

FILED FOR RECORD AT THE REQUEST OF:

Law Offices of James L. Strichartz
201 Queen Anne Avenue North, Suite 400
Seattle, WA 98109



2013111500092

LAW OFFICES OF AMND-RER 230.00
PAGE-001 OF 159
11/15/2013 09:03
KING COUNTY, WA

**AMENDMENT TO
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR THE PLATS OF SHADOWBROOK DIVISION 1, SHADOWBROOK DIVISION 2, AND
SHADOWBROOK DIVISION 3**

Grantor: Tuscany Homeowners Association

Grantee: Tuscany Homeowners Association

Legal Description: Lots 1 through 132 and Tracts A through P, of the Plat of Shadowbrook Division 1, according to the plat thereof recorded on June 20, 1989, in King County, Washington in Volume 146 of Plats, at pages 29 through 36, inclusive, under Recording No. 8906200220, and any amendments thereto, records of King County, Washington;

Lots 1 through 77 and Tracts A through L, of the Plat of Shadowbrook Division 2, according to the plat thereof recorded on December 3, 1991, in King County, Washington in Volume 158 of Plats, at pages 94 through 104, inclusive, under Recording No. 9112031190, and any amendments thereto, records of King County, Washington;

Lots 1 through 9 and Tracts A through D, of the Plat of Shadowbrook Division 3, according to the plat thereof recorded on February 20, 1991, in King County, Washington in Volume 155 of Plats, at pages 49 through 51, inclusive, under Recording No. 9102200369, and any amendments thereto, records of King County, Washington.

Tax Parcel ID: 770196-0010 through 770196-1400, inclusive; 770199-0010 through 770199-0800, inclusive; 770198-0010 through 770198-0110, inclusive

WHEREAS, a certain Declaration entitled DECLARATION OF COVENANTS AND RESTRICTIONS FOR THE PLAT OF SHADOWBROOK (the "Declaration"), was recorded on June 21, 1989, under Recording No. 8906210512, in the records of King County, State of Washington, covering real property situate in King County, State of Washington in Volume 146 of Plats, at pages 29 through 36, inclusive; and

ORIGINAL

WHEREAS the Declaration has been amended by instruments recorded under King County Recording Nos. 9007270469, 9101310907, 9111180235, 9303160721, 9303161915, 9307021356, and 912092437; and

WHEREAS, pursuant to Article VIII, Section 1 of the Declaration, the Board has proposed the following Amendment to Declaration, and has given written notice of this proposed Amendment to every Owner at least ninety (90) days in advance; and

WHEREAS, the Owners of at least two-thirds (2/3) of the Lots have signed this instrument

NOW, THEREFORE, the President and the Secretary of the Association certify the Declaration to have been amended in the following particulars:

A. Article I of the Declaration is hereby deleted in its entirety and the following new Article I is substituted in its place:

- (a) **“Act”** means Chapter 64.38 RCW pertaining to homeowners’ associations.
- (b) **“Assessment”** means all sums chargeable by the Association against a Lot and its Owner, including without limitation regular and special Assessments, fines imposed by the Association, interest and late charges on any delinquent account, costs of collection, including reasonable attorney’s fees, incurred by the Association in connection with the collection of a delinquent Owner’s account, costs and attorney’s fees incurred by the Association in connection with the enforcement of the Governing Documents, and all other sums payable by an Owner to the Association as provided in the Governing Documents, unless the context clearly indicates otherwise.
- (c) **“Association”** means “Tuscany Homeowners Association”, a Washington non-profit corporation, the successor to the corporation formerly known as “Shadowbrook Homeowners Association”, which was administratively dissolved by the Secretary of State, and the unincorporated association also known as Tuscany Homeowners Association.
- (d) **“Common Expenses”** means and includes the actual and estimated expenses incurred by the Association for administration, operation, maintenance, repair, replacement, addition to or improvement of the Common Maintenance Areas or for the general benefit of the Owners; all expenditures found necessary or appropriate by the Board pursuant to the Governing Documents; and all expenditures agreed upon as Common Expenses by the Association.
- (e) **“Common Maintenance Areas”** or **“Common Areas”** means those areas of land shown on any recorded subdivision plat of The Properties that are maintained by the Association for the common use and enjoyment of the owners of The Properties. “Common Maintenance Areas” shall include Tracts “L & M”, entry landscaping, cul-de-sac islands, and other open spaces, and public equestrian trails.
- (f) **“Governing Documents”** means the Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations of the Association adopted as provided in the Declaration and Bylaws, as these documents may be lawfully amended and/or adopted from time to time.

(g) **“Lender”** means and refers to the beneficial owner, or the designee of the beneficial owner, of a recorded encumbrance on a Lot created by Mortgage which was made in good faith and for value, and shall also mean the seller, or the designee or assignee of a seller, under a real estate contract for the sale of a Lot. **“Lender”** also includes a governmental agency or governmentally chartered corporation which insures or guarantees a Mortgage.

