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STATE OF KANSAS
COUNTY OF JOHNSON
FILED FOR RECORD

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REBECCA L. DAVIS
REGISTER OF DEEDS

AMENDED AND RESTATED
TUSCANY RESERVE
HOMES ASSOCIATION DECLARATION

THIS DECLARATION is made as of the 17th day of July, 2003, by **TUSCANY RESERVE, INC.**, a Kansas corporation ("Developer") and supersedes the Homes Association Declaration filed with the offices of the Register of Deeds of Johnson County, Kansas on March 26, 2003 as instrument number 3593607 in Book and Volume 8790 at Page 857. Such prior Homes Association Declaration is hereby amended and restated in its entirety as provided below.

WITNESSETH:

WHEREAS, Developer has executed and filed with the Register of Deeds of Johnson County, Kansas, a plat of the subdivision known as "Tuscany Reserve" which plat includes the following described lots and tracts:

Lots 1 through 86, and Tracts A, B, C, D and E of Tuscany Reserve,
a subdivision in the City of Leawood, Johnson County, Kansas.

WHEREAS, Developer, as the present owner and developer of the above-described property, desires to create and maintain a residential neighborhood and a homes association for the purpose of enhancing and protecting the value, desirability, attractiveness and maintenance of the property within the subdivision;

NOW, THEREFORE, in consideration of the premises contained herein, Developer, for itself and for its successors and assigns, and for its future grantees, hereby subjects all of the above-described lots to the covenants, charges, assessments and easements hereinafter set forth.

ARTICLE I. DEFINITIONS

For purposes of this Declaration, the following definitions shall apply:

(a) "Board" means the Board of Directors of the Homes Association.

(b) "Certificate of Substantial Completion" means a certificate executed, acknowledged and recorded by the Developer stating that all of the Lots in the Subdivision (as then constituted or contemplated by the Developer) have been sold by the Developer and the residences to be constructed thereon are substantially completed; provided, however, that the Developer may execute and record a Certificate of Substantial Completion or similar instrument in lieu thereof in Developer's absolute discretion at any earlier time and for any limited purpose hereunder. The execution or recording of a Certificate of Substantial Completion shall not, by itself, constitute an assignment of any of the Developer's rights to the Homes Association or any other person or entity.

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(c) “City” means the City of Leawood, Kansas.

(d) “Common Areas” means (i) the Right of Way Amenities, (ii) the Private Park, (iii) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler systems, trees and landscaping constructed or installed by or for the Developer or the Homes Association at or near the entrance of any street or along any street, and any easements related thereto, in the Subdivision, (iv) the wrought iron fence installed by the Developer on or near portions of the Subdivision boundaries, (v) all platted landscape easements and all other landscape easements that may be granted to the Developer and/or the Homes Association, for the use, benefit and enjoyment of all Owners within the Subdivision, (vi) all creeks, ponds and drainage ways platted as open space, and (vii) all other similar areas and places, together with all improvements thereon and thereto, the use, benefit or enjoyment of which is intended for all of the Owners within the Subdivision, whether or not any “Common Area” is located on any Lot.

(e) “Developer” means Tuscany Reserve, a Kansas corporation, and its successors and assigns.

(f) “Homes Association” means the Kansas not-for-profit corporation to be formed by or for the Developer for the purpose of serving as the homes association for the Subdivision.

(g) “Lot” means any lot as shown as a separate lot on any recorded plat of all or part of the Subdivision; provided, however, that if an Owner, other than the Developer, owns adjacent lots (or parts thereof) upon which only one residence has been, is being, or will be erected, then (i) for purposes of determining the amount of periodic and special assessments due with respect thereto from time to time, such adjacent property under common ownership shall constitute such whole or partial number of Lots as may be specified in writing by the Developer, and (ii) for all other purposes hereunder, such adjacent property under common ownership shall be deemed to constitute only one “Lot.”

(i) “Manor Villa Lot” means a Lot that is within Lots 1 through 28 above.

