

AGREEMENT

THIS AGREEMENT is entered into this 7th day of August, 2006, by and between Tuscany Land Development, LLC ("TLD") and Tuscany Homeowners Association ("the Association").

Recitals

WHEREAS, TLD succeeded Tuscany Development Company, LLC as "Declarant" under that certain Declaration of Additional Covenants, Conditions, and Restrictions of Tuscany Addition dated July 20, 1998, recorded in Book 858 at page 259 ("the Declaration"), pertaining to the following-described real property located in Butler County, Kansas:

The First Phase Tuscany Addition to Andover, Butler County, Kansas, including Reserves A, B, and C ("Phase One"); and

WHEREAS, TLD is the owner and developer of certain lands contiguous to Phase One, located in what is designated Parcel 2 in the Preliminary Planned Unit Development Tuscany Addition, including the development known as Winchester at Tuscany Phase Two, as shown on the Final P.U.D. Plan, Winchester Estates Addition, Phase 2 of the Tuscany Planned Unit Development, consisting of 39 residential lots ("Phase Two"), and one or two, but not more than two, additional developmental phases, located in Parcel 2, consisting of a total of 43 additional lots (herein referred to only for reference as "Phase Three"); and

WHEREAS, TLD has constructed a pool and playground on a tract, which tract is more particularly described on Exhibit A attached hereto (such tract and the improvements located thereon hereinafter being referred to as "the P&P"), for use by the owners of residential lots in Phase One, Phase Two, and Phase Three, but not to exceed the number of lots in Phase One and a total of eighty-two (82) additional lots, in Phases Two and Three; and

WHEREAS, prior to the date of this Agreement, TLD informally turned over the operation and maintenance of the P&P to the Association, and the owners of residential lots located in Phase One have had access to and the right to use the P&P in accordance with rules established or to be established by the Association; and

WHEREAS, the parties desire to enter into this Agreement to clarify the rights and obligations of the Association, and owners of residential lots in Phase One and, not to exceed a total of eighty-two (82) additional lots, in Phase Two and Phase Three, with respect to the P&P.

Agreement

IN CONSIDERATION of the premises and the mutual covenants contained herein, the parties agree to the following:

1. **Conveyance of P&P.** Upon execution of this Agreement, TLD shall convey the P&P to the Association by Special Warranty Deed, free and clear of liens and encumbrances, except for the following exceptions:

- a. Rights or claims of parties in possession not shown by the public records;
- b. Easements, or claims of easements, not shown by the public records;
- c. Encroachments, overlaps, boundary line disputes, shortages in area or other matters which would be disclosed by an accurate survey or inspection of the premises;
- d. Taxes or special assessments which are not shown as existing liens by the public records.
- e. Easements and rights-of-way of record.

2. **Access to and Use of the P&P.** The owners of residential lots located in Phase Two and Phase Three, not to exceed a total of eighty-two (82) lots, shall have access to and the right to use the P&P in the same manner and on the same terms as owners of residential lots in Phase One, subject to the provisions of this Agreement.

3. **Costs and Expenses.** The costs and expenses incurred by the Association for operation and maintenance of the P&P, and any capital expenditures for the improvement of and/or improvements to the P&P and any charges for a reserve fund for capital expenditures for the maintenance and improvement of and/or improvements to the P&P, shall be allocated among the owners of lots in Phase One, Phase Two, and Phase Three, who have the right to use the P&P as herein limited in number, on a pro rata basis, with each lot bearing its pro rata share of such costs, expenses, capital expenditures and reserve charges as of the date a residence is constructed thereon and is either occupied (either by owner or lessee), or a sale thereof to a purchaser who intends to occupy it has been consummated, or ninety (90) days have elapsed since the issuance of a Certificate of Occupancy by the City of Andover, Kansas, with regard thereto, whichever is earlier. The pro rata share for each such lot shall be calculated as follows: the numerator shall always be one and the denominator shall be the total number, at the time of calculation, of residential lots in Phases One, Two and Three on which a residence has been constructed and is either occupied (either by owner or lessee), or a sale thereof to a purchaser who intends to occupy it has been consummated, or ninety (90) days have elapsed since the City of Andover, Kansas issued a Certificate of Occupancy with regard thereto, whichever is earlier; provided, however, the number of lots used in the denominator may never exceed the limits herein set forth for the number of lots having the right of access to and the right to use the P&P. The Association shall assess and collect the pro rata share attributable to each such lot in the Association each month. The Association shall also assess the pro rata share attributable to each such lot in Phase Two and Phase Three each month and shall bill the owner thereof or, when organized and functioning, the Homeowners Associations for Phase Two and Phase Three, for such shares each month. The owner, when it is being billed by the Association, and the Homeowners Associations for Phase Two and Phase Three, when they are being billed by the