(h) **“Lot”** means any plot of land shown upon any recorded subdivision map of the Properties. The term **“Lot”** shall include Tract C of Shadowbrook Division 3.

(i) **“Majority”** or **“Majority of Owners”** means and refers to Owners of more than fifty percent (50%) of the Lots in the Association.

(j) **“Manager”** means and refers to the person retained by the Board under a written agreement between that person and the Association to perform those management and administrative functions and duties delegated to that person with respect to the Association and the Plat.

(k) **“Member”** is synonymous with the term **“Owner.”**

(l) **“Mortgage”** means and refers to a recorded mortgage or recorded deed of trust that creates a lien against a Lot and also means and refers to a recorded real estate contract for the sale of a Lot.

(m) **“Mortgage Foreclosure”** includes a deed of trust sale and a deed given in lieu of a mortgage foreclosure or deed of trust sale, and also includes a real estate contract forfeiture or a deed given in lieu of a real estate contract forfeiture.

(n) **“Owner”** means the owner of a Lot, but does not include a person who has an interest in a Lot solely as security for an obligation. **“Owner”** also means the vendee, not the vendor, of a Lot under a real estate contract.

(o) **“The Properties”** means and refers to all such existing properties, and additions thereto, as are subject to the Declaration under the provisions of Article II thereof.

(p) **“Tenant”** means and includes a tenant, lessee, renter, subtenant, and sublessee, the assignee of a tenant, lessee, renter, subtenant, and sublessee, and all other non-Owner occupant of a Lot that is not occupied by its Owner. Tenant does not mean or include any person who occupies a Lot with an Owner occupant, whether or not rent is paid.

B. Article V of the Declaration is hereby deleted in its entirety and the following new Article V is substituted in its place:

Article V. Homeowners Association

1. **Form of Association.** Tuscan Homeowners Association (“The Association”) is a nonprofit corporation formed under the laws of the State of Washington. The Association is organized to assume and succeed to all rights, responsibilities and legal obligations, without limitation, accruing to and/or owed by that corporation formerly known as Shadowbrook Homeowners Association, which was

previously administratively dissolved by the Secretary of State, and the unincorporated association also known as Tuscan Homeowners Association, and automatically assumes and succeeds to all such rights, responsibilities and legal obligations. The Owners shall constitute the membership of the Association. The rights, duties and obligations of the Members and of the corporation shall be governed by the provisions of the Governing Documents.

2. Membership.

(a) **Qualification.** Each Owner of a Lot shall automatically, upon becoming an Owner, become a Member of the Association and shall remain a Member until that Owner ceases to own the Lot. Each Owner shall be entitled to one membership for each Lot owned by that Owner. If a Lot has been sold on contract, the contract purchaser shall exercise the rights of the Owner for purposes of the Association, and the Governing Documents, except as those rights may be pledged as provided in Article V, Section 3(d) of this Declaration, and shall be the voting representative unless otherwise specified. Ownership of a Lot shall be the sole qualification for membership in the Association.

(b) **Transfer of Membership.** The Association membership of each Owner shall be appurtenant to the Lot giving rise to the membership, and shall not be assigned, transferred, pledged, hypothecated, conveyed or alienated in any way except upon the transfer of title to the Lot and then only to the transferee of title to the Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant to the Lot to the new Owner of the Lot.

3. Voting.

(a) **Number of Votes.** The total voting power of all Owners shall be equal to the number of Lots in the Development and the total number of votes available to the Owner of any one (1) Lot shall be one (1). If an Owner owns more than one (1) Lot, that Owner shall have the votes for each Lot owned.

(b) **Voting Representative.** An Owner may, by written notice to the Association, designate a voting representative for the Lot. The designated voting representative need not be an Owner. The designation may be revoked at any time by actual notice to the Association from a person having an ownership interest in a Lot, or by actual notice to the Association of the death or judicially declared incompetence of any person with an ownership interest in the Lot. This power of designation and revocation may be exercised by the guardian of an Owner, and the administrators or executors of an Owner's estate. Where no designation is made, or where a designation has been made but is revoked and no new designation has been made, the voting representative of a Lot shall be the group composed of all of the Owners of that Lot. If a Lot is owned by a husband and wife and only one of them is present at a meeting of the Association, the one who is present will represent the marital community.

(c) **Joint Owner Disputes.** The vote for a Lot must be cast as a single vote. The division of the vote allocated to a Lot shall not be allowed. If joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If more than one (1) vote on a matter is cast by different Owners of a particular Lot at a meeting of the Association, or by written ballot, and there is any conflict among the votes so cast, none of the votes cast for the Lot shall be counted and the votes shall be deemed void; provided that the vote of the Lot shall be counted for the purpose

of constituting a quorum; and, further provided, that multiple votes cast in a consistent manner shall be counted only once for a Lot.

