

## **Mark's Crossing**

THIS INDENTURE OF TRUST AND DECLARATIONS OF RESTRICTIONS, hereinafter referred to as this "Indenture", made and entered into this 1st day of October, 2004 by and between "Grantor", and Warren G. Wobbe, an individual, Daniel J. Miesner, an individual, Thomas L. Hoeft, an individual, "Trustees", and Mark's Crossing "Grantee" as follows:

### **WITNESSED:**

WHEREAS, Grantor has recorded the plat of Mark's Crossing, which is incorporated herein by reference and is located in the County of Warren, State of Missouri, as Book No. \_\_\_\_\_, Page No. \_\_\_\_\_ on the day of \_\_\_\_\_, 20\_\_\_\_ in the Warren County Recorder's Office (the "Plat") and

WHEREAS, there are designated, established and recited on the recorded Plat of Mark's Crossing (hereinafter referred to as the "Subdivision" or the "Tract of Land") certain streets, common areas, and cul-de-sacs and certain easements which are for the exclusive use and benefit of the owner or owners of the lots shown on the Plat; and

WHEREAS, it is the purpose and intention of this Indenture to preserve the Tract of Land shown on the Plat as a restricted, first class, single family neighborhood and to protect the same against certain uses by the adoption of a common neighborhood plan and scheme of restrictions, and to apply that plan and restrictions to the entire Subdivision; and

WHEREAS, all reservations, limitations, conditions, easements and covenants herein contained, and any and all of which are hereafter termed "Restrictions" , are jointly and severally for the benefit of all persons who purchase, hold or reside upon any of the several lots covered by this instrument, and their respective tenants, invitees, successors and assigns, and it is intended that these Restrictions shall run with the land; and

WHEREAS, Grantor desires to establish in the Trustees sufficient authority and also sufficient right, title and interest in the Tract of Land to carry out the purposes of this Indenture.

NOW, THEREFORE, for and in consideration of the premises and of the mutual promises, covenants and agreements made by the parties hereto, each to the other, and to the agreement and consent of the Trustees to act as Trustees hereunder, Grantor does by these presents, and shall by duly recorded Warranty Deed, grant, bargain, sell convey and confirm unto the Trustees, in their capacities as Trustees hereunder, and unto their successors in trust, so long as this Indenture shall remain in force and effect, the following described property and property interests in the Subdivision (collectively, the "Subdivision Property"), to wit:

(A) All the strips of land shown on the Plat as streets, cul-de-sac islands, sidewalks, entrance monument, gate and fence areas or any other common areas of the Subdivision.

(B) All the strips of land shown on the Plat as public utility easements, storm water sewers and drainage facilities, or easements designed for storm water control.

(C) Easements in, over, upon and across such portions of the Plat as may be used for residential or other purposes as follows: The rights, benefits and advantages of having egress and ingress to and from, over, along and across any such land for the purpose of performing any of the rights and duties in this Indenture contained; and of laying, constructing, maintaining and operating over, along and across any of said land used for any such residential or other purpose, either above or underground, suitable streets and supports or conduits or other means of conducting sewage, steam, electricity, water, or other useful agencies, provided, that none of the streets, supports, conduits, pipes, devices or other appliances shall interfere with the lawful construction of any building or structure on said property, and that easements shall terminate at the exterior foundation wall of any building structure.

(D) Any improvements now or hereafter constructed upon any of the foregoing pursuant to this Indenture, including but not limited to street lights, sidewalks, and any other structure for the common use of the lot owners.

TO HAVE AND TO HOLD the aforesaid Subdivision Property in trust in accordance with and pursuant to this Indenture, together with all the rights and appurtenances to the same belonging unto the said Trustees and to their successors and assigns for the sole benefit, use and enjoyment of the lot owners of Mark' Crossing, their heirs and assigns, subject to easements, conditions, restrictions, deeds of trust and rights of way record. Grantor hereby covenants that it and its successors and assigns shall and will WARRANT AND DEFEND the title to the premises unto the said Trustees, and their successors and assigns, forever against the claims of all persons whomsoever, excepting, however, the general taxes, if any, becoming a lien after the date of this instrument.

