

THE CROSSING POOL ASSOCIATION DECLARATION

THIS DECLARATION is made as of this ____ day of _____, _____, by the undersigned (the “Declarants”), owners of some of the land located within the subdivisions known as The Crossing and The South Crossing, in Jackson County, Lee’s Summit, Missouri (the “Subdivisions”).

WITNESSETH:

WHEREAS, the Declarants are the owners of street address described hereto and incorporated herein by reference (the “Property”), which Property constitutes some (but not all) of the street addresses within the Subdivisions; and

WHEREAS, the Declarants and Bordner & Spellerberg Development (the “Developer”) the developer of the Subdivisions, desire to develop and have constructed a pool within The Crossing and incorporated herein by reference (the “Pool Land”), for the sole benefit of the Property and in connection therewith, desire to create and maintain a Association compromised solely of the owners of the Property, and their successors, to subsequently maintain and operate the Pool in accordance with the provisions hereof.

STATEMENT OF INTENT

It is the intent of the undersigned to voluntarily subject their property located at street address _____, Lee's Summit, Missouri to the covenants, assessments and restrictions contained in this Declaration for the purpose of enabling the Pool to be constructed and subsequently owned, operated and maintained by the Association, which the undersigned believe to benefit and be in the best interest of their Property.

NOW, THEREFORE, in order to assist Declarants and hereafter the grantees of Declarants and hereafter in providing the means necessary to develop the Pool and to subsequently pay for any costs or expenses associated with the ownership, operation and maintenance of the Pool, Declarants do now and hereby subject all of the Property to the covenants, assessments and restrictions set forth and contained in this Declaration, subject, however, to the limitations hereinafter specified.

DEFINITIONS OF TERMS USED.

The term “Assessable Lots” shall mean all land within the District except the Developer Land and any land owned by the Homes Association, together with such other land as may from time to time be added to the District as herein provided.

“Developer Land” shall mean that land not developed within The Crossing and incorporated herein by reference.

The term “District” as used in this Declaration shall mean, unless and until expanded as hereinafter provided, all of the Property. If or when other land shall, in the manner hereinafter provided, be added to that described above, then the term “District” shall thereafter mean all land which shall from time to time be subjected to the terms of this Declaration, including any further modification thereof.

The term “Homes Association” shall mean The Crossing Homes Association, Inc., a Missouri not-for-profit corporation.

The term “Owners” as used herein shall mean those person, partnerships, joint ventures, corporations or other entities who may from time to time own land within the District.

SECTION 1. MEMBERSHIP IN ASSOCIATION.

The Owners of all of the Property, together with the Owners of any other land that may from time to time be made subject to all of the terms and provisions of this Declaration in the manner hereinafter provided for, shall be the members of an association which is hereby created and established, to be known as The Crossing Pool Association (the “Association”). The Association shall be incorporated under the laws of the State of Missouri as a corporation not-for-profit. Members of the Association shall be the sole judge of the qualification of its members and of their rights to participate in its meetings and proceedings.

SECTION 2. LAND ENTITLED TO BENEFITS.

No land shall be entitled to any of the benefits, improvements or services provided by this Association unless such land is subject to the terms of this Declaration and to the assessments herein provided for.

SECTION 3. OTHER LANDS – HOW THEY MAY BE ADDED.

- (a) Developer may, from time to time, unilaterally add to the District without the necessity of the consent of any Owner or other person or entity) any of the Developer Land in its sole discretion; provided, however, that the land to be

added to the District shall at that time be bound by all of the terms of this Declaration and any future modifications thereof.

- (b) Association may, from time to time, upon the request of any owner of any land within the Subdivisions, add to the District; provided, however, that the land to be added to the District shall at that time be bound by all of the terms of this Declaration and any future modification hereof.

SECTION 4. POWERS AND DUTIES OF THE ASSOCIATION.

The Association shall have all of the powers and duties as are available under R.S.Mo.355.131, by law and in equity, including, without limitation, the following powers and duties which it may exercise and perform whenever, in its discretion, it may deem them necessary or desirable, to wit:

- (a) To manage and control, for the benefit of its members, the Pool, the Pool Land and any improvements or personal property utilized in connection therewith;
- (b) To impose, levy and collect the assessments which are provided for in this Declaration dues, admission and transfer fees to enable the Pool to be owned, operated and maintained by the Association;
- (c) To acquire by lease or own the title to such real estate or personal property as may be reasonably necessary in order to carry out the purposes of the Association, including, without limitation, the Pool Land, and any improvements or personal property utilized in connection therewith, and to pay taxes on such property as may be owned or leased by it;
- (d) To establish such rules and regulations with respect to the Pool, the Pool Land and other improvements or personal property utilized in connection therewith, including annual fees and other assessments as the Association deems proper;
- (e) To maintain insurance for such purposes, in such amounts, and with such companies as the Association deems proper;
- (f) To enforce or to sue for damages as a result of the violation of, either in its own name or in the name of any Owner within the District, any covenant, assessment or restriction which may be virtue hereof or may hereafter be imposed upon any of the land in the District, either in the form as originally placed thereon or as modified subsequently thereto; provided, however, that this right of enforcement shall not serve to prevent such changes, releases, or modifications as are permissible herein, nor shall it serve to prevent the assignment of those rights by the proper parties, whenever and wherever such rights

or assignment exist. The expenses and costs of any enforcement proceedings shall be initially paid out of the general fund of the Association, as herein provided for, but if the Association prevails in such a proceeding, the owner and/or the real estate subject to the proceeding, shall be liable for such expenses and costs, including any attorney's fees incurred by the Association. Nothing herein contained shall be deemed or construed to prevent any Owner having the contractual right to do so from enforcing, in his own name, any such covenants, assessments or restrictions;

- (g) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property; and
- (h) To make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income.

