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AMENDED INDENTURE REGULATING THE USE OF  
PRIVATE STREETS AND EASEMENTS IN THE SUBDIVISION  
KNOWN AS O'FALLON HILLS AND DEFINING  
RESTRICTIONS GOVERNING LOTS THEREIN

THIS INDENTURE, Made and entered into this 3<sup>rd</sup> day of August, 1959, by and between ROBERT J. SABINSKE and ANITA M. SABINSKE, his wife, Parties of the First Part (hereinafter referred to as Grantors) and ROBERT J. SABINSKE, ANITA M. SABINSKE, and RICHARD L. ERKENBECK, Parties of the Second Part (hereinafter called Trustees),

WITNESSETH THAT:

WHEREAS, The Grantors are the owners of certain tracts of land in St. Charles County, Missouri, which they have caused to be platted as O'FALLON HILLS, according to the plat thereof recorded in Plat Book 6, page 82, of the St. Charles County Records; and

WHEREAS, The Grantors, desirous of promoting and enhancing the value of said tracts of land by stabilizing residential values and establishing facilities and services therein, did by an instrument recorded on July 17, 1959, in Book 330, page 277, of the St. Charles County Records establish a trust of certain rights in and to said land and set restrictions on the use of certain portions thereof; and

WHEREAS, The Grantors now desire to make certain that the benefits of said trust and restrictions extend to all of the land platted as O'FALLON HILLS; and

WHEREAS, The Grantors deem that their purposes may best be accomplished by republishing the instrument recorded on July 17, 1959, in Book 330, page 277, of the St. Charles County Records with certain changes and amendments therein; and

WHEREAS, The Trustees acquiesce in such changes and amendments and are willing to accept the duties, responsibilities and benefits herein conferred on them; and

WHEREAS, There are no other parties whose interests are or may be affected by the contents of this instrument;

NOW THEREFORE, The Grantors, in consideration of the premises and of the sum of ONE DOLLAR (\$1.00) paid by the Trustees, the receipt whereof is hereby acknowledged, and in consideration of the agreement and consent of the Parties of the Second Part to act as Trustees hereunder, do hereby grant, bargain and sell, convey, transfer, assign and set over unto the said Trustees, their successors and assigns all and singular the several strips and parcels of land which are delineated and set apart as drives, lanes, circles, streets or roads on the said plat of O'FALLON HILLS and designated as LANG DRIVE, MEADOW DRIVE, O'FALLON DRIVE, PERRY CIRCLE, PERRY, ROYAL, PERSHING, PERSHING CIRCLE, PARK CIRCLE, KING CIRCLE, QUEEN CIRCLE, KERN DRIVE, COTTAGE, HAROLD CIRCLE, FOREST LANE, CARR CIRCLE, COLGATE CIRCLE, CORNELL, BROCKTON CIRCLE, CRESTVIEW DRIVE, CEDAR LANE, OAK CIRCLE, PINE CIRCLE, and LINDA LANE; and the said Grantors upon the considerations heretofore

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recited do also hereby create, reserve and transfer, assign and grant unto the said Trustees, easements for the purposes set forth in Article II hereof over, across, through and under all of the lots in Blocks 1 through 18 of O'FALLON HILLS and as marked by dotted or interrupted or dash lines on the said plat of O'FALLON HILLS and denominated "utility easement", "U. E.", "anchor easement" or "anchor e's'm't" thereon to have and to hold all of the foregoing to the Trustees and their successors in trust upon the uses and purposes, for the term and upon the conditions hereinafter in this Indenture set forth.