## I. TRUSTEES' DUTIES AND POWERS

The grantor hereby invests the Trustees, and their successors, with the following rights, powers, duties, authorities, and obligations:

1.) The power and authority to promulgate rules and regulations for the use of, and in general to exercise such control over the Subdivision Property including those easements, streets, common areas, and cul-de-sacs (but excepting those easements, streets, common areas and cul-de-sacs which may hereafter be dedicated to public bodies or agencies), sidewalks, street lights, shrubbery, storm water sewers and control devices, including but not limited to water retention or detention facilities, sanitary sewer trunks and lateral lines, pipes, and disposal and treatment facilities as may be shown on the Plat of said Tract Land, if any, as is necessary or useful to maintain, landscape, repair, rebuild, supervise and insure the proper use of the Subdivision Property and said easements, streets, common areas, cul-de-sacs, and street lights, if any, by the necessary public utilities and other, including the right (to themselves and others to whom they may grant permission) to construct, operate or maintain on, under and over the Subdivision Property and said easements, streets, common, areas, and cul-de-sacs, sewers, pipes, poles, wires, and other facilities and public utilities for services to the lots shown on said Plat.

2.) The power and authority to publicly dedicate any private streets constructed or to be constructed whenever such dedication would be accepted by a public agency.

3.) The power to prevent, in their own name as Trustees, any infringement and to compel the performance of any restriction or provision set out in this Indenture or established by law, and also any rules and regulations issued by the Trustees covering the use of any Subdivision Property, facilities or improvements subject to their control or any matters relating thereto; provided, however, this power granted to the Trustees is intended to be discretionary and not mandatory, except in cases where the exercise of such power is required to compel or enforce compliance with applicable Ordinances of Warren County.

4.) The power to receive, hold, convey, dispose and administer in trust, for any purpose mentioned in this Indenture, any gift, grant, conveyance or donation of money or real or personal property.

5.) The power to purchase insurance against all risks, casualties, and liabilities of every nature and description, including but not limited to, fiduciary, public liability and property damage insurance, as the Trustees may deem necessary and proper.

6.) The power to assess property owners within the Subdivision, in order to provide means necessary for the Trustees to perform the duties and avail themselves of and exercise the rights and power herein created and to provide for the construction, maintenance and reconstruction of the Subdivision Property, including but not limited to, such items as roads, entrance monument, common areas and road ditches.

7.) The power to require a reasonable deposit not to exceed Two Thousand Dollars (\$2,000.00), in connection with the proposed erection of any building or structure, fence, detached building, outbuilding, swimming pool, tennis court or other structure on any of the 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 any Subdivision Property, facilities or improvements shall be repaired.

8.) The Trustees, in exercising the rights, powers and privileges granted to them and in discharging the duties imposed upon them by the provision of this Indenture, may from time to time enter into contracts, employ other agents, servants and labor as they may deem necessary, and employ counsel to institute, prosecute, dismiss and settle such suits brought against them individually or collectively in their capacity as Trustees and the Trustees shall likewise have all other such powers without limitation necessary or useful to perform any tasks assigned to the Trustees hereunder and to do any acts which further the purpose and intent of this Indenture. In furtherance of this section, the Trustees are authorized and empowered to cooperate and contract with the Trustees of adjoining or nearby subdivision, in the development and maintenance of facilities and common roadways which inure to the benefit and general welfare of the inhabitants of the entire area.

9.) The Trustees are authorized to act through a representative provided, however, unless a greater number is expressly required, all acts of the Trustees shall be agreed upon by a majority of said Trustees, provided, further, that a Trustee shall only be responsible for his own intentional wrongful acts and shall not be responsible for his own negligent acts or the wrongful acts of others. Neither the Trustees nor any of them shall be held personally liable for injury or damage to persons or property by reasons of any act or failure to act of the Trustees or any of them, collectively or individually. Neither the Trustees nor Successor Trustees shall be entitled to any compensation or fee for services performed pursuant to this covenant. Nothing herein in this paragraph 9 shall be construed to prevent the County of Warren from requiring the Trustees to compel compliance with applicable county ordinances.

10.) If the Trustees should at any time be sued for damages for personal injuries or death sustained by anyone or for damage to property sustained by anyone in the Subdivision or on the Subdivision Property or by anyone by reason of any act of the Trustees, or any of them, in their character as Trustees, the Trustees may, if the insurance company insuring and indemnifying Trustees against loss or damage by reason of any such claim or suit, shall fail, refuse or neglect to assume the defense of such claim or suit, or shall fail, refuse, or neglect to pay and satisfy any judgment rendered in such suit against the Trustee, employ attorneys to defend such suit or action or to compromise and settle at any time, such claims, before or after suit, or after judgment and the expense thereof, including any amount paid in settlement or in satisfaction of any judgment recovered against them, and interest and costs and attorney's fees and other costs of defending such action shall be assessed by the Trustees pro rata against the owners of residence lots and against the residences thereon situated in the same manner as provided in Article V hereof, and the payment thereof shall be enforced as hereinafter provided, the amount so to be paid shall be in addition to the assessment for general purposes referred to in the said Article V.

## II. DESIGNATION AND SELECTION OF TRUSTEES MEETING OF LOT OWNERS

1.) The initial Trustees for the Subdivision shall be Warren G. Wobbe, Jr., Daniel J. Miesner, and Thomas L. Hoeft designated herein alternatively as "Trustee" or "Trustees", who, by their signature to this instrument, consent to serve in that capacity for terms which shall expire at such time and in such manner as provided herein. Any Trustee shall have the right to resign at any time upon giving notice to the remaining Trustee or Trustees. Whenever any Trustee so resigns, or refuses to act, or becomes unable to act through disability or death, or whenever any Trustee, other than an initial Trustee, becomes disqualified to act through sale of his lot or parcel in the Subdivision, the remaining Trustees shall have the power to appoint a successor or successors for the unexpired portions of their terms by written instrument recorded in the office of the Warren County Recorder of Deeds (the "Recorder's Office"); provided the successor so appointed is a lot or parcel owner in the Subdivision or an officer of any corporate owner or partner of any partnership which owns a lot in the Subdivision. If any such appointed lot owner sells his lot, he shall cease to be a Trustee and his successor shall be appointed in the same manner by the remaining Trustee or Trustees. If all Trustees retire or cease to act as Trustees, then the lot owners in the Subdivision shall appoint new Trustees at a meeting of the Subdivision.

2.) At such time as fifty percent (50%) of the recorded lots are sold, Trustee Thomas L. Hoeft, or his successor if he is not serving at such time, shall be removed from his trusteeship by recordation of a document in the Recorder's Office by the Grantor, or its assigns, effective upon the date of such recordation and a new Trustee shall be elected by majority vote of the then owners of the recorded lots, and additionally, at such time as seventy five percent (75%) of the recorded lots are sold, a second Trustee Daniel J. Miesner, shall be removed by the same procedure and upon second new Trustee shall be elected by majority vote of the then owners of the recorded lots. Upon the sale of one hundred percent (100%) of the remaining lots Warren G. Wobbe Jr. shall be removed by the same procedure. All such new Trustees, or their successors, having been chosen by the purchasers of the recorded lots as herein provided, or are owned by parties intending to occupy residences on such lots as homeowners, or two (2) years after appointment of such second new Trustees, whichever shall first occur, at which time all Trustees shall resign and the then owners of the recorded lot shall elect by majority of vote three (3) Trustees, to serve for one, two, and three years, respectively, in order to obtain continuity of trusteeship. Thereafter, all Trustees shall be elected for terms of three (3) years each. If any lot is jointly owned and all joint owners do not appear at any meeting, all joint owner(s) who do appear shall be entitled to exercise a vote as to that lot without the requirement of a proxy from the absent joint owner(s), unless the Trustees shall have received a written notice from any such other joint owner specifically withdrawing such right.

3.) All such elections shall be by lot owners, upon written notice by Trustees, or should there be no such Trustees, then by one (1) such lot owner, sent by mail to or personally served upon, all record lot owners, at least ten (10) days prior to the date set for the meeting to be held for the purpose of electing Trustees. The said notice shall specify the time and place of the meeting and shall be in the County of Warren. At such meeting or any adjournment thereof, the majority of 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, the owners of each lot, whether attending in person or by proxy, shall be entitled to one vote for each recorded lot owned. 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. Representatives of owners of a majority of the lots shall constitute a quorum for the purpose of electing Trustees or for any other business purpose coming before a meeting.