(ii) “Grand Villa Lot” means a Lot that is within Lots 29 through 44 and Lots 71 through 86 above.

(iii) “Villas Lot” means a Manor Villa or Grand Villa Lot.

(iv) “Estates of Tuscany Lot” or “Estates Lot” means a Lot that is within Lots 45 through 70 above.

(h) “Owner” means the record owner(s) of title to any Lot, including the Developer.

(i) "Recording Office" means the Office of the Register of Deeds of Johnson County, Kansas.

(j) "Right-of-Way Amenities" has the meaning set forth in Article XV.

(k) "Subdivision" means collectively all of the above lots in Tuscany Reserve, all Common Areas, and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.

(l) "Turnover Date" means the earlier of: (i) the date as of which 90% of all of the Lots in the Subdivision (as then constituted or contemplated by the Developer) have been sold by the Developer and the residences have been constructed thereon, or (ii) the date the Developer, in its absolute discretion, selects as the Turnover Date for all or any specific portion of this Declaration.

ARTICLE II. HOMES ASSOCIATION MEMBERSHIP

Until the Turnover Date, the Homes Association shall have two classes of membership, namely Class A and Class B. The Developer shall be the sole Class A member. Each Owner of a Lot, including the Developer as an Owner, shall be a Class B member. Until the Turnover Date, all voting rights shall be held by the Class A member, except that the Class B members shall have the sole right to vote on increases in annual assessments as provided in clause (c) of Section 2 of Article IV below.

After the Turnover Date, there shall be only one class of membership which shall consist of the Owners of the Lots in the Subdivision and every such Owner shall be a member.

Where voting rights exist based on Lot ownership, each member shall have one vote for each Lot for which he is the Owner; provided, however, that when more than one person is an Owner of any particular Lot, all such persons shall be members and the one vote for such Lot shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Lot. During any period in which a member is in default in the payment of any assessment levied by the Homes Association under this Declaration, the voting rights of such member shall be suspended until such assessment has been paid in full.

Subject to the foregoing, the Homes Association shall be the sole judge of the qualifications of each Owner to vote and their rights to participate in its meetings and proceedings.

ARTICLE III. POWERS AND DUTIES OF THE HOMES ASSOCIATION

1. In addition to the powers granted by other portions of this Declaration or by law but subject to all of the limitations set forth in this Declaration, the Homes Association shall have the power and authority to do and perform all such acts as may be deemed necessary or appropriate by the Board to carry out and effectuate the purposes of this Declaration, including, without limitation:

(a) To enforce, in the Homes Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Lots or other part of the Subdivision; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the Homes Association or other parties having the right to make such waivers, changes, releases or modifications under the terms of the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth or otherwise by law. The expense and cost of any such enforcement proceedings by the Homes Association shall be paid out of the general funds of the Homes Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Developer or any Owner from enforcing any building, use or other restrictions in its or his own name.

(b) To acquire and own title to or interests in, to exercise control over, and to improve and maintain the Common Areas, subject to the rights of any governmental authority, utility or any other similar person or entity therein or thereto.

(c) To maintain public liability, worker's compensation, fidelity, fire and extended coverage, director and officer liability, indemnification and other insurance with respect to the activities of the Homes Association, the Common Areas and the property within the Subdivision.

(d) To levy the assessments and related charges which are provided for in this Declaration and to take all steps necessary or appropriate to collect such assessments and related charges.

(e) To enter into and perform agreements from time to time with the Developer and other parties regarding the performance of services and matters benefiting both the Developer or other parties and the Homes Association and its members, and the sharing of the expenses associated therewith.

(f) To enter into and perform agreements with the Developer, other developers, other homes associations and other parties relating to the joint use, operation and maintenance of any recreational facilities and other similar common areas, whether in or outside the Subdivision, and the sharing of expenses associated therewith.

(g) To have employees and otherwise engage the services of a management company or other person or entity to carry out and perform all or any part of the functions and powers of the Homes Association, including, without limitation, keeping of books and records, operation and maintenance of Common Areas, and planning and coordination of activities.