Association, shall be responsible for and liable to the Association for payment. In addition, the owners of such lots in Phase Two and Phase Three shall continue to also be responsible for and liable to the Association for payment of their pro rata shares which may be legally enforced against them personally in the event of non-payment by the Homeowners Associations for Phase Two and Phase Three, as the case may be, when the Homeowners Associations are being billed.

4. **Control and Operation of P&P.** Notwithstanding the allocation of costs, expenses, capital expenditures and reserve charges associated with the P&P, and the rights of access and use of the P&P by owners of lots in Phase One, Phase Two, and Phase Three, as herein provided, the Association shall retain sole control of operation, maintenance, and capital expenditures for improvement of and/or improvements to the P&P, including decision-making authority with respect to such matters. In the event a master homeowners association is formed of which the Association is a part, this Agreement and the rights and obligations of the Association set forth herein with regard to the P&P and the rights and obligations of the owners of the additional eighty-two (82) lots provided above and the homeowners association(s) which may be formed for Phases Two and Three, shall continue in full force and effect and the master homeowners association, if formed, shall be subject thereto and such rights and obligations of the Association shall be binding thereon. *Provided, however,* excepting routine maintenance matters, the Association shall not have authority to make special assessments for major capital expenditures for construction, reconstruction, repair, or replacement of a capital improvement located on the P&P, including fixtures and personal property related thereto, without the assent of a majority of the votes of members of the Association in attendance and voting in person, or voting by proxy, at either an annual meeting or a special meeting duly called for such purpose.

5. **Entire Agreement.** The Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter of this Agreement, and there are no written or oral agreements between the parties concerning such subject matter.

IN WITNESS WHEREOF, the parties, through their authorized representatives, have executed this Agreement as of the date first written above.

TUSCANY LAND DEVELOPMENT, LLC

By Len Marotte
Len Marotte, Managing Member

TUSCANY HOMEOWNERS ASSOCIATION

By Willie Sinsel
Willie Sinsel, President

ACKNOWLEDGMENT

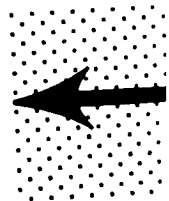
STATE OF KANSAS)
)
) ss:
COUNTY OF SEDGWICK)

BE IT REMEMBERED that on this 4th day of October, 2006, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Len Marotte, Managing Member of Tuscany Land Development, LLC, who is known to me to be the same person who executed the above and foregoing Agreement in the capacity stated on behalf of said corporation as its free act and deed; and was duly authorized to execute the same for and on behalf of Tuscany Land Development, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Lorraine F. Cavender
Notary Public
LORRAINE F. CAVENDER
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. _____

My Appointment Expires: 7-23-08



ACKNOWLEDGMENT

STATE OF KANSAS)
)
) ss:
COUNTY OF SEDGWICK)

BE IT REMEMBERED that on this 3rd day of October, 2006, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Willie Sinsel, President of Tuscany Homeowners Association, who is known to me to be the same person who executed the above and foregoing Agreement in the capacity stated on behalf of said association as its free act and deed; and was duly authorized to execute the same for and on behalf of Tuscany Homeowners Association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Doris J. Jarrett
Notary Public
DORIS J. JARRETT
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 10/3/2010

My Appointment Expires: