

INDENTURE OF TRUST AND RESTRICTIONS OF SHADOWOAK  
ST. LOUIS COUNTY, MISSOURI

77 SEP 12 PM 3:04

THIS INDENTURE, MADE and ENTERED INTO this 12<sup>th</sup>

*Wm E. Faulk*  
RECORDER OF DEEDS

day of September, 1977, BY and BETWEEN THE ROLWES CO.,  
INC., a Missouri corporation, "First Party," and EDWARD A.  
ROLWES, WILLIAM SHOOP, and LAWRENCE E. ROLWES, all of St.  
Louis County, Missouri, "Trustees":

WITNESSETH THAT:

WHEREAS, the subject property is located within the unincorporated area of St. Louis County and is subject to the various ordinances of that governmental body; and,

WHEREAS, First Party has recorded the plat of Shadowoak, on this 12<sup>th</sup> day of September, 1977, as Daily No. 367 in the St. Louis County Recorder's Office; and,

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

WHEREAS, there may be designated, established and recited on the recorded plat of Shadowoak, certain streets, common land and easements which are for the exclusive use and benefit of the residents of Shadowoak, 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 construction, maintaining and operating, sewers, pipes, poles, wires, storm water drainage, parks and other facilities and public utilities for the use and benefit of the residents of Shadowoak; and,

WHEREAS, it is the purpose and intention of this Indenture to preserve said tract of land as a restricted neighborhood and to protect the same against certain uses by the adoption of a sound urban environment plan and scheme 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 Shadowoak, and to foster their health, welfare and safety; and,

WHEREAS, all reservations, limitations, conditions, easements and covenants herein contained, and all of which are sometimes hereinafter termed "restrictions," are jointly or 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 Shadwoak, 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 Shadwoak, and any conveyance or change of ownership of a lot or dwelling unit in Shadwoak, will carry with it ownership in common property, so that none of the owners of lots or dwelling units in Shadwoak, 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 Shadwoak, will 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 of Shadwoak, shall continue to be exercised by the Trustees.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, covenants and agreements made by the parties hereto each to the other, the parties hereto COVENANT and AGREE to and with each other, collectively and individually, for themselves, their heirs, successors and assigns, and for and upon behalf of all persons who may 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 Shadwoak, all as described herein as follows, to-wit:



I.

RESERVATION OF EXPENDITURES

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

II.

DESIGNATION AND SELECTION OF TRUSTEES

AND

MEETINGS OF LOT OWNERS

The Trustees shall be Edward A. Rolwes, William Shoop, and Lawrence E. Rolwes, 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 5, 6 and 7 years respectively, except such terms shall expire whenever Developer shall no longer own a lot in the plat of Shadwoak, if such occurs earlier, than the expiration of said terms. Whenever any Trustee resigns, refuses to act, becomes disabled or dies, the remaining Trustees or Trustee shall have the power to appoint a successor or successors for the unexpired portions of their terms by duly written recorded instrument. Any Trustee shall have the right to resign at any time upon giving notice to the remaining Trustees or Trustee. Any successor so appointed must, however, be a lot owner in the plat of Shadwoak, or officer or agent of any corporate owner, and if such lot owner sells his or her lot, then his or her successor shall be appointed in the same manner by the remaining Trustees or Trustee.

At such time as fifty percent (50%) of the lots have been sold in the development of the plat of Shadwoak, 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 percent (95%) of the lots have been sold, Developer shall cause the resignation of the remaining initial Trustees and two new Trustees shall be chosen by purchasers of the developed lots. In the event the development is not ninety-five percent (95%) completed within five years after the date of this instrument, Developer shall cause to be replaced two of the original Trustees by the appointment of two Trustees who are resident lot owners of the plat of Shadowoak.

The first three appointments made after the expiration of the five-year period from the date of this instrument shall be for a tenure of one, two and three years respectively in order to obtain continuity of trusteeship. Thereafter, all appointments shall be made for a tenure of three 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 title of all lots according to the plat of Shadowoak shall be called upon notice signed by at least three such lot owners, sent by mail to or personally served upon, all of such record owners, at least ten (10) days before the date fixed for the meeting, for the purpose of electing new Trustees. The said notice shall specify the time and place of meeting and shall be in St. Louis 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 vote for each full lot owned by him or her. 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 plat of Shadowoak 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 on even date herewith, which said common land is set forth and shown on the plat of Shadowoak, all in accordance with and pursuant to the aforesaid ordinances of St. Louis County 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 control over the easements, streets and roads (except for those easements, streets and roads which are now or may hereafter be dedicated to public bodies or agencies), entrances, lights, street lights, gates, common ground, park areas, shrubbery, grassed and shrubbed areas within cul-de-sacs, islands, lakes and entrance markers, storm water sewers, sanitary sewer trunks and lateral lines, pipes, and disposal and treatment of facilities as may be shown on the plat of Shadowoak 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 itself and others to whom it may grant permission) to construct, operate and maintain on, under and over said easements and streets, sewers, street lights, pipes, poles, wires and other facilities and public utilities for services to the lots shown on said plats, and the right to establish traffic rules and regulations for the usage of driveways, streets and parking lots in the plat of Shadowoak.