(d) Pledged Votes. If an Owner has pledged his or her vote regarding special matters to a Lender under a duly Recorded Mortgage, including a pledge to the seller under a duly Recorded real estate contract, only the vote of the Lender will be recognized in regard to the special matters upon which the vote is pledged if a copy of the instrument creating this pledge has been filed with the Board.

(e) Suspension of Right to Vote. An Owner's right to vote may be suspended in the manner provided in the Governing Documents.

4. Meetings. Meetings of the Members of the Association shall be held in accordance with the Bylaws.

5. Actions Without A Meeting.

(a) Written Ballot Authorized. Any action which may be taken by the Owners at a meeting of the Association may likewise be taken without a meeting after notice sent to all Members not less than ten (10) nor more than fifty (50) days in advance of the date set for the counting of the ballots, if (a) the written ballot of every Owner is solicited specifying the proposed action and providing an opportunity to specify approval or disapproval of any proposal; (b) the number of ballots cast within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and (c) the number of written approvals, signed by Owners or their proxies, setting forth the action to be approved, received by the Association, equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(b) Ballot Solicitations. Ballots shall be solicited in a manner consistent with the requirements of law. All solicitations shall indicate the number of responses needed to meet the quorum requirement and shall state the percentage of approvals necessary to pass the measure submitted. The solicitation must specify the time by which the ballot must be received at the address specified for return of the ballots by the Association in order to be counted.

(c) Revocation of Ballots. Subject to any applicable provisions of law, any Owner or other person entitled to cast a ballot, may revoke the ballot, or substitute another, by a writing received by the Association prior to the time specified in the solicitation for the counting of ballots, but may not do so after that time unless that time has been extended as provided in Article V, Section 5(d). A revocation is effective upon receipt by the Association at the address specified for return of the ballots.

(d) Extension of Time for Balloting. If a sufficient number of ballots are not received by the Association by the date specified in the solicitation to either constitute a quorum as required under clause (b) of Article V, Section 5(a), or to approve the proposal under clause (c) of Article V, Section 5(a), the Board may extend the date for the solicitation of ballots on further notice to all Members, of not less than ten (10) nor more than thirty (30) days, of the new date set for the counting of ballots.

(e) **Election of Directors By Mail Ballot.** In case of election of Board members by mail, the Board by majority vote shall select a slate consisting of the names of proposed Board members who are willing to serve, at least sufficient in number to fill any positions on the Board which are up for election, and shall set a date at least fifty (50) days after selection by which all votes are to be received. The Secretary within five (5) days after the selection is made shall give written notice of the number of Board members to be elected and of the names of the Board's nominees to all Owners at their registered addresses. The notice shall state that any Owner may nominate an additional candidate or candidates, not to exceed the number of Board members to be elected, by notice in writing to the Secretary at the address specified in the notice. The notice shall specify a date for the closing of nominations fifteen (15) days from the date the notice is given by the Secretary, by which the nominations must be received. Within five (5) days after the date of closing the nominations, the Secretary shall give written notice to all Members, stating the number of Board members to be elected and the names of all nominees, stating that each Owner may cast a vote by mail and stating the date established by the Board, which shall be not less than ten (10) nor more than fifty (50) days after the date of notice, by which the votes must be received by the Secretary at the address of the principal office of the Association, which shall be specified in the notice. Votes received after that date shall not be effective except as provided in Article V, Section 5(d). All persons elected as Board members by mail election by receipt of the number of votes required by the Bylaws shall take office effective five (5) days after the date specified in the notice for counting of the votes.

6. **Management by Board.** Administrative power and authority to manage the affairs of the Association shall be vested in a Board elected from among the Lot Owners. Except as provided in the Governing Documents or RCW Chapter 64.38, the Board shall act in all instances on behalf of the Association. The Board shall not act on behalf of the Association to amend the articles of incorporation, to take any action that requires the vote or approval of the Owners, to terminate the Association, to elect members of the Board, or to determine the qualifications, powers, and duties, or terms of office of members of the Board; but the Board may fill vacancies in its membership of the unexpired portion of any term. In the performance of their duties, the officers and members of the Board shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under RCW Chapter 24.03. Solely for the purpose of determining a person's qualifications to serve on the Board, the term "Lot Owner" shall include a director, trustee, officer, agent or employee appointed by a corporate Lot Owner as its voting representative, or a partner, agent or employee appointed by a partnership Lot Owner as its voting representative. The Board may delegate all or any portion of its administrative duties to a Managing Agent or to an officer or officers of the Association, or in any other lawful manner provided by the Bylaws or by resolution of the Board; provided, however, that any management contract or delegation shall be terminable with or without cause upon thirty (30) days notice by either party, and no such management contract shall have a duration longer than one year. The members of the Board shall be elected by the Lot Owners in the number and manner and for such terms as are provided in the Bylaws. The Board shall elect a President from among its members, who shall preside over meetings of the Board and the meetings of the Association.