#### ARTICLE I.

##### Streets and Roadways

1. The Trustees shall have the power to construct, reconstruct, improve, contract for, maintain or repair improved streets or roadways of any kind or quality upon the several strips of land herein conveyed to them and designated as drives, lanes, circles, streets or roads.
2. The Trustees shall have the right and power to provide for the plowing or removal of snow from the said streets or roadways.
3. The Trustees shall have the right and power to plant, care for, spray, trim, protect and replant trees and to plant, care for, spray, trim, protect and replant shrubbery, and sow or resow, trim and care for grass in or upon the drives, lanes, circles, streets and roads herein conveyed to them or in or upon any other public areas of O'FALLON HILLS.
4. The Trustees shall have the power and right to provide lights in or on all drives, lanes, circles, streets and roads and on or at all gateways or entrances, or in such other places in or about O'FALLON HILLS as they may determine.
5. The Trustees shall have the right and power to grant easements in, over or under the drives, lanes, circles, streets or roads herein conveyed to them for any of the purposes set forth in Article II hereof.

#### ARTICLE II.

##### Utilities

1. The Trustees shall have the right and power to construct, to lease, to purchase, or in any other manner to contract for or provide for sewers and sewage disposal, drainage, water, gas, electricity, telephone service and fire protection facilities to serve all or any part of O'FALLON HILLS.
2. In providing for any such services or facilities, the Trustees may themselves make use of or they may convey, transfer or assign whole or partial rights in and to the easements created in this Indenture and transferred to the Trustees herein.

#### ARTICLE III.

##### General Powers

1. The Trustees shall have the right and power to provide for and maintain tennis courts, playgrounds, gateways, entrances, drinking

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fountains, lakes, streams, and other ornamental or recreational features in said O'FALLON HILLS on any lands set aside for the general use of the owners of the lots in said subdivision or to which the said owners have access and the use thereof.

2. The Trustees shall have the right and power to care for and maintain any and all vacant lots in said subdivision, to remove weeds and cut grass thereon, to pick up and remove therefrom loose materials, trash and rubbish of all kinds and to do any and all other things necessary or desirable in the judgment of the Trustees to keep such vacant and unimproved property neat in appearance and in good order.

3. The Trustees shall have the right and duty to enforce, either in their own names or in the name of any owner within the subdivision, any and all restrictions which may now be or which may hereafter be imposed upon any of the lots in said subdivision, either in the form as originally placed or as modified subsequently.

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4. The Trustees shall have the duty to pay any and all taxes which may be levied against the property herein conveyed to them or any part thereof.

5. No building or structure shall be erected placed or altered on any lot in O'FALLON HILLS until the building plans, specifications and plot plans showing the location of such building or structure have been approved in writing by the Trustees as to general plan, external design and as to location of the building or structure with respect to property and set back or side lines. Should the Trustees fail to approve or disapprove such plans, design and location within sixty (60) days after such plans have been submitted, or, in any event, if no suit to enjoin the erection of such building or structure, or the making of such alterations has been commenced prior to completion thereof, then such approval will not be required and the requirement herein set forth will be deemed to have been met.

#### ARTICLE IV.

##### Assessments

1. For the purpose of providing or maintaining any of the services, facilities or improvements described in paragraph 1 of Article II hereof, the Trustees shall have the power to levy an assessment or assessments in the manner hereinafter provided against all of the lots benefitted thereby, and the Trustees shall have the power reasonably and in good faith to determine which are the lots so benefitted.

2. For the purpose of performing or exercising any of the powers, rights or duties imposed upon them by Articles I, III, IV, V, or VI hereof or any powers, rights or duties which may devolve upon them by virtue of their office, the Trustees shall have the power to levy an annual or other assessment in the manner hereinafter provided against all of the lots in O'FALLON HILLS.

3. In making any assessment hereunder, the Trustees shall divide the total amount of the assessment by the number of lots to be assessed and shall then assess the resulting quotient figure against each such lot. The Trustees shall have the sole power to determine the total amount of any assessment.

