

4
LC-
S-3



20091207000925440 AM DECL
Bk:DE5306 Pg:784
12/07/2009 12:28:08 PM 1/4

CERTIFIED-FILED FOR RECORD
Barbara J. Hall
Recorder of Deeds
St. Charles County, Missouri
BY: JHICKS

File #: LCMISC

RECORDING DOCUMENT IDENTIFICATION SHEET

TITLE: AMENDMENT TO THE DECLARATION OF GOVERNANCE,
COVENANTS, EASEMENTS, CONDITIONS, AND RESTRICTIONS
FOR THE NEW TOWN AT ST. CHARLES

DATE: December 2, 2009

GRANTOR(S): WHITTAKER BUILDERS, INC.,
3333-4 Rue Royale, St. Charles, MO 63301

THE NEW TOWN AT ST. CHARLES GENERAL ASSEMBLY
3307-1 Domain, St. Charles, MO 63301

GRANTEE(S): WHITTAKER BUILDERS, INC.
3333-4 Rue Royale, St. Charles, MO 63301

THE NEW TOWN AT ST. CHARLES GENERAL ASSEMBLY
3307-1 Domain, St. Charles, MO 63301

REFERENCE BOOK AND PAGE NUMBER: Declaration of Governance, Covenants,
Easements, Conditions, and Restrictions for The New Town at St. Charles, Book 4122, page
1574, Recorder of Deeds' Office of St. Charles County, Missouri, as amended.



AMENDMENT TO THE
DECLARATION OF GOVERNANCE, COVENANTS, EASEMENTS, CONDITIONS,
AND RESTRICTIONS FOR THE NEW TOWN AT ST. CHARLES

THIS AMENDMENT is made as of the 2nd day of December, 2009, to that certain Declaration of Governance, Covenants, Easements, Conditions, and Restrictions for The New Town at St. Charles, dated as of the 8th day of March, recorded in Book 4122 on page 1574, in the office of the St. Charles County Recorder of Deeds, as amended (the "Declaration"), by Whittaker Builders, Inc., a Missouri corporation (the "Declarant"). (Terms defined in the Declaration are used herein as defined therein unless otherwise indicated).

RECITALS

- A. Article III, Section 5(a), of the Declaration permits the Declaration to be amended prior to the Turnover Date by the Founder, if at its sole discretion, the Founder believes that such changes will better accomplish the objectives of the Community, adjust to market conditions, or respond to changing land use conditions both within and without the Community.
- B. Pursuant to the powers vested in the Founder under Article II, Section 2 of the Declaration, the Founder has added property to the Community and subjected such Property to the Declaration by executing and recording those certain Amendments to the Declaration recorded in Book 4502, page 1095, Book 4572, page 4, Book 4644, page 630, Book 4744, page 2043, Book 4857, page 763, and Book 5147, page 775, respectively, of the St. Charles County Recorder of Deeds office.
- C. This Amendment is made prior to the Turnover Date which is defined in Article I, Section 39 as follows:
- "Turnover Date" shall mean and refer to the earlier of (a) the date on which neither the Founder nor any Affiliate of the Founder no longer owns any Parcel within the Community or (b) the date on which Founder elects, in its sole and absolute discretion, to relinquish (i) all rights to appoint and remove members of the Board of Governors pursuant to this Declaration and the Bylaws and (ii) all voting rights in the Assembly reserved to the Founder pursuant to this Declaration and the Bylaws.
- D. Whittaker Builders, Inc., a Missouri corporation is named as the Founder, owns at least one Parcel within the Community, and has not relinquished any rights set forth in the above paragraph "B."
- E. Article VIII, Section 11 of the Declaration provides that in addition to General Assessments, "each Owner purchasing a Parcel from the Founder or a Builder shall pay an initial set-up fee to be deposited with the Assembly and which shall be in such amount as the Founder shall determine."
- F. Article V, Section 11 of the Declaration provides that the Board of Governors of the General Assembly, in furtherance of its duties to "manage the Commons and affairs of the Assembly with respect thereto ... shall have and is vested with all powers and authorities, except as may be expressly limited by law or this Declaration, to supervise, control, direct, and manage the Commons, affairs, and activities of the Assembly, to determine the policies of the Assembly, to do or cause to be done any and all lawful things for and on behalf of the Assembly, to levy Assessments, to exercise or cause to be exercised any and all of its powers, privileges, or franchises, and to seek the effectuation of its objects and purposes."



