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TITLE OF DOCUMENT: *Restrictions*

DATE OF DOCUMENT: *2/10/2020*

GRANTOR(S): *Birchwood Estates*

GRANTEE(S): *Birchwood Estates*

* STATUTORY MAILING ADDRESS(S): *1516 Professional Dr. Imperial Mo 63052*

LEGAL DESCRIPTION:

*Birchwood Estates
Plot number 2020P-000025*

REFERENCE BOOK AND PAGE(S):

**Indenture of Trust and Restrictions for Birchwood Estates,
Jefferson County Missouri**

This indenture of Trust and Restrictions for Birchwood Estates (the "Indenture"), made and entered into the 10th day of February 2020, by and between Ryan G'Sell Investments, LLC, a Missouri Limited Liability Company (hereinafter referred to as "First Party"), and Ryan G'Sell, Raymond G'Sell, Sr and James Kohm (hereinafter collectively referred to as "Trustees")

WITNESSETH, THAT:

WHEREAS, First Party is the owner of tract of real property (the "Property") located in Jefferson County, Missouri, as more particularly described on Exhibit -A attached hereto and incorporated herein by reference; and

WHEREAS, First Party has caused the Property to be subdivided under the name "Birchwood Estates" (sometimes hereinafter referred to as the "Subdivision"), as has caused or will cause the record plat (s) of such Subdivision to be recorded in the Jefferson County Records; and

WHEREAS, there has been and may be designated, established and recited on the plat (s) of the Subdivision, certain streets, common land and easements which are dedicated to the Lot Owners of Birchwood Estates for public use and shall be maintained by the Lot Owners of Birchwood Estates, except those streets or easements which are or may hereafter be dedicated to public bodies and agencies and which have been provided for the purpose of constructing, maintaining and operating sidewalks, sewers, pipes, poles, wires, storm water drainage, parks and other facilities and public utilities for the use and benefit of the resident of the Subdivision; and

WHEREAS, First Party, being the owner of the entire tract, may desire, from time to time, to encumber and dispose of parts thereof; and

WHEREAS, it is the purpose and intention of the Indenture to preserve said tract of the land, subdivided as aforesaid, as a restricted neighborhood and to protect the same against certain uses by the adoption of this Indenture, and to apply the plan contained in the Indenture to all of said land described herein, including all common land, and mutually to benefit, guard and restrict future residents of the Subdivision and to foster their health and safety; and

WHEREAS, all reservation, limitations, conditions, easements and covenants herein contained, and all of which are sometimes hereafter termed "restrictions" are jointly and severally for the benefit of all persons who may purchase, hold or reside upon the tract covered by this instrument.

WHEREAS, the Jefferson County Council has approved the development of the property herein described pursuant to its Planned Unit Development Procedure.

NOW, THEREFORE, in consideration to the premises and of the mutual promises, covenants and agreements made by the parties hereto each to the other, the receipt and sufficiency of which is

hereby acknowledged, 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 and parcels of land in the Subdivision, all as hereinafter set forth:

ARTICLE 1

Definition of Terms

The following terms when used in this Indenture (unless the context requires otherwise) shall have the following meanings:

1. "Architectural Control Committee" shall have the meaning set forth in Article VI hereof.
2. "Common Ground" or "Common Land" or "Common Property" (or the plural of any thereof) shall mean and refer to all real property and the improvements thereon owned by the Trustees and all easements, licenses and other rights held by the Trustees for the common use and enjoyment of all owners, including, without limitation, parks, open spaces, cul-de-sac islands, recreational facilities, lakes, streets, paths, trails, walkways, storm water (including retention basins) and sanitary sewers and drainage facilities, retaining walls, subdivision entrance ways and monuments, street lights, and other such areas and facilities as may be shown on the record plat (s) of the Subdivision. Nothing hereinabove contained shall be deemed a representation that any of the enumerated facilities are or will be included in the Subdivision or that any such facilities will be constructed upon Common Ground.
3. "Consumer Price Index" shall mean and refer to the Consumer Price Index for all urban consumers, All Items, St. Louis, Missouri (1982-84=100) published by the Bureau of Labor Statistics, United States Department of Labor.
4. "First Party" shall mean and refer to Ryan G'Sell Investments, LLC, a Missouri limited liability company, its successors and assigns, including but not limited to, any builder or developer who purchases vacant lots or parcels of land constituting a portion of the Property for the Purpose of building residences thereon for sale to third persons.
5. "Indenture" shall mean and refer to this Indenture of Trust and Restrictions for the single family residential properties of Birchwood Estates, Jefferson County, Missouri, inclusive of streets and common properties therein, as described on the attached Exhibit "A" and as from time to time amended.
6. "Lot" shall mean and refer to any plot of land, with the exception of Common Ground, shown on the recorded subdivision plats of the property.

7. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot, including contract sellers but excluding those having such interests as security for the performance of an obligation and excluding First Party.
8. "Property" shall mean and refer to the real property described on Exhibit A attached to hereto and incorporated herein by reference
9. "Subdivision" shall mean and refer to Birchwood Estates, the subdivision of the Property created by recording the aforesaid plats in Jefferson County records.
10. "Trustees" shall mean and refer to those persons designated in the preamble to this Indenture, and their successors and assigns as appointed or elected in accordance with the provisions of Article VI hereof.
11. "Ordinance" shall mean and refer to ordinance No. _____ enacted by the Jefferson County Council.

ARTICLE II

Duration of Trust

The indenture of Trust herein created shall continue until such time as the plat (s) of the Property constituting the Subdivision may be vacated by Jefferson County, Missouri, or its successors, after which period of time fee simple title to the Common Property shall vest in the rights of said tenants in common shall only be appurtenant to and in conjunction with their ownership of lots in said plat (s), and any conveyance or change of ownership of any lot shall carry with it ownership in Common Property so that none of the Owners to Lots and none of the owners of the Common Property shall have such rights of ownership as to permit them to convey their interest in the Common Property except as is incident to the ownership of a lot, and any sale of any Lot shall carry with it, without specifically mentioning it, all the incidents of ownership of the Common Property; provided, however, that all of the rights, powers and authority conferred upon the Trustees shall continue to be possessed by the Trustees.

ARTICLE III

Reservation and Reimbursement 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 for sewers, gas pipes, water pipes, conduits, poles, wires, street lights, road, streets, recording fees, subdivision fees, consultation fees, or fees, charges and expenses incurred with respect to the Property.

First Party shall further have the right to be reimbursed from assessments paid and collected pursuant to Article IX for reasonable expenditures made or advanced by or on behalf of First Party in Furtherance or fulfillment of any purpose, right, duty or obligation granted to or invested in the Trustees herein.