SECTION 5. METHOD OF PROVIDING GENERAL FUNDS.

- (a) For the purpose of providing a general fund to enable the Association to exercise the powers and maintain the improvements and render the services herein provided for, all of the Assessable Lots on the first day of each fiscal year of the Association, as hereinafter defined, shall be subject to an annual assessment which may be levied by the Association from year to year and shall be paid to the Association annually in advance (except with respect to any increase in an assessment within a year, which increase shall be payable as provided by the Association) by the respective Owners of the Assessable Lots. The Association may, from year to year, fix and determine the total amount required in this general fund and may levy and collect an annual assessment.
- (b) Assessments for each fiscal year shall be due and payable on the first day of such fiscal year, except that an assessment levied during a fiscal year for such fiscal year shall be payable in full on the date determined by the Association. It shall be the duty of the Association to notify all Owners whose addresses are then listed with the Association giving the amount of the assessment on each Assessable Lot owned by them and the date when such assessment is due. Failure of the Association to levy an assessment for any one year shall in no way affect the right of the Association to do so for any subsequent year.
- (c) A written or printed notice deposited in the United States Post Office with postage prepaid and addressed to the respective Owners at the last address listed with the Association shall be deemed to be sufficient and proper notice for these purposes, or for any other purpose of this Declaration where notices are required.

- (d) The Developer Land shall not be subject to assessment as set forth herein, unless and until (i) a subsequent owner of any of such Developer Land subjects his property to the provisions of this Declaration, in which event, that land shall be subject to the assessments set forth herein, or (ii) the Developer unilaterally subjects the Developer Land to the provisions of this Declaration, in accordance with Section 3. Notwithstanding anything to the contrary herein contained, the subsequent owners of any of the Developer Land shall be entitled to utilize the Pool, but only upon the payment of an annual fee established by the Association and subject to the rules and regulations established by the Association. No other owner of any land not subject to all of the provisions of this Declaration shall be entitled to utilize the Pool under any circumstances, unless with the prior express written consent of the Association, which consent may be withheld in the sole discretion of the Association.

SECTION 6. LIEN ON REAL ESTATE.

- (a) The assessment provided for in section 5 shall become a lien on the real estate against which it is levied as soon as it is due and payable, as above set forth; provided, however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage now existing or which may hereafter be placed on said real estate securing the payment of a loan made by a bank, savings and loan or other institutional lender (an "Institutional Mortgage"). In the event of the failure of any Owner to pay the assessment on before the 30th day following the date such assessment is due, then such assessment shall bear interest from the due date at the lesser of (i) the rate of fifteen percent (15%) per annum or (ii) the maximum rate chargeable to the Owner under applicable law.
- (b) Within thirty (30) days from the date the assessment is due for the fiscal year during which and for which the assessment is levied, the assessment shall become delinquent and payment of both principal and interest may be enforced by a personal action against the Owner and/or by foreclosure of a lien for the assessment on said real estate in proceeding in any court in Jackson County, Missouri, having jurisdiction of suits for the enforcement of such liens; and
- (c) Such liens shall continue for a period of five (5) years from the date of delinquency and no longer, unless, within such time, suit shall have been instituted for the collection of the assessment, in which case the lien shall continue until the termination of the suit and until the sale of the property under execution of the judgment establishing the same.

SECTION 7. EXPENDITURES LIMITED TO ASSESSMENTS FOR CURRENT YEAR.

The Association shall at no time expend more money within any one year than the total amount of the assessment for that particular year or any surplus which it may have on hand from previous assessments, nor shall said Association enter into any contract whatsoever binding the assessment of any future year to pay for any such obligation, and no such contract shall be valid or enforceable against the Association except for contracts for utilities, it being the intention that the assessment for each year shall be applied as far as practicable toward the payment of the obligations of that year and that the Association shall have no power to make a contract affecting the assessment of any future or subsequent year, except for utilities.

SECTION 8. ASSOCIATION TO NOTIFY MEMBERS OF ADDRESS.

The Association shall notify all Owners of land in the District as it may exist from time to time, insofar as the addresses of such Owners are listed with said Association, of the official address of said Association, the time and place of the regular meetings of the Association, and the place where payments shall be made and any other business in connection with said Association may be transacted, and in the case of any change of such address, the Association shall notify all the Owners of the land in the District, insofar as their addresses are listed with the Association, of the new address.

SECTION 9. RULES.

The Association shall have the right to make such rules and regulations and provided such means and employ such agents as will enable it to adequately and properly carry out the provisions of this Declaration, in the sole discretion of the Association.

SECTION 10. AMENDMENT.

By written consent of the Owners of three-fourths (3/4ths) of the area of the land within the District as then constituted, evidenced by a Declaration duly executed and acknowledged by such Owners and recorded in the Office of the Recorder of Deeds for Jackson County, Missouri, this instrument may be modified, and amended.

SECTION 11. TERM; HOW TERMINATED.

This Declaration shall continue for a period of ten (10) years from the date hereof and shall automatically renew for successive periods of ten (10) years each – (for a maximum of 40 years) as long as the Pool is still being operated; provided, however, after the initial

ten (10) year period, this Declaration may be terminated and all of the land now or hereafter affected may be released from all the terms and provisions thereof by the Owners of three-fourth (3/4ths) of the area then subject thereto executing and acknowledging an appropriate agreement or agreements for that purpose and filing the same for record in the office of the Recorder of Deeds for Jackson County, Missouri.

SECTION 12. COVENANTS RUNNING WITH THE LAND.

All of the provisions of this Declaration shall be deemed to be covenants running with the land within the District and shall be binding upon Declarants and upon their successors and assigns.

