

3674299

\$44.00
\$40.00

STATE OF KANSAS
COUNTY OF JOHNSON) SS
FILED FOR RECORD

TUSCANY RESERVE

2003 JUL 23 P 1:44 DECLARATION OF RESTRICTIONS

REBECCA L. DAVIS
REGISTER OF DEEDS

THIS DECLARATION is made as of the 17th day of July, 2003, by TUSCANY RESERVE, INC., a Kansas corporation ("Developer") and supercedes the Declaration of Restrictions filed with the offices of the Register of Deeds of Johnson Count, Kansas on March 26, 2003 as instrument number 3593611 in Volume and Book 8790 at Page 893. 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:

All of Lots 1 through 86 and Tracts A, B, C, D and E, TUSCANY RESERVE, a subdivision of land in City of Leawood, Johnson County, Kansas, according to the recorded plat thereof;

WHEREAS, the "TUSCANY RESERVE" residential subdivision will consist of three areas, namely the "Manor Villas" area (to be Lots 1 through 28), the "Grand Villas" area (to be Lots 29 through 44 and Lots 71 through 86), and the "Estates of Tuscany" or "Estates" area (to be Lots 45 through 70); and

WHEREAS, Developer, as the present owner and developer of the above-described lots and tracts, desires to place certain restrictions on such lots to preserve and enhance the value, desirability and attractiveness of the development and improvements constructed thereon and to keep the use thereof consistent with the intent of the Developer, and all of said restrictions shall be for the use and benefit of Developer and its future grantees, successors and assigns;

NOW, THEREFORE, in consideration of the premises contained herein, Developer, for itself and for its successors and assigns, and for its future grantees, hereby agrees and declares that all of the above-described lots and tracts shall be, and they hereby are, restricted as to their use and otherwise in the manner hereinafter set forth.

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

(a) "Lot" means any lot as shown as a separate building lot on any recorded plat, certificate of survey or similar drawing 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 such adjacent property under common ownership shall be deemed to constitute only one "Lot."

(b) "Manor Villa Lot" means a Lot that is within Lots 1 through 28 above.

44.00

40.00

84.00 CK

190030230

ew-Polsinelli, Shalton

(c) "Grand Villa Lot" means a Lot that is within Lots 29 through 44 and Lots 71 through 86 above.

(d) "Villas Lot" means a Manor Villa or Grand Villa Lot.

(e) "Estates of Tuscany Lot" or "Estates Lot" means a Lot that is within Lots 45 through 70 above.

(f) "Subdivision" means all of the above-described lots and tracts in "TUSCANY RESERVE" and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.

(g) "Developer" means Tuscany Reserve, Inc., a Kansas corporation, and its successors and assigns.

(h) "Owner" means the record owner(s) of title to any Lot, including the Developer, and for purposes for all obligations of the Owner hereunder, shall include, where appropriate, all family members and tenants of such Owner and all of their guests and invitees.

(i) "Common Areas" means (i) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler systems and landscaping constructed or installed by or for the Developer at or near the entrance of any street or along any street, and any easements related thereto, in or to the Subdivision, (ii) all 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, (iii) all Green Areas, and (iv) 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.

(j) "Green Areas" means Tracts A, B, C, D and E above and similar areas that may be platted in the Subdivision as a tract and not as a residential lot.

(k) "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.

(l) "Exterior Structure" means any structure erected or maintained on a Lot other than the main residential structure or any structural component thereof, and shall include, without limitation, any deck, gazebo, greenhouse, doghouse, outbuilding, fence, patio wall, privacy screen, boundary wall, bridge, patio enclosure, tennis court, paddle tennis court, swimming pool, hot tub, pond, basketball goal, flag pole, swingset, trampoline, sand box, playhouse, treehouse, batting cage or other recreational or play equipment or structure, and all exterior sculptures, statuary, fountains, and similar yard decor.

(m) “Certificate of Substantial Completion” means a certificate executed, acknowledged and recorded by the Developer stating that all or, at the Developer’s discretion, substantially all of the Lots in the Subdivision (as then composed 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 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.

(n) “Approving Party” means (i) prior to the recording of the Certificate of Substantial Completion, the DRC and (ii) subsequent to the recording of the Certificate of Substantial Completion, the Board (or with respect to Exterior Structures and other matters assigned to it, the Architectural Committee).

(o) “Board” means the Board of Directors of the Homes Association.

(p) “Design Review Committee” or “DRC” means the committee of persons designated from time to time by the Developer to review and approve new construction-related matters in the Subdivision. See Section 15.

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

(r) “Turnover Date” means the earlier of: (i) the date as of which 90% of all of the Lots in the Subdivision (as then composed 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.