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4. The Trustees shall give notice of each assessment levied hereunder by sending a letter to the owner of each lot affected thereby at the address of such owner as shown on the records of the Trustees. The assessment shall be due and owing when levied and each assessment shall be a charge or lien upon the lot or lots against which levied until paid; and the lien of such assessment, together with all other similar assessments and the interest thereon, if any, shall constitute a first lien against the property superior to any lien or encumbrance which the owner may theretofore have created or may thereafter create against the said lot or any improvement thereon.

5. In case any assessment is not paid when due, it shall, from and after thirty (30) days after the date of assessment, bear interest at the rate of eight per cent (8%) per annum; and, if default shall continue for six (6) months, the Trustees shall have the right to place the matter in the hands of an attorney for collection and the fee of such attorney will be paid by the lot owner or lot owners in default against whom such action to enforce collection has been taken and said fee shall likewise be a first lien on the lot or lots of such owner or owners. The Trustees may institute and prosecute any legal proceeding at law or in equity or both against the owner or owners of any lot in default of an assessment and all persons claiming through or under them to compel the payment with interest of any such assessment, costs of suit and attorneys' fees.

#### ARTICLE V.

##### Restrictions

1. The Grantors, for themselves, their successors and assigns for and on behalf of all persons who may hereafter derive title to any lot in any block of O'FALLON HILLS from them or otherwise hold through them, their successors or assigns, do hereby covenant with the Trustees and for the benefit of the future owners of said lots and each of them as follows:

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(a) No lot in any block shall be improved or occupied for other than private, single-family, residential purposes.

(b) The dwelling house, as distinguished from out houses and service quarters, shall face the street upon which the lot fronts and no part thereof shall be nearer than thirty (30) feet from the front line of said lot except where so indicated on the plat of O'FALLON HILLS.

(c) All other structures shall be in the rear of the dwelling house and shall be slightly, of neat construction, and of a character to enhance the value of the property.

(d) When any improvements are erected on any lot, the owner shall at the same time construct a sanitary septic tank of approved character to provide sewerage for the same, unless other adequate sewerage facilities have already been provided.

(e) No dwelling shall be constructed on any lot in Blocks 1, 2, 6, 7, 8, 9 or 10 with less than 800 square feet of floor space, excepting porches and porticos; nor shall any dwelling be constructed on any lot in any other block with less than 1,000 square feet of floor space, excepting porches and porticos; nor

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shall any dwelling be moved or maintained on any such lot with fewer than the number of square feet of floor space stated herein.

(f) No basement shall be occupied until the dwelling house is completed. The dwelling house shall be completed on the exterior within six (6) months after commencement of construction of any type.

(g) No noxious, offensive or annoying activity shall be conducted upon any lot, nor shall anything be done thereon which may be or become a nuisance. No part of any lot or any improvement erected thereon shall be used for raising poultry, the housing of cows, horses, or any other livestock.

2. All building and set back lines as established on the recorded plat of O'FALLON HILLS shall be observed.

3. The covenants and restrictions herein contained shall be deemed to run with the land and shall be binding on all parties hereto and all persons claiming under them until January 1, 1980, after which time the said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each unless they are modified, amended or terminated in the manner provided in Article VII hereof.

4. The covenants and restrictions herein contained may be enforced by proceedings at law or in equity against any person or persons violating or attempting to violate the same either to restrain such violation or to recover damages for past violations. Invalidation of any of these covenants or restrictions by judgment or court order shall in no wise affect any of the other provisions which are hereby declared severable and they shall remain in full force and effect.

#### ARTICLE VI.

##### Organization

1. The Trustees herein named shall serve for terms ending on January 19, 1965, January 20, 1964, and January 15, 1963 respectively. Successor Trustees (except in the case of filling a vacancy) shall be elected for terms of three (3) years each, but a successor elected to fill a vacancy created as hereinafter provided shall be elected for the unexpired term of the Trustee so superseded and the Successor Trustee shall be elected in the manner hereinafter provided.

2. There shall be an Annual Meeting of lot owners at a convenient place in St. Charles County for the purpose of electing Trustees or for the transaction of such other business as may properly come before said meeting on the third Tuesday in January in each year, beginning in the year 1961, and each year thereafter.

3. Should any Trustee, or any Successor Trustee, resign, die or decline to act, become incompetent by reason of sickness or other cause to discharge the duties or exercise the rights and powers hereby granted or bestowed upon him as Trustee, then it

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shall be the duty of the surviving or remaining Trustee or Trustees as soon as reasonably may be, to call a special meeting of all of the lot owners to be held at a convenient place in St. Charles County, Missouri, after first having given ten (10) days written or printed

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notice of the time and place of such meeting. Such of the owners in attendance at said meeting shall elect a chairman and proceed by vote or ballot to elect a successor or successors to fill any existing vacancy or vacancies among the Trustees. Should such surviving or remaining Trustee or Trustees refuse or neglect to call a meeting within sixty (60) days after the occurrence of a vacancy, or should all the Trusteeships be vacant at the same time, then such meeting may be called by the owner or owners of any five (5) of said lots who shall give a like notice thereof.

4. In any election of Trustees the owner of each lot shall be entitled to one vote for each full lot or major portion thereof owned by him, which vote may be cast in person or by proxy. No person shall, however, be considered as the owner of a lot until fee simple title shall have been conveyed to him by Warranty Deed duly recorded. The person or persons receiving the highest number of votes or ballots shall be deemed elected and shall, upon his or their acceptance in writing, at once and by force of this Indenture, be subject to all the duties and restrictions by this Indenture imposed, and shall succeed to and be vested with and possess and enjoy as a joint tenant but not as a tenant in common with the remaining Trustee or Trustees all the estate, rights, interest, privileges and powers by this Indenture granted to his or their predecessors.

5. All of the rights, duties, privileges and powers herein conferred upon the Trustees may be exercised by a majority of them.

6. The Trustees may and shall have the right to act by and through any agents or attorneys in fact or at law employed or retained by them.

7. At each Annual Meeting the Trustees shall render an account of all monies received, disbursed, and held by them during and at the end of the preceding calendar year.

#### ARTICLE VII.

##### Amendments

1. For and during a period of five (5) years commencing with the date hereof, the provisions of this Indenture may be modified or amended by the joint and concurrent action of the Grantors and the Trustees hereunder.

2. From and after five (5) years from the date hereof to and including January 1, 1980, this Indenture may be modified or amended by a vote of the owners of not less than three-fourths (3/4) of the lots in O'FALLON HILLS.

3. From and after January 1, 1980, this Indenture may be modified, amended or terminated by the concurring vote of the owners of not less than fifty-one per cent (51%) of the lots in O'FALLON HILLS.

4. In voting on any such amendment to this Indenture, each owner shall have one vote for each lot or major portion thereof owned by him. No person shall, however, be considered an owner entitled to vote for any purpose provided in this Indenture unless and until he shall have acquired fee simple title by Warranty Deed


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duly recorded in the office of the Recorder of Deeds of St. Charles County, Missouri.


IN WITNESS WHEREOF, The parties hereto have amended the Indenture regulating the use of private streets and easements in the Subdivision known as O'FALLON HILLS and defining restrictions governing lots therein as executed on the 17th day of July, 1959, and recorded on the 17th day of July, 1959, and as so amended have caused the same to be republished herewith.

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## GRANTORS

  
Robert J. Sabinske  
Anita M. Sabinske

## TRUSTEES

  
Robert J. Sabinske  
Anita M. Sabinske  
Richard L. Erkenbeck

STATE OF MISSOURI }  
COUNTY OF Chester } SS

On this 4 day of August, 1959, before me personally appeared ROBERT J. SABINSKE and ANITA M. SABINSKE, to me known to be the persons described as the Grantors in the foregoing instrument, and they acknowledged that they executed the same each as his own free act and deed.

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 My Commission Expires May 14, 1962.

  
Notary Public