

RECORDING MEMORANDUM

Instrument: First Amendment to Woodlyn Crossing Indenture of Trust and Restrictions

Grantor: Board of Trustees of Woodlyn Crossing Subdivision
c/o Sandberg Phoenix, Attn: Todd Billy
120 S. Central Ave., Ste. 1600
Clayton, MO 63105

Grantee: Board of Trustees of Woodlyn Crossing Subdivision
c/o Sandberg Phoenix, Attn: Todd Billy
120 S. Central Ave., Ste. 1600
Clayton, MO 63105

Date: _____, 2022

Legal Description: See Exhibit A, which is attached hereto and incorporated herein by reference

County: St. Louis County, Missouri

Reference: Book 8043, Page 421

Return To: Sandberg Phoenix
120 S. Central Ave., Ste. 1600
Clayton, MO 63105
(314) 231-3332

This cover page is attached solely for the purpose of complying with the requirements stated in Mo. Rev. Stat. §§ 59.310.2 and 59.313.2 (2000). The information provided on this cover page shall not be construed as either modifying or supplementing the substantive provisions of the attached instrument. In the event of a conflict between the provisions of the attached instrument and the provisions of this cover page, the attached instrument shall control.

**FIRST AMENDMENT TO WOODLYN CROSSING
INDENTURE OF TRUST AND RESTRICTIONS**

THIS AMENDMENT to the Woodlyn Crossing Indenture of Trust and Restrictions is made and entered into as of this ___ day of _____, 2022 by the Board of Trustees (“Board”) of Woodlyn Crossing Subdivision (collectively, the “Association”).

WHEREAS, Woodlyn Crossing Subdivision (“Subdivision”) exists by virtue of the “Woodlyn Crossing Indenture of Trust and Restrictions” as recorded on January 2, 1987 in Book 8043, Page 421 in the records of St. Louis County, Missouri (“Indenture”); and

WHEREAS, pursuant to Section 12(e) of the Indenture, the Owners are authorized to amend the Indenture by approval of two-thirds (2/3) of all the Owners; and

WHEREAS, the Owners desire to amend the Indenture to clarify and address issues related to a landscape timber wall including risk management, and to adopt a process for future amendments; and

WHEREAS, this Amendment is in the best interests of the community as a whole.

NOW THEREFORE, the Indenture is amended as follows:

A. *A new subsection (o) to Section 1 of the Indenture, related to definition of Retaining Wall, is inserted to read as follows:*

“(o) “Retaining Wall” shall mean and refer to that wall made of landscaping timbers located to the immediate north of those lots on the north side of the roadway commonly known as Elm Crossing Court and as further described and depicted in Exhibit “B,” which is incorporated herein by reference. Retaining Wall, as defined, includes those portions of the Retaining Wall located within the common ground and the lots. The Retaining Walls shall exclude all other retaining walls or functional equivalent improvements regardless of when such improvement or alteration was performed.

B. *A new subsection (q) Section 10 of the Indenture, related to allocation of responsibility with respect to the Retaining Wall, is inserted to read as follows:*

(q) Allocation of Responsibility-Retaining Wall. The responsibilities, duties, and obligations with respect to the Retaining Walls are as follows:

(1) Maintenance by the Board of Trustees/Association. The Board of Trustees and/or the Association (collectively, the “Association”) shall solely be

responsible for maintenance of landscape timbers comprising the Retaining Wall. Such duty and obligation is limited to replacement of failed, or failing, landscape timbers with landscape timbers or its functional equivalent as determined by the Board of Trustees exercising their business judgment. All costs incurred pursuant to this Section shall be a common expense of the Association.

(2) Repairs and Replacement of Retaining Wall. The Association shall have no duty or obligation to repair or replace any portion of the Retaining Wall. Such duty and obligation shall be the responsibility of each individual lot owner. All costs incurred pursuant to this Section shall be the responsibility of the lot owner.

(3) Improvements. If an Owner wishes to make improvements or otherwise make alterations to any portion of the Retaining Wall within their lot, the Owner shall submit such request in writing for review and approval (or rejection, or approval with conditions), which must be obtained by the Owner prior to any improvements or alterations occurring consistent with Section 9 of the Indenture. If such improvement are alteration results in the removal or replacement of any portion of the Retaining Wall, the Association's obligation to maintain that portion of the Retaining Wall shall cease and the Owner shall be responsible for such maintenance, repair, and replacement, at their cost, thereafter.

C. Section 12, Subsection (e) of the Indenture related to amending the Indenture, is deleted in its entirety and a new Section 12, Subsection (3), related to Amendments, is inserted in lieu thereof to read as follows:

(e) Amendments. Except as otherwise provided in this Indenture, this Indenture may be amended at any time with substantial compliance of the following procedures: (1) the Association shall send a copy of the proposed amendment to each Owner subject to this Declaration with a ballot; (2) the Owner shall have a minimum of thirty days from the date the proposed amendment is sent to cast a ballot on the proposed amendment; and (3) unless one-third of the votes in the Association reject the proposed amendment, the Amendment shall be deemed approved by the Owners.

An amendment may change or eliminate any restriction in the Indenture or add new and/or more burdensome restrictions; however, no amendment can: (1) eliminate the requirement that there be an Association, (2) eliminate the power of the Association to levy assessments unless adequate substitution is made, and, (3) unless unanimous consent is obtained, change each Lot's allocated interests, or change a Lot's restricted use.

D. A new subsection (i) to Section 12 of the Indenture, related to Limitation of Liability and Hold Harmless, is inserted to read as follows:

(i) Indemnification, Limitation of Liability, and Hold Harmless. The Board of Trustees and/or the Association shall not be liable for any damages resulting (directly or indirectly) from any failure of the Retaining Wall (in whole or in part) or the failure of the Board/Association to fulfill its duties and obligations under Section 10(q) that results in injury to person(s) or damage to property (“Limitation”). This Limitation does not include the right of an Owner to compel the Association’s compliance with Section 10(q). Such Limitation shall include any persons that have served, or are serving, as member of the board of trustees, their agents, employees, successors, assigns, directors, and officers.

Further, each Owner shall indemnify and hold harmless the Board of Trustees and/or the Association (including its current and past board members, agents, employees, successors, assigns, directors and officers) for any injuries to persons or damages to property alleged or caused by the acts or omissions of an Owner responsible for repairs and replacement of their portion of the Retaining Wall.

E. The Board of Trustees is authorized to execute and record this Amendment upon its approval by the Owners and, their signatures below, certify that this amendment has been approved by the Owners in accordance with the Indenture.

F. This Amendment shall be effective upon the date of its recording with the Recorder of Deeds, St. Louis County, Missouri, and shall be applicable to events and circumstances occurring after said effective date.

IN WITNESS WHEREOF, the Board of Trustees of Woodlyn Crossing Subdivision hereby execute this Amendment on the day and year first above written.

This space intentionally left blank.

Board of Trustees

EXHIBIT A

**WOODLYN CROSSING
LEGAL DESCRIPTION**

Woodlyn Crossing, a subdivision, according to the plat thereof as recorded in Plat Book 256, Page 67 of the records of St. Louis County, Missouri

Woodlyn Crossing, Plat 2, a subdivision, according to the plat thereof as recorded in Plat Book 274, Page 25 of the records of St. Louis County, Missouri

EXHIBIT B
DEPICTION OF RETAINING WALL