(h) To provide for the collection and disposal of rubbish and garbage; to pick up and remove loose material, trash and rubbish of all kinds in the Subdivision; and to do any other things necessary or desirable in the judgment of the Board to keep any property in the Subdivision neat in appearance and in good order.

(i) To exercise any architectural, aesthetic or other control and authority given and assigned to the Homes Association in this Declaration or in any other deed, declaration or plat relating to all or any part of the Subdivision.

(j) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations, restrictions and guidelines, and the recorded declarations, by levying fines and other enforcement charges and taking such other lawful actions as the Homes Association, in its discretion, deems appropriate.

(k) To exercise such other powers as may be set forth in the Articles of Incorporation or Bylaws of the Homes Association.

2. In addition to the duties required by other portions of this Declaration and by law, the Homes Association shall have the following duties and obligations with respect to providing services to all Owners within the Subdivision:

(a) To the extent not provided as a service by any governmental authority, the Homes Association shall provide for the collection and disposal of rubbish and garbage for each residence one day per week (which day, if possible, shall be the same for all residences). The Homes Association, however, shall not be obligated to provide any recycling services.

(b) The Homes Association shall at all times, from and after its date of formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by or for the Developer or the Homes Association), subject to any control thereover maintained by any governmental authority, utility or other similar person or entity.

(c) The Homes Association shall properly maintain any Right-of-Way Amenities and otherwise satisfy its and the Owners' obligations with respect thereto, as contemplated in Article XV.

(d) The Homes Association shall provide lawn care, consisting of mowing, edging, annual mulching, fertilizing and weed control of grass areas only (excluding designated natural areas) on all Lots, but such services shall not include the replanting or reseeding of sod or grass, the replacement of trees, the care or replacement of bushes, shrubbery, trees, gardens or flowers, the care of foundation plantings, or the care of any areas which have been enclosed by an Owner with fencing or hedging or otherwise made inaccessible to the Homes Association; provided, however, that the Homes Association may perform additional care of landscaping at its discretion.

The Board shall have the right to further determine the scope and timing of the foregoing services described in this section and shall have the right to establish, maintain and expend reserve funds for the improvements on the Common Areas and the services to be provided by the Homes

Association under this Section 2. Neither the Developer, any director nor the Homes Association shall be liable to any Owner or other party for any failure to establish or maintain any such reserves or if any such reserves are inadequate.

ARTICLE IV. ANNUAL ASSESSMENTS

1. For the purpose of providing funds to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Lots in the Subdivision, other than Lots then owned by the Developer shall be subject to an annual assessment to be paid to the Homes Association in four quarterly installments by the respective Owners thereof as provided in this Article IV. The amount of such annual assessment per Lot shall be fixed periodically by the Board, subject to Section 2 below, and, until further action of the Board, shall be \$3,300 per year for Grand Villa and Estate lots and \$3,000 per year for Manor Villa lots.

2. The rate of annual assessment upon each Lot in the Subdivision may be increased as to and for each calendar year:

(a) After year 2004, by the Board from time to time, without a vote of the members, by up to 15% over the rate of annual assessment in effect for the preceding calendar year; or

(b) At any time by any amount by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase.

Notwithstanding the foregoing limits on annual assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of annual assessment at an amount that will permit the Homes Association to perform its duties as specified in Section 2 of Article III above.

3. The annual assessments provided for herein shall be based upon the calendar year (commencing in 2003) and shall be due and payable in installments on the first day of each fiscal quarter; provided, however, that (i) the first full assessment for each Lot shall be due and payable only upon commencement of occupancy of the residence on the Lot and shall be prorated as of the date thereof, and (ii) prior to such initial occupancy, a partial assessment for a Lot shall be due and payable upon installation of the sod on the Lot (which partial assessment shall be determined by the Developer). No Lot shall be entitled to receive any services to be provided by and through the Homes Association until such time as the first quarterly assessment has been paid with respect thereto.