4.) The Trustees shall have an annual meeting for all lot owners at which time they will report on activities for the preceding year which shall take place in the County of Warren at a place designated by the Trustees by written notice to all lot owners to take place at time selected by the Trustees on the first Sunday of every March or at such other time as designated by the Trustees. The Trustees shall be required to provide the County of Warren with a list of the names, addresses and telephone numbers of the Trustees on an annual basis, no later than the first Sunday of every April, and the Trustees shall further be required to notify the County of Warren of any change to the Trustees within thirty (30) days of such change.

### III. SURFACE STORM WATER DRAINAGE

No person deriving title to any part of the Subdivision, by, through, or under the Grantor, its successors or assigns, shall have the right to modify, change or alter such grade as the Grantor may have established, or may hereafter establish upon the Subdivision, nor shall any such person obstruct, alter or change, in any way the drainage surface waters after the courses thereof shall have been fixed by reason of any grade established by the Grantor, unless such person shall have first procured the written consent and authorization of the Trustees and shall have received the approval of the County of Warren, Missouri.

#### IV. RESERVATION OF EXPENDITURES

The Grantor reserves the right to receive and retain any money or consideration which may be refunded or allowed on account for any sums previously expended or subsequently provided by it for joint main sewers, storm water control devices, gas pipes, water pipes, conduits, poles, wires, street lights, roads, streets, recording fees, subdivision fees, consulting fees, or fees, charges and all other expenses without limitation incurred with respect to the creation and development of the Subdivision.

#### V. ASSESSMENTS

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

1.) (a) The Trustees and their successors are authorized to make uniform assessments in each calendar year except hereinafter provided of an amount not to exceed Two Hundred Dollars (\$200.00) [further subject to adjustment and increase in proportion to the increase in the Cost of Living index (United States Department of Labor, All Cities, All Items, 1957 equals 100, or if not available, most similar index) from the date of recording this Indenture to the date of levying any assessment hereunder] against each single-family lot which is a lot of record on the date the Plat is recorded and the assessment is levied, all for the purpose of enabling the Trustees to defend and enforce these Restrictions; to maintain, generate, construct, reconstruct and operate the Subdivision Property, including but not limited to streets, pressure sewers, common areas, cul-de-sacs, turnaround islands, storm water control devices, included but not limited to the retention or detention facilities, street lights, and other utilities, sidewalks, and any other areas or structures for the common use of the lot owners; to dispose of garbage or rubbish; to perform or execute any powers or duties provided for in this Indenture; and overall, properly to protect the health, safety and general welfare of the lot owners, including the purchase of any insurance necessary or useful to protect the interest of the lots owners or the Trustees.

(b) If at any time the Trustees shall consider it necessary to make any expenditure requiring an assessment additional to the assessments above provided, they shall submit in writing to the owners of all lots for approval an outline of the plan for the project contemplated and the estimated amount required. If such project and assessment so stated be

approved either (i) at a meeting of the lot owners duly called and held in a the manner provided in reference to the election of Trustees by simple majority vote of those entitled to meet at such a meeting, or (ii) on written consent of the owners fifty (50%) percent of the lots plus one, the Trustees shall notify all owners in said tracts of the additional assessments. There shall be one (1) vote per lot. The limit of Two Hundred Dollars (\$200.00) [subject to adjustment based upon Cost of Living index as hereinabove provided] per calendar year for general purposes set forth in 1 (a) above shall not apply to any assessment made under the provisions of this paragraph (b).

2.) Notwithstanding anything to the contrary herein, neither the Grantor, nor the Trustees and their successors shall make any assessments upon and against several lots in the Subdivision for items or matters that are within the requirements of the Grantor, and/or the original subdivider or developer, for making or installing improvements to the Subdivision.

3.) All assessments, either general or special, made by the Trustees for the purpose hereinabove enumerated shall be made in the manner and subject to the following procedure, to wit:

(a) Notice of all assessments shall be given by certified mail addressed to the last known or usual post office address of the record holder of the fee simple estate and deposited in the United States mail with postage prepaid, or may be given by posting a brief notice of the assessment upon the lot itself.