ARTICLE IV

Designation and Selection of Trustees And Meetings of Lot Owners

1. Original Trustees. The original trustees shall be Ryan G'Sell, Raymond G'Sell, Sr. and James Kohm, who, by their signatures hereto, consent to serve in such capacity until their successors are elected or appointed as hereinafter provided. Should an original Trustee or a successor Trustee appointed by First Party resign other than as required by Section 2 of the Article IV, refuse to act, become disabled or die, First Party shall have the power to appoint, by duly written, recorded instrument, a successor Trustee who shall serve until his successor is elected by the Owners in the manner hereinafter provided.
2. Election of Trustees. At such time as the Jefferson County, Missouri (the "County"), has issued occupancy permits ("Permits") for residences on (75%) of the Lots to be developed in the Subdivision), or until such earlier time as First Party may determine, First Party shall cause the resignation of one (1) of the original Trustees and successor Trustees shall be elected by then Lot Owners. At such time as the city has issued permits for residences constructed on (95%) of the Lots to be developed may determine, First Party Shall cause the resignation of a second of the original Trustees, and successor, Trustees shall be elected by the then Lot Owners. The two (2) Trustees elected by the Lot Owners pursuant to the foregoing provisions shall serve until time as the County has issued Permits for (100%) residences constructed on all Lots in the Property, or until such earlier time as First Party may determine, when the term of such elected Trustees shall expire and First Party shall cause the resignation of the last original Trustee serving hereunder, and the then Owners shall elect three (3) successor Trustees, one (1) of which shall be elected to serve for one (1) year, one (1) of which shall be elected to serve two (2) years and one (1) shall be elected to serve for three (3) years from the date of election. Thereafter, all trustees shall be elected for terms of three (3) years each.
3. Manners of Conducting Elections; Meetings of Owners. (a) The election of for the first two (2) successor Trustees under ARTICLE IV, Section 2 of this Indenture shall be by mail. Notice of call nominations shall be sent to all owners and shall require all nominations to be received within Thirty (30) days thereafter. Upon receipt, all nominations will be compiled on an election ballot and mailed to all Owners, who shall have thirty (30) days thereafter to cast their votes and return their ballots to the First Party. The person receiving the most votes shall be elected the successor Trustee; provided, however if the next person elected declines to serve, the person receiving the next highest number of votes shall be declared the Trustee unless he/she also declines to serve, in

which event the position shall be given to the next highest vote recipient and the process shall continue until the position is accepted. Any runoff election required by reason of a tie shall be conducted by mail in the aforesaid manner. For purposes hereof nominations and/or ballots shall be timely received if postmarked by the United States Postal Authority no later than midnight on such thirtieth (30th) day.

(b) Except as provided in Article IV, section 3 (a) of this indenture, all elections by Owners shall be preceded by notice signed by the Trustees, then in office, or should there be no Trustees, then by three (3) such Owners sent by mail to or personally served upon all Owners at least ten (10) days before the date fixed for the meeting to be held for the purpose of electing Trustees. The said notice shall specify the time and place of meeting which shall be in Jefferson County. At such meeting or at any adjournment thereof, the majority of the Owners attending such meeting, in person or by proxy, shall have the power to elect such Trustees, who shall thereupon serve until their successors have been duly appointed or elected and qualified. At such meeting, each Owner whether attending in person or by proxy, shall be entitled to one (1) vote, which, when the Owner constitutes more than one (1) person or entity, shall be cast as they among them shall determine; in no event shall more than one (1) vote be cast with respect to any Lot. The result of any election of Trustees shall be certified by the persons elected as chairman and secretary at such meeting, and their certification shall be acknowledged and recorded. Any business relevant or pertinent to the affairs of the Subdivision may be transacted at any meeting of Owners called in conformity with the procedure described above. Twenty-five percent (25%) of the Owners shall constitute a quorum for the purpose of electing Trustees and for the purpose of conducting any other business coming before a meeting.

4. Qualification of Trustees. Any Trustee elected under the provisions of this Article shall be an Owner in the Subdivision, or an officer or agent of a corporate Owner, and if such Owner sells his or her Lot or resigns, refuses to act, becomes disabled or dies, the remaining Trustees shall appoint an Owner to act as successor for the unexpired portion of the term of the Trustee no longer acting. Where the provisions of this instrument cannot be fulfilled by reason of unfilled vacancies among the Trustees, the Board of Alderman of Jefferson County, Missouri, or its successors may, upon the petition of any concerned resident or Owner in the Subdivision, appoint one or more Trustees to fill the vacancies until such time as Trustees are elected or selected in accordance with this Indenture. Any person so appointed who is not an Owner within the Subdivision shall be allowed a reasonable fee for his services by the or appointment, which fee shall be levied as a special assessment against the Lots and which fee shall not be subject to any limitations on special assessments contained in the Indenture or elsewhere.

ARTICLE V

Trustees' Duties and Powers

The Trustees shall have the rights, powers, duties and authorities described throughout this Indenture and the following rights, powers and authorities:

1. Acquisition of Common Property. To Acquire and hold the Common Property in accordance with and pursuant to the ordinance and in accordance with and subject to the provisions of the Indenture and to deal with any such Common Property as hereinafter set forth.
2. Control of Common Property. To exercise such control over the easements, streets and roads, sidewalks (except for those easements, Streets, roads and sidewalks which are now or may hereafter be dedicated to public bodies or agencies), entrances and entrance markers, lights, gates, park areas, lakes, cul-de-sac island, medians, shrubbery, storm water sewers, sanitary sewer trunks and lateral line, pipes, and disposal and treatment facilities consulting Common Property as may be shown on the record plat (s) of the Subdivision, as is necessary to maintain, repair, rebuild, supervise and insure the proper use of said easements, streets and roads, etc., 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, sidewalks, sewers, pipes, poles, wires, and other facilities and public utilities for services to the Lots, and the right to establish traffic rules and regulations for the usage of driveways, streets and parking lots in the Subdivision.
3. Maintenance of Common Property. To exercise control over the Common Property and easements for the exclusive use and benefit of residents of the Subdivision, and to pay real estate taxes and assessments on said Common Property, all for the benefit and use of the Owners and residents in the Subdivision and according to the discretion of the Trustees.
4. Dedication. To dedicate to public use any private streets constructed or to be constructed in the Property whenever such dedication would be accepted by a public agency.
5. Easements. To grant easements for public streets, sewers, utilities and cable television on and over the Common Property. Notwithstanding anything contained in this Indenture to the contrary, if required in connection with First Party's or its successors' or assigns' development of property adjacent to the property, the Trustees shall grant such easements to enter the Common ground as may be required to from time to time erect, install, maintain, repair, rebuild and operate water, sewer, gas, telephone, power and cable television pipes, lines, poles and conduits and to keep it clear of brush and trees. The provisions of the Article V, section 5 shall not be amended, modified or deleted without the prior consent of First Party.
6. Enforcement. 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 governing the use of the Common Property or any matters relating thereto. This provision is intended to be cumulative and not to restrict the right of any Owner to proceed in its own behalf, but the power and authority herein granted to the Trustees is intended to be discretionary and not mandatory.

7. Vacant and Neglected Lots. 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 parcels of land in the property, and the Owners thereof may be charged with the reasonable expenses so incurred. The Trustee, their agents or employees, shall not be deemed guilty or liable for any manners or trespass or any other act or injury, abatement, removal or planting.
8. Plans and Specifications. As more specifically provided in Article VI hereof, to consider, approve or reject any and all plans and specifications for any and all buildings or structures and any additions or exterior renovations thereto, fences, satellite dishes, swimming pools, tennis courts, playground equipment and landscaping proposed for construction, erection or installation on any Lot.
9. Deposits. To require a reasonable deposit in connection with the proposes erection of any buildings or structures, fence, detached building, outbuilding, swimming pool, tennis courts, or other structure in the Property approved in accordance with Section 8 of Article V and Article VI of this Indenture, in order to provide that upon completion of the project, all debris shall be removed from the site and from adjacent Lots and parcels, and that any and all damages to subdivision improvements shall be repaired.
10. Insurance. To purchase and maintain in force such insurance as they may deem appropriate, including, but not limited to property insurance and liability insurance protecting the Trustees and the Owners from any and all claims for personal injuries and property damage arising from use of the Common Property and facilities.
11. Employment. In exercising the rights, powers and privileges granted to them and in discharging the duties imposed upon them by the provisions of this Indenture, from time to time to enter into contracts, employ agents, legal counsels, servants and labor as they may deem necessary or advisable, including First Party or employees and agents of First Party and the successors and assigns of First Party, on such terms and conditions and for such compensation as the Trustees, in their sole discretion, deem fair and reasonable, and to defend suits brought against them individually or collectively in their capacity as Trustees.
12. Condemnation. In the event it shall become necessary for any public agency to acquire all or any part of the Common Property for a public purpose, the Trustees

are hereby authorized to negotiate with such public agency for such acquisition and to execute instruments necessary, only the Trustees need to be made parties, and any proceeds received shall be held by the Trustees for the benefit of those entitled to the use of said Common Property.