2. Use of Land. Except as otherwise expressly provided herein, none of the Lots may be improved, used or occupied for other than single family, private residential purposes. No trailer, outbuilding or Exterior Structure shall at any time be used for human habitation, temporarily or permanently; nor shall any residence of a temporary character be erected, moved onto or maintained upon any of the Lots or any Common Areas or used for human habitation; provided, however, that nothing herein shall prevent the Developer or others (including, without limitation, builders and real estate sales agencies) authorized by the Developer from using trailers or temporary buildings or structures or any residence or clubhouse for model, office, sales or storage purposes during the development and build out of the Subdivision.

3. Building Material Requirements.

(a) Exterior walls of all residences and all appurtenances thereto shall be of stucco (natural or acrylic) (but no stucco board or stuccato), natural stone (or cast stone of a similar tone and form), or any combination thereof, except as and where otherwise

expressly approved in writing by the DRC. The use of brick shall be permitted only by approval of the DRC. Exterior concrete blocks and board and batt siding shall not be permitted. All windows shall be constructed of glass, wood, metal or vinyl clad and wood laminate, or any combination thereof. All exterior doors and louvers shall be constructed of wood, metal, fiberglass, or vinyl clad and wood laminate, colored metal and glass, or any combination thereof. No windows or doors may be silver or other bright finish. Reflective or mirror finish glass shall not be permitted. Roofs throughout the Development shall be barrel tile materials exclusively. Color selections for both exterior walls and roof materials are to be as approved by the DRC. All homes in the Manor Villas and Grand Villas must use exterior lighting fixtures as specified by the DRC. All homes must incorporate stucco or stone courtyards and exterior wrought iron accents. All exterior architecture shall be approved in writing by the DRC. Notwithstanding the foregoing provisions of this Section 3 requiring or prohibiting specific building materials or products, any building materials or products that may be or come into general or acceptable usage for dwelling construction of comparable quality and style in the area, as determined by the DRC in its discretion, shall be acceptable upon written approval by the DRC.

(b) All applicable exterior components (excluding roof, brick, stone, stucco) shall be covered with a workmanlike finish of two coats of high quality paint (which may include a primer coat) or stain. No residence or Exterior Structure shall stand with its exterior in any unfinished condition for longer than ten months after commencement of construction. All exterior foundations and concrete walls which are exposed shall be painted the same color as the residence, and those exceeding 12 inches above final grade shall be covered with siding compatible with the structure.

(c) No air conditioning apparatus or unsightly projection shall be attached or affixed to the front of any residence and placement of same to be approved by the DRC. Window and wall air conditioning units shall not be permitted.

(d) Chimneys on exterior walls may not be cantilevered and must have a foundation wall underneath. No metal or other pipe shall be exposed on the exterior of any fireplace or fireplace flue (other than a minimal amount of exterior metal or piping from a direct vent fireplace).

(e) All driveways and sidewalks shall be concrete, exposed aggregate concrete, bomanite, interlocking pavers, brick or other permanent stone finishes. Crushed gravel and natural driveways and sidewalks are prohibited. No driveway shall be constructed in a manner as to permit access to a street across a rear lot line. The DRC may require, in its discretion, upgraded material borders for any or all driveways.

(f) All Villas Lots shall have at least a two-car garage. All Estates of Tuscany Lots shall have at least a three-car garage, but no more than a four-car garage. All garages must be side entry or courtyard side entry. No carports are permitted.

(g) No electric furnaces, add-on electric heat pumps or electric water heaters shall be installed in or for any residence on the Lots prior to January 1, 2009, without the specific prior written consent of the Developer.

(h) All wood on any decks (excluding flooring material) shall be painted the same color as the body or primary trim color of the residence. All deck rails shall be wrought iron or stucco with wrought iron or wood caps, or other materials specifically approved by the DRC in its discretion.

4. Minimum Finished Square Footage.

(a) No residence shall be constructed upon any Estate Lot with less than 3,250 square feet of finished floor area for 1 ½ Story, 2 story, and Reverse 1 ½ story plans. At least 2,500 square feet of finished floor area is required on the first floor for a 2 story residence, 1 ½ story, or Reverse 1 ½ story. Ranch plans in the Estates require a minimum square footage of 2,800 square feet.

(b) Grand Villa residences must have a minimum of finished floor area of at least 2,800 square feet with 2,160 square feet minimum on the first floor for 1 ½ story, 2 story and reverse 1 ½ story plans. Ranch plans must have a minimum square footage of 2,500 square feet.

(c) Manor Villa residences must have a minimum of finished floor area of at least 2,200 square feet with at least 1,750 square feet on the first floor for 1 ½ story and reverse 1 ½ story plans. Ranch plans must have a 2,000 square foot minimum.

(d) Finished floor area shall exclude any finished attics, garages, basements (except for a ranch or a reverse one and one-half story residence) and similar habitable areas.