(b) Every such assessment shall become due and payable within thirty (30) days after notice is given hereinabove provided. From and after the date when said payment is due, it shall bear interest at the rate of twelve (12%) per annum until paid, and such payment and interest shall constitute a lien upon said lot upon which residence is situated, and said lien shall continue in full force and effect until said amount is fully paid. At any time after the passage of the resolution levying an assessment and its entry in its minutes, the Trustees may, in addition, execute and acknowledge an instrument reciting the levy of the assessment with respect to any one or more lots and cause same to be recorded in the Recorder's Office in the County of Warren, State of Missouri, and the Trustees may, upon payment, cancel or release any one or more lots from the liability of assessments (as shown by recorded instrument) by executing, acknowledging and recording (at the expense of the owner of the property affected) a release of such assessment with respect to any lot or lots affected, and the Trustees shall cause to be noted from time to time in the minutes of their proceedings, the payments on account of any assessments. The lien created hereby shall be enforceable in the same manner as deeds of trust with power of sale or by court suit, provided no such lien shall be foreclosed upon until written notice by certified mail is given to any mortgagee of record of such lot, provided such mortgagee shall first have registered in writing its name and address with the Trustees. All costs associated with the collection of past due assessments, including, but not limited to, filing fees, attorneys fees and court costs shall be paid by the owner(s) of the affected lot. The lien of any assessment hereunder shall be superior to that of any institutional mortgagee, unless the mortgage or deed of trust be for a term of greater than ten (10) years in which event the lien of any such assessment shall be junior to that of such institutional mortgage. An institutional mortgage is defined herein as a bank, life insurance company, pension fund, or savings and loan association which is the record holder of a mortgage or deed of trust encumbering any lot subject to this Indenture.

4.) All rights, duties, powers, privileges and acts of every nature and description which the Trustees might execute or exercise under the terms of this Indenture may be executed or exercised by a majority of said Trustees then in office unless otherwise expressly provided in this Indenture.

5.) Notwithstanding any other condition herein, the Trustees shall make suitable provision for compliance with all subdivision and other ordinances, rules and regulations of County of Warren and for such purposes shall not be limited to the maximum assessment provided for herein. Specifically and not by the way of limitation, the Trustees shall make provision for the maintenance and operation of all street lights, sidewalks, streets, common areas, cul-de-sac islands, turnaround islands, pressure sewer systems, storm water control facilities and easements, and any other areas or structures for the common use of the lot owners.

6.) The Trustees may deposit the funds received as Trustees at interest, when deemed feasible by them, in their discretion but any such depository shall be insured by the Federal Deposit Insurance Corporation. The Trustees shall designate one of their members as "Treasurer" of the subdivision funds collected under this instrument, and such funds shall be placed in the custody and control of such Treasurer.

7.) Any lot subject to this Indenture shall be subject to all assessments provided for herein only from and after the date upon which title to any such lot shall pass from the Grantor, or from such other developers or contractors, to the ultimate purchaser(s) thereof (excepting, however, no assessments shall be levied against any such lot by reason of conveyances of title made by the Grantor to other developers or contractors, who construct residences thereon for re-sale to the ultimate purchaser(s) thereof). In the event title to any lot shall pass to such purchaser(s) during a year in which assessment provided for herein was levied, then the purchaser(s) of any such lot shall pay to the Trustees, at the time of closing, the pro-rata share of any such assessment, determined on the basis of thirty days to the month.

8.) Purchasers of lots shall not be assessed by the Trustees there under for installation of common improvements such as streets, sewers, storm water control devices, lights, sidewalks, and utilities, if any, which the original developer is required to construct under the Improvement Plans or the Subdivision Ordinance of the County of Warren, but this prohibition shall not apply to maintenance and repair of such items, nor the assessments for installations not required in order for the property to be subdivided under said ordinance.

9.) Invalidity of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

## VI DECLARATION OF RESTRICTIONS



Grantor, being the owner of the following described real estate lying and being situated in the County of Warren, State of Missouri, and being more particularly on the legal description attached hereto as Exhibit A, by this Indenture does impose upon all the lots in the Subdivision and all common property established therein, the following restrictions and conditions, to-wit:

1) No structure shall be erected on any single-family lot other than one detached single-family residence with a minimum of a two car side entry garage and unless otherwise approved.

2) No single-family residence shall be erected on any lot nearer the front lot line than the building lines shown on the recorded Plat or any other as required by County of Warren.

3) Above ground living space of dwelling, exclusive of open porches and breezeways, shall have not less than eighteen hundred (1,800) square feet in single story residence and not less than fifteen hundred (1,500) square feet on the first floor of two story dwelling. All construction must be completed within nine (9) months of the commencement of said construction.

