

**FIRST RESTATED AND AMENDED INDENTURE OF TRUST AND COVENANTS,
CONDITIONS AND RESTRICTIONS FOR LAKE ADELLE SUBDIVISIONS**

This First Restated and Amended Indenture of Trust and Covenants, Conditions and Restrictions for Lake Adelle Subdivisions is made and entered into by Lake Adelle Property Owners, Incorporated, a Missouri not-for-profit corporation, by authority of the Board of Trustees and Directors of said corporation, under the authority granted Lake Adelle Property Owners, Incorporated, under Section 213.041 of the Revised Statutes of Missouri.

PREAMBLE

WHEREAS, by instrument dated August 14, 1947, and recorded on or about August 15, 1947, in Book 173, Page 150 of the Jefferson County Land Records (hereinafter sometimes referred to as the "Subdivision Indenture"), the original developers of the Lake Adelle Subdivisions, Earl L. McKee and Adele Lillian McKee, who are referred to in the Subdivision Indenture as the Grantors, state the following:

Earl L. McKee and Adele Lillian McKee reserve the right to transfer the unsold portion of this Subdivision and grant unto the purchaser all rights herein retained to GRANTORS and also the right to pass upon and approve or reject plans for any residence to be erected on any lot in this Subdivision.

WHEREAS, by Quit Claim Deed dated on or about January 28, 1970, and recorded on or about April 29, 1970, in Book 443, Page 905 of the Jefferson County Land Records, the successor trustees of the original Grantors serving under the Subdivision Indenture conveyed the common property of the Lake Adelle Subdivisions to Lake Adelle Property Owners, Incorporated, a Missouri not-for-profit corporation, including without limitation, the dam, lake, parkways, roads, sewer systems, wells, well houses, pumps and water systems, and all unpaid current, delinquent and future assessments due or to become due.

WHEREAS, said Quit Claim Deed conveyed the unsold portion of the Lake Adelle Subdivisions to Lake Adelle Property Owners, Incorporated, and thereby granted unto Lake Adelle Property Owners, Incorporated, the developers' rights under the Subdivision Indenture retained by Earl L. McKee and Adele Lillian McKee, the original grantors under the Subdivision Indenture.

WHEREAS, Lake Adelle Property Owners, Incorporated, claims to be and is the current successor in interest of the original grantors, Earl L. McKee and Adele Lillian McKee, under the Subdivision Indenture.

WHEREAS, the Subdivision Indenture states, in part

7. No sale, conveyance, lease or renting shall be made to any person not a full blooded Caucasian.

WHEREAS, said Subdivision Indenture has been extended to various subdivisions, including, without limitation, Lake Adelle Subdivision One (1) recorded in Plat Book 9, Page 31 under instruments recorded in Book 404, Page 610 and Book 0369, Pages 1048 and 1050 of the Jefferson County Land Records, Lake Adelle Subdivision Two (2) recorded in Plat Book 10, Page 20 under instruments recorded in Book 404, Page 606 and Book 0369, Page 1068 of the Jefferson County Land Records, Lake Adelle Subdivision Three recorded in Plat Book 10, Page 27 under instruments recorded in Book 0369, Page 1052 of the Jefferson County Land Records; Lake Adelle Subdivision Four recorded in Plat Book 10, Page 32 under instruments recorded in Book 404, Page 599 and Book 0369, Page 1056 of the Jefferson County Land Records; Lake Adelle Subdivision Five (5) recorded in Plat Book 10, Page 34 under instruments recorded in Book 404, Page 596 and Book 0369 Page 1054 of the Jefferson County Land Records; Lake Adelle Subdivision Six (6) recorded in Plat Book 10, Page 52 under instruments recorded in Book 404, Page 593 of the Jefferson County Land Records; Lake Adelle Woodland recorded in Plat Book 11, Page 5 under instruments recorded in Book 404, Page 598 and Book 0369, Page 1061 of the Jefferson County Land Records, Lake Adelle Place One recorded in Plat Book 10, Page 33 under instruments recorded in Book 0369, Page 1058 of the Jefferson County Land Records, Lake Adelle Place Two recorded in Plat Book 10, Page 33 under instruments recorded in Book 0369, Page 1064 of the Jefferson County Records, and Lake Adelle Place Three recorded in Plat Book 10, Page 34 under instruments recorded in Book 0369, Page 1066 of the Jefferson County Land Records.