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

4) To dedicate to public use any private streets or street 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 utilities on and over the common land hereinafter described.

6) 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 covering the use of said common land or any matters relating thereto. This provision is intended to be cumulative and not to restrict the right of any lot owner to proceed in his own behalf, but the power and authority herein granted to the Trustees is intended to be discretionary and not mandatory.

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 matter 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 of 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, approval will not be required and the related restrictions shall be deemed to have been fully complied with.

9) To require a reasonable deposit in connection with the proposed erection of any building or structure, fence, detached building, outbuilding, swimming pool, tennis courts, or other structures on any of said lots in order to provide that 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 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.

11) 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.

12) 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 of those entitled to the use of said common land.

13) Notwithstanding any other conditions herein, the Trustees shall make suitable provisions for compliance with all subdivision and other ordinances, rules and regulations of St. Louis County or any municipality of which the subdivision may become a part, including but not limited to street lights and 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 Shadowoak, 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 Shadowoak, 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 Dollars (\$50.00) per lot in each calendar year upon and against each lot in Shadowoak, 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 required, common land, utilities, parking spaces, entrance gates and trees, and to dispose of garbage or rubbish, to perform or execute powers or duties provided for in this instrument, or otherwise properly to protect the health, safety and general welfare of the residents of Shadowoak. Each annual assessment 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.



(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 to the contemplated project and the amount of the assessment required, to the then owners or residences. If such assessment is approved, either at a meeting of the owners of residences called by the Trustees, by fifty-five percent (55%) of the votes cast in person or by proxy, or on written consent of fifty-five percent (55%) of the total votes, the Trustees shall notify all owners of the additional assessment; PROVIDED, HOWEVER, that in determining such required fifty-five percent (55%) majority, each owner of a single family residence shall be entitled to one (1) full vote, except that only those who have paid all assessments theretobefore 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 a 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 percent (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, Mis-



souri. 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 their hands as Trustees in a bank protected by the Federal Deposit Insurance Corporation or in a savings and loan association protected by the Federal Savings and Loan Insurance Corporation, the treasurer, who shall be elected from the Trustees by the Trustees, being bonded for the proper performance of his duties in an amount fixed by the Trustees.

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 following described real estate lying and being situated in St. Louis County, Missouri, and being more particularly described as:

*All* Lots ~~through~~ ~~inclusive~~ and all common ground of Shadwoak, a Subdivision in St. Louis County,

being all the property included in the plat of said Shadwoak, by this Indenture does impose upon all lots and common land in Shadwoak, the following restrictions and conditions, to-wit:

1) Term: These restrictions 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 Shadwoak, 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.



2) Land Use and Building Type: All lots in Shadowoak, 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 stories in height.

3) Dwelling Cost, Quality and Size: The construction cost of each single family dwelling in Shadowoak, shall not be less than Twenty Thousand Dollars (\$20,000.00) 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 as 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 900 square feet on the ground floor of a one-story dwelling, not less than 900 feet square feet on the ground floor of a one and a half story, and not less than 900 square feet on the ground floor of a two-story dwelling.

4) Placement of Improvements: Residence buildings shall be placed on lots only in the manner approved by the Trustees, with the front and side building set-back lines being at least those required by St. Louis County Zoning ordinances for the subdivision.

5) Easements: The easements shown on the recorded plat for installation and maintenance of utilities and drainage facilities are hereby dedicated and reserved for the purposes shown in said plat and shall run with the land.

6) Entrance Way: The Trustees 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.

7) Signs: No signs shall be erected or displayed in public view on any lot except one (1) sign, not larger than five (5) 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.

8) 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.

9) 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 Trustees as to locations, materials used and height of fence. The decision of the Trustees shall be conclusive.

10) Nuisances: No noxious or offensive activity shall be carried on, on any lot, nor shall anything be done thereon which may be or become a nuisance or annoyance.

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

12) No above ground structure, other than required street lights, may be erected within a cul-de-sac, divided street entry islands, or median strips without the written approval by the Department of Highways and Traffic.

13) Nothing contained herein to the contrary withstanding, whenever any matter requires a vote of the lot owners, each lot shall be entitled to only one (1) vote even if there are multiple owners of a lot.

IN WITNESS WHEREOF, the undersigned First Party has executed this Indenture this 12th day of September, 1977.

(SEAL)

THE ROLWES CO., INC.

By: Edward A. Rolwes  
President



Barbara Rolwes  
Secretary



Edward A. Rolwes  
Trustee

Clarence E. Rolwes  
Trustee

William A. Sharp  
Trustee

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

On this 12th day of SEPTEMBER, 1977, before me personally appeared EDWARD A. ROLWES, to me known, who, being by me first duly sworn, did say that he is the President of THE ROLWES CO., 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 Trustees; and EDWARD A. ROLWES 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.

Lorraine Kinsey  
Notary Public  
Lorraine Kinsey





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

On this 12th day of SEPTEMBER, 1977, before me personally appeared EDWARD A. ROLWES, WILLIAM SHOOP and LAWRENCE E. ROLWES, 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 official seal in the County and State aforesaid, the day and year first above written.



*Loraine Kinsey*  
Notary Public  
Loraine Kinsey

210