4) No roll tarpaper or shingles shall be used on any exterior wall. All footings, foundations and basements shall be constructed of poured concrete. No structures of a temporary nature such as house trailers, modular homes, earth homes, tents, or shacks shall be placed, erected or maintained on any lot. No basement erected or maintained on any lot shall be used, temporarily or permanently, as a place of residence. Gas tanks must be buried, no above LP tanks will be permitted.

5) No lot shall at any time be resubdivided or reduced in size with out Trustees approval as well as the approval of the County of Warren.

6) No roads shall be constructed or conveyed connecting Mark's Crossing roads with other lands with out the approval of Trustees, except for the present roadways to Sunnyside Rd. Roadways are to remain private and are to be maintained by the Subdivision. Notice is hereby given by these Declarations that the County of Warren will not be responsible for the maintenance or upgrading of any roadway in the Subdivision and is not and will not in the future be willing to accept dedication of the roadways. Sub grade roadway will be rolled rock base with a two inch asphalt overlay. The Grantor will construct a sign at the entrance to the subdivision, within fifty feet (50') of the center line of the road, which shall state: "Private Streets Maintained by Property Owners". This sign shall be installed where it is easily visible to anyone entering the subdivision, and be maintained in good order by the Trustees and lot owners. The minimum size for such sign shall be twelve inches (12") high by eighteen inches (18") wide with two inch (2") high letters. There shall also be sufficient contrast in the coloring of the sign background as compared to the message lettering.

7) There shall be no vehicle parked in open view upon any tract unless the vehicle is licensed to be driven and is used on public roads a minimum of once every thirty (30) days.

8) When any dwelling improvements are erected on any lot, the owner(s) shall at the time construct a sanitary sewage system of approved character by County of Warren to provide for the more effective disposal of sewage, unless other adequate sewage facilities have already been provided.

9) No lot shall be used or maintained as dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers.

10) The owner(s) of each lot shall keep substantially all grass and weeds cut. If substantially all grass and weeds are not cut on any lot, the Board of Trustees shall notify the owner(s) in writing. If the grass and weeds are not cut within thirty (30) days of notification, the Board of Trustees shall have the grass and weeds cut and the cost of cutting shall be added to the assessment of their lot and shall be a lien upon the lot as if part of the original assessment.

11) No all terrain or unlicensed motorized two, three or four-wheel vehicle or vehicles may be operated in Mark's Crossing.

12) No gas powered motors will be permitted on any lake in Mark's Crossing.

13) Docks at the waters edge should not exceed 160 sq. ft. in size and are not to be of a floating nature . The structure itself may cantilever over the waters edge but can not be built into the water.

14) An Architectural Control Committee is hereby established for the purpose of reviewing and approval of any and all construction within the development. The Board of Trustees shall act as the Architectural Control Committee. The Committee shall act with firmness and with responsible discretion to enforce the covenants, conditions, restrictions herein in order to maintain Mark's Crossing as a desirable, harmonious, and compatible, first-class residential community.

In the event of death or resignation of any Board or Committee member, the remaining members shall have full authority to designate a successor. Each such successor shall serve until the next Annual Meeting when the successor shall be elected to serve the unexpired term, if any, of the member who is deceased or has resigned. The members of the Board and Committee shall not be entitled to any compensation for services performed pursuant to this covenant. At any time, the then record owner(s) of a majority of lots shall have the power through a duly recorded written instrument to change the membership of the Board, or to withdraw from the Board to restore it, any of its powers and duties.

The Board's approval or disapproval as required in these covenants shall be in writing. In the event the Board, or its designate representative, fails to approve or disapprove within thirty (30) days after construction plans and

specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have fully completed.

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of five (5) years from the date these covenants are recorded, after which time said covenant shall be automatically extended for successive periods of five (5) years unless an instrument signed by a two-thirds vote of the then owners of the lots has been recorded agreeing to change said covenants in whole or part. The covenants may be changed, in whole or part, at any time, if an instrument signed by a two-thirds majority of the then owners of the lots agree to any such change that has been recorded.

