

Boone County, Missouri



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Nora Dietzel
Nora Dietzel, Recorder of Deeds



Title of Document: Restrictive Covenants
(SOUTH WIND, PLAT 4)

Date of Document: December 5, 2019

Grantor/Grantee: WINSCOTT CONSTRUCTION AND EXCAVATING,
INC., a Missouri corporation

Legal Description:

Lots 401 through 432 and Common Area Lot C433 of the South Wind Plat 4, recorded in Book 52, Page 55, Deed Records of Boone County, Missouri.

Nora Dietzel, Recorder of Deeds

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RESTRICTIVE COVENANTS

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the undersigned are the owners of the following described Thirty-Three (33) tracts of real estate situated in Boone County, Missouri, to-wit:

Lots 401 through 432 and Common Area Lot C433 of the South Wind Plat 4, recorded in Book 52, Page 55, Deed Records of Boone County, Missouri.

WHEREAS, the undersigned desires to place the covenants and restrictions contained herein upon all of the above described tracts for its benefit and for the benefit of all future owners of said tracts; and

WHEREAS, the undersigned desires that said covenants and restrictions shall constitute covenants running with the land and the present and all future successive owners of said tracts shall have the right to invoke and enforce said restrictions;

NOW, THEREFORE, the undersigned does hereby impose the covenants and restrictions herein set out on all of the above described tracts, which covenants and restrictions shall be considered as covenants running with the land whether or not the same are mentioned in subsequent conveyances, and said covenants and restrictions shall be binding upon the undersigned and its successors in title to the above described tracts and to its successor and assigns forever, to-wit:

USE RESTRICTIONS

1. That no manufactured home, mobile home, house trailer or modular home shall be located on any tract regardless of whether or not the same is located on a permanent foundation.
2. That no partially dismantled, nonoperating, wrecked, junked or discarded vehicle or equipment of any kind shall be located on any tract.
3. That no commercial dog kennel shall be permitted on any tract; no

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commercial feed lot shall be permitted on any tract and no commercial confined feeding of poultry shall be permitted on any tract.

4. No livestock, reptile or other animal shall be raised, kept or bred on any tract, except (a) that dogs, cats and other household pets may be kept provided the same are not kept, bred or maintained for any commercial purpose, (b) that not more than two (2) equine for each five (5) acres of land may be kept on a tract, and (c) that not more than one animal, being either a bovine, swine, a hog, a sheep or a goat for each five (5) acres of land may be kept on a tract. Any aforesaid animal kept on a tract must be kept under sanitary conditions and shall not constitute a nuisance to the owner or occupant of any other tract.

5. That chickens, ducks and other poultry may be kept on a tract provided the same are not kept, bred or maintained for any commercial purpose and except not more than ten (10) in the aggregate of said domesticated fowl may be kept on a tract and except no roosters shall be kept on any tract. Any domesticated fowl kept on a tract must be kept under sanitary conditions and shall not constitute a nuisance to the owner or occupant of any other tract.

6. That no dog shall be kept or maintained on any tract which barks causing disturbance to the occupant of any other tract, except no vicious dog shall be kept or maintained on any tract.

7. That no tract shall be used or maintained as a dumping ground, and no rubbish, trash or garbage shall be kept on the premises of any tract except in sanitary containers. All containers or other equipment for the storage or disposal of such materials must be kept in a clean and sanitary condition and the contents of said containers must be removed from the premises at least once each week.

8. That no household trash, household waste or household garbage shall be burned on a tract but such does not preclude the burning of natural vegetation and yard waste.

9. That no sewage disposal system of any kind shall be located on any tract unless the same complies with all rules, regulations, ordinances and laws applicable to the same and no sewage lagoon shall be located on any tract without prior written consent of the Architectural Control Committee.

10. That no two-wheel, three-wheel, four-wheel or greater numbered wheel recreational vehicle (motorcycle, moped, powered scooter, powered tricycle, or motor bike) may be operated on any tract or the roadways leading to a tract for recreational purposes in a manner which disturbs the peace of the occupant of any

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other tract. All such vents must have a suitable muffler so as to provide for quiet operation.

11. That no illegal, noxious, or offensive activity shall be carried on upon any tract, nor shall anything be done thereon which may become an annoyance or nuisance to a neighbor or the neighborhood.