7. **Authority of Association.** The Association, acting by and through the Board, and any officers, Manager or other agents or representatives to whom the Board has delegated the power or authority to act, shall have all of the powers and authority permitted by law, including without limitation the following powers:

(a) Adopt and amend Bylaws, Rules, and Regulations;

(b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for Common Expenses from Owners;

(c) Hire and discharge or contract with Managers and other employees, agents, and independent contractors;

(d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the Association, but not on behalf of owners involved in disputes that are not the responsibility of the Association;

(e) Make contracts and incur liabilities;

(f) Regulate the use, maintenance, repair, replacement, and modification of Common Areas;

(g) Cause additional improvements to be made as a part of the Common Areas;

(h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;

(i) Grant easements, leases, licenses, and concessions through or over the Common Areas and petition for or consent to the vacation of streets and alleys;

(j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the Common Areas;

(k) Impose and collect charges for late payments of Assessments and, after notice and an opportunity to be heard by the Board or by the representative designated by the Board and in accordance with the procedures as provided in the Bylaws or Rules adopted by the Board, levy reasonable fines in accordance with a previously established schedule adopted by the Board and furnished to the Owners for violation of the Governing Documents;

(l) Exercise any other powers conferred by the Bylaws;

(m) Exercise all other powers that may be exercised in this state by the same type of corporation as the Association; and

(n) Exercise any other powers necessary and proper for the governance and operation of the Association.

8. Additional Governing Documents.

(a) Adoption of Bylaws. Bylaws for the administration of the Association and the Development and for other purposes not inconsistent with the intent of the Declaration have been adopted by the Board. Bylaws for the Association may be adopted or amended by the Board or by the affirmative vote of a Majority of Owners. In the case of adoption by the Owners, notice of the time, place and purpose of the meeting, and the proposed text of any Bylaws to be voted on, shall be delivered to each Owner at least ten (10) days prior to the meeting. The requirement that the text of the proposed Bylaws be included with the notice

shall preclude the adoption of Bylaws language which has been amended by the Owners at the meeting without further notice to all of the Owners. Notice of any mail vote, including the text of the Bylaws to be voted on, shall be given to each Owner at least ten (10) days prior to the date set for counting the vote.

(b) Bylaws Provisions. The Bylaws shall be deemed to contain provisions identical to those provided in this Article V, and may contain supplementary, not inconsistent, provisions necessary or desirable for the proper administration and operation of the Association and the Properties. To the extent that they are not inconsistent with the terms of the Declaration, as amended by this instrument, any Bylaws in effect at the time of adoption of this Amended and Restated Declaration shall remain in full force and effect until changed by the Owners. To the extent that the Bylaws are inconsistent with the Declaration, they shall be deemed to have been amended by the approval of this Amended and Restated Declaration.

(c) Adoption of Rules and Architectural Control Regulations. The Board, or Association membership by the affirmative vote of a Majority of Owners, at a duly called regular or special meeting or by mail ballot conducted in the manner provided in Article V, Section 5, may from time to time adopt reasonable Architectural Control Regulations and reasonable Rules necessary or desirable to ensure compliance with or supplement the covenants, conditions and restrictions of the Declaration, to set or codify Community Wide Standards, to administer the Association, or to regulate the use, occupancy and maintenance of the Lots and the Common Area for the common good of the Owners, and to promote the comfortable use and enjoyment of the Properties and the welfare of the Owners and Residents. A Rule may be proposed for adoption by the Owners (1) by the Board, or (2) by written request signed by Thirty Percent (30%) of the Owners. The text of any Rule proposed for adoption at an Owners' meeting shall be included in the notice of the meeting. When adopted, the Rules and the Architectural Control Regulations shall be binding upon all persons bound by the Declaration.

(d) Amendment of Rules and Architectural Control Regulations. The Board or Owners may from time to time amend any Rules or Architectural Control Regulations in the same manner as is provided for adoption; provided, however, that the Board shall not have the power: (1) to amend any Rule or Architectural Control Regulation adopted by the membership in a manner inconsistent with the action of the membership; or (2) to adopt any Rule or Architectural Control Regulation which has been defeated by the vote of a Majority of Owners; or (3) to adopt any Rule or Architectural Control Regulation which is inconsistent with a Rule or Architectural Control Regulation adopted by a Majority of Owners.

(e) Distribution of Rules and Architectural Control Regulations. The Rules and the Architectural Control Regulations shall be stated in writing and shall be made available to each Owner, Tenant, Resident, Lender or other party having a legitimate interest in them, upon request to the Secretary or Manager of the Association. The Association may charge a reasonable fee for the cost of complying with the request.