Any person or persons violating or attempting to violate any of the covenants, restrictions, conditions, or limitations contained herein, or failing to pay their annual assessment by January 1st shall be subject to proceedings at law or in equity to restrain such violation or to recover damages therefore or to collect the assessments; any failure to enforce any covenants, conditions, restrictions, or limitations contained herein shall not act as nor constitute a waiver of any subsequent breach thereof. A majority of the Board of Trustees shall have the power to enforce these covenants, restrictions, conditions, or limitations contained herein and to collect assessments.

Invalidation of any one of the covenants by judgment or court shall in no way effect any of the other provisions which shall remain in full force and effect.

The provisions contained herein shall run with and bind the land and shall be enforceable by the Board of Trustees.

15) No residence shall be used directly or indirectly for business of any character or for any purpose other than that of any exclusive private residence for one family.

16) Without permission of the Trustees, no sign of any kind, including a "For Sales" sign shall be displayed in public view of any lot or parcel, except one professionally made sign per lot of not more than five (5) square feet advertising the same for sale during the initial construction and sales period.

17) No animals, livestock or poultry of any kind, including horses, shall be raised, bred or kept on any lot, or in any house on any lot, except that dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purpose, and further provided that they do not exceed three (3) in number in the aggregate.

18) Easements, installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. The easements are of each lot and all improvements in it shall be maintained continuously by the owner of the lot except for those improvements for which a public authority or utility company is responsible. Grantor agrees to provide the County of Warren the necessary easements for potential sewer, gas, electric, phone, and water line construction, said easements are to be contained on the recorded subdivision plat.

19) Unlicensed boats, trailers and/or recreational vehicles may not be stored outside the garage.

20) No perimeter fence or wall or shed or other outbuilding may be erected on any lot without the consent in writing of the Trustees, and improvements as such shall not be permitted to deteriorate or fall into disrepair. The Trustees may in their discretion repair or restore such fence or wall and charge the cost of the same to the owner of such lot. If a fence or wall constructed on the lot shall be closer than eighteen (18) inches to the boundary of another lot subject to this Indenture, the owner of such adjoining lot shall have the right, but only while said fence or wall is so in place, to use and maintain the unfenced or unwalled part of said lot adjoining his or her lot, to fence or wall in the same as part of his or her lot, and to connect his or her fence or wall, if any, to said fence or wall.

21) All trash storage and removal shall be from the rear of the residences. At no time may any patio or sun deck be used as storage space. Trash containers, trunks, boxes, garden tools or any other items which have a tendency to mar the beauty of the entire subdivision may not be stored so as to be visible from neighboring lots or from the street. All lots and houses shall be maintained in a neat and tidy condition, with lawns properly mowed.

22) The Trustees, by majority vote, shall have the power to approve or reject all plans and/or specifications for the construction, reconstruction, addition to or alteration of any building, fence, wall or other structure of any kind, as well as plans and/or specifications for the location of the structures on the lot or lots and the grading and landscaping treatment. No work shall be started upon any of the above improvements until the plans and/or specifications for the location of the structure or structures on the lot or lots and the grading and landscaping treatment have been submitted to and approved in writing by the Trustees. The Trustees shall have the right to refuse to approve any design which, in their opinion, is not suitable or desirable, taking into consideration the type of materials used, harmony of the structure or structures with the surrounds, the effect of the building or alteration therein, as planned, on the outlook from adjacent or neighboring property, and any and all other factors which, in their opinion, may affect the desirability and suitability of the Subdivision as a desirable residential area. The Trustees shall either approve or reject said plans and/or specifications within thirty (30) days after receipt thereof, and if the Trustees fail to act within said time, the plans and/or specifications shall be considered as approved.

23) The Trustees shall not be liable in damages to anyone so submitting plans for approval or to any lot or property owners covered by this instrument by reason of mistake in judgment, negligence or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval, or failure to approve any such plans.

24) In addition to these restrictions, all subdivision improvements shall be subject to the provisions of the Zoning Ordinance and the Subdivision Ordinance of the County of Warren and no building structure or premises shall be used for any purposes prohibited by law or ordinance. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. In such regard, lot owners are obligated to care for their property, including, but not by way of limitation, easements on their property, and to keep their property free from accumulation of weeds, debris and other waste matter.

In the event the Trustees determine that a nuisance shall exist upon any lot within the Subdivision, the Trustees shall give the lot owner of record seven (7) days prior written notice indicating the nuisance existing on the lot and directing that the nuisance be removed or abated immediately. In the event the lot owner, within the seven (7) day period, shall fail to remove or abate the nuisance set forth in the foresaid notice or shall fail to present a written plan satisfactory to the Trustees for the removal or abatement of the nuisance, then the Trustees are hereby empowered to take steps they deem necessary to remove or abate any nuisance so existing, including, but not limited to, the clean up and removal of any debris, cutting of weeds or grass, trimming, cutting back, removing, replacing or maintaining trees, shrubbery and flowers. The owners of any property upon which any nuisance shall have existed which the Trustees were required to remove or abate shall be charged with any expenses incurred by the Trustees. The Trustees or any contractors, agents, employees of the Trustees shall be authorized to go upon any lot which a nuisance is determined for the purpose of removing or abating the nuisance and such entry is consented to by the lot owner and no person so entering upon the lot shall be deemed to have trespassed on the property.

## VII. GENERAL PROVISION

These general provisions shall apply to this Indenture of Trust and Declaration of Restriction:

1) All covenants and agreements herein are to run without the land and shall be binding on all parties and all persons claiming under them for a period of five (5) years from the date these covenants are recorded, after which time said covenants shall be automatically extended for successive periods of five (5) years, unless revoked by vote of two-thirds (2/3) of the lot owners in the Subdivision. Such renovation shall become effective and valid only after the County of Warren approved the same.

2) All covenants and agreements herein are expressly declared to be independent not interdependent; nor shall any laches, waiver, estoppel, condemnation or failure of titles as to any part or lot of said Tract of Land be of any effect to modify, invalidate or annul any grant, covenants or agreements herein, with respect to the remainder of said tract, saving always the right to amendment, modification or repeal as hereinabove expressly provided.

3) Enforcement of any of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any such covenant and may be brought to restrain any such violation and/or to recover damages therefor.

4) This Indenture may be amended, modified or changed by the written consent of three-fourths (3/4) of all owners of lots or parcels, and any such amendment, modification or change shall become effective upon being recorded in the Office of the Recorder of Deeds of Warren County, Missouri; however, no such amendment shall be valid or effective until approved by the County of Warren, Missouri. Furthermore, no such amendment, modification or change shall abrogate or eliminate the requirement that there be Trustees or that

the Trustees shall comply with the provisions of the county ordinances of the County of Warren. No amendment shall be permitted as long as the Grantor owns any lot in the Subdivision unless such Grantor consents to such amendment. It is understood and agreed that the lot owners are on formal notice that the County of Warren will not upgrade or maintain the roadways or install curb and gutters or sidewalks.

5) All rights of the Grantor hereunder shall be freely assignable by such Grantor.

IN TESTIMONY WHEREOF, the Grantor and the Trustees have executed this Indenture the day and year first above written.

GRANTOR:

TRUSTEES:

Mark's LLC.

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Daniel J. Miesner

\_\_\_\_\_  
Warren G. Wobbe, Jr.

-----  
Thomas L. Hoeft

By: \_\_\_\_\_

Its: \_\_\_\_\_

#### ACKNOWLEDGEMENT OF GRANTOR

STATE OF MISSOURI                    )  
  ) SS  
COUNTY OF                            )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, before me appeared \_\_\_\_\_, to me personally known, who being by me duly sworn did say that he is a member of the Mark's Crossing, LLC., a Missouri Partnership and that as partner he has authority to execute the foregoing instrument on behalf of said Mark's Crossing Partnership, and acknowledged that he executed the same as his free act and deed and as the free act and deed of said Mark's Crossing Partnership.

IN TESTIMONY WHEREOF, I have set my hand and affixed my official seal at my office in \_\_\_\_\_ the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

#### ACKNOWLEDGMENT OF TRUSTEE

STATE OF MISSOURI                    )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared Daniel J. Miesner, who being first duly sworn upon his oath, stated that he is an initial Trustee herein named, and that he executed the foregoing Indenture as his free act and deed.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my official seal the date and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:  
\_\_\_\_\_

#### ACKNOWLEDGMENT OF TRUSTEE

STATE OF MISSOURI                    )  
  ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared Thomas L. Hoeft who first duly sworn his oath, stated that he is an initial Trustees herein named, and that he executed the foregoing Indenture as his free act and deed.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my official seal the date and year first written above.