ARCHITECTURAL CONTROL

12. No dwelling, garage, building, fence, wall, exterior light pole, communication tower, satellite dish exceeding thirty-five inches (35") in diameter, gazebo or other structure or improvement shall be erected, constructed, placed or altered on any tract unless the plans and specifications therefor have been approved by the Architectural Control Committee. The person desiring to do any of the foregoing shall submit plans and specifications for the same to the Architectural Control Committee showing elevations, designs, floor plan dimensions, color of roof, color of exterior walls, construction materials and other necessary data to enable the committee to determine if said dwelling, garage, building, fence, wall, exterior light pole, communication tower, satellite dish, gazebo or other structure or improvement is compatible with these restrictions and the other improvements located on the other tracts in the vicinity of said tract. The approval or disapproval of said plans and specifications by the Architectural Control Committee shall be in writing. In the event the committee or its designated representative shall fail to approve or disapprove said plans and specifications in writing with thirty (30) days after receipt of the same and in the event no suit to enjoin the construction of any said improvement has been commenced prior to the completion of the same, no approval of said plans and specifications shall be required.

13. The initial Architectural Control Committee shall be composed solely of KEITH WINSKOTT. The Architectural Control Committee may designate in writing a representative to act for it. So long as WINSKOTT CONSTRUCTION AND EXCAVATING, INC., a Missouri corporation, is the owner of a tract subject to these Restrictive Covenants, WINSKOTT CONSTRUCTION AND EXCAVATING, INC., a Missouri corporation, shall have the right to remove any member of the committee, to designate the new member or members of the committee, to change the number of members of the committee and to assign all of its rights under this paragraph to any other person or entity by a written assignment specifically referring to the provisions of this paragraph. In the event of the death, resignation or removal of any member of the committee, WINSKOTT CONSTRUCTION AND EXCAVATING, INC., a Missouri corporation, shall designate the successor member

or members of the ~~committee~~ Unofficial Document

After WINSKOTT CONSTRUCTION AND EXCAVATING, INC., a Missouri corporation, no longer owns any of the tracts subject to these Restrictive Covenants, the Architectural Control Committee shall be elected by the owners of all of the tracts subject to these Restrictive Covenants, with the owners of each tract having one (1) vote for each tract owned and the owners of a tract shall have the right to vote by proxy. The new committee shall be composed of three (3) members, with one member elected for a term of one (1) year, one member elected for a term of two (2) years, and one member elected for a term of three (3) years with separate election to be held for each of the three members, and then each year thereafter as the term of a member expires one member shall be elected annually on the first Monday of May to serve for a period of three (3) years. A member of the successor committee must be an owner of a tract subject to these Restrictive Covenants. In the event of death, resignation or disqualification of any member or the successor committee elected thereafter, the owners of the tracts subject to these Restrictive Covenants shall elect a successor committee member voting as above mentioned. Any owner of a tract may call a meeting of the owners of the tracts subject to these Restrictive Covenants for the purpose of electing the new committee and for the purpose of electing a new committee member in the event of death, resignation or disqualification of any member of the committee.

No member of the Architectural Control Committee shall receive any compensation for services performed.

ASSOCIATION

14. The Developer shall cause to be incorporated a not-for-profit corporation under the laws of the state of Missouri to be known as SOUTH WIND HOMEOWNERS ASSOCIATION, a Missouri not-for-profit corporation, (or such other names selected by the undersigned in the event said name is not available), referred to herein as "Association" and the Association shall have the right, power and authority to own, control, operate, repair and maintain the common areas shown on the above described plat of SOUTH WIND, Plat 4, and on any plat of any of the real estate hereafter annexed to this Declaration as provided herein and to use the same for such purposes as the Association shall deem appropriate, and to perform the purposes set out in this Declaration.

15. Each owner of a Lot subject to this Declaration shall be a member of the Association. The membership appurtenant to any Lot shall not be separated from ownership of said Lot.

16. The Association shall be governed by a Board of Directors, which shall consist of three (3) Directors appointed by the Developer either until such time that the Developer has sold and conveyed title to all of the Lots subject to this Declaration (being the above described Lots and any other Lots hereafter subjected to the provisions of this Declaration) or until the time that Developer has recorded in the office of the Recorder of Deeds of Boone County, Missouri a renunciation of its right to continue to appoint the members of the Board of Directors, whichever first occurs. Thereafter the Directors shall be elected by the members of the Association who shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members and shall have one vote for such Lot which shall be exercisable as the owners of the Lot may determine but in no event shall more than one vote be cast with respect to any Lot.

17. After the Developer no longer has the right to appoint the members of the Board of Directors of the Association, the Board shall initially have one Director serving a three (3) year term, one Director serving a two (2) year term and one Director serving a one (1) year term. Each year one new Director shall be elected to a three (3) year term so as to maintain a total membership on the Board of three (3). The election of Directors and the conduct of all affairs of the Association, shall be in accordance with the Articles of Incorporation and the By-laws established by the Directors of the Association, insofar as such By-laws do not conflict with the provisions of this document and in case of conflict the provisions of this document shall control.

18. For operational purposes, the Board shall appoint a President, Treasurer, and Secretary of the Association, who shall each be members of the Association.