13. Ordinance Compliance. Notwithstanding any other condition herein, the Trustees shall make suitable provision for compliance with all Subdivision and all other ordinances, rules and regulation of Jefferson 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 provision for the maintenance and operation of all street lights, roadways and easements.

ARTICLE VI

Architectural and Environmental Control

1. Architectural Approval. From and after conveyance of an Approved Lot by First Party, no building, fence, wall, driveway or other structure, swimming pool, tennis courts or improvement shall be commenced, erected or maintained on such Lot, nor shall any exterior addition to, removal of all or any part thereof, or exterior change or alteration (structural or nonstructural) in any improvement on such Lot be made, nor shall any tree with a three inch (3") or greater caliper be removed, nor shall the grade or slope of any lot be changed, nor shall any item, apparatus or device be attached to or the color or other exterior appearance of any structure upon any such Lot be changed until the plans and specifications showing the degree, nature, kind, shape, size, square footage, height, elevation, material, colors, location and configuration of the same shall have been submitted to and approved in writing by the Trustees, or, if so appointed by the trustees in their sole discretion, by an architectural committee composed of three (3) or more representatives. All plans for improvements shall be submitted with an application fee of Fifty Dollars (\$50.00). Reference hereinto "Architectural Control Committee," shall refer either to the aforesaid committee, if appointed and constituted, or to the Trustees, whichever happens to be acting at the time. In the event the Architectural Control Committee fails to approve or disapprove any design, material, colors, or location within forty-five (45) days after all required plans and specifications have been submitted to it (and fees, if required, have been paid), approval will not be required and this provision will be deemed to have been fully complied with. The Architectural Control Committee is authorized where it deems appropriate to charge a review fee for any submission to defray the costs of reviews it conducts or authorizes.
2. Architectural Restrictions. Without limiting any other provision of this Indenture or diminishing the authority of the Architectural Control Committee under Article

VI, Section 1 of this Indenture, the following restrictions shall apply to all Lots within the Subdivision:

- a. No fence, hedge, or mass planting shall be erected, placed or altered on any Lot nearer to any street than the minimum building set-back line without the approval of the Architectural Control Committee and appropriate governmental authorities.
- b. No fence may be erected on any Lot that borders Common Ground without the approval of the Architectural Control Committee.
- c. No Lot Owner shall change the appearance of any improvements within or upon the Common Ground.
- d. No addition, alteration or improvement to the Lots or Common Ground shall, without the prior approval of the Trustees, cause any increase in the premiums of any insurance policies carried by the Trustees or by the Owners of any Lots other than those affected by such change.
- e. No separate detached buildings, storage sheds, barns or other structures are to be placed on any Lot within the Subdivision.
- f. All room, garage or other additions to the improvements on any Lot must be of similar materials and siding color as the main structure and all specifications of material, plans and colors must first receive approval from the Architectural Control Committee.

ARTICLE VII

Sewers and Drainage Facilities

1. Trustees' Responsibility – Common Property. The Trustees shall be responsible for the maintenance, repair and replacement of the private sanitary and storm sewers, if any retention basins and any other sanitary or sewers or other drainage facilities located on and servicing any Common Property or improvements there on in the Subdivision.
2. Owners' Responsibility. Each Owner shall be responsible for the maintenance, repair and replacement of the lateral sewage line or lines servicing such Owners Lot.

ARTICLE VIII

Retaining Walls

1. Trustees' Responsibilities. Trustees shall be responsible for the maintenance, repair and replacement of the retaining walls, including the associated grading, if any, located on, benefiting and servicing any Common Property or improvement thereon, where located on and servicing any Lots or improvements thereon in the Subdivision shown on the Site Development Plan referenced herein.

2. Owners' Responsibilities. Each owner shall be responsible for and fully cooperate with the Trustees and their duly authorized representatives, for the maintenance, repair and replacement of the above references retaining walls, whether located on Lots or upon Common property.
3. Ingress and Egress Easements. The retaining walls easements are dedicated to the Trustees and to the abutting property Owners for the purpose of constructing, maintaining and repairing said retaining walls. During installation, maintenance, repair and replacement of said retaining walls, the Trustees are granted the right of temporary use of adjacent ground not occupied by improvements for the excavation and storage of materials of said retaining walls. The Trustees are granted, in addition to the above, all rights of ingress and egress to perform their duties stated herein. The Trustees shall be charged with the exclusive duties of maintenance, repair and replacement for the retaining walls and such cost associated with such activities shall be the proper expenses for the Trustees.

ARTICLE IX

General Assessments

1. General. First Party, for each Lot within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay (i) annual assessments or charge; and (ii) special assessments, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The annual and special assessments together with such interest thereon and costs of collection thereof shall be a charge on the Lot and shall be a continuing lien upon the Property against which such assessment is made. Each such assessment, together with interest thereon and cost of collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

2. Purpose. The assessments levied under this Article shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Subdivision and in particular for the rendering of services in the furtherance of such purposes, including the carrying out of all functions herein authorized, and for the acquisition, improvement, maintenance and operation of the Common Property and all facilities thereon and easements herein of on the plat (s) of the subdivision established, including, but not limited to, the payment of taxes and insurance thereon, and repair, maintenance, replacements and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof, and for such other needs as may arise.
3. Capital Contribution/Initiation Fee-A capital contribution of \$200.00 will be imposed for each new construction property in Birchwood Estates. This is a one-time, nonrefundable fee paid by the buyer at closing to be deposited into the HOA.

4. Annual Assessments. The maximum annual assessments shall, until increased as herein authorized be Three Hundred Dollars (\$300.00) per Lot. If such Index be discontinued, the Trustees shall utilize a successor index, determined by the Trustees in their sole judgment, to be most similar to the discontinued Index.

The Trustees may, after consideration of current maintenance costs and future costs and needs, fix the actual assessment for any year at a lesser amount. The Trustees may change the basis and maximum of assessments provided for herein upon the approval of a majority of the Trustees and the assent to a majority of the Owners voting in person or by proxy at a meeting duly called for such purpose, written notice of which shall have been sent to all Owners at least thirty (30) days in advance and shall set forth the purpose of the meetings.

Each annual assessment shall be levied prior to or during the year for which it is levied, notice thereof being given by first class mail addressed to the last known or usual post office address of each Owner and deposited in the United States mail with postage prepaid, or by posting of a notice of the assessment upon the Lot against which it applies. Each annual assessment shall be due on the date which is thirty (30) days after such mailing or posting and shall become delinquent if not paid within thirty (30) days following such due date.

5. Storm Water Facilities. In addition to the foregoing, the Trustees are authorized to make separate annual assessments upon and against each Lot for the purpose of maintaining or repairing storm water storage, disposal of sewer facilities located within the Subdivision; PROVIDED, HOWEVER, the separate power granted to the Trustees by this Section 4 shall expire with the calendar year following the acceptance of any such storm water facilities for maintenance by an appropriate governmental body or public utility. Any assessment made under authority granted in this Section 4, shall be assessed and collected in the same manner as the assessments under Section 3 above, and the Trustees shall have the same powers of collection and lien rights against the Lots as provided in said Section 1.
6. Special Assessments. If at any time the Trustees consider it necessary to make any expenditure 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 then Lot Owners. If such assessment is approved, either at a meeting of the Owners called by the Trustees, by a majority of the votes cast in person and by proxy, or on written consent of a majority of the total votes entitled to vote thereon, the Trustees shall notify all Owners of the additional assessment; PROVIDED, HOWEVER, that in determining such required majority, each Owner shall be entitled to one (1) full vote, except that only those who have paid all assessments theretofore made shall be entitled to vote. The limit of the annual assessments for general purposes set forth in Section 3 hereof shall not apply to any assessment made under the provisions of this Section 5. Notice of any special assessment hereunder shall be given in the same manner as notices of annual assessments are given, with such assessment becoming delinquent thirty (30) days after the date of such notice.