4. Notwithstanding Sections 1, 2 and 3 above, from the transfer of title to a Lot from Developer to a third party (including a home builder) until the occupancy of the residence on the

Lot, the assessment for such Lot shall be \$300 per quarter. No trash services shall be provided by the Homes Association to such Lot during any such period.

5. At least \$30 per quarter of the assessment paid by each assessable Lot (except the assessments set forth in Section 4 above) shall be allocated to reserves to provide funds for repair or maintenance of major items and for other contingencies. Neither Developer nor the Homes Association nor any member of the Board shall have any liability to any Owner or member of the Homes Association if no additional reserves are established or maintained or if any reserves are inadequate. Developer may increase or decrease reserve allocation at its discretion. The Board shall determine in its sole discretion the circumstances under which the reserves set forth in this Section are utilized.

ARTICLE V. SPECIAL ASSESSMENTS

1. In addition to the assessments provided for herein, the Board:

(a) shall have the authority to levy from time to time a special assessment against any Lot and its Owner to the extent the Homes Association expends any money (for services, materials, and legal fees and expenses) to correct or eliminate (by enforcement, self-help or otherwise) any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration or plat covering such Lot (including, without limitation, to maintain or repair any Lot or improvement thereon); and

(b) shall levy from time to time special assessments against each and every Lot (other than any Lot then owned by the Developer) in an equal amount that is sufficient, when aggregated, to enable the Homes Association to perform its duties as specified in Section 2 of Article III above that require any expenditure during any period in an amount in excess of the general and reserve funds of the Homes Association available therefor.

2. In the event an Owner fails to properly maintain, repair, repaint, or replace any improvements on the Owner's Lot, the Homes Association, acting through the Board and after giving adequate notice to the Owner of the need for the maintenance, repair, repainting, or replacement, may enter onto the Lot and perform such maintenance, repair, repainting, or replacement. The Homes Association's costs thereof, plus a reasonable overhead and supervisory fee, shall be payable by the Owner of the Lot and shall be a special assessment against and lien upon the Lot until paid by the Owner.

3. If any Owner commences a lawsuit or files a counterclaim or crossclaim against the Homes Association, the Board of Directors, or any committee, or any individual director, officer or committee member of the Homes Association, and such Owner fails to prevail in such lawsuit, counterclaim or crossclaim, the Homes Association, Board of Directors, or individual director, officer or committee member sued by such Owner shall be entitled to recover from such Owner all litigation expenses incurred in defending such lawsuit, counterclaim or crossclaim, including reasonable attorneys' fees. Such recovery right shall constitute a special assessment against the Owner's Lot and shall be enforceable against such Lot as provided herein.

4. Each special assessment shall be due and payable upon the Homes Association giving notice of the assessment to the Owner of the Lot.

ARTICLE VI. DELINQUENT ASSESSMENTS

1. Each assessment regarding a Lot shall be a charge against the Owner and shall become automatically a lien in favor of the Homes Association on the Lot against which it is levied as soon as the assessment becomes due. Should any Owner fail to pay any assessment with respect to the Owner's Lot in full within 30 days after the due date thereof, then such assessment shall be delinquent, the Owner shall be charged a late fee of 5% of the unpaid amount and the unpaid amount shall bear interest at the rate of 10% per annum (or, if lower, the maximum rate permitted by law) from the delinquency date until paid, which late fee and interest shall become part of the delinquent assessment and the lien on the Lot. Should the Homes Association engage the services of an attorney to collect any assessment hereunder, all costs of collecting such assessment, including court costs and reasonable attorneys' fees, shall, to the extent permitted by applicable law, be added to the amount of the assessment being collected and the lien on the Lot. Each assessment, together with late fees, interest thereon and collection costs, shall also be the personal obligation of the Owner(s) of the Lot, jointly and severally, at the time when the assessment became due.