G. Subsection (q) of said Article V, Section 11 of the Declaration also specifically provides that the above powers include without limitation that the Board may "provide for the establishment, levying and collection of Assessments for the establishment and promotion of various funds for the promotion of the Community and/or the New Town at St. Charles Trust, pursuant to this Declaration."

H. The Founder believes that an amendment to the Declaration requiring that the above-described initial set-up fee also be paid by an Owner purchasing a Parcel from another Owner would better accomplish the objectives of the Community and would allow the Community to adjust to market conditions and the Board concurs in this opinion.

I. In accordance with Article III, Section 5, the Founder, desires to amend the aforesaid Article VIII, Section 11, regarding the payment of an initial set-up fee, as set forth herein below.

J. Although not required for the making of this Amendment, the Board, in accordance with Article V, Section 11, agrees with and joins in Founder's amendment of the aforesaid Article VIII, Section 11, regarding the payment of an initial set-up fee, as set forth herein below.

AMENDMENT

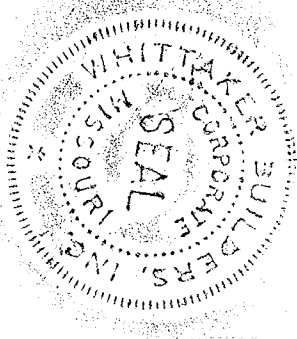
NOW, THEREFORE, in accordance with Article III, Section 5 of the Declaration, the Founder with the agreement of the Board under Article V, Section 11, amends Article VIII, Section 11 of the Declaration as follows:

A. The current language of that Section is replaced with the following:

"11. Commencement of Annual General Assessments. Each Owner shall pay his first annual General Assessment upon the closing of the purchase of his Parcel, adjusted according to the number of months remaining in the calendar year. Thereafter, annual Assessments shall be paid as provided herein. In addition to the foregoing, each Owner purchasing a Parcel from the Founder or a Builder shall pay an initial set-up fee to be deposited with the Assembly and which shall be in such amount as the Founder shall determine. In addition to the foregoing, any subsequent Owner purchasing a Parcel from an Owner other than the Founder or a Builder shall also pay an initial set-up fee to be deposited with the Assembly and which shall be in such amount as the Founder shall determine. The Founder expressly reserves the right to change the amount of the set-up fee at any time."

B. Except as otherwise provided herein, the Declaration shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the undersigned have set their hands as of the date first above written.



WHITTAKER BUILDERS, INC.,
a Missouri corporation

Gregory G. Whittaker, President



20091207000925440 4/4

Bk: DE5306 Pg: 787

THE NEW TOWN AT ST. CHARLES GENERAL ASSEMBLY

[NO SEAL]

David W. Price

David W. Price, Vice President

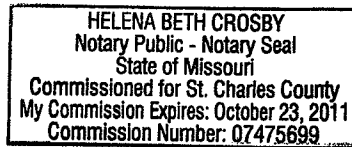
STATE OF MISSOURI)
) SS
COUNTY OF ST CHARLES)

On this 2nd day of December, 2009, before me Helena Beth Crosby, a Notary Public, personally appeared Gregory G. Whittaker who being by me duly sworn, did say that he is the President of Whittaker Builders, Inc. a corporation of the State of Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and said Gregory G. Whittaker 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 official seal in the County of St. Charles and State of Missouri the day and year first above written.

My term expires: 10-23-2011

Helena Beth Crosby
Notary Public



STATE OF MISSOURI)
) SS
COUNTY OF ST CHARLES)

On this 2nd day of December, 2009, before me Helena Beth Crosby, a Notary Public, personally appeared David W. Price who being by me duly sworn, did say that he is the Vice President of The New Town at St. Charles General Assembly, a non-profit corporation of the State of Missouri, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and said David W. Price acknowledged said instrument to be the free act and deed of said entity.

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

My term expires: 10-23-2011

Helena Beth Crosby
Notary Public