19. After the Developer no longer has the right to appoint the members of the Board of Directors of the Association, the members of the Association shall have the right by majority vote to modify, amend or revoke any decision of the Board of Directors of the Association and shall have the right by majority vote to make any and all decisions of the Association.

ASSESSMENTS

20. Each owner of a Lot by acceptance of a deed, contract for deed or other form of conveyance therefor, whether or not it shall be so expressed in any such deed, contract or other conveyance, shall be deemed to covenant and agree to pay to the Association annual assessments, which are initially One Hundred Fifty

Dollars (\$150.00), and special assessments to be established and collected from time to time as hereinafter provided.

21. The annual assessments and special assessments, together with interest thereon and costs of collection as hereinafter provided, shall be a lien upon the Lot against which such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof as herein provided, shall also be the personal obligation of the person who was the owner of such Lot at the time the assessment was imposed.

22. The assessments of the Association shall be assessed equally against each Lot and the owner(s) thereof which is subject to assessment as provided herein. The Association is hereby empowered to make and collect during each year from the owner(s) of each Lot an assessment in a sum sufficient for the purposes stated herein, along with a reasonable balance for the purpose of unanticipated expenses. Special assessments shall be made and collected by the Association as required for the purpose set forth in this document.

23. The annual assessments of the Association shall be for the calendar year and shall be due on January 31st of each year. If any assessment is not paid on the due date, then such assessment shall become delinquent and shall, together with interest and costs of collection, thereupon become a continuing lien on the Lot which shall bind such property in the hands of the owner, and said owner's heirs, devisees, personal representatives and assigns. The Association may file a notice of lien with the Boone County Recorder of Deeds for delinquent assessments. The personal obligation of the then owner to pay such assessment, however, shall remain said owner's personal obligation and shall also pass to and be the personal obligation of said owner's successors in title to the Lot.

24. If any assessment is not paid when due, the assessment shall bear interest from the date of the delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or an action to foreclose the lien against the property, or both, and there shall be added to the amount of such assessment and interest the reasonable attorney fees incurred in collection. No owner may waive or otherwise escape liability for the assessment provided for herein by claiming nonuse of the benefits for which the assessment is imposed.

25. The lien of any assessment provided for herein shall be subordinate to the lien of any deed of trust now or hereafter placed upon a Lot subject to assessment; provided however, that such subordination shall apply only to the assessments which have become due and payable prior to the date of sale or transfer of such property pursuant to a foreclosure, or any other proceedings in

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lieu of foreclosure. Such sale or transfer shall not relieve the personal obligation of the property owner for the assessments coming due during the time he, she or it owned the Lot.

26. Despite owning a Lot, unless a builder occupies or leases a dwelling built upon a Lot, the builder is not required to pay the annual or special assessments associated with that Lot for the remainder of the calendar year the Lot was acquired and for the following year.

27. The Developer shall not be required to pay annual or special assessments on Lots owned by the Developer.

28. The annual and special assessments shall be assessed and used for the purposes of the Association including but not limited to the following:

- a. To control, operate, maintain, repair, alter, and improve any common areas.
- b. To maintain storm water detention facilities.
- c. To install, replace, remove, trim, cultivate, fertilize, irrigate, mow and maintain the trees, shrubs, ground cover, plantings and other landscape materials of all types and kinds in the common areas.
- d. To maintain such insurance on the common areas and other property owned and/or controlled by the Association (including liability insurance) as the Association deems appropriate.
- e. To pay any and all taxes and assessments levied, if any, upon all property owned and/or controlled by the Association.
- f. To carry out and exercise all of its rights, powers and duties and to perform all of its obligations as set out herein.
- g. To enforce all of the provisions of this document and to pay the expense of enforcing the provisions, including attorney fees and court costs.

COMMON AREA

29. The Developer will convey to the Association the title to and will cause the Association to acquire title to the common area shown on the above described plat of SOUTH WIND, PLAT 4, being the "common areas" referred to herein.

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30. The Association shall have upon its own control, operate, maintain and retain title to said common areas for the use and benefit of the owners of all of the Lots. The Association shall use the common areas as a park area, as a recreational area and for such other uses as the Association deems appropriate.

31. The Association shall have the right, power and authority to acquire title to the common area within any of the Annexation Real Estate described below and to use the same as common area.

ANNEXATION REAL ESTATE

32. The Developer may at any time hereafter by written Declaration recorded in the Office of the Recorder of Deeds of Boone County, Missouri, make all or any part of any tract of land, with the written consent of the owner of said real estate, subject to the provisions of this Declaration, and in such event, each platted Lot thereon shall be designated either as a Lot or as common area, and in such event each Lot shall be subject to and be deemed a part of this Declaration and the owners of each said Lot shall be subject to, be bound by and be deemed a part of this Declaration, including the Building Covenants contained herein, and the owners of each said Lot shall be a member of the Association and shall be entitled to all of the benefits contained herein, including the same right of the owners of all other Lots to use the common areas referred to herein, and each Lot and the owners thereof shall be subject to assessment by the Association and shall be bound by all of the provisions contained herein regarding the Association with all of the benefits and all of the obligations as a member of the Association.

