

31.

INDENTURE OF TRUST AND RESTRICTIONS FOR OAK HILL
ST. LOUIS COUNTY, MISSOURI

THIS INDENTURE, made and entered into this 15th day of February, 1978, by and between GIVENS REAL ESTATE, INC., a Missouri Corporation, "First Party", and EDWARD H. GIVENS, DAVID E. GIVENS and CHARLES D. ORMSBEE, all of St. Louis County, Missouri, "Trustees".

WITNESSETH THAT:

WHEREAS, the St. Louis County Council, by Resolution dated ~~18~~ 18 NOV, 1976 approved OAK HILL, as a density development subdivision under the Zoning Ordinance of St. Louis County, so that a plat of OAK HILL was authorized to be recorded; and,

WHEREAS, First Party has recorded the plat of OAK HILL, on this, the 17th day of MARCH, 1978, as Daily No. 97, in the St. Louis County Recorder's Office pursuant to and in conformity with the aforesaid resolution; and,

WHEREAS, common land for park and recreational areas has been reserved in OAK HILL; and,

WHEREAS, there are designated, established and recited on the recorded plat of OAK HILL certain streets, common land and easements which are for the exclusive use and benefit of the residents of OAK HILL, 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 sewers, pipes, poles, wires.

to protect the same against certain uses by the adoption of a sound urban environment plan and scheme of restrictions, and to apply that plan and scheme of restrictions to all of said land described herein, including all common land and mutually to benefit, guard and restrict future residents of OAK HILL, and to foster their health, welfare and safety; and,

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

WHEREAS, First Party, by deed simultaneously herewith, has conveyed to the Trustees herein designated, and has established as common land, the property described herein; and,

WHEREAS, said deed conveys the property described therein to said Trustees for a period of fifty (50) years after which fee simple title to said property will vest in all the then record owners of the lots and dwelling units in the recorded plat of OAK HILL as tenants in common, but the rights of such tenants in common will only be appurtenant to and in conjunction with their ownership of lots and dwelling units in OAK HILL, and any conveyance or change of ownership of a lot or dwelling unit in OAK HILL, will carry with it ownership in common property, so that none of the owners of lots or dwelling units in OAK HILL and none of the owners of the common property will have such rights of ownership as will permit them to convey their interest in the common property except as an incident to the ownership of such lot or dwelling unit, and any sale of any lot or dwelling unit in

of the mutual promises, covenants and agreements made by the parties hereto each to the other, the parties hereto COVENANT and AGREE to and with each other, collectively and individually, for themselves, their heirs, successors and assigns, and for and upon behalf of all persons who may thereafter derive title to or otherwise hold through them, together with their heirs, successors, or assigns, any of the lots and parcels of land in OAK HILL, all as described on Exhibit "A" attached hereto and by this reference made a part hereof, as follows:

I.

RESERVATION OF EXPENDITURES.

First Party reserves the right to receive and retain any money consideration which may be refunded or allowed on account of any sums previously expended or subsequently provided by it 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 creation of OAK HILL.

II.

DESIGNATION AND SELECTION OF TRUSTEES
AND MEETINGS OF LOT OWNERS

The Trustees shall be EDWARD H. GIVENS, DAVID E. GIVENS and CHARLES D. ORMSBEE, designated herein as Trustees, who, by their signatures to this Instrument, do hereby consent to serve in such capacity, and who shall serve for terms of five (5), six (6) and seven (7) years respectively, except such term shall expire, whenever Developer shall no longer own a lot in OAK

giving notice to the remaining Trustees, or Trustee. Any successor so appointed must, however, be a lot owner in OAK HILL, or officer or agent of any corporate owner, and if such lot owners sells his or her lot, then his or her successor shall be appointed in the same manner by the remaining Trustee or Trustees.