7. Prorations. Should a Lot become subject to assessments after January 1 in any year and should an annual or special assessment have been levied for that year, then such assessment shall be adjusted so that such Lot shall be charged with a portion of the assessment prorated for the balance of that year.
8. Interest and Liens. All assessments shall bear interest at the rate of one percent (1%) over the from time to-time publicly announced floating prime rate of interest by The Federal Reserve Bank of St. Louis, St Louis, Missouri (the "Prime Rate"), from the date of delinquency, and such assessment, together with interest and costs of collection, shall constitute a lien upon the Lot 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 of Deeds' Office for Jefferson County, Missouri, and thereafter institute any appropriate legal action to enforce such lien. Should an Owner pay an assessment after the recording of a notice thereof, as herein provided, the Trustees shall cause to be executed and recorded (at the expense of the Owner of the affected Lot) a release of said lien.

The lien of the assessments provided for herein shall be subordinate to the lien of any institutional (bank, savings and loan association, pension or retirement fund, insurance company or federally insured mortgage) first mortgage now and hereafter placed upon any Lot with respect to which assessments have become due and payable prior to a sale or transfer of such Lot pursuant to foreclosure or transfer in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter become due, nor from the lien of any such subsequent assessment. As used herein, the term "mortgages" shall include deed or deeds of trust.

Each assessment, together with interest thereon and cost of collection thereof (including reasonable attorney's fees), shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due.

9. Exemptions. The following properties subject to this Indenture shall be exempt from the assessments, charges and liens created herein:
 - (a) All Common Property
 - (b) All properties exempted from taxation under the laws of the State of Missouri; and
 - (c) All Lots owned by First Party until occupied or until title to the "the Lot has been transferred to the first purchaser thereof at retail (as distinguished from sales in bulk or at wholesale to others for development or resale). No Lot devoted to residential use shall be exempt from assessment hereunder.
10. Keeping of Funds. The Trustees shall deposit the funds coming into their hands as Trustees in a bank protected by the Federal Deposit Insurance Corporation, the treasurer being bonded for the proper performance of his duties in an amount fixed by the Trustees.

11. Ordinance Compliance. Notwithstanding any other conditions herein, the Trustees shall make suitable provisions for compliance with all subdivision and other ordinances, rules and regulations of the Jefferson County, Missouri, including, but not limited to, streetlights, and for such purposes shall not be limited to the maximum assessment provided for herein.
12. First Party Loans. Notwithstanding any provision of this Indenture to the contrary, if at any time the resources of the Trustees are insufficient for the obligations and purposes herein specified, First Party may, but shall have no obligation to, advance funds therefore to or for the benefit of the Trustees, and, in such event, First Party shall be entitled to be reimbursed from subsequent assessments for all such advances and interest thereon from the date thereof at the Prime Rate. Any advance by First Party shall be reflected as a loan to and obligation of the Trustees on the Subdivision's books and records.

ARTICLE X
PROVISIONS APPLICABLE TO ALL ASSESSMENTS

The following provisions shall apply to assessments for the facilities as provided in Article IX, whether levied by the Trustees or the Association, and to General Assessments as provided in Article IX (including assessments for storm water facilities provided in Section 4 of Article IX)

1. Notice of Annual Assessments. Notice of annual assessments shall be given by first class mail addressed to the last known or usual post office address of each Owner and deposited in the United States mail with postage prepaid, or by posting a notice of the assessment upon the Lot against which it applies. Each annual assessment shall be due on the date which is thirty (30) days after such mailing or posting and shall become delinquent if not paid within thirty (30) days following such due date.

ARTICLE XI
RESTRICTIONS

In addition to the limitations and restrictions imposed by other provisions of this Indenture and the ordinance, the following restrictions are imposed upon and against the Property and each Lot now or hereafter existing therein:

1. Building Use. No building or structure shall, without the approval of the Trustees, be used for a purpose other than that for which the building or structure was originally designed.
2. Building Location. No building or structure shall be located on any Lot nearer to the street (s) upon which such Lot fronts or by which such Lot is bordered or the side or rear lot lines that the front building line or side, or rear set- back lines shown on the plats of the Subdivision.
3. Resubdivision. No Lot shall be resubdivided nor shall a fractional part of any Lot be sold without the consent of the Trustees; which consent shall not be unreasonably withheld. In

the event either of the foregoing is approved, then the assessment attributable to the Lot so subdivided shall be pro-rated between the resulting Lots.

4. Commercial Use. Except for the promotional activities conducted by First Party in connection with the development of the Subdivision and the marketing and sale of residences therein and the conduct of a home occupation in strict accordance with the provisions of the applicable zoning ordinances, no commercial activities of any kind shall be conducted on any Lot. Further, no residence constructed upon the Property shall be used as a rooming or boarding house or group home.
5. Nuisances. No loud, noxious or offensive activity shall be carried on upon any Lot or Common Ground in the Subdivision, nor shall anything be done thereon that may be or become a nuisance or annoyance to the neighborhood. No exterior lighting shall be directed outside the boundaries of a Lot or other parcel.
6. Maintenance. Each owner shall maintain and keep his Lot in good order and repair and shall do nothing which would be in violation of law. Trash, rubbish, toys, tools, cases, crates or any discarded item shall not be left in the front or back yard of any Lot overnight or for extended period of time, and no exterior front yard appurtenances such as sculptures, bird bath or similar personal property items which are not permanently affixed to or made a part of the realty shall be placed in the front yard of any Lot.
7. Obstructions. There shall be no obstruction of any portion of the Common Property or any storage or construction or planting thereon by an Owner. No clothes, laundry or other articles or equipment shall be placed, hung, exposed or stored in any portion of the Common Property or in any portion or the exterior or yard area of any Lot or on or about the exterior of any building.
8. Animals. No animals, reptiles, birds, horses, rabbits, fowl, poultry, cattle or livestock of any kind shall be brought onto or kept on the Properties, except that no more than two dogs, cats or other household pets (except house pets with vicious propensities) may be kept or maintained on any Lot, provided that such pets are not kept for any commercial purpose and provided that such pets- are at all times leashed and no "runs" or other outside structures are erected or installed therefore. The keeping of any pet which by reason of its noisiness or other factor is a nuisance (as determined by the Trustees in the sole judgment) or annoyance to the neighborhood is prohibited.
9. Trucks, Boats, etc. No truck (other than pick-up trucks not exceeding $\frac{3}{4}$ ton) or commercial vehicles, boats, motorcycles, campers, house trailers, boat trailers or trailers of any other description shall be permitted to be parked or stored on any Lot unless they are parked or stored in an enclosed garage or in such other enclosure (open or otherwise) approved by the Architectural Control Committee, except only during periods of approved construction on the Lot. Further, no motor vehicle or equipment shall be repaired or otherwise serviced in front of or adjacent to any residence in the Subdivision or on any

Subdivision street or Common Ground. No motor vehicle or equipment shall be regularly parked on any Subdivision street and the Trustees may take the necessary steps to remove the same at the Owner's expense.

10. Abandoned Vehicles. No abandoned cars, motorcycles, jeeps, trucks or motor vehicles of any kind whatsoever that are unable to move under their own power may be stored or suffered to remain upon any of the Common Property or on any Lot, or Subdivision street. If any such motor vehicle is so stored or remains on the aforesaid premises, the Trustees may take the necessary steps to remove the same at the Owner's expense.
11. Street Parking. There shall be no overnight parking of vehicles on any subdivision street or common property.
12. Vehicular Sight Lines. No fence, wall, tree, hedge or shrub planting shall be maintained in such manner to obstruct sight lines for vehicular traffic. Except as may be required to comply with the prior sentence, no live tree shall be removed without the approval of the Architectural Control Committee.
13. Temporary Structures. No structure of a temporary character, trailer, tent, shack, garage, metal or wooden shed, barn or other outbuilding shall be installed, constructed or maintained on any Lot at any time.
14. Signs. No signs, advertisements, billboards or advertising structures of any kind may be erected, maintained or displayed on any Lot; provided, however, that nothing herein shall prohibit signs erected or displayed by First Party in connection with the development of the Property and the marketing and sale of residences therein, or by any future Owner attempting to market their individual residence.
15. Garbage. No trash, garbage, rubbish refuse, debris, trash cans or trash receptacles of any type shall be stored in the open on any Lot, but shall be kept secured within the improvements located on each Lot; provided, however, after sunrise on any day designated for trash pick-up, trash, garbage, rubbish, refuse and debris secured within appropriate trash cans or receptacles may be placed at the street curbing for pick-up; and, provided, further, that trash cans or receptacles shall be removed and secured within the improvements on each Lot prior to sundown of the same day.
16. Utility and Drainage Easements. Easements for installation and maintenance of utilities and drainage facilities are established in this Indenture and are and/or will be reserved as shown on the recorded plats of the Property. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, "or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

17. Oil Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or portion of the Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot or portion of the Property. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or portion of the property.

18. Cul-De-Sac, Etc. No above ground structure, other than required streetlights, may be erected upon a cul-de-sac, divided street entry island or median strip without the written approval of Jefferson County, Missouri.

19. Fences.

(a) No fencing or screening of any kind shall be erected or maintained on any Lot without the prior written consent of the Architectural Control Committee and unless in strict compliance with the following standard and requirements, to-wit:

- (i) Other than as expressly permitted by the provisions of this Section 19, the maximum height for full perimeter fencing shall be forty-eight inches (48”).
- (ii) Fencing shall only enclose the rear yards of any Lot. Rear yard fencing shall be full perimeter, and no fencing shall be erected or maintained on any Lot between the rear corner of the residence constructed upon such Lot and the street upon which such Lot fronts. Except under extraordinary circumstances (as defined below), fencing must start at the rear corners of the residence and must be within four inches (4”) of the lot lines and lot corners with respect to corner Lots, fencing along the side of the rear yard facing the street shall not be placed any nearer to said street than four inches (4”) of the building line limit established by the subdivision plat. As used in this paragraph, the term “extraordinary circumstances” shall include the necessity to protect “green space”, avoiding the destruction of a tree canopy, a severe or extreme rear yard slope, or, in certain instances determined by the Architectural Control Committee, the interference by utility structures. When an extraordinary circumstance exists, with prior written consent of the Architectural Control Committee, fencing may be set beyond four inches (4”) to the lot lines and lot corners; provided, however, prior to providing its consent, the Architectural Control Committee may, in its discretion, require the written approval of all adjoining Lot Owners for the fence variance. In those instances where written consent is given, the Lot Owner shall continue to maintain that portion of such Owner’s Lot that is located outside the fence, and the Owner’s failure to do so on more than three (3) occasions as determined by the Trustees serving notice of such failure on the Owner shall be considered revocation of the variance and the fence shall be considered in violation of this Indenture, and upon notice by the Trustees, shall be removed or brought into strict compliance within sixty (60) days.

- (iii) All perimeter fencing shall be made only of aluminum, wrought iron, vinyl or other approved composite material. In any event the Trustees may require that the actual material being considered is provided to them prior to their approval of any such fencing. Decisions as to the aesthetic value of any such composite materials lie solely with the Trustees and their decision to allow or disallow such material shall be final.
- (iv) Fencing may be any picket width up to a maximum of six inches (6"), and regardless of picket width, the minimum open space between pickets shall be three inches (3").
- (v) No wood fencing is allowed. No perimeter privacy fencing is allowed.
- (vi) All fence posts shall be anchored in a base of concrete of at least one (1) foot six inches (6") deep into the soil.
- (vii) Swimming pool fencing shall only be of wrought iron or similar style. Under no circumstances may swimming pool fencing exceed a height of forty-eight inches (48"). Swimming pool fencing may be erected either around the perimeter of the concrete or wood swimming pool apron or as a full perimeter fence. Notwithstanding anything herein to the contrary, all swimming pool enclosures shall be constructed to comply with all applicable laws and regulation promulgated by any governmental entity having jurisdiction over the Subdivision.
- (viii) Six foot (6') privacy or "Shadow box" fences shall only be allowed around attached patios and decks on the Lots, and may be constructed on the Common Ground by the Trustees.
- (ix) Notwithstanding any provision hereof to the contrary, with the prior written consent of the Architectural Control Committee, a six foot privacy fence may be placed along the border of a busy street or to screen an adjacent parcel of property not within the Subdivision. In such event, the fencing on all Lots bordering such area shall be of the same style, material and configuration.
- (x) Within one (1) year following the erection of a fence, the Trustees may, in their sole discretion, require the Lot Owner to landscape along such fence, in which event landscaping may include vegetation such as rambling rose, multi-flora rose, evergreen shrubbery or such similar material as may be approved by the Trustees.

20. Decks, Porches, Screened Porches. All deck, patios, patio enclosures, screened porches, wooden walks and/or stairways and other such similar type of additions shall be constructed directly behind the residence structure. Under no circumstances shall any such

addition extend beyond the site line as viewed when looking straight down the side of the structure and into the backyard.

- (a) Screened porches, patio enclosures and other such similar types of additions shall be made of wood and built according to the following:
- (i) Screened deck type of structures shall be built with a shed roof that matches the roof line and shingle material of the house.
 - (ii) Screened porch type of additions shall be built with siding, gutter board and roofing that are identical to the home itself. (May also be known as a "Florida Room"). A gable or shed roof is acceptable.
 - (iii) No metal prefabricated screened porches shall be permitted on any Lot.
 - (iv) Materials for all decks and or screened decks shall be limited to cedar, redwood or composite material decking rails, uprights, handrails and pickets. Wolmanized material may be used for stringers, supports, joists or other structural components. Consideration may be given by Trustees for newly developed composite material that offer similar appearance as cedar or redwood. Trustees in their decision process may require Owner to provide a piece of the material for "hands-on" inspection. Owner's failure to provide same will be cause for automatic disapproval of Owner's request.
 - (v) Decks and screened decks are to be left natural in color, not painted or stained. Clear wood treatments and sealers are acceptable and suggested.

21. Television Antennae. No exterior television or radio antennae, towers or similar structures will be allowed on any Lot in the Property, except that (i) antennae designed to receive direct, broadcast satellite service, including direct-to home satellite services, that are one meter or less in diameter, and (ii) antennae designed to receive video programming service via multipoint distribution services, that are one meter or less in diameter or diagonal measurement, and (iii) antennae designed to receive television broadcast signals are allowed; provided that the location and placement of such antennae are approved by the Architectural Control Committee pursuant to Article VI of this Indenture. Where possible, permitted antennae must be installed so as not to be visible from Subdivision streets or Common Ground. Notwithstanding anything herein to the contrary, the Architectural Control Committee may disapprove the location or placement of a permitted antennae only to the extent that there is an alternate location and/or placement for such antennae which will not unreasonably increase the cost of installation, maintenance or use, and will not preclude reception of an acceptable quality signal. In the event that a court of competent jurisdiction determines any part of this provision to be invalid, this provision shall be deemed modified to the minimum extent necessary to comply with the law.

22. Hazardous and/or Unsightly Materials. No above-ground gas, propane or gasoline, oil or other hazardous material storage tanks or devices shall be permitted upon or in any Lot or the Common Ground of the Subdivision. No articles of personal property, such as sporting equipment, children's toys or bicycles shall be left unattended on any Lot, Subdivision, street or the Common Ground of the Subdivision. No basketball hoops shall be permanently attached to the front of any residence or erected in the front of any residence or Common Ground of the Subdivision and shall not be visible from any Subdivision street or Common Ground.

23. Swimming Pools.

- (a) No above ground swimming pools will be allowed on any Lot in the Subdivision unless they are recessed at least one-half (1/2) of their exterior depth into the yard or the slope of a yard and completely surrounded by decking, properly skirted to the surrounding ground level so as to present the appearance of an in-ground pool. The plans for any such pool must be submitted to and approved by the Architectural Control Committee, and shall include drawings, material lists, landscape detail and any other information deemed necessary by the Architectural Control Committee in its sole discretion. The approval of any such pool shall not constitute a precedence for other such structures, and each instance will be determined on a case by case basis.
- (b) All in-ground pools must have at least four feet (4') of concrete or some other such decking material surrounding the entire pool.
- (c) Any requirements set forth in this Section for approval of installation of pools that may conflict with any governmental codes or guidelines may be changed by the Trustees to conform with such governmental guidelines.

ARTICLE XIII
GENERAL PROVISIONS

These general provisions shall apply to the foregoing Indenture:

- 1. Enforcement. Enforcement of any of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any such covenants and may be brought to restrain any such violation and/or to recover damages therefore together with reasonable attorney's fees and court costs.
- 2. Actions by Trustees. The Trustees are authorized to act through a representative, provided, however, that all acts of the Trustees shall be agreed upon by at least a majority of said Trustees. No Trustee shall be held personally responsible for his wrongful acts, and no Trustees shall be held responsible for the wrongful acts of others. No Trustee shall be held personally liable for injury or damage to persons or property by reason of any act or failure to act of the Trustee, collectively or individually. The Trustees from time to time serving hereunder, except Trustees appointed pursuant to Article IV, Section 4 hereof, shall not be entitled to any compensation or fee for services performed pursuant to this Indenture.

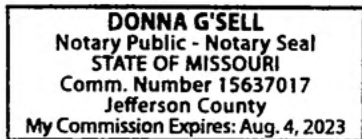
3. Adjoining Tracts. The Trustees named hereunder shall be the Trustees of the Property and are authorized and empowered to cooperate and contract with Trustees of adjoining or nearby tracts in the development and maintenance of facilities inuring to the benefit and general welfare of the inhabitants of the entire area.
4. Amendments. The provisions hereof may be amended, modified or changed from time to time prior to completion of the development by First Party by recording an instrument of amendment in the office of the Recorder of Deeds for Jefferson County, Missouri. Thereafter, the provisions hereof may be amended, modified or changed by the written consent of two-thirds (2/3rd) of all the Owners, with any such amendment, modification or change being recorded in the office of the Recorder of Deeds for Jefferson County, Missouri. No amendment, modification or change shall reduce or modify the obligations or rights granted to or imposed upon the Trustees or eliminate the requirement that there be Trustees unless some person or entity is substituted for the Trustees with their responsibilities and duties in a manner approved by the Jefferson County.
5. Severability, etc. All covenants any agreements herein are expressly declared to be independent and not interdependent. No laches, waiver, estoppel, condemnation or failure of title as to any part of the Property or any Lot in the Property shall be of any effect to modify, invalidate or annul any grant, covenant or agreement herein with respect to the remainder of the Property, saving always the right to amendment, modification or repeal as hereinabove expressly provided.
6. Invalidation. Invalidation of any one of the covenants of this Indenture shall in no way affect any other provision hereof.
7. Assignment of First Party. The rights of powers and obligations granted to First Party may be assigned or transferred by First Party, in whole or in part, to any other person or entity or persons or entities to whom First Party sells, transfers or assigns all or any of the Lots in the Subdivision.
8. Rights during Construction and Sale. Notwithstanding any provision contained in this Indenture to the contrary, until all Lots authorized by the Ordinance to be developed in the Property have been sold and conveyed for residential use, First Party and its successors and assigns shall have the right and privilege:
 - (i) To erect and maintain advertising signs, sales flags and other sales devices and banners for the purpose of aiding the sale of Lots and residences in the Property
 - (ii) To maintain sales, business and construction offices in display homes or trailers on the Property (including without limitation, the Common Ground) to facilitate the completion of development of the Subdivision and construction and sale of residences and improvements on the Property. First Party's construction activities shall not be

considered a nuisance, or violation of any provision of this indenture, and First Party hereby reserves the right and privilege for itself and its successors and assigns to conduct the activities enumerated in this Section until all Lots in the Property have been sold and conveyed for residential purposes. The provisions of this, Article XIII, Section 8, shall not be amended, modified or deleted without the prior written consent of First Party.

9. Term. Except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Indenture shall run with and bind the Property for a term which is the longer of: (i) thirty (30) years from the date of recordation of this Indenture, after which said covenants and restrictions shall be automatically extended for successive periods of ten (10) years each, unless an instrument signed by the then Owners of two-thirds (2/3rd) of the Lots subject hereto has been recorded agreeing to terminate this Indenture as of the end of any such ten (10) year period, but in no event prior to the vacation of the plat(s) of the Subdivision by Jefferson County, Missouri, or its successors; or (ii) as to any subdivision of the Property, for the duration of the subdivision encumbered hereby unless continued in effect by the vote of two-thirds (2/3) of the Lots in such subdivision by an appropriate instrument filed of record prior to the vacation of the plats of such subdivision as aforesaid. No such agreement of termination shall be effective unless made and recorded one (1) year in advance of the effective date of such termination, and unless written notice of the proposed agreement of termination is sent to every Owner at least ninety (90) days in advance of any action taken.

In WITNESS WHEREOF, First Party has executed this Indenture this 10th day of February 2020.

First Party:



Ryan G'Sell Investments, LLC
A Missouri Limited Liability Company

By: [Signature]
Ryan G'Sell, Manager

STATE OF MISSOURI)
) SS.
COUNTY OF Jefferson)

On this 10th day of February, 2020 before me personally appeared Ryan G'Sell to me personally known, who being by my duly sworn, did say that he is the Manager of Ryan G'Sell Investments, LLC, a Missouri Limited Liability Company and that said instrument was signed on behalf of said Limited Liability company by authority of its operating agreement, and said Ryan G'Sell acknowledged said instrument to be the free act and deed of said Company.

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

[Signature]
Notary Public

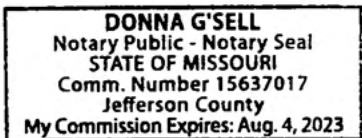
Trustees: Ryan G'Sell
Name Printed
RAYMOND G'SELL
Name Printed
JAMES Kohm
Name Printed

[Signature]
Signature
[Signature]
Signature
[Signature]
Signature

STATE OF MISSOURI)
) SS.
COUNTY OF Jefferson)

On the 10th day of February, 2020 before me personally appeared Ryan G'Sell, Raymond G'Sell Sr., and James Kohm, to me personally known, who being by me duly sworn did say that they have executed the foregoing instrument as their free act and deed.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my official seal in the County and State aforesaid, the day and year first written.