ENFORCEMENT

33. The Developer, the Association and/or the owner of any Lot subject to this Declaration may enforce this Declaration and the provisions herein and shall have the right to proceed in law or in equity or both, against any person or persons violating or attempting to violate any of the provisions of this Declaration, either to restrain violation or to restore damages, or both, and said remedies shall be cumulative and not exclusive, and the Association shall have the right to enforce its lien rights as set out herein, and in any aforesaid legal proceedings the prevailing party shall have the right to recover from the other party all reasonable litigation expenses including reasonable attorney fees.

34. Invalidation of any one of the provisions of this Declaration by

judgment or court's decree shall not in any way affect the validity of the other provisions herein which shall remain in full force and effect.

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ASSIGNMENT OF DEVELOPER RIGHTS

35. WINSOTT CONSTRUCTION AND EXCAVATING, INC., Inc., a Missouri corporation, shall have the right to assign all of its rights hereunder as Developer, including but not limited to the right to appoint the members of the Board of Directors of the Association and the right to annex additional Lots, tracts or parcels to this Declaration as provided herein, to any other person or entity but any such assignment must be in writing expressly referring to this paragraph number.

MODIFICATION

36. The covenants, restrictions and provisions contained herein may at any time hereafter be amended, modified or abrogated upon the written consent of (a) WINSOTT CONSTRUCTION AND EXCAVATING, INC., a Missouri Corporation, and (b) the owners of two-thirds (2/3) or more of the tracts subject to the provisions of this document; provided however, after WINSOTT CONSTRUCTION AND EXCAVATING, INC., a Missouri Corporation, no longer owns any of the tracts subject to the provisions of this document, the covenants, restrictions, and provisions contained herein may be amended, modified or abrogated upon the written consent of the owners of two-thirds (2/3) or more of the tracts subject to the provisions of this document.

ENFORCEMENT

37. Any owner of any above described tract subject to the provisions of this document may enforce the provisions of this document and shall have the right to proceed in law or in equity, or both, against any person or persons violating or attempting to violate any of the provisions of this document, including the remedy of injunction or damages, or both, and said remedies shall be cumulative and not exclusive, and in any said legal proceedings the prevailing party shall have the right to recover from the other party all reasonable litigation expenses including a reasonable attorney fee.

TRACT DEFINITION

38. The term "tract" as used herein shall be deemed to mean the above described Tracts 401 through 432, and C433, both inclusive, except in the event hereafter said tract is subdivided into smaller tracts by survey, plat, deed or other document, each said smaller tract shall thereupon be deemed a "tract" under the provisions of this document.

MISCELLANEOUS

39. Invalidation of any one of the provisions of this document by judgment or court's decree shall not in any way affect the validity of the other provisions herein which shall remain in full force and effect.

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IN WITNESS WHEREOF, the undersigned has hereunto executed this document this 5th day of December, 2019.

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WINSCOTT CONSTRUCTION AND EXCAVATING, INC., a Missouri corporation

BY: Keith Wincott
KEITH WINSCOTT, President

ATTEST:

-----, Secretary

STATE OF MISSOURI)
) ss.
COUNTY OF BOONE)

On this 5th day of December, 2019, before me personally appeared KEITH WINSCOTT, of WINSCOTT CONSTRUCTION AND EXCAVATING, INC., to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his 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.

Cari Nichols
NOTARY PUBLIC *Cari Nichols*

My commission expires 3-10-2021.

Commissioned in Boone County.



CARI NICHOLS
My Commission Expires
March 10, 2021
Boone County
Commission #13679705

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MORTGAGEE'S SUBORDINATION AGREEMENT

The undersigned, Hawthorn Bank, a corporation, being the holder of the Note secured by the Deed of Trust recorded in Book 4961, Page 83, Deed Records of Boone County, Missouri, does hereby subordinate said Deed of Trust to the above described Restrictive Covenants.

Dated this 6th day of December, 2019.

[Signature]
Hawthorn Bank, a corporation

BY: [Signature]
PRINT NAME: Brandon Kalista
TITLE: Commercial Loan Officer

ATTEST:

BY: _____
PRINT NAME: _____
TITLE: _____

STATE OF MISSOURI)
) ss.
COUNTY OF BOONE)

On this 6th day of December, 2019, before me personally appeared Brandon Kalista, of Hawthorn Bank, a corporation, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her 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.



CARI NICHOLS
My Commission Expires
March 10, 2021
Boone County
Commission #13679705

[Signature]
NOTARY PUBLIC Cari Nichols

My commission expires 3-10-2021.

Commissioned in Boone County.