Repeat Violations.** Fines may be levied on a daily basis for recurring and/or continuous violations, and notice and opportunity to be heard not need to be provided for subsequent violation of the same provision of the Governing Documents unless: (a) the amount of the fine is 50% higher than the previous fine, or (2) the fine was levied more than two years prior.

*F. Section 18(c) of Article V of the Indenture related to Insurance is deleted in its entirety and a new Section 18(c) related to the same subject is inserted in lieu thereof to read as follows:*

**18. Owner Insurance.** Each owner is solely responsible for obtaining and maintaining insurance for all portions of their Lot including all fixtures, personal property, and improvements upon the Lot. Should an owner fail to obtain and maintain sufficient insurance, such owner is deemed to have accepted the risks associated with not having insurance. Accordingly, no third party shall be responsible or liable for such uninsured loss.

G. *The Board of Trustees is authorized to execute and record this Amendment upon its approval by the Owners and, their signatures below, certify that this amendment has been approved by the Owners in accordance with the Indenture.*

H. *This Amendment shall be effective upon the date of its recording with the Recorder of Deeds, St. Louis County, Missouri, and shall be applicable to events and circumstances occurring after said effective date.*

IN WITNESS WHEREOF, the Board of Trustees of Rush Creek Homeowners' Association hereby execute this Amendment on the day and year first above written.

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**EXHIBIT A**

**RUSH CREEK SUBDIVISION  
LEGAL DESCRIPTION**

Rush Creek Subdivision, a subdivision, according to the plat thereof as recorded in Plat Book 169, Page 86 of the records of St. Louis County, Missouri.