WHEREAS, the Subdivision Indenture was originally extended to Ridge Road Subdivision recorded in Plat Book 10, Page 34 by instrument recorded in Book 404, Page 588 of the Jefferson County Land Records.

WHEREAS, Section 213.041 of the Revised Statutes of Missouri provides as follows:

1. No declaration or other governing document of a homeowners' association shall include a restrictive covenant in violation of section 213.040.
2. Notwithstanding any other provision of law or provision of the governing documents, the board of directors of a homeowners' association shall amend, without approval of the owners, any declaration or other governing document that includes a restrictive covenant in violation of section 213.040, and shall restate the declaration or other governing document without the restrictive covenant but with no other change to the declaration or governing document.
3. If after providing written notice to a homeowners' association requesting that the association delete a restrictive covenant in violation of section 213.040, and the association fails to delete the restrictive covenant within thirty days of receiving the notice, the Missouri commission on human rights, a city or county in which a common interest development is

located, or any person may bring an action against the homeowners' association for injunctive relief to enforce the provisions of subsections 1 and 2 of this section. The court may award attorney's fees to the prevailing party.

4. The provisions of this section shall become effective on January 1, 2006.

WHEREAS, upon information and belief, Lake Adelle Property Owners, Incorporated, is a homeowners' association as that term is used in Section 213.041 of the Revised Statutes of Missouri.

WHEREAS, upon information and belief, the Subdivision Indenture does not express a method of amending that instrument by less than unanimous consent of the lot owners. *Compare Lake Tishomingo Property Owners Association v. Cronin*, 679 S.W.2d 852 (Mo. banc 1984) and *Lake Waukomoka, Inc. v. Spain*, 622 S.W.2d 309 (Mo. App., E.D. 1981) (which interpreted similar subdivision indentures as not being capable of amendment by less than unanimous consent of the lot owners).

WHEREAS, upon information and belief, in the absence of Section 213.041 of the Revised Statutes of Missouri, Lake Adelle Property Owners, Incorporated, would not have the power to amend the Subdivision Indenture by deleting paragraph 7 of the Subdivision Indenture.

WHEREAS, upon information and belief, paragraph 7 of the Subdivision Indenture violates one or more of the provisions of Section 213.040 of the Revised Statutes of Missouri.

WHEREAS, upon information and belief, Lake Adelle Property Owners, Incorporated, has the authority under Section 213.041 of the Revised Statutes of Missouri, without the approval of the lot owners of Lake Adelle, to restate the Subdivision Indenture without the restrictive covenant stated in paragraph 7 thereof, but with no other change to the Subdivision Indenture.

NOW, THEREFORE, the undersigned, being all of the Board of Trustees and Directors of Lake Adelle Property Owners, Incorporated, a Missouri not-for-profit corporation, do hereby unanimously consent in lieu of an annual or special meeting of the Board of Trustees and Directors of Lake Adelle Property Owners, Incorporated, to the following actions effective upon the date of the last of the Members of the Board of Trustees and Directors of said corporation to sign this instrument:

BE IT RESOLVED that the Subdivision Indenture described herein and recorded in Book 173, Page 150 of the Jefferson County Land Records be restated without the restrictive covenant stated in paragraph 7 thereof, but with no other intended changes to the Subdivision Indenture, as follows:

THIS INSTRUMENT, Made and entered into this last day of August 1947, by Earl L. McKee and Adele Lillian McKee, his wife, of the County of Jefferson, State of Missouri, hereinafter referred to as grantors, WITNESSETH:

WHEREAS, the Grantors are now the owners of a certain tract of land in the County of Jefferson, State of Missouri, described as follows:

Lake Adelle Subdivision, located and situated in Section Two (2), Township Forty-one (41) North, Range Three (3) East, Jefferson County, Missouri, Subdivision Number One (1) as shown upon the plat this day recorded in the recorder's office of Jefferson County, Missouri.