(e) The DRC, in its discretion, may allow variances from the minimum square footage requirements for specified lots.

5. Approval of Plans; Post-Construction Changes; Grading.

(a) Notwithstanding compliance with the provisions of Sections 3 and 4 above, no residence or Exterior Structure may be erected upon or moved onto any Lot unless and until the building plans, specifications, exterior materials, location, elevations, plot plan, lot grading plan, landscaping plan, and exterior color scheme have been submitted to and approved in writing by the DRC. No change or alteration in such building plans, specifications, exterior materials, location, elevations, lot grading plan, landscaping plan or exterior color scheme shall be made unless and until such change or alteration has been submitted to and approved in writing by the DRC. All building plans and plot plans shall be designed to minimize the removal of existing trees with a caliper in excess of three inches.

(b) Following the completion of construction of any residence or Exterior Structure, no significant landscaping change, exterior color change or exterior addition or alteration shall be made thereto unless and until the change, addition or alteration has been submitted to and approved in writing by the DRC. All replacements of all or any portion of a completed structure because of age, casualty loss or other reason, including, without limitation, roofs and siding, shall be of the same materials, location and elevation as the original structure unless and until the changes thereto have been submitted to and approved in writing by the DRC.

(c) All final grading of each Lot shall be in accordance with the master grading plan approved by the City, any related grading plan furnished by the Developer for the development phase containing the Lot and any specific site grading plan for the Lot approved by the Developer. No landscaping, berms, fences or other structures shall be installed or maintained that impede the flow of surface water. Water from sump pumps shall be drained away from adjacent residences (actual and future). No changes in the final grading of any Lot shall be made without the prior written approval of the Approving Party and, if necessary, the City. The DRC and the Developer shall have no liability or responsibility to any builder, Owner or other party for the failure of a builder or Owner to final grade or maintain any Lot in accordance with the master grading plan or any approved lot grading plan or for the DRC or the Developer not requiring a lot grading plan or compliance therewith or for the quality or composition of any soil. The Developer and the DRC do not represent or guarantee to any Owner or other person that any grading plan for the Lots that the Developer or DRC may approve or supply shall be sufficient or adequate or that the Lots will drain properly or drain to any Owner's or other person's satisfaction.

6. Set Backs. No residence, or any part thereof (exclusive of porches, porticoes, stoops, balconies, bay and other windows, eaves, chimneys and other similar projections), or Exterior Structure, or any part thereof, shall be nearer the street line than the building set back lines shown on the recorded plat for such Lot; provided, however, that certain setback lines have been adjusted or reduced pursuant to City approvals and may not be accurately reflected on the plat, it shall be the responsibility of Lot Owners to verify the actual required setback of their lot; and, provided further, that the Developer shall have the right to decrease, from time to time and in its absolute discretion, the set back lines for a specific Lot, by filing an instrument in writing in the office of the Register of Deeds of Johnson County, Kansas and by acquiring approval of the City, if necessary.

7. Commencement and Completion of Construction. Unless the following time periods are expressly extended by the Developer in writing, construction of the residence on a Lot shall be commenced within six months following the date of delivery of a deed from the Developer to the purchaser of such Lot and shall be completed within 15 months after such commencement. In the event such construction is not commenced within such six month period (or extension thereof, if any), the Developer shall have, prior to commencement of construction, the right (but not the obligation) to repurchase such Lot from such purchaser at 95% of its original sale price. If such repurchase right is exercised by the Developer, the Owner of the Lot

in violation of this construction commencement provision shall not be entitled to reimbursement for taxes, interest or other expenses paid or incurred by or for such Owner.

8. Exterior Structures.

(a) No Exterior Structure shall be erected upon, moved onto or maintained upon any Lot except (i) strictly in accordance with and pursuant to the prior written approval of the DCR as to the applicable building plans, specifications, exterior materials, location, elevations, lot grading plans, landscaping plans and exterior color scheme and (ii) in compliance with the additional specific restrictions set forth in subsection (b) below or elsewhere in this Declaration; provided, however, that the approval of the DCR shall not be required for (i) any Exterior Structure erected by or at the request of the Developer or (ii) any Exterior Structure that (A) has been specifically approved by the DRC prior to the issuance of a temporary or permanent certificate of occupancy as part of the residential construction plans approved by the DRC and (B) has been built in accordance with such DRC-approved plans. Compliance with the specific requirements or restrictions set forth in subsection (b) below or elsewhere in this Declaration shall not automatically entitle an Owner to install or maintain any specific Exterior Structure, and the Approving Party, in its discretion, shall always have the right to additionally regulate, prohibit, condition or otherwise restrict any Exterior Structure notwithstanding such otherwise compliance.