At such time as fifty per cent (50%) of the lots of OAK HILL have been sold, Developer shall cause the resignation of one of the original Trustees and a new Trustee shall be chosen by the purchasers of the developed lots, to serve for a term of three (3) years. At such time as ninety-five per cent (95%) of the lots have been sold, Developer shall cause the resignation of the remaining initial Trustees and two (2) new Trustees shall be chosen by purchasers of the developed lots. In the event the development is not ninety-five per cent (95%) completed within five (5) years after the date of this Instrument, Developer shall cause to be replaced two (2) of the original Trustees, by the appointment of two (2) Trustees who are resident lot owners of OAK HILL.

The first three (3) appointments made after the expiration of the five (5) year period from the date of this Instrument shall be for a tenure of one (1), two (2) and three (3) years, respectively, in order to obtain continuity of trusteeship. Thereafter, all appointments shall be made for a tenure of three (3) years each. If all of the Trustees, whether herein named or hereafter appointed, resign, refuse to act, become disabled or die, so that there will be no eligible Trustee in office, then a meeting of the record owners of the fee simple

County. At such meeting or at any adjournment thereof, the majority of the record owners attending such meeting, in person or by proxy, shall have the power to elect such Trustees, who shall thereupon serve until their successors have been duly appointed or elected and qualified. At such meeting each lot owner, whether attending in person or by proxy, shall be entitled to one (1) vote for each full lot owned by him. The result of such election shall be certified by the persons elected as chairman and secretary respectively 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 lot owners called in conformity with the procedure described above. A majority of the lot owners shall constitute a quorum at the respective meeting of each.

III.

TRUSTEES' DUTIES AND POWERS

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

1. To acquire and hold the common land conveyed to Trustees by separate instrument of even date herewith, which said common land is set forth and shown on the plat of OAK HILL, all in accordance with and pursuant to the aforesaid resolution of the St. Louis County Council and in accordance with and subject to the provisions of this instrument, and to deal with any common lands so acquired under the provisions hereinafter set forth.
2. To exercise such control over the easements, streets

and 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, sewers, pipes, poles, wires and other facilities and public utilities for services to the lots shown on said plat, and the right to establish traffic rules and regulations for the usage of driveways, streets and parking lots in the plat of OAK HILL.

3. To exercise control over the common land shown on said plat and pay real estate taxes and assessments on said common land out of the general assessment herein provided; to maintain and improve same with shrubbery, vegetation, decorations, buildings, recreational facilities of any kind or description, other structures, and any and all other types of facilities in the interest of health, welfare, safety, morals, recreation, entertainment, education, and general use of the owners of lots in OAK HILL, all in conformity with applicable laws; and to prescribe by reasonable rules and regulations, the terms and conditions of the use of common land, all for the benefit and use of the owners of the lots in OAK HILL and according to the discretion of the Trustees.

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

5. To grant easements for public streets, sewers and

provision is intended to be cumulative and not to restrict the right of any lot owner to proceed in his own behalf, but the power and authority herein granted to the Trustees is intended to be discretionary and not mandatory.

7. To clean up rubbish and debris and remove grass and weeds from and to trim, cut back, remove, replace and maintain trees, shrubbery and flowers upon any vacant or neglected lots or property, and the owners thereof may be charged with the reasonable expenses so incurred. The Trustees, their agents or employees shall not be deemed guilty or liable for any matters of trespass or any other act for any such injury, abatement, removal or planting.

8. To consider, approve or reject any and all plans and specifications for any and all buildings or structures, fences, detached buildings, outbuildings, accessory buildings, swimming pools or tennis courts proposed for construction and erection on said lots, proposed additions to such buildings or alterations in the external appearance of buildings already constructed, it being provided that no buildings or structures, fences, detached buildings, outbuildings, accessory buildings, swimming pools, tennis courts or other structures may be erected or structurally altered on any said lots unless there shall be first had the written approval of a majority of the Trustees to the plans and specifications therefor and to the grade proposed therefor. In the event the Trustees fail to approve or disapprove within thirty (30) days after building plans or other specifications for fences, swimming pools or tennis courts, accessory buildings and other outbuildings have been submitted to them hereunder,

upon completion of the project, all debris shall be removed from the site and from adjacent lots, and that any and all damages to subdivision improvements shall be repaired.

