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NEW GOVERNING DOCUMENTS BENEFITS AND CHANGES

Why Change? At its heart, the governing documents of a community association is a contract between yourself, your neighbor, and the Association. A contract can be flawed for many reasons with the most common in community associations being: (1) failure or difficulty to adapt, (2) failure to ensure financial stability of the Association, (3) lack of tools for enforcement, (4) lack of depth/foresight, and (5) failure to be consistent with what the community wants. The purpose of this memorandum is to highlight some of the particular benefits of the new documents and, hopefully, avoid the need to perform a full-scale replacement ever.

Owner Protections. Under the Indenture, the Board of Trustees have the sole authority to make some very important decisions *without any input* from owners. The New Documents re-balance this by: (1) empowering the owners more input and oversight through notices and opportunities to reject, say, an increase in assessments, and (2) provide notice and comment before the Board can adopt rules that may impact you.

Further, the New Documents are more comprehensive on many procedures eliminating your need to hire an attorney to merely know how to: (1) access books and records, (2) call a special meeting, (3) understanding enforcement, and (4) administering applications for alterations.

The New Documents also act as a defense. By requiring the Association to have insurance consistent with industry best practices and limitations of liability, the New Documents reduce unanticipated financial risks related to personal injuries that might otherwise result in risk to each owner individually.

Community Standards. While the New Documents are based upon objective models (listed below) and ensure a strong legal foundation, it is imperative that the New Documents reflect the wishes of the community on those community standards that address conduct in your community such as pets, parking, signs, leasing, fences/sheds and other alterations.

In our experience, the vast majority of owner concerns are related to these topics, which, appropriately so, our office is dispassionate about since the New Documents must reflect your community. The draft of the New Documents being shared at this time

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reflect what our office believes to be consistent with what we saw when we visited your community with some insight from the Board. After all, we need to start somewhere.

In sum:

- **Single-Family Use and Occupancy.** No changes were made but the language has been updated to reflect the changes in society.
- **Leasing.** You can lease your home as you can today. The New Documents have some new regulations to ensure that we have the information we need in the event of an emergency as well as contact your for violations that you might not otherwise be aware of.
- **Pets.** Each resident is to be a responsible pet owner (leash in-hand and pickup pet waste) and comply with ordinance.
- **Signs.** In our experience, it is easier to have a general rule prohibiting something and then provide exceptions. Signs are prohibiting except for public notices, association signs, political signs, and for sale signs. For lease signs are not permitted.
- **Parking.** Most community associations have difficulty with parking particularly if the community has many new drivers. Finding the right balance can be difficult and, with ever increasing sizes of emergency vehicles, tougher. Consistent with ordinance, certain vehicles must be parked inside your garage and no derelict or inoperable vehicles are prohibited. Through input from owners (and first responders), the Association may regulate or prohibit parking via rulemaking.
- **Sheds, Storage.** So long as they are consistent with ordinance and you obtain prior approval from the Board, you can have a shed, exterior storage or other improvements on your lot.

Approval of Colors? A simple online search will find you numerous news stories of over-zealous and simply unneighborly disputes of homeowners' associations. Most stem from necessary approvals required to make a change to the physical appearance of the community.

The New Documents take a new approach. First, we purposefully located the application process (Article XI of the Declaration) and what alterations are, and are not permitted (Exhibit B of the Declaration) in one-spot. No more flipping from page to page just to discover that you can't build a ten foot fence. Second, we make a distinction between "Major" alterations and "minor" alterations. We may typically think of major and minor in terms of size or scope. The New Documents make the distinction between major and minor based solely upon the extent of the Board's review. Minor alterations are those where the Board wishes to approve solely for the purpose to ensure that the alteration has nominal impacts on neighbors such as where the contractors may park or where a dumpster may be located. Major alterations are those that would have a larger impact on the physical appearance, aesthetics and other properties such as an addition or installation of a new deck.

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Apathy and Changing our Mind. Let's say in five years, the community wishes to allow chain-link fences. The New Documents provide the community the ability to change its mind without being overly burdensome by placing increased emphasis on participation—if you are unwilling to complete a ballot, then should the community suffer?

To counter-balance the need to safeguard against apathy, we make it easier for owners to participate by expressly authorizing absentee balloting system for voting that would be used as a replacement for proxies.

Financial Accountability. Sadly, it is common for owners to not pay their assessment because: (1) perception that the Association 'doesn't do anything,' or (2) personality conflicts or prior disputes. Both are not legal defenses and only further damage the community resulting in higher assessments and, potentially, expensive attorney fees. Given the rate of assessment for your community and home values, the inability to pay is likely an issue for a very small number of owners.

The New Documents provide additional protection that assessment would be paid by enhancing the Association's authority to foreclosure its lien and, for future liens against a home such as a mortgage, such the Association's lien to be superior to all other liens except for unpaid taxes. This ensures that the Association would recover in full in the event the owner declares bankruptcy or is foreclosed upon by his or her mortgage company.

Objective Models. Here is a list of objective models that we relied upon in drafting the New Documents: the Uniform Common Interest Owners Act ("UCIOA"), UCIOA Bill of Rights, the Uniform Planned Community Act, the Missouri Uniform Condominium Act ("Condo Act") (adopted in Missouri in 1983) and the proposed version of the Uniform Condominium Act ("UCA"). We also look to: (1) the Missouri Nonprofit Corporation Act ("NCA"), Restatement (Third) of Property: Servitudes ("Restatement"), federal and state case law ("Case Law"), trends in the industry including proposed legislation in Jefferson City ("Trends"), and best practices ("Best Practices") as advocated by Community Associations Institute ("CAI"), an international trade organization for homeowners and board members (CAI can be visited online at www.caionline.org).