2. All liens on any Lot for assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage now existing or which may hereafter be placed upon such Lot, as provided below. A foreclosure sale or deed in lieu of foreclosure thereunder shall automatically extinguish the lien hereunder for such assessments to the extent applicable to periods prior to the entry of the order allowing such foreclosure or the execution of a deed in lieu thereof but shall not release such Lot from liability for any assessment applicable to periods thereafter. If the Owner subsequently redeems the Lot from the foreclosure sale, the lien hereunder shall automatically be reinstated retroactively in full.

3. Payment of a delinquent assessment with respect to a Lot may be enforced by judicial proceedings against the Owner personally and/or against the Lot, including through lien foreclosure proceedings in any court having jurisdiction of suits for the enforcement of such liens. The Homes Association may file certificates of nonpayment of assessments in the Recording Office, and/or the office of the Clerk of the District Court for Johnson County, Kansas, whenever any assessment is delinquent, in order to give public notice of the delinquency. For each certificate so filed, the Homes Association shall be entitled to collect from the Owner of the Lot described therein a fee of \$150.00, which fee shall be added to the amount of the delinquent assessment and the lien on the Lot.

4. Such liens shall continue for a period of five years from the date of delinquency and no longer, unless within such period suit shall have been instituted for collection of the assessment, in which case the lien shall continue until payment in full or termination of the suit and sale of the property under the execution of judgment establishing the same.

5. The Homes Association may cease to provide any or all of the services (including, without limitation, use of Common Areas and trash services) to be provided by or through the Homes Association with respect to any Lot during any period that the Lot is delinquent on the payment of an assessment due under this Declaration, and no such cessation of use privileges or services shall result in a reduction of any amount due from the Owner before, during or after such cessation. No Owner may waive or otherwise avoid liability for any assessment by not using any Common Areas or declining any services provided through the Homes Association.

6. No claim of the Homes Association for assessments and charges shall be subject to setoffs or counterclaims made by any Owner.

ARTICLE VII. LIMITATION ON EXPENDITURES

Except for matters contemplated in Section 2 of Article III above, the Homes Association shall at no time expend more money within any one year than the total amount of the assessments for that particular year, plus any surplus and available reserves which it may have on hand from prior years. The Homes Association shall not have the power to enter into any contract which binds the Homes Association to pay for any obligation out of the assessments for any future year, except for (i) contracts for utilities, maintenance or similar services or matters to be performed for or received by the Homes Association or its members in subsequent years, and (ii) matters contemplated in Section 2 of Article III above.

ARTICLE VIII. NOTICES

1. The Homes Association shall designate from time to time the place where payment of assessments shall be made and other business in connection with the Homes Association may be transacted.

2. All notices required or permitted under this Declaration shall be deemed given if deposited in the United States Mail, postage prepaid, and addressed to the Owner at the address of the Lot. Notice to one co-Owner shall constitute notice to all co-Owners.

ARTICLE IX. AMENDMENT AND TERMINATION

1. Subject to the provisions of subsection (a) below, This Declaration may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by (1) the Owners of at least two-thirds (2/3) of the Lots within the Subdivision as then constituted and (2) if prior to the recording of the Certificate of Substantial Completion, the Developer. After recording of the Certificate of Substantial Completion or with the Developer's written consent, this Declaration also may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written instrument signed by the Homes Association after the proposed amendment, modification or termination has been first approved by the affirmative vote of 75% or more of the full number of directors of the Homes Association and then approved by

the members of the Homes Association at a duly held meeting of the members of the Homes Association (called in whole or in part of that purpose) by the affirmative vote of Owners owning at least two-thirds (2/3) of the Lots.

(a) Prior to termination of this Declaration or amendment to the provisions concerning the Right-of-Way Amenities which could adversely impact the City, the Homes Association shall receive the written consent of the City.