(b) Additional Restrictions

(i) Lots may have only wrought iron (or similar) fences in the specific styles and colors approved by the DRC. All fences, boundary walls and privacy screens shall be ornamental and shall not disfigure the property or the neighborhood or interfere with drainage. No chain link, wire, or wood fencing or similar fence shall be permitted. Unless and until otherwise specifically approved in writing by the Approving Party, (A) no fence shall exceed four feet in height and no privacy wall shall exceed six feet in height, (B) (except in the case of front courtyards approved by the DRC) no fence, boundary wall or privacy screen shall be constructed or maintained on any Lot nearer to the front street than the rear corners (as defined by the Approving Party) of the residence, (C) all fences shall be stair-stepped to follow the grade of the Lot, and (D) no fencing is permitted in any landscape easement area. Decorative walls or fences to define a front or rear courtyard or patio area or to screen pool equipment must be (i) compatible with the design of the residence, (ii) of the same or compatible materials and colors as the residence (including, brick, stone, stucco and wrought iron), and (iii) no more than four feet in height. Exceptions to the regulations contained in this Section 8(b)(i) may be granted by the DRC in its discretion.

- (ii) Retaining walls must be covered with brick, stone or stucco on all exposed surfaces.
 - (iii) All basketball goals shall be permanently installed, free standing and not attached to the residence and located behind the front corners (as determined by the Approving Party) of the residence. All backboards shall be transparent and all poles shall be a neutral color or painted to match the residence. There shall be only one basketball goal per Lot. Full size portable basketball goals are not allowed. The Board shall have the right to establish reasonable rules regarding the hours of use of basketball goals and any such rules shall be binding upon all of the Lots and the Owners.
 - (iv) All recreational or play structures (other than basketball goals) shall be located behind the rear corners (as determined by the DRC) of the residence and may require landscape screening, if deemed appropriate by the DRC based on size, color and proximity to the neighboring properties.
 - (v) No aboveground type swimming pools shall be permitted. All pools shall be wrought iron fenced and all pool pumps, heaters and similar equipment and all hot tubs shall be fenced or otherwise adequately screened from view from all streets and other Lots, all in accordance with the other provisions of the Declaration. All pools and hot tubs and exterior fountains shall be kept clean and maintained in operable condition at all times.
 - (vi) The following Exterior Structures shall be prohibited: animal runs, trampolines, portable basketball goals, batting cages, and detached greenhouses.
 - (vii) All outside dog houses shall be located in the back yard near the residence, shall be painted (where appropriate) the same color of the residence, and shall have roofs that are compatible with the residence and their size and placement shall be subject to approval by the DRC.
 - (viii) No Exterior Structure that is prohibited under Section 9 below shall be permitted under this Section 8. No Exterior Structure that is prohibited on a Villa Lot under Section 12 below shall be permitted on those lots under this Section 8.
- (c) No fence, boundary wall or other Exterior Structure installed by or for the Approving Party anywhere in the Subdivision may be removed or altered by any Owner or other person without the prior written consent of the Approving Party.

9. Buildings or Uses Other Than for Residential Purposes; Noxious Activities; Miscellaneous.

(a) Except as otherwise provided in Section 2 above, no residence or Exterior Structure, or any portion thereof, shall ever be placed, erected or used for business, professional, trade or commercial purposes on any Lot; provided, however, that this restriction shall not prevent an Owner from maintaining an office area in his residence in accordance with the applicable ordinances of the City.

(b) No noxious or offensive activity shall be carried on with respect to any Lot; nor shall any trash, ashes or other refuse be thrown, placed or dumped upon any Lot or Common Area; nor shall anything be done which may be or become an annoyance or a nuisance to the Subdivision, or any part thereof. Each Owner shall properly keep and maintain his Lot in a neat, clean and orderly fashion and his residence and Exterior Structures in good condition and repair at all times.

(c) Unlicensed or inoperative motor vehicles are prohibited, except in an enclosed garage.

(d) Overnight parking of motor vehicles, trailers, campers or similar apparatus of any type or character in public streets, Common Areas or vacant lots is prohibited. Motor vehicles shall be parked overnight in garages or on paved driveways only.

(e) Trucks or commercial vehicles with gross vehicle weight of 12,000 pounds or over are prohibited except during such time as such truck is actually being used for the specific purpose for which it is designed.

(f) Recreational motor vehicles and trailers of any type or character are prohibited except:

- (i) Storing in an enclosed garage;
- (ii) Temporary parking for the purpose of loading and unloading (maximum of one overnight every 14 days); or
- (iii) With prior written approval of the Approving Party.

(g) Except as provided in subsection (f) above, no vehicle (other than an operable passenger automobile, passenger van or small truck), commercial van or truck, bus, boat, trailer, camper, mobile home or similar apparatus shall be left or stored overnight on any Lot, except in an enclosed garage.