(f) Conflicts Among Governing Documents. In the event of a conflict between the Declaration and any of the other Governing Documents, the Declaration shall prevail. In the event of a conflict between the Articles and any Governing Document besides the Declaration, the Articles shall prevail. In the event of a conflict between the Bylaws and the Rules or the Architectural Control Regulations, the Bylaws shall prevail.

C. Article VII of the Declaration is hereby deleted in its entirety and the following new Article VII is substituted in its place:

Article VII. Assessments

1. Creation of Lien and Personal Obligation of Assessments.

(a) The Owner of each Lot (including Tract C of Shadowbrook Division 3), for himself or herself, and for his or her heirs, personal representatives, successors and assigns, hereby covenants and agrees, and each subsequent Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in the deed, is deemed to covenant and agree, for each Lot owned, to pay to the Association any and all Assessments charged by the Association pursuant to this Declaration.

(b) The amount of any Assessment assessed to any Lot and the Owner of any Lot shall be a charge on the land and shall be a continuing lien upon the Lot against which the Assessment is made from the time that the Assessment is due. Recording of the Declaration constitutes record notice and perfection of the lien for Assessments. While no further Recording of any claim of lien for Assessment shall be required to perfect the Association's lien, the Association may record a notice of claim of lien for Assessments in the real property records of King County. Any current or prospective Owner or Lender of a Lot may request a certificate of Assessments from the Board pursuant to Article VII, Section 12 and the certificate shall be conclusive as to the amount of any lien against the Lot at the time of issuance.

(c) In addition to constituting a lien on the Lot and all its appurtenances, each Assessment, including without limitation interest, late charges, costs and attorneys' fees in the event of delinquency, shall be the joint and several personal debt and obligation of the Owner of Lots for which the same are assessed as of the time the Assessment is made, and, except as provided in Article VII, Section 10 to that Owner's successors in title. Suit to recover personal judgment for any delinquent Assessments shall be maintainable without foreclosing or waiving the liens securing them.

(d) Any payment on an Owner's Assessment account shall be applied first to outstanding fines, then to costs of collection, including attorneys' fees, chargeable to an Owner pursuant to the Declaration, then to interest and late fees, then to regular Assessments, and finally to special Assessments.

(e) No Owner may waive or otherwise escape liability for the Assessments provided for in the Declaration by non-use, or abandonment of his or her Lot. No Owner shall be entitled to assert as a setoff or defense against his or her obligation to pay Assessments the amount of any obligation or liability due from, or claim asserted against, the Association or any other person.

(f) Nonpayment of Assessments may result in foreclosure of the lien established pursuant to the Declaration. The lien established pursuant to the Declaration is exempt from the homestead protection under Chapter 6.13 RCW.

2. Purpose of Assessments. All Assessments levied by the Association shall be used exclusively to promote the health, safety, welfare and recreation of the Owners and Residents of the Lots, the improvement, operation and maintenance of the Common Maintenance Areas, the payment of Common Expenses and the performance of the duties of the Association as set forth in the Governing Documents.

3. **Budget.** Not less than sixty (60) days prior to the beginning of each calendar year or other fiscal year adopted by the Board by resolution, the Board shall estimate the charges for Common Expenses to be paid during the year, make provision for creating, funding and maintaining reasonable reserves for contingencies, operations, insurance, and repair, replacement and acquisition of Common Maintenance Areas, shall take into account any expected income and any surplus available from the prior year's operating fund, and shall divide the estimated net charges by the number of Lots and shall assess each Lot and Owner such amount in accordance with the number of Lots owned. If the sum estimated and budgeted at any time proves inadequate for any reason (including nonpayment for any reason of any Owner's Assessment), the Board may at any time levy a further Assessment which shall be assessed to the Owners in like manner.

4. **Budget Ratification.** Within thirty (30) days after adoption by the Board of any proposed regular annual budget or special assessment supplemental budget of the Association, the Board shall set a date for a meeting of the Owners to consider ratification of the budget. The date of the meeting shall be not less than fourteen (14) nor more than sixty (60) days after mailing of the summary. Unless at that meeting a Majority of Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

5. **Uniform Rate of Assessments.** Except for certain special Assessments and other items which may be levied against particular Lots under the provisions of the Declaration, all Assessments for Common Expenses shall be assessed to the Lots and the Owners at a uniform rate.

6. **Date of Commencement of Annual Assessments.** The annual Assessments provided for in the Declaration shall commence on and become due and payable on January 1 of each year, or in any other manner as the Board may reasonably require. Written notice of each annual and special Assessment shall be sent to every Owner. Each Owner shall be obligated to pay Assessments made pursuant to the Declaration to the Association on or before the due date or in any other reasonable manner as the Board shall designate and any unpaid Assessments shall bear interest at the rate specified in Article VII, Section 11 from the due date until paid.

7. **Omission of Assessment.** The omission by the Board before the expiration of any year to fix the budget and Assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of the Declaration or a release of an Owner from the obligation to pay the Assessments or any installment thereof for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed.

8. **Liability for Damages and Misconduct.** Notwithstanding any other provision of this Declaration, each Owner shall be responsible for any expenses resulting from damages done to a Lot or the Common Maintenance Areas by that Owner or a tenant occupying the Owner's Lot, or the family, servants, employees, agents, visitors, licensees, or household pet of that Owner or tenant, or from any misconduct by that Owner or a tenant occupying the Owner's Lot, or the family, servants, employees, agents, visitors, licensees, or household pet of that Owner or tenant. The charges for repair or replacement of any damage in excess of insurance proceeds available to the Association under policies of insurance issued to the Association and the expenses resulting from any such misconduct caused thereby

shall be specially assessed to the Lot, shall be a lien upon the Lot, and shall be collectable as are other Assessments.

9. **Records.** The Board shall cause to be kept complete, detailed and accurate records, in accordance with generally accepted accounting principles and in a form sufficient to enable the Association to comply with the requirements of any applicable Washington statute, of all receipts and expenditures of the Association, specifying and itemizing each expense incurred. Except to the extent exempted from disclosure under applicable law, the books and records of the Association, including the records and resolutions authorizing payments by the Association and all contracts, documents, minutes, resolutions, papers and other records of the Association, shall be available for examination and copying upon prior request by any Owner, Lender, prospective purchaser of a Lot, or prospective Lender, personally or by an authorized representative, during normal business hours at the place at which the records are normally kept or at another reasonable time and location established by the Board. The Association may assess reasonable charges against an Owner and the Owner's Lot to cover the direct and indirect costs of examination and copying of Association records by an Owner or an Owner's representative and may require any other requesting party to pay a like charge.

10. **Priority of Assessments.** Except for Mortgages recorded after the date of recording of this Amendment to Declaration, the lien for payment of Assessments shall have priority over all other liens and encumbrances, recorded or unrecorded, except that the liens created under the Declaration upon any Lot for Assessments shall be subject to tax liens on the Lot in favor of any assessing unit and/or special district and shall be subject to the rights of a Lender in the case of any indebtedness secured by a first Mortgage upon the Lot. Where a Lender or other purchaser of a Lot becomes entitled to possession of a Lot as a result of a Mortgage Foreclosure of a first Mortgage, that possessor and his or her successors and assigns shall not be liable for the share of the Assessments by the Association chargeable to that Lot which became due prior to the Mortgage Foreclosure sale. That prior unpaid share of Assessments shall, at the discretion of the Board, be deemed to be Common Expenses collectable from all of the Owners including the possessor, his or her successors and assigns.

11. **Late Charges and Interest on Delinquent Assessments.** The Board may from time to time establish late charges and a rate of interest to be charged on Assessments that may become or remain delinquent in the future. In the absence of other established non-usurious rates, the late fee on delinquent Assessments shall be fifty dollars (\$50.00), which shall be added to any account which is not paid in full on or before January 8 of each year, and the interest rate applicable to any account which is delinquent for more than thirty (30) days shall be twelve percent (12%) per annum, or the maximum allowable under RCW 19.52.020, imposed on the entire delinquent balance on the last day of each month.

12. **Recovery of Attorneys' Fees and Costs.** In addition to any attorneys' fees and costs recoverable in an action brought under Article VII, Section 1 (c) or Article VII, Section 13 of the Declaration, the Association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent Assessments, whether or not those collection activities result in suit being commenced or prosecuted to judgment. In addition, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees on appeal and in the enforcement of a judgment, whether in the State of Washington or a sister state.

13. **Certificate of Assessment.** A certificate executed and acknowledged by the treasurer or the president of the Association, or the Manager, or another authorized agent of the Association if neither the president nor treasurer nor Manager is available, stating the indebtedness, if any, for Assessments secured by the Association's lien upon any Lot shall be conclusive upon the Association as to the amount of indebtedness on the date of the certificate in favor of all persons who rely thereon in good faith. A certificate of Assessments, in recordable form, shall be furnished to any Owner or any Lender within a reasonable time after request at a reasonable fee to be set by the Board. Unless otherwise prohibited by law, any Lender may pay any unpaid Assessments payable with respect to that Lot and upon payment that Lender shall have a lien on the Lot for the amounts paid of the same rank as the lien of his or her Mortgage.

14. **Judicial Foreclosure of Assessment Lien.** The Association may foreclose the lien of any Assessment by appropriate action in court in the manner that a Mortgage is foreclosed or in any other manner provided by the laws of the State of Washington as they may from time to time be changed or amended. In any action to foreclose a lien against any Lot for nonpayment of delinquent Assessments, any judgment rendered against the Owner of the Lot in favor of the Association shall include a reasonable sum for attorneys' fees and all costs and expenses reasonably incurred in preparation for or in the prosecution of the action in addition to taxable costs permitted by law. The Association shall have the power to bid in at any resulting sale and to purchase, acquire, lease, hold, mortgage and convey any Lot.

15. **Rental Value.** From the time of commencement of any action to foreclose a lien against a Lot for nonpayment of delinquent Assessments, the Owner of the Lot shall pay to the Association the reasonable rental value of the Lot to be fixed by the Board and the plaintiff in any Assessment foreclosure action shall be entitled to the appointment, without bond, of a receiver to collect the reasonable rental value of the Lot. The receiver may, if the rental is not paid, obtain possession of the Lot, refurbish it for rental up to a reasonable standard for rental homes in this type of development, rent the Lot or permit its rental to others, and apply rents first to the costs of the receivership and attorneys' fees thereof, then to the costs of refurbishing the Lot and Improvements for rental, then to costs, attorneys' fees and charges of the foreclosure action, and then to the payment of other delinquent Assessments.

16. **Non-judicial Foreclosure of Assessment Lien.** The Lot Owners by approval of this Amendment to the Declaration each hereby bargain, sell, and convey to Chicago Title Insurance Co., a Washington corporation, (referred to in this Declaration as the "Trustee") in Trust, for the benefit of the Association, as beneficiary, with power of sale, the real property which is subject to this Declaration, which real property is not used principally for agricultural or farming purposes, together with all the tenements, hereditaments, and appurtenances now or hereafter thereunto belonging or in any way appertaining, and the rents, issues and profits thereof. This grant is made by each Lot Owner for the purpose of securing performance of the payment of all Assessments due hereunder against each Lot Owner's respective Lot. Upon default by any Lot Owner in the payment of any Assessment, upon the written request of the Association, Trustee shall sell the Lot subject to the lien for Assessments, in accordance with the Deed of Trust Act of the State of Washington, at public auction to the highest bidder. Any person except Trustee may bid at Trustee's Sale. Trustee shall apply the proceeds of the sale as follows: (1) to the expense of sale, including a reasonable Trustee's fee and attorney's fee; (2) to the obligation secured by this grant in trust; (3) the surplus, if any, shall be distributed to the persons entitled thereto. Trustee shall deliver to the purchaser at the sale its deed, without warranty, which shall

convey to the purchaser the interest in the property which the Lot Owner had or had the power to convey at the time of adoption of this Amendment, and such as he or she may have acquired thereafter. Trustee's deed shall recite the facts showing that the sale was conducted in compliance with all the requirements of law and of the Declaration, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchaser and encumbrancers for value. The Beneficiary may appoint in writing a successor trustee, and upon the recording of such appointment in the real property records of the county in which this Declaration is recorded, the successor trustee shall be vested with all powers of the original trustee.

17. **Rental Lots.** If a Lot is rented by its Owner, the rent is hereby pledged and assigned to the Association as security for the payment of all Assessments and, if the Assessments on the Lot are delinquent, the Board may collect, and the Tenant shall pay over to the Board, so much of the rent for the Lot as is required to pay any amounts due to the Association under the Governing Documents. The Tenant shall not have the right to question payment over to the Board, and payment to the Association will discharge the Tenant's duty of payment to the Owner for rent, to the extent of rent received by the Association. No demand or acceptance of rent under this Section shall be deemed to be a consent or approval of the Lot rental or a waiver of the Owner's obligations under the Governing Documents. The Board shall not exercise this power where a receiver has been appointed with respect to the Lot or its Owner; nor in derogation of any rights which a Lender may have with respect to the rents. If a Tenant shall fail or refuse to pay rent to the Association as provided for in this section, the Association shall have the right to bring an action for unlawful detainer for nonpayment of rent under RCW 59.15.030, and the costs and attorneys' fees incurred by the Association in connection with that action shall be an Assessment collectable in the same manner as any other Assessment under the Declaration.

18. **Remedies Cumulative.** The remedies provided in the Declaration are cumulative and the Board may pursue them concurrently and may pursue any other remedies which may now or in the future be available under law although not expressed in the Declaration.

D. Article VIII, Section 1 of the Declaration is new Section is hereby deleted in its entirety and the following new Article VIII, Section 1 is substituted in its place:

Section 1. Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns. This Declaration may be amended from time to time by vote or written approval of at least Two-Thirds (2/3) of the Owners; provided, however, the percentage of votes necessary to amend a specific clause or provision shall not be less than the percentage of affirmative votes required for action to be taken under that clause or provision; and no amendment which would defeat the obligations of the Association to maintain the Common Maintenance Areas in accordance with the terms of the Declaration, which would defeat the Assessment procedures which assure the collection of funds for that maintenance, or which would terminate the existence of the Declaration or the Association shall be made unless approved by Ninety Percent (90%) of the Owners; and provided further, that the provisions of the Declaration relating to the establishment, maintenance and repair of the public equestrian trails and required open space areas are based on plat conditions adopted by ordinance by the King County Council and may not be changed in whole or in part without the approval of ordinance by the King County Council. Notwithstanding the foregoing, if, by law, any different consent or agreement is required in order to effect the amendment of this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration

shall be effective only if authorized and executed as required by law. No provision of this Declaration may be changed, modified or rescinded so as to conflict with the provisions of any law. Votes shall be cast by written ballot either in person or by proxy at a meeting duly called for such purpose, written notice of which shall be sent to all Owners not less than fourteen (14) days nor more than sixty (60) days in advance of said meeting. Owners may also vote by executing a document in writing consenting to the amendment. An Owner's written consent may be submitted either prior to or within thirty (30) days following the date of said meeting. The amendment shall be set forth in full in writing and shall be signed on behalf of the Owners by the president and secretary of the Association, who shall certify that the amendment has been approved by the Owners as required by this Section. The amendment shall be effective when Recorded, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be conclusively presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

E. This Amendment to the Declaration shall take effect upon recording. The terms of this Amendment to the Declaration shall control over and implicitly amend any inconsistent provision of the Declaration or the Bylaws of the Association. Except as amended by this instrument, the Declaration shall remain in full force and effect.

DATED this 11th day of November, 2013.

TUSCANY HOMEOWNERS ASSOCIATION

By: Peter A. Williams
President

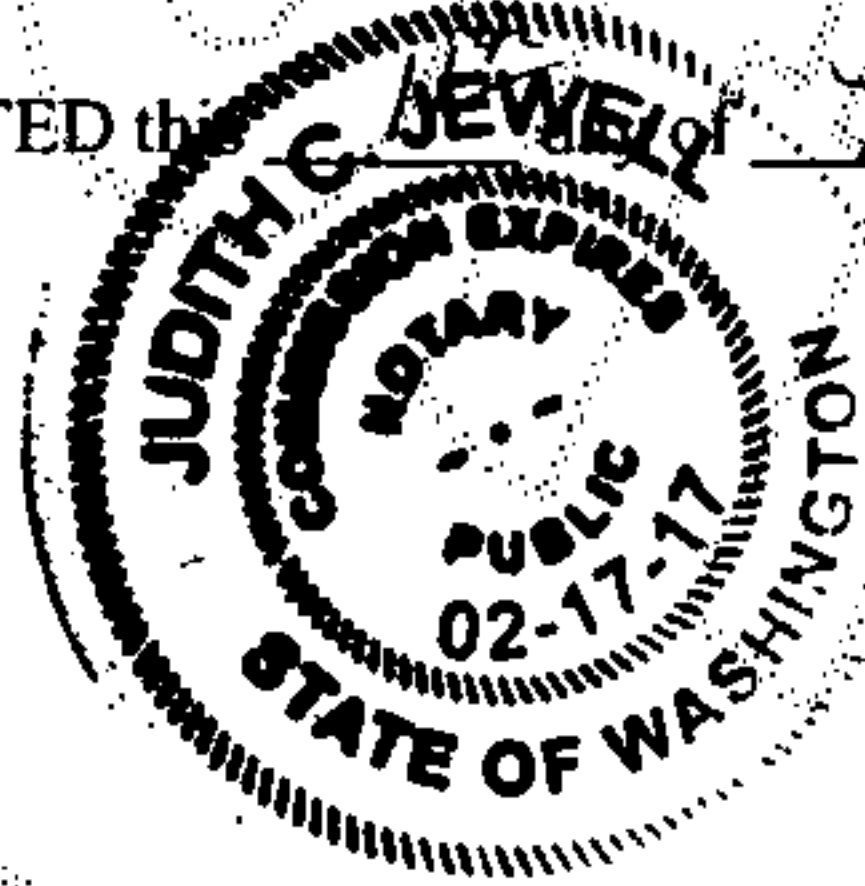
ATTEST: The above amendment was properly adopted.

By: Travis Bras
Secretary

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 11th day of November, 2013, personally appeared before me, Peter Williams and Francis BRAVO, known to me to be the President and Secretary of Tuscany Homeowners Association, the non-profit corporation that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of the Association, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute the instrument.

DATED this JEWELL November, 2013.



Judith G. Jewell [Signed]
Judith G. Jewell [Print Name]
Notary Public in and for the State of
Washington, residing at Woodville, WA
My commission expires: 2-17-17