2. Anything set forth in Section 1 of this Article to the contrary notwithstanding, other than 1(a) above, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend or change any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording in the Recording Office a written instrument for such purpose, if (i) either the Veteran's Administration or the Federal Housing Administration or any successor or similar agencies thereto shall require such action as a condition precedent to the approval by such agency of the Subdivision or any part of the Subdivision or any Lot in the Subdivision, for federally-approved mortgage financing purposes under applicable Veterans Administration, Federal Housing Administration or similar programs, laws and regulations, (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the Subdivision, (iii) a typographical or factual error or omission needs to be corrected in the opinion of the Developer, or (iv) such action is appropriate, in Developer's discretion, in connection with a replat of all or any part of the Subdivision. No such amendment by the Developer shall require the consent of any Owner.

3. If the rule against perpetuities or any rule against restraints on alienation or similar restriction is applicable to any right, restriction or other provision of this Declaration, such right, restriction or other provision shall terminate (if not earlier terminated) upon lapse of 20 years after the death of the last survivor of the now-living children and grandchildren of the individuals signing this Declaration on behalf of the Developer as of the date of such execution.

ARTICLE X. ASSIGNMENT

1. The Developer shall have the right and authority, by written agreement made expressly for that purpose, to assign, convey, transfer and set over to any person(s) or entity, all or any part of the rights, benefits, powers, reservations, privileges, duties and responsibilities herein reserved by or granted to the Developer, and upon such assignment the assignee shall then for any or all such purposes be the Developer hereunder with respect to the rights, benefits, powers, reservations, privileges, duties and responsibilities so assigned. Such assignee and its successors and assigns shall have the right and authority to further assign, convey, transfer and set over the rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

2. The Homes Association shall have no right, without the written consent of the Developer, to assign, convey, or transfer all or any part of its rights, benefits, powers, reservations, privileges, duties and responsibilities hereunder.

ARTICLE XI. COVENANTS RUNNING WITH THE LAND

1. All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Subdivision. By accepting a deed to any of the Lots, each future grantee of any of the Lots shall be deemed to have personally consented and agreed to the provisions of this Declaration as applied to the Lot owned by such Owner. The provisions of this Declaration shall not benefit or be enforceable by any creditor of the Homes Association (other than the Developer) in such capacity as a creditor.

2. No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of or default under this Declaration shall impair any of such rights or remedies; nor shall any such delay or failure be construed as a waiver of that or any other violation or default.

3. No waiver of any violation or default shall be effective unless in writing and signed and delivered by the person or entity entitled to give such waiver, and no such waiver shall extend to or affect any other violation or situation, whether or not similar to the waived violation. No waiver by one person or entity shall affect any rights or remedies that any other person or entity may have.

ARTICLE XII. GOVERNING LAW AND SEVERABILITY

1. This Declaration shall be governed by and construed in accordance with the laws of Kansas.

2. Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgment or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions or parts.

ARTICLE XIII. COMMON AREAS

1. Developer covenants and agrees to convey, by special warranty deed, all of its rights, title and interest in the Common Areas (except any part thereof that is within any Lot or outside of the Subdivision) to the Homes Association, without any cost to the Homes Association, at such time(s) as the Developer, in its absolute discretion, may determine, but in all events not later than one month after the Developer has recorded the Certificate of Substantial Completion. Such transfer shall be free and clear of all mortgages, deeds of trust, security interests and mechanic's liens. Notwithstanding the actual date of transfer, except as otherwise provided in an agreement with the Developer, the Homes Association shall at all times, from and after the date of its formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by the Developer or the Homes Association), subject to any control thereover maintained by any governmental authority, utility or similar person or entity. Any transfer of title by the Developer shall not constitute an assignment by the Developer of any of its rights, as the developer of the Subdivision, pursuant to this Declaration or any other instrument, contract or declaration. In insuring the Common Areas, the Homes Association shall cause the Developer to be named as an

additional insured on the insurance coverage until the recording of the Certificate of Substantial Completion.

2. The Developer, in its discretion, shall have the right to reconfigure and/or replat all or any part of the Subdivision then owned by it, including, without limitation, to make part of a Common Area tract a part of a Lot, and vice versa.

3. Subject to Section 2 above and Section 4 below, the Developer covenants and agrees to convey, by special warranty deed, all of its rights, title and interest in the Common Areas (except any part thereof that is solely a landscape easement or is within any Lot or outside of the Subdivision) to the Homes Association, without any cost to the Homes Association, at such time(s) as the Developer, in its absolute discretion, may determine, but in all events not later than one month after the Developer has recorded the Certificate of Substantial Completion. Such transfer shall be free and clear of all mortgages, deeds of trust, security interests and mechanic's liens. Notwithstanding the actual date of transfer, except as otherwise provided in an agreement with the Developer, the Homes Association shall at all times, from and after the date of its formation and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas (except any part thereof that is within any Lot and has not been landscaped or otherwise improved by the Developer or the Homes Association), subject to any control thereover maintained by any governmental authority, utility or similar person or entity. Any transfer of title by the Developer shall not constitute an assignment by the Developer of any of its rights, as the developer of the Subdivision, pursuant to this Declaration or any other instrument, contract or declaration. In insuring the Common Areas, the Homes Association shall cause the Developer to be named as an additional insured on the insurance coverage until the recording of the Certificate of Substantial Completion.

4. The Developer, in its discretion, shall have the right to reconfigure and/or replat all or any part of the Subdivision then owned by it, including, without limitation, to make part of a Common Area tract a part of a Lot, and vice versa.

ARTICLE XIV. PRIVATE PARK

1. "Private Park" means any and all real property contained within Tracts C, D and E of the plat for Tuscany Reserve, which contain man-made or natural channels or conveyances (through which storm water flows) and a storm water detention lake (the "Private Storm Sewer System").

2. The following shall apply with respect to any Private Park and any Private Storm Sewer System:

(a) By acceptance of a deed to a Lot, all Owners acknowledge and accept the inherent risks and hazards (whether foreseeable or not) associated with the presence of natural and man-made channels and lakes containing water. The Developer and the Homes Association and the officers and directors of the Homes Association shall have no liability or responsibility to any Owner or other party with respect to such inherent risks and hazards.

Each Owner, for himself, the members of his family, his guests and invitees, shall be deemed to have released and agreed never to make a claim against the Developer or the Homes Association or any officer or director of the Homes Association for any personal injury or death that may be suffered or incurred by any of such releasing parties in connection with Common Areas, Private Park and Private Storm Sewer System and such inherent risks and hazards, and each of them shall be deemed to have waived any and all claims and causes of action that any of them may ever have against any of such released parties with respect thereto.

(b) The Owners of the Lots shall have sole responsibility for the Private Storm Sewer System, and in that regard shall maintain the Homes Association as the vehicle to fulfill their obligations. The Homes Association shall be responsible for properly maintaining the Private Park and the Private Storm Sewer System, including, without limitation, any bank stabilization project constructed therein to obviate the effects of detrimental erosion, silt accumulation, or other damage caused by the flow of water into or through the Private Storm Sewer System from the surrounding property or from public storm sewer systems and for correcting any effects of silt accumulation or detrimental erosion or other damage caused by the flow of water through the Private Park. Title to the Private Park shall be conveyed to the Homes Association at such time as the Developer determines in its discretion.

(c) The Homes Association shall maintain adequate liability insurance to cover all reasonably insurable risks associated with the Private Storm Sewer System and the obligations of the Homes Association to the City.

(d) As set forth in Article IV, Section 5, the Homes Association shall create and maintain out of its annual dues a reserve for the costs of the future performance of the Homes Association's obligations with respect to the Private Storm Sewer System.

(e) The Homes Association shall perform annually all obligations mandated by the City regarding surveying or certification of stormwater capacity or detention capacity of the private storm sewer system, and shall execute any agreements or amendments to this document deemed necessary by the Board to comply with City requirements.

(f) Upon any failure by the Homes Association to satisfy its obligations to the City under this Section, the Owners of the Lots shall have such responsibility.