WHEREAS, The grantors in consideration of the premises and for the mutual benefit of the Grantors and the owners of the several lots in said subdivision hereby agree to establish certain easements, restrictions and conditions to run with the land as to both grantors and lot owners, their heirs, successors, and assigns, as follows:

That such restrictions are made, reserved and imposed not only for the benefit of the lot owners in said subdivision, but also for the benefit of other land now or hereafter to be owned by grantors.

The following restrictions shall be subject to proper enforcement clauses:

Deeds to lots in Lake Adelle Subdivision will be made subject to the following covenants and restrictions which shall run with the land and bind all subsequent owners until and including July 1, 1967.

1. Said lot shall be used for residence purposes only and no business of any nature shall be permitted, maintained or conducted thereon. Not more than one residence at a time shall be placed or kept thereon; and no such residence shall be designed or converted for the use of more than one family. No Clubs, Fraternities, or Organizations of any nature may operate from or use any building in said Subdivision.
2. Every such residence shall front towards the front end of the lot; and the main body thereof shall be at least twenty-five feet from the front line of the lot; and no porch or part thereof shall be within fifteen feet of the front line of the lot; nor shall any building be nearer than five feet from the side lines of said lot.
3. There will be no restrictions as to cost of any residence but complete architect's plans and specifications must be submitted for the approval of Grantors before building operations are started. No residence shall be wholly or partly covered with tar paper, metal or canvas, and no tent house or shack shall be on said lot. No unpainted wooden house shall be on said lot unless of log or slab construction. No Auto Trailer or Movable Home or House shall be allowed on said lot. No storage tank shall be above ground on said lot without written consent of the GRANTORS. No building or construction of any kind may be made on the Parkway surrounding said Lake without the written consent of the GRANTORS. All docks for the mooring of boats or other purposes shall be of a standard design that will be furnished by GRANTORS with a building permit.
4. No outbuildings shall be built on said lot. Garages shall be attached to or built in as a part of the residence. All rear entrances to residences shall be from the side of the residence where

possible and if a rear porch is to be a part of the residence it shall be enclosed with a lattice or trellis so that it is not openly exposed from the rear. Owners shall cut all brush or woods on said lot once each year to prevent fire hazard. If this is not done, Grantors shall have the right to do so and a maximum charge of \$3.00 for this service may be added to the assessment when said assessment is made for that year. No refuse, garbage cans, bottles or any objectionable material shall ever be thrown or deposited in said Lake. All garbage must be deposited in covered fly and insect proof tight garbage cans, and they must not be placed where they would be offensive to adjoining property owners.

5. Said premises shall not be used for any unlawful purpose, or for any purpose that would injure the reputation of the neighborhood.

6. All toilets, baths, sinks, lavatories and inside drains of bath premises shall be connected with the subdivision sewer system and all plumbing fittings shall not be more than four inches in diameter, according to the Company specifications which will be furnished with building permit.

7. [Intentionally deleted.]

8. Said premises shall not be leased or rented to any person without the written consent of the Grantors.

9. No sale of such lot shall be consummated without giving at least fifteen days' written notice to GRANTORS, and the owners of the two lots adjoining said lot on the sides, of the terms thereof; and any of them shall have the right to buy said lot on such terms. Such notice shall be personally served if service can be made on the subdivision; if any person entitled to service cannot be found on the subdivision, notice shall be mailed to such person at the address last known to the GRANTORS. Affidavit of the person making service shall be sufficient evidence thereof to protect a purchaser.