10. To establish rules and regulations for the operation of recreational facilities and swimming pool, if the same are provide in common areas and employ personnel to supervise and operate the same. The regulations shall include the conditions under which residents may entertain guests in such facilities, including the charges to residents for such guests.

11. To purchase and maintain in force liability insurance protecting the Trustees and lot owners from any and all claims for personal injuries and property damage arising from use of common areas and facilities.

12. 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, servants and labor as they may deem necessary, to employ counsel to institute and prosecute such suits as they may deem necessary or advisable, and to defend suits brought against them individually or collectively in their capacity as Trustees.

13. In the event it shall become necessary for any public agency to acquire all or any part of the common land for a public purpose, the Trustees are hereby authorized to negotiate with such public agency for such acquisition and to execute instruments necessary to that purpose. Should acquisition by eminent domain become necessary, only the Trustees need be made parties, and any proceeds received shall be held by the Trustees for the benefit

for such purposes, shall not be limited to the maximum assessment provided for herein.

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

IV.

ASSESSMENTS

The Trustees and their successors in office are hereby authorized, empowered, and granted the right to make assessments upon and against lots in OAK HILL for the purposes herein stated and at the rate hereinafter provided, and in the manner and subject to the provisions of this instrument:

1. (a) The Trustees and their successors in office are authorized to make uniform annual assessments in an amount not to exceed Fifty and no/100 Dollars (\$50.00) per lot in each calendar year upon and against each lot in OAK HILL, upon which a residence has been constructed and sold either by First Party or by any other builder for the purpose of carrying out any and all of the general duties and powers of the Trustees hereunder and for the further purpose of enabling the Trustees to defend and enforce restrictions, adequately to maintain streets, if

shall be levied prior to December 31st in the year prior to 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 the owner and deposited in the United States mail with postage prepaid, or by the posting of a notice of the assessment upon the residence against which it applies by said December 31st. Each annual assessment shall be due on March 1st following and shall become delinquent if not paid by April 1st.

(b) In addition to the foregoing authority to make a uniform annual assessment for the purpose of carrying out their general duties and powers, should a recreation facility and/or a swimming pool be located in the subdivision; the Trustees shall levy a uniform annual assessment against each completed single family residence for maintenance and operation of such recreational facility and/or swimming pool, PROVIDED, HOWEVER, that no such assessment shall be levied until the facility and/or pool have been completed and no part of such assessment shall be expended in payment for the original construction. The Trustees are further authorized to obtain additional funds through dues to be paid by those residents of OAK HILL who elect to use the facility and/or pool.

(c) 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 owners of residences. If such assessment is approved, either at a meeting of the owners of residences called by the Trustees, by fifty-five per cent (55%) of the votes cast in person

made, shall be entitled to vote on any question. The limit of the annual assessments for general purposes as set forth in (1) (a) above, shall not apply to any assessment made under the provisions of this paragraph. Notice of such special assessment 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.

(d) Should a residence 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 residence shall be charged with a portion of the assessment prorated for the balance of that year.

2. All assessments shall bear interest at the rate of eight per cent (8%) per annum from the date of delinquency and such assessment, together with interest, shall constitute a lien upon the property against which it is assessed until the amount, together with interest and charges, is fully paid. As an assessment becomes delinquent, the Trustees may execute and acknowledge an instrument reciting the levy of the assessment and cause the same to be recorded in the Recorder's Office of St. Louis County, Missouri. Such assessment may be enforced in the same manner as is provided by law for the enforcement of special tax liens against real estate, except that such assessments shall not have priority over existing mortgages or deeds of trust. Should an owner pay an assessment after the recording of a notice thereof, as herein provided, the Trustees shall release said lien.

3. The Trustees shall deposit the funds coming into

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

V.

INDENTURE OF RESTRICTIONS

First Party being the owner of the real estate described on Exhibit "A" attached hereto, being all the property included in the plat of said OAK HILL by this Indenture does impose upon all lots and common land in OAK HILL the following restrictions and conditions, to-wit:

1. Land Use and Building Type: All lots in OAK HILL shall be used for single family residential purposes, and no building shall be erected, placed, altered or permitted to remain on any of said lots other than single-family residences not to exceed two stores in height.