(h) No television, radio, citizens' band, short wave or other antenna, satellite dish (other than as provided below), solar panel, clothes line or pole, or other unsightly projection shall be attached to the exterior of any residence or Exterior Structure or

erected in any yard. Should any part or all of the restriction set forth in the preceding sentence be unenforceable under any Federal statute or be held by a court of competent jurisdiction to be unenforceable because it violates the First Amendment or any other provision of the United States Constitution, the Approving Party shall have the right to establish rules and regulations regarding the location, size, landscaping and other aesthetic aspects of such projections so as to reasonably control the impact of such projections on the Subdivision, and all parts thereof, and any such rules and regulations shall be binding upon all of the Lots. Notwithstanding any provision in this Declaration to the contrary, small satellite dishes (maximum 39 inches in diameter) may be installed and screened, with the prior written consent of the DRC, so as not to be readily visible from the street or any other lot. The DRC shall have the right to establish rules and regulations binding upon all of the Lots and specific requirements for each Lot, regarding the location, size, landscaping and other aesthetic aspects of such small satellite dishes so as to control the impact thereof on the Subdivision, and all parts thereof.

(i) No artificial flowers, trees or other vegetation shall be permitted on the exterior of any residence or in the yard. Sculptures, bird baths, fountains and similar decorative objects are allowed on the exterior of the residence or in the yard only with the specific written approval of the DRC.

(j) Exterior holiday lights shall be permitted only between Thanksgiving Day and New Year's Day. Except for such holiday lights, all exterior lighting shall be white and not colored.

(k) No garage sales, sample sales or similar activities shall be held within the Subdivision without the prior written consent of the Approving Party.

(l) No speaker, horn, whistle, siren, bell or other sound device, shall be located, installed or maintained upon the exterior of any residence or in any yard, except intercoms, devices used exclusively for security purposes, and stereo speakers used in accordance with any rules specified by the Approving Party.

(m) All residential service utilities shall be underground, except with the approval of the Approving Party.

(n) In the event of vandalism, fire, windstorm or other damage, no residence or Exterior Structure shall be permitted by the Owner to remain in damaged condition for longer than three months (except with the specific written approval of the Approving Party).

(o) No shed, barn, or other storage facility shall be erected upon, moved onto or maintained upon any Lot. Storage shall be permitted under a deck provided such area is screened as otherwise authorized herein.

(p) No outside or underground fuel storage tanks of any kind shall be permitted.

(q) Except for signs erected by or for the Developer or its approved real estate brokerage company for the Subdivision, no sign, advertisement or billboard may be erected or maintained on any Lot except that:

(i) One sign not more than three feet high or three feet wide, not to exceed a total of five square feet, may be maintained on the Lot offering the residence for sale. For newly constructed homes offered for sale, only a real estate brokerage company sign (which may include a rider identifying the builder), and not also a separate sign for the builder, may be used if a real estate brokerage company is involved.

(ii) One garage sale sign not more than three feet high or three feet wide, not to exceed a total of five square feet, is permitted on the Lot when the sale is being held, provided such signs are erected in accordance with City code and are removed within two hours after the close of the sale.

(iii) One political sign per candidate or issue not more than three feet high or three feet wide, not to exceed a total of five square feet, is permitted on the Lot for up to 15 days before the election but must be removed within two days after the election.

(r) No signs offering a residence for rent or lease shall be allowed in the Subdivision.

(s) No sign shall be placed or maintained in any Common Area without the approval of the Approving Party.

(t) No trash, refuse, or garbage can or receptacle shall be placed on any Lot outside a residence, except after sundown of the day before or upon the day for regularly scheduled trash collection and except for grass bags placed in the back or side yard pending regularly scheduled trash collection.

(u) Garage doors shall remain closed at all times except when necessary.

10. Animals. No animals of any kind shall be raised, bred, kept or maintained on any Lot except that dogs, cats and other common household pets may be raised, bred, kept or maintained so long as (a) they are not raised, bred, kept or maintained for commercial purposes, (b) they do not constitute a nuisance and (c) the City ordinances and other applicable laws are satisfied. All pets shall be confined to the Lot of the Owner except when on a leash controlled by

a responsible person. Owners shall immediately clean up after their pets on all streets, Common Areas and Lots owned by others.

11. Lawns, Landscaping, Trees and Gardens.

(a) Prior to occupancy, all lawns, including all areas between each residence and any adjacent street, regardless of the existence and location of any fence, monument, boundary wall, berm, sidewalk or right-of-way line, shall be fully sodded and shall remain fully sodded at all times thereafter; provided, however, that the Owner of a Lot may leave or subsequently create a portion of the Lot as a native area with the express written permission of the Approving Party. No lawn shall be planted with zoysia. Prior to occupancy, the Owner thereof shall landscape the Lot in accordance with the landscape plans approved by the DRC, which plans shall specify tree requirements, placement and size of plantings on all four sides and non-deciduous screening of air conditioning units.

(b) All Lots are required to have an underground sprinkler system installed prior to occupancy covering the entire front, rear and side yards of the Lot (other than native areas approved above) and to use the sprinkler system as necessary or appropriate (as determined by the Approving Party) during the late spring, summer and early fall months.

(c) The DRC shall have the right to allow the required sod, sprinkler systems and landscaping to be installed after initial occupancy of the residence provided that an escrow of funds is established satisfactory to the DRC.

(d) All vegetable gardens shall be located behind the rear corners of the residence (as determined by the Approving Party) and at least 10 feet away from the boundary of the Lot or any Common Area or landscape easement. No vegetable garden(s) shall exceed 50 square feet in size on any Lot, except with the prior written consent of the Approving Party.

(e) The lawn of each Lot shall be kept in good condition at all times and uniformly mowed and clipped with a length of grass not to exceed four inches.

(f) The Developer shall have the right (but not the obligation) to install one or more trees on each Lot. The type of tree(s) and location shall be selected by the Developer in its absolute discretion. Each Owner shall properly water, maintain and replace all trees and landscaping on the Owner's Lot (including any trees planted by or for the Developer, but excluding those in a Common Area or landscape easement to the extent maintained by the Homes Association).

(g) No tree of three-inch caliper or more may be removed from any Lot at any time (other than by the Developer) without the written approval of the Approving Party.

12. Additional and Supplemental Requirements for Villa Lots. The Villa Lots shall be subject to the following additional or supplemental covenants, restrictions, easements and other provisions:

(a) Fences shall be allowed on the Manor Villa Lots only for purposes of enclosing a patio area or a hot tub.

(b) Water from sump pumps shall be connected to an underground drain that directs the water to the street underdrain. Water from downspouts shall be connected to underground drains that direct the water away from residences (actual and future).

(c) No barbecue grills, combustible materials or similar fire hazard shall be placed or maintained (even temporarily) in any yard within 10 feet of another residence.

(d) No swimming pools, swingsets, basketball goals or other play structures shall be permitted on the Manor Villa Lots.

(e) All hot tubs, dog houses and vegetable gardens on the Villa Lots must be within an enclosed patio area.

(f) Fences shall be allowed on the Grand Villa Lots only for the purposes of enclosing patio areas, hot tubs or swimming pools.

(g) Each Owner of a Villas Lot and the Homes Association shall have a perpetual nonexclusive easement on and over the adjacent side yard of each adjacent Villas Lot for the sole and limited purpose of providing reasonable ingress and egress for the maintenance and repair of the Owner's residence, utility lines and connections, lawn and landscaping. The Owner or the Homes association utilizing such easement shall be responsible for minimizing and repairing any damage done to the adjacent Villas Lot in connection with the use of such easement.

(h) Each Owner of a Villa Lot shall have a perpetual easement over that portion of the Villas Common Area between the boundary of the Villa Lot and the public or private street directly in front of and serving that Villa Lot where the driveway for the residence is originally constructed. The Owner shall be responsible for maintaining the entire driveway serving the Owner's residence in good repair and condition at all times and for replacing the same when necessary.

(i) The DRC may grant exceptions to the requirements in Sections 12(a) through (f).

13. Easements for Public Utilities; Drainage; Maintenance. The Developer shall have, and does hereby reserve, the right to locate, erect, construct, maintain and use, or authorize the location, erection, construction, maintenance and use of drains, pipelines, sanitary and storm sewers, gas and water lines, electric and telephone lines, television cables and other utilities, and to give or grant rights-of-way or easements therefor, over, under, upon and through all easements and rights-of-way shown on any recorded plat of the Subdivision or any Common Area. All

utility easements and rights-of-way shall inure to the benefit of all utility companies, including, without limitation, the Johnson County Unified Wastewater District, for purposes of installing, maintaining or moving any utility lines or services and shall inure to the benefit of the Developer, all Owners and the Homes Association as a cross easement for utility line or service maintenance.

The Developer shall have and does hereby reserve for itself and its successors and assigns and the Homes Association and its successors and assigns an easement over and through all portions of each Lot in the Subdivision for the purpose of performing the powers and duties of the Homes Association and maintaining any Common Area. Any physical damage caused in the exercise of such easement shall be repaired by and at the expense of the party exercising the easement right.

No water from any roof, downspout, sump pump, or perimeter basement drain or surface drainage shall be placed in or connected to any sanitary sewer line.

14. Common Areas.

(a) The Developer and its successors, assigns, and grantees, as Owners, and the Homes Association shall have the right and easement of enjoyment in and to all of the Common Areas, but only for the intended and permitted use of such Common Areas. Such right and easement in favor of the Owners shall be appurtenant to, and shall automatically pass with, the title to each Lot. All such rights and easements shall be subject to the rights of any governmental authority or any utility therein or thereto.

(b) Any ownership by the Homes Association of any Common Area and the right and easement of enjoyment of the Owners in the Subdivision as to any Common Area shall be subject to the right of the Developer to convey sewage, water, drainage, pipeline, maintenance, electric, telephone, television and other utility easements over, under, upon and through such Common Area, as provided in Section 13 above.

(c) No Owner shall improve, destroy or otherwise alter any Common Area (including, without limitation, any platted landscape easement) without the express written consent of the Approving Party.

(d) Owners of Lots adjacent or nearby the Common Areas shall prevent erosion and pollutant discharges and runoff onto the Common Areas.

(e) The following rules, regulations and restrictions shall apply to the use of any Green Areas:

- (i) No automobiles or motorized vehicles of any kind shall be allowed in the Green Areas except in any designated parking lots.
- (ii) No refuse, trash, or debris shall be discarded or discharged in or about the Green Areas except in designated trash bins.

- (iii) Access to the Green Areas shall be confined to designated common areas, except that owners of Lots adjacent to the Green Areas may have access to the area from their respective lots.
- (iv) The Developer and the Homes Association shall have reasonable access through all Lots to the Green Areas.

(f) Subject to the foregoing, the Developer and the Homes Association shall have the right from time to time to make, alter, revoke and enforce additional rules, regulations and restrictions pertaining to the use of any Common Area.

15. Design Review Committee.

(a) Until the Turnover Date, the DRC shall be a committee consisting of a person or persons designated by and serving at the sole pleasure of the Developer. After the Turnover Date, the DRC shall be a committee consisting of persons designated by the Board.

(b) The DRC shall meet as necessary to consider applications with respect to any Exterior Structures that require the approval of the DRC as provided in Section 8 above and to consider any other matters within the authority of the DRC as provided in this Declaration. A majority of the members of the DRC shall constitute a quorum for the transaction of business at a meeting and every act or decision made by a majority of the members present at a meeting at which a quorum is present shall be regarded as the act or decision of the DRC.

(c) At each meeting, the DRC shall consider and act upon written and complete applications that have been submitted to it for approval in accordance with this Declaration. In making its decisions, the DRC may consider any and all aspects and factors that the individual members of the DRC, in their discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Subdivision, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed Exterior Structure. All decisions of the DRC shall be in writing and delivered to the applicant, who shall be responsible for keeping the same. The DRC may establish in advance and change from time to time certain procedural and substantive guidelines and conditions that it intends to follow in making its decisions.

(d) After the Turnover Date, any applicant or other person who is dissatisfied with a decision of the DRC shall have the right to appeal such decision to the Board provided such appeal is filed in writing with a member of the Board within seven days after the date the DRC renders its written decision. In making its decisions, the Board may consider any and all aspects and factors that the individual members of the Board, in their discretion, determine to be appropriate to establish and maintain the quality, character and aesthetics of the Subdivision, including, without limitation, the building plans, specifications, exterior color scheme, exterior materials, location, elevation, lot grading plans, landscaping plans and use of any proposed Exterior Structure. Any

decision rendered by the Board on appeal of a decision of the DRC shall be final and conclusively binding on all parties and shall be deemed to be the decision of the DRC for all purposes under this Declaration. The Board, from time to time, may adopt, amend and revoke rules and regulations respecting appeals of decisions of the Architectural Committee, including, without limitation, requiring payment of a reasonable fee by the appealing party.

16. No Liability for Approval or Disapproval.

(a) Neither the Developer, nor the Homes Association, nor any member of the DRC or the Board shall be personally liable to any person for any approval, disapproval or failure to approve any matter submitted for approval, for the adoption, amendment or revocation of any rules, regulations, restrictions or guidelines or for the enforcement of or failure to enforce any of the restrictions contained in this Declaration or any other declaration or any such rules, regulations, restrictions or guidelines.

(b) If any Owner commences a lawsuit or files a counterclaim against the Homes Association, the Board of Directors, the DRC, or any individual director, officer or committee member of the same, and such Owner fails to prevail in such lawsuit or counterclaim, the Homes Association, Board of Directors, DRC, 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 or counterclaim, including reasonable attorneys' fees. Such recovery right shall constitute a lien against the Owner's Lot and shall be enforceable against such Lot.