[Signature]
Notary Public



Space Above for Recorder's Use Only

DOCUMENT COVER SHEET

Date of Document: March 10, 2022

Title of Document: First Amendment to Indenture of Trust and Restrictions for Birchwood Estates, Jefferson County, Missouri

Grantor: Birchwood Estates

Grantor's Address: c/o Ernst Management Services
PO Box 515027
St. Louis, MO 63151

Grantee: Birchwood Estates

Grantee's Address: c/o Ernst Management Services
PO Box 515027
St. Louis, MO 63151

Legal Description: See Exhibit A

After recording return to:
Stephen G. Davis, Esq.
Carmody MacDonald, P.C.
120 S. Central Ave., Suite 1800
St. Louis, MO 63105

**FIRST AMENDMENT TO INDENTURE OF TRUST
AND RESTRICTIONS FOR BIRCHWOOD ESTATES
JEFFERSON COUNTY MISSOURI**

This First Amendment to Indenture of Trust and Restrictions for Birchwood Estates (this "*Amendment*") is made by Ryan G'Sell Investments, LLC, a Missouri limited liability company ("*Developer*") and is effective upon recording in the Jefferson County, Missouri records (the "*Effective Date*").

RECITALS

WHEREAS, the real estate described on Exhibit A, attached hereto and incorporated herein, known as the Birchwood Estates is subject to that certain Indenture of Trust and Restrictions for Birchwood Estates dated as of February 10, 2020, recorded on February 10, 2020, as Instrument No. 2020R-004729 of the Office of the Recorder of Deeds of Jefferson County, Missouri (the "*Indenture*");

WHEREAS, pursuant to Article XIII, Section 4 of the Indenture, the Indenture may be amended from time to time prior to completion of the development by the Developer by recording an instrument of amendment in the Office of the Recorder of Deeds for Jefferson County, Missouri; and

NOW THEREFORE, the Indenture is hereby amended as set forth herein effective as of the Effective Date. Capitalized terms used but not defined in this Amendment shall have the meanings assigned thereto in the Indenture.

1. Amendments.

a. Article V Section 6 is hereby deleted in its entirety and replaced with the following:

"Section 6. Enforcement.

a. To prevent 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 the Trustees governing the use of the Common Property or any matters relating thereto, the Trustees shall have the right to enforce, by any proceeding at law or in equity, any of the covenants, conditions, restrictions and provisions hereof, either to restrain or enjoin a violation or threatened violation or to recover damages. Failure or forbearance by the Trustees to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. This provision is intended to be cumulative and not to restrict the right of any Owner to proceed in his or her own behalf, but the power and authority herein granted to the Trustees is intended to be discretionary and not mandatory. The Trustees shall be entitled to recover its reasonable attorneys' fees and court costs in connection with any enforcement action it undertakes.

b. In addition to the rights granted to the Trustees in the above Section 6(a), the Trustees shall have the right to levy monetary fines (provided such fines are reasonable and notice of which is provided to the Owner(s) prior to such levy) for failure of an Owner of a Lot to comply with any provisions of the covenants, conditions, restrictions and provisions of this Indenture. Each Owner agrees to pay all such fines levied by the Trustees. The Trustees, or a property management firm acting on behalf of the Trustees, shall provide Owner(s) with written notice of a concern, violation or anticipated violation and provide a period in which to correct the violation or anticipated violation prior to levying such fine.

Such fines shall be collected and enforced as an "assessment" pursuant to Article IX of this Indenture. The Trustee may from time to time formulate or modify rules and regulations interpreting and specifying its procedures for levying monetary fines provided for in this Section 6(b), including the frequency and amounts of any fines."

b. Article IX Section 8 is hereby deleted in its entirety and replaced with the following:

"Section 8. Interest, Late Fees and Liens. All assessment shall bear interest at the rate of one percent (1%) over the from time to-time publicly announced floating prime rate of interest by The Federal Reserve Bank of St. louis, Missouri (the "Prime Rate") from the date of delinquency. At the Trustee's sole discretion, late fees may be imposed upon Owners owing delinquent assessments. Such assessment, together with interest, late fees and costs of collection (including reasonable attorneys' fees'), shall constitute a lien upon the Lot against which it is assessed until the amount, together with interest, late fees 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 office of the Recorder of Deeds for Jefferson County, Missouri, and thereafter institute any appropriate legal action to enforce such lien. Should an Owner pay an assessment after the recording of a notice thereof, the Trustees shall cause to be executed and recorded (at the expense of the Owner of the affected Lot) a release of said lien.

The lien of the assessments provided for herein shall be subordinate to the lien of any institutional (bank, savings and loan association, pension or retirement fund, insurance company or federally insured mortgage) first mortgage now or hereafter placed upon any Lot with respect to which assessments have become due and payable prior to a sale or transfer of such Lot pursuant to foreclosure or transfer in lieu of foreclosure. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. As used herein, the term "mortgage" or "mortgages" shall include deed or deeds of trust.

Each assessment, together with interest, late fees and costs of collection (including reasonable attorneys' fees') shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due."

c. Article XI Section 9 is hereby deleted in its entirety and replaced with the following:

"Section 9. Trucks, Boats, etc. No trucks (other than pick-up trucks not exceeding 3/4 ton) or commercial vehicles (other than commercial trucks and vehicles not exceeding 3/4 ton), boats, motorcycles, campers, house trailers, boat trailers or trailers of any other description shall be permitted to be parked or stored on any Lot unless they are parked or stored in an enclosed garage or in such other enclosure (open or otherwise) approved by the Architectural Control Committee, except only during periods of approved construction on the Lot. Trucks and commercial vehicles exceeding 3/4 ton must obtain special approval from the Trustees and pay an additional road maintenance fee before entering the Subdivision. Further, no motor vehicle or equipment shall be regularly parked on any Subdivision street and the Trustees may take the necessary steps to remove the same at the Owner's expense."

d. Article XI Section 10 is hereby deleted in its entirety and replaced with the following:

“Section 10. Abandoned and Derelict Vehicles. No Abandoned or Derelict motor vehicles of any kind whatsoever may be stored or suffered to remain upon any of the Common Property, any Subdivision street or on any Lot. If any such motor vehicle is so stored or remains on the aforesaid premises, the Trustees may take the necessary steps to remove the same at the Owner's expense. “Abandoned or Derelict motor vehicles” is defined to mean any motor vehicle of any kind whatsoever or principal part thereof which: (a) is unable to move and/or is inoperable, (b) does not properly display current registration plates, (c) lacks operable component parts or is in a visible state of disrepair, or (d) is so wrecked, dilapidated, burned out, stripped, or vandalized as to be of no apparent value other than for scrap of parts.”

e. Exhibit A of the Indenture is hereby deleted in its entirety and replaced with Exhibit A attached hereto and incorporated herein.

2. Full Force and Effect. Except as specifically amended hereby, all of the terms and conditions of the Indenture shall remain in full force and effect, and the same are hereby ratified and confirmed.

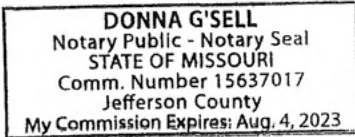
3. Severability. The invalidity of any portion hereof shall not affect the validity, force or effect of the remaining portions hereof. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, such restriction shall be enforced to the maximum extent permitted by law.

4. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which shall constitute together but one and the same document.

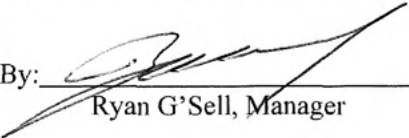
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**SIGNATURE PAGE
TO
FIRST AMENDMENT TO INDENTURE OF TRUST
AND RESTRICTIONS FOR BIRCHWOOD ESTATES
JEFFERSON COUNTY MISSOURI**

The Developer has executed this Amendment as of the date indicated below.



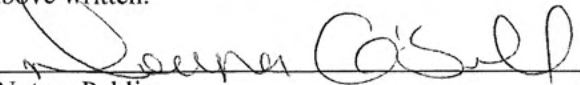
Ryan G'Sell Investments, LLC,
a Missouri limited liability company

By: 
Ryan G'Sell, Manager

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

On this 10th day of March, 2022, before me personally appeared Ryan G'Sell, who being by me duly sworn, did say that he is the Manager of Ryan G'Sell Investments, LLC, a Missouri limited liability company and that the foregoing was executed for the purpose stated herein and acknowledged that he executed this instrument on behalf of said limited liability company as its free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.


Notary Public

My Commission Expires:
Aug 4th 2023

EXHIBIT A

A tract of land being part of Survey 1973, Fractional Section 1 and Fractional Section 12, in Township 40 North, Range 5 East, Jefferson County, Missouri, and being more particularly described as follows:

Beginning at a point being at the most Northern corner of Lot 9 of Warnes Subdivision of Survey No. 1973 (PB 4, PG 500); thence along the East line of said Lot 9, South 37 degrees 12 minutes 24 seconds East a distance of 1207.48 feet to a point on the South line of Survey 1973; thence along said South line, South 83 degrees 24 minutes 28 seconds East a distance of 671.71 feet to a point; thence South 00 degrees 54 minutes 03 seconds East a distance of 1073.83 feet to a point; thence South 89 degrees 05 minutes 28 seconds West a distance of 1211.44 feet to a point; thence North 68 degrees 18 minutes 25 seconds West a distance of 57.93 feet to a point; thence South 09 degrees 53 minutes 35 seconds West a distance of 22.66 feet to a point; thence South 89 degrees 05 minutes 28 seconds West a distance of 30.88 feet to a point; thence South 00 degrees 29 minutes 56 seconds West a distance of 146.64 feet to a point on U.S. Survey Line No. 392; Thence along U.S. Survey line, North 36 degrees 59 minutes 40 seconds West a distance of 2199.27 feet to a point being at the most Southern corner of a tract of land to Melba and Roy Tidwell as recorded in Document 2014R-009020; thence leaving U.S. Survey No. 392 running along the Southeast line of said Tidwell tract, North 53 degrees 44 minutes 14 seconds East a distance of 291.99 feet to a point; thence North 33 degrees 30 minutes 03 seconds West a distance of 8.04 feet to a point; thence North 52 degrees 10 minutes 14 seconds East a distance of 358.34 feet to a point being at the most Eastern corner of a tract of land to James and Rhonda chandler as recorded in Document 2016R-011256; thence South 36 degrees 32 minutes 33 seconds East a distance of 322.12 feet to a point being at the most Southern corner of a tract of land to Curtis Colleen Family trust as recorded in document 2010R-042291 point also being on the most West line of Lot 9 of Warnes Subdivision of Survey No. 1973; thence along said West line of Lot 9, North 52 degrees 48 minutes 09 seconds East a distance of 633.24 feet to the point of beginning and containing 3,258,496 square feet, 74.8 Acres more or less.

SUBJECT TO RIGHT OF WAY FOR POUNDS ROAD AND OLD HWY 21A (AKA WEST MAIN)

END OF DESCRIPTION



Space Above for Recorder's Use Only

DOCUMENT COVER SHEET

Date of Document: January 19, 2023

Title of Document: Second Amendment to Indenture of Trust and Restrictions for Birchwood Estates, Jefferson County, Missouri

Grantor: Ryan G'Sell Investments, LLC

Grantor's Address: c/o Ernst Management Services
PO Box 515027
St. Louis, MO 63151

Grantee: Ryan G'Sell Investments, LLC

Grantee's Address: c/o Ernst Management Services
PO Box 515027
St. Louis, MO 63151

Legal Description: See Exhibit A

After recording return to:
Stephen G. Davis, Esq.
Carmody MacDonald, P.C.
120 S. Central Ave., Suite 1800
St. Louis, MO 63105

**SECOND AMENDMENT TO INDENTURE OF TRUST
AND RESTRICTIONS FOR BIRCHWOOD ESTATES
JEFFERSON COUNTY MISSOURI**

This Second Amendment to Indenture of Trust and Restrictions for Birchwood Estates (this “*Amendment*”) is made by Ryan G’Sell Investments, LLC, a Missouri limited liability company (“*Developer*”) and is effective upon recording in the Jefferson County, Missouri records (the “*Effective Date*”).

RECITALS

WHEREAS, the real estate described on Exhibit A, attached hereto and incorporated herein, known as the Birchwood Estates is subject to that certain Indenture of Trust and Restrictions for Birchwood Estates dated as of February 10, 2020, recorded on February 10, 2020, as Instrument No. 2020R-004729 of the Office of the Recorder of Deeds of Jefferson County, Missouri, as amended by that certain First Amendment to Indenture of Trust and Restrictions for Birchwood Estates, Jefferson County, Missouri dated March 10, 2022, recorded on July 6, 2022, as Instrument No. 2022R-022294 of the Office of the Recorder of Deeds of Jefferson County, Missouri (as amended, the “*Indenture*”);

WHEREAS, pursuant to Article XIII, Section 4 of the Indenture, the Indenture may be amended from time to time prior to completion of the development by the Developer by recording an instrument of amendment in the Office of the Recorder of Deeds for Jefferson County, Missouri; and

WHEREAS, the Developer has not completed the development and therefore the Developer may amend the Indenture as set forth herein.

NOW THEREFORE, the Indenture is hereby amended as set forth herein effective as of the Effective Date. Capitalized terms used but not defined in this Amendment shall have the meanings assigned thereto in the Indenture.

1. Amendments.

a. Article XI Section 4 of the Indenture is hereby deleted in its entirety and replaced with the following:

“Section 6. Commercial Use. Except for the promotional activities conducted by First Party in connection with the development of the Subdivision and the marketing and sale of residences therein and the conduct of a home occupation in strict accordance with the provisions of the applicable zoning activities, no commercial activities of any kind shall be conducted on any Lot. Further no, residence constructed upon the Property shall be used as a rooming or boarding house or group home. Notwithstanding the foregoing, so long as Angels Arms owns the Lots commonly known as 1848 Sunset Ridge, Festus, MO 63028 and 1858 Sunset Ridge, Festus, MO 63028 (collectively, the “Angel Arm Lot”), the Angel Arm Lots shall be permitted to be used as a foster home and/or group home; provided that upon the sale of the Angel Arm Lots by Angels Arms, the restrictions contained in this Section 6 shall apply to all Lots, including the Angel Arm Lot.”

2. Full Force and Effect. Except as specifically amended hereby, all of the terms and conditions of the Indenture shall remain in full force and effect, and the same are hereby ratified and confirmed.

3. Severability. The invalidity of any portion hereof shall not affect the validity, force or effect of the remaining portions hereof. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, such restriction shall be enforced to the maximum extent permitted by law.

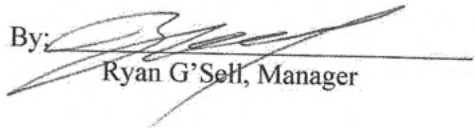
4. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which shall constitute together but one and the same document.

[Remainder of page intentionally left blank.]

**SIGNATURE PAGE
TO
SECOND AMENDMENT TO INDENTURE OF TRUST
AND RESTRICTIONS FOR BIRCHWOOD ESTATES
JEFFERSON COUNTY MISSOURI**

The Developer has executed this Amendment as of the date indicated below.

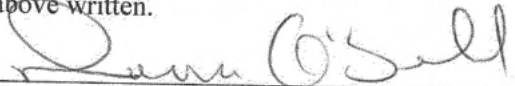
Ryan G'Sell Investments, LLC,
a Missouri limited liability company

By: 
Ryan G'Sell, Manager

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

On this 19th day of January, 2023, before me personally appeared Ryan G'Sell, who being by me duly sworn, did say that he is the Manager of Ryan G'Sell Investments, LLC, a Missouri limited liability company and that the foregoing was executed for the purpose stated herein and acknowledged that he executed this instrument on behalf of said limited liability company as its free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year first above written.



Notary Public

My Commission Expires:

Aug 4th 2023



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