2. Dwelling Cost, Quality and Size: The construction cost of each single-family dwelling in OAK HILL shall not be less than Twenty-Five Thousand Dollars (\$25,000.00) based on building costs prevailing on the date these covenants are recorded, and shall be of such quality, workmanship and design and shall be constructed of such materials as will maintain the subdivision at first class single-family residential area. The determination as to whether these standards of cost, quality, workmanship, design and materials are satisfactory shall be made by the Board of Trustees. Exclusive of garages and open porches, there shall be not less than 700 square feet on the ground floor of a one-story dwelling, not less than 650 square feet on the main floor

as may be modified by any variances granted by the St. Louis County Board of Adjustment.

4. Easements: The easements shown on the recorded plat for installation and maintenance of utilities and drainage facilities are hereby reserved and the same shall run with the land.

5. Entrance Way: The Board shall maintain the entrance way or ways into the subdivision and pay the cost of electricity consumed for lighting such entrance way or ways and the streets in the subdivision.

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

7. Livestock and Poultry: No animals, livestock or poultry shall be raised, bred or kept on any lot, EXCEPT THAT, household pets, in limited numbers, may be kept provided they are not maintained for any commercial purpose.

8. Fences: No fences or screening shall be erected or maintained on any lot between the building set-back lines and the street upon which that lot fronts. Fences may be maintained on other portions of lots only with written consent of the Trustee

islands, or median strips, without the written approval of the Department of Highways and Traffic.

VI.

TERM AND AMENDMENTS

These indentures, restrictions and other provisions shall run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded, after which time these covenants shall be automatically extended for continuing successive terms of ten (10) years, each, unless an instrument, signed by the then owners of a majority of the lots in OAK HILL has been recorded, agreeing to change these covenants in whole or in part. Any amendments so adopted prior to the completion of the development, shall be reviewed and approved by the Director of Planning of St. Louis County, Missouri.

VII.

SEVERABILITY

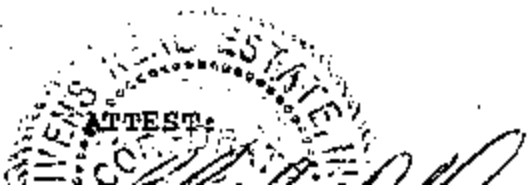
Invalidation of any one of the covenants of this Indenture shall in no way affect any other provision hereof.

IN WITNESS WHEREOF, First Party has executed this Indenture this 15th day of February, 1978.

GIVENS REAL ESTATE, INC.

By:

Edward H. Givens
EDWARD H. GIVENS

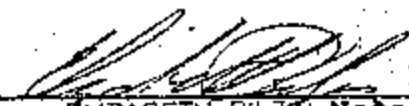


STATE OF MISSOURI)
) SS.
COUNTY OF ST. LOUIS)

On this 15th day of February, 1978, before me personally appeared EDWARD H. GIVENS, to me known, who, being by me first duly sworn, did say that he is the President of GIVENS REAL ESTATE, INC., a Missouri Corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation, by authority of its Board of Directors; and EDWARD H. GIVENS acknowledged said instrument to be the free act and deed of said corporation.

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



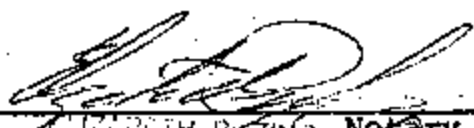

ELIZABETH BLINN, Notary Public
St. Louis County, Missouri

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

On this 15th day of February, 1978, before me personally appeared EDWARD H. GIVENS, DAVID E. GIVENS and CHARLES D. ORMSBEE, to me known, who, being by me first duly sworn, did say that they executed the foregoing instrument as Trustees, and by affixing their signatures thereto, they consented to act in such capacity and did so as their free act and deed.

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




ELIZABETH BLINN, Notary Public
St. Louis County, Missouri