17. Covenants Running with Land; Enforcement. The agreements, restrictions, reservations and other provisions herein set forth are, and shall be, covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Subdivision. The Developer, and its successors, assigns and grantees, and all parties claiming by, through or under them, shall conform to and observe such agreements, restrictions, reservations and other provisions; provided, however, that neither the Developer, the Homes Association nor any other person or entity shall be obligated to enforce any such agreements, restrictions, reservations or other provisions. 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 agreements, restrictions and reservations set forth herein as applied to the Lot owned by such Owner. No agreement, restriction, reservation or other provision herein set forth shall be personally binding upon any Owner except with respect to breaches thereof committed during his ownership; provided, however, that (i) the immediate grantee from the builder of the residence on a Lot shall be personally responsible for breaches committed during such builder's ownership of such Lot and (ii) an Owner shall be personally responsible for any breach committed by any prior Owner of the Lot to the extent notice of such breach was filed of record, as provided in the third paragraph of this Section 17, prior to the transfer of ownership.

The Developer, the Homes Association and each Owner shall have the right (but not the obligation) to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of or to enforce the observance of the agreements, restrictions, reservations and other provisions

herein set forth, in addition to any action at law for damages. To the extent permitted by law, if the Developer or the Homes Association shall be successful in obtaining a judgment or consent decree in any such court action, the Developer and/or Homes Association shall be entitled to receive from the breaching party as part of the judgment or decree the legal fees and expenses incurred by the Developer and/or Homes Association with respect to such action.

Whenever the Developer or the Board determines that a violation of this Declaration has occurred and is continuing with respect to a Lot, the Developer or the Homes Association may file with the office of the Register of Deeds of Johnson County, Kansas a certificate setting forth public notice of the nature of the breach and the Lot involved.

No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of 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.

No waiver of any violation 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; provided, however, that a duly authorized, executed and delivered waiver by the Homes Association, acting upon a decision of the Board, respecting a specific violation shall constitute and be deemed as a waiver of such violation by all other persons and entities (other than the Developer).

18. Assignment of Developer's Rights. The Developer shall have the right and authority, by written agreement made expressly for that purpose, to assign, convey and transfer 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 all purposes be the Developer hereunder with respect to the assigned rights, benefits, powers, reservations, privileges, duties and responsibilities. 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 of the Developer hereunder.

19. Release or Modification of Restrictions.

(a) The provisions of this Declaration shall remain in full force and effect until December 31, 2030, and shall automatically be continued thereafter for successive periods of five years each; provided, however, that the Owners of at least a majority of the Lots within the Subdivision as then constituted may release the Subdivision, from all or part of such provisions as of December 31, 2030, or at the expiration of any extension period, by executing (in one or more counterparts), acknowledging and recording an agreement in writing for such purpose, at least one year prior to December 31, 2030, or to a subsequent expiration date, whichever is applicable. The provisions of this Declaration may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by (i) the Owners of at least two thirds (2/3) of the Lots within the Subdivision as then constituted and (ii) if prior to the recording of the Certificate of Substantial Completion, the Developer, or if after the recording of the Certificate of Substantial Completion, the Homes Association under express authority and action of the Board.

(b) Anything set forth in this Section 19 to the contrary notwithstanding, the Developer shall have the absolute, unilateral right, power and authority to modify, revise, amend, change or add to any of the terms and provisions of this Declaration, as from time to time amended or supplemented, by executing, acknowledging and recording an appropriate instrument in writing for such purpose, if (i) either the Veteran's Administration or the Federal Housing Administration or any successor 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 Veteran's Administration or 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, or (iii) a typographical or factual error or omission needs to be corrected in the opinion of the Developer. No such amendment shall require the consent of any Owner.

(c) Anything set forth in this Section 19 to the contrary notwithstanding, the provisions of Section 12 of this Declaration may be amended, modified or terminated, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by (i) the Owners of at least two thirds (2/3) of the Villa Lots within the Subdivision as then constituted and (ii) if prior to the recording of the Certificate of Substantial Completion, the Developer, or if after the recording of the Certificate of Substantial Completion, the Homes Association under express action of the Board.

(d) If the rule against perpetuities 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.

20. Extension of Subdivision. The Developer shall have, and expressly reserves, the right, from time to time, to add to the existing Subdivision and to the operation of the provisions of this Declaration other adjacent or nearby lands (without reference to any street, park or right-of-way) by executing, acknowledging and recording a written declaration or agreement subjecting such land to all of the provisions hereof as though such land had been originally described herein and subjected to the provisions hereof; provided, however, that such declaration or agreement may contain such deletions, additions and modifications of the provisions of this Declaration applicable solely to such additional property as may be necessary or desirable as solely determined by the Developer in its discretion.

21. Severability. 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.

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

TUSCANY RESERVE, INC.

By: *[Signature]*
Name: Ed Kennamore
Title: President

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

This instrument was acknowledged before me on July 17, 2003 by Ed Kennamore, President of TUSCANY RESERVE, INC., a Kansas corporation.

Kelli L. Springs
Notary Public in and for said County and State
Print Name: KELLI L. SPRINGS

My Commission Expires:
April 22, 2005



26813 / 53743
FCSIM 168247.3