10. No fence or other obstruction shall be on said lot, except a fence not over three and one-half feet high and composed of wire with at least three-inch mesh, or pickets at least three inches apart. No signs of any nature, business or otherwise, except the identifying name of the home or owner, may be displayed.

11. The Grantee, his, her, their heirs and assigns are to pay toward the sewer system to be constructed in said LAKE ADELLE Subdivision, for the right to connect thereto, the sum of Eighty-Nine Dollars (\$89.00) due and payable 30 days after said sewer system has been laid to said lot so that a connection can be made thereto. The sum of \$89.00 shall be a lien on said lot until paid.

12. The Grantee, his, her, their heirs and assigns are to pay towards the water system to be constructed in said LAKE ADELLE Subdivision, for the right to connect thereto, the sum of Thirty Dollars (\$30.00), due and payable 30 days after said water system has been laid to said lot so that a connection can be made thereto. This payment will include valves, connections and labor necessary to make connection to lot when ordered by Grantee to be done. This sum of \$30.00 shall be a lien on said lot until paid.

13. GRANTORS shall have the right to lay sewer pipes and water pipes and appurtenances thereto through or across said lot and shall have at all times the right of ingress and egress for the purpose of repairing and maintaining same, provided, however, dirt taken from any excavation shall be replaced and the surface left as nearly as possible in original condition after the work is completed. GRANTORS shall also have the right to cross telephone poles or poles for carrying electric current at the intervening corner of any two lots.

14. As a part of the consideration for the sale of this lot, GRANTORS shall have the right to assess the owners of this lot after July 1, 1969 and each succeeding July 1st thereafter, such sum as GRANTORS shall deem necessary for the upkeep and maintenance of the dam, lands and other improvements, provided, however that no assessment for any one year shall exceed the sum of fifty-five cents (55¢) per front foot, and further provided that the assessment as levied each year shall be and become a lien without filing of suit or legal proceeding to establish such lien on said lot if not paid within thirty days after July 1st of the year in which the assessment is made.

15. It is mutually agreed by and between the parties that in the event the payments specified for sewer and/or water connections or of assessments for upkeep and maintenance herein provided for shall remain unpaid for sixty days from the date when due, such sum or sums together with interest thereon, a reasonable attorney's fee and court costs shall be enforceable and collectible as a lien upon said real estate in and by suit, action or other proceedings in any court of Jefferson County, Missouri, having jurisdiction of suits for the enforcement of such similar liens, instituted or commenced in the name of GRANTORS, their successors or assigns, as party plaintiff.

Said GRANTEE, his heirs and assigns, shall, subject to compliance with the foregoing restrictions, and while holding said lot, have license personally and for the family and lot owner's guests to the use and privileges of the lake in said subdivision known as LAKE ADELLE which shall include boating, bathing, fishing and the use of the private beaches only, also the parkway surrounding said lake, including the right to moor boats in front of said parkway, all subject to the rules and regulations prescribed by GRANTORS from time to time.

Said restrictions may be extended beyond said twenty years' period for a new period not exceeding twenty years, by an instrument executed by the then owners of a majority of the front feet in said subdivision and duly acknowledged and recorded in the recorder's office of said Jefferson County, Missouri, before the expiration of said twenty year period; and further extensions may be effected in like manner.

The GRANTORS ... agree that all lots in said subdivision sold for residence purposes shall contain substantially the same restrictions set out in this instrument, or in the plat of said property, and nothing herein contained shall limit the right of the GRANTORS to use the portions of the property in said subdivision not sold for residence purposes, for any purpose not inconsistent with the plat and plan of said subdivision, and in order to more fully effectuate the purposes of the same, it being the intention of the GRANTORS and of the purchasers of lots to

maintain said property as a high grade subdivision for rural residence purposes, and with the added attraction of water sports and general amusements.

Said GRANTORS and every person hereafter having any right, title or interest in any lot in said block shall have the right to prevent or stop violation of any of said restrictions, by injunction or other lawful procedure, and to recover any damages resulting from such violation.