ARTICLE XV. RIGHT-OF-WAY AMENITIES

1. The City may allow the Developer to construct certain Common Area improvements within certain of the public right-of-way associated with streets in the Subdivision (collectively, the "Right-of-Way Amenities") as follows:

(a) Landscaping and structures within islands, including irrigation systems and underdrains;

- (b) Landscape lighting;
- (c) Art work, sculptures, fountains, statuary;
- (d) Landscape lights and conduits beneath street; and
- (e) Monument signs at entrance.

2. The Right-of-Way Amenities, although located within City right-of-way, are the sole responsibility of the Owners, which Owners shall maintain the Homes Association to be used as the vehicle by which to fulfill the obligations of the Homes Association as set forth under City policy or in any agreements now or in the future entered into between the Homes Association and the City regarding the maintenance of the Right-of-Way Amenities. Such delegation shall not, however, relieve the Owners of their maintenance responsibilities.

3. The City is hereby released from any and all past, present or future liability for any damage that may be caused at any time to any person or to any real or personal property resulting from or related to, directly or indirectly, the City allowing the Right-of-Way Amenities to be located in its right-of-way, or otherwise acting or failing to act with respect to the maintenance of the Right-of-Way Amenities. The City further is hereby released from any and all past, present or future obligations to expend any public funds or to take any other action to maintain or improve the Right-of-Way Amenities.

4. The Homes Association, or upon its failure, the Owners, will indemnify and hold harmless the City, its Mayor, the members of the City Council and the employees and agents of the City from and against any and all losses, damages, costs and expenses, including reasonable attorneys fees, that may be incurred or suffered by any of them as a result of or in connection with any claims that may be asserted against any of them in connection with the Right-of-Way Amenities. The Homes Association, or upon its failure, the Owners, will further be required to promptly reimburse the City for any public funds the City may expend with respect to maintenance of the Right-of-Way Amenities in the event the Homes Association fails to maintain the same, although the City is under absolutely no obligation to so maintain.

5. The Homes Association and the Owners understand and agree, if the City or the City's designee does damage to the Right-of-Way Amenities, repair or replacement of the same shall not be the responsibility of the City or the City's designee.

6. The Homes Association and the Owners understand and agree, should the City determine that the Right-of-Way Amenities are endangering the public health, safety or welfare or have become unsightly or a nuisance, or interfere in any way with the City's use of the right-of-way, that upon request of the City, the Homes Association will remove or cause to be removed any or all Right-of-Way Amenities from the City's right-of-way. Should the Homes Association fail to comply with the City's removal request, the City may remove the same and the Homes Association, or upon its failure, the Owners, shall be obligated to reimburse the City for the removal.

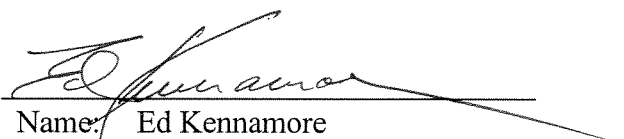
7. The Homes Association, or upon its failure, the Owners shall maintain adequate liability insurance to cover all reasonably insurable risks associated with the maintenance of the Right-of-Way Amenities.

8. The Developer and the City shall be third-party beneficiaries of all provisions of this Declaration relating to the Right-of-Way Amenities, and the Developer and the City shall have the right to enforce all restrictions, obligations and other provisions regarding the Right-of-Way Amenities.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be duly executed the day and year first above written.

THE DEVELOPER:


TUSCANY RESERVE, INC.

By: 
Name: Ed Kennamore
Title: President

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

On this 17 day of JULY, 2003, before me appeared ED KENNAMORE, to me personally known, who, being by me duly sworn did say that ~~he~~ she is the PRESIDENT of TUSCANY RESERVE, INC., a corporation of the State of KANSAS, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said PRESIDENT 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 the day and year first above written.


NOTARY PUBLIC

My Commission Expires:

APRIL 22, 2005

[SEAL]