All of the covenants and agreements herein made shall run with the land and shall bind the GRANTORS herein, their successors and assigns, and the individual resident lot owners, their heirs and assigns.

Earl L. McKee and Adele Lillian McKee reserve the right to transfer the unsold portion of this Subdivision and grant unto the purchaser all rights herein retained to GRANTORS and also the right to pass upon and approve or reject plans for any residence to be erected on any lot in this Subdivision.

The restrictions on any lot may be removed only by written consent, duly acknowledged and recorded, of GRANTORS and the owners of all other lots in the same Block.

...

BE IT FURTHER RESOLVED that this instrument be recorded in the Office of the Recorder of Deeds of Jefferson County, Missouri, once this instrument is fully executed by the Members of the Board of Trustees and Directors of Lake Adelle Property Owners, Incorporated, and this instrument is in a form capable of recordation in the Jefferson County Land Records.

Having restated the Subdivision Indenture recorded in Book 173 Page 150 of the Jefferson County Land Records with the deletion of restrictive covenant stated in paragraph 7 thereof, the undersigned Members of the Board of Trustees and Directors of Lake Adelle Property Owners, Incorporated, acting on behalf of said corporation, state their intent to restate said Subdivision Indenture without the restrictive covenant stated in paragraph 7 of the original Subdivision Indenture, but with no other changes to the Subdivision Indenture.

IN WITNESS WHEREOF, Lake Adelle Property Owners, Incorporated, a Missouri not-for-profit corporation, as the current Successor to the original Grantors named in the Subdivision Indenture described herein, has executed this instrument on the date of the last Member of its Board of Trustees and Directors to execute this instrument.

LAKE ADELLE PROPERTY OWNERS, INCORPORATED

By:

Gerald Vichland, Member of the
Board of Trustees and Directors of
Lake Adelle Property Owners,
Incorporated, and President of said
corporation

Date: **5-20-07**

By:

Jerry Diederichs, Member of the Board of Trustees and Directors of Lake Adelle Property Owners, Incorporated, and Vice President of said corporation

Date: 5-20-07

By:

Jo Ann Vess, Member of the Board of Trustees and Directors of Lake Adelle Property Owners, Incorporated, and Treasurer of said corporation

Date: 5-20-07

By:

Elaine Pennington, Member of the Board of Trustees of Lake Adelle Property Owners, Incorporated, and Secretary of said corporation

Date: 5-20-07

By:

Susan Viehland, Member of the Board of Trustees and Directors of Lake Adelle Property Owners, Incorporated

Date: 5-20-07

By:

Robert Murphy, Member of the Board of Trustees and Directors of

Lake Adelle Property Owners,
Incorporated

Date: 5-20-07

By:

Ron Watkins, Member of the Board
of Trustees and Directors of Lake
Adelle Property Owners,
Incorporated

Date: 5-20-07

By:

Kenneth Ferrell, Member of the
Board of Trustees and Directors of
Lake Adelle Property Owners,
Incorporated

Date: 5-20-07

By:

Kathy Harrington, Member of the
Board of Trustees and Directors of
Lake Adelle Property Owners,
Incorporated

Date: 5/20/07

By:

Debbie Moss, Member of the Board
of Trustees and Directors of Lake
Adelle Property Owners,
Incorporated

Date: 5/20/07

By:

Michael Boulahan, Member of the
Board of Trustees and Directors of
Lake Adelle Property Owners,
Incorporated

Date: 5/20/07

By:

Kenneth Froud, Member of the
Board of Trustees and Directors of
Lake Adelle Property Owners,
Incorporated

Date: 5/20/07

By:

Jacqueline Munding, Member of
the Board of Trustees and Directors
of Lake Adelle Property Owners,
Incorporated

Date: 5/20/07

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By:

James Garrett, Member of the Board
of Trustees and Directors of Lake
Adelle Property Owners,
Incorporated

Date: 5/20/07

By:

Lorraine Lapp, Member of the Board
of Trustees of Lake Adelle Property

My term expires: _____

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