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STATE OF KANSAS  
COUNTY OF JOHNSON  
FILED FOR RECORD

AMENDMENT TO  
HOMES ASSOCIATION DECLARATION  
OF  
BLACKTHORNE ESTATES

2002 DEC 31 P. 12: 57

REBECCA L. DAVIS  
REGISTER OF DEEDS

**THIS AMENDMENT TO HOMES ASSOCIATION DECLARATION OF BLACKTHORNE ESTATES**, made as of this 5th day of December, 2002 by the undersigned, Heritage Development of Kansas, Inc., a Minnesota corporation ("Developer").

WHEREAS, that certain Homes Association Declaration ("Declaration") for the subdivision known as Blackthorne Estates, 1st Plat, a subdivision in Johnson County, Kansas, was recorded in the Office of the Register of Deeds of Johnson County, Kansas at Book 5898, at Page 883 on October 26, 1998; and

WHEREAS, the Declaration was made applicable to Blackthorne Estates, 2nd Plat, a subdivision in Johnson County, Kansas, by document recorded in the Office of the Register of Deeds of Johnson County, Kansas at Book 7014, at Page 338 on May 4, 2001; and

WHEREAS, the Declaration was made applicable to Blackthorne Estates, 3rd Plat, a subdivision in Johnson County, Kansas, by document recorded in the Office of the Register of Deeds of Johnson County, Kansas at Book 7218, at Page 352 on August 10, 2001; and

WHEREAS, the Declaration was made applicable to Blackthorne Estates, 4th Plat, a subdivision in Johnson County, Kansas, by document recorded in the Office of the Register of Deeds of Johnson County, Kansas at Book 7928, at Page 654 on July 8, 2002; and

WHEREAS, as a condition to development of such subdivision, the City of Overland Park has required certain duties of the Association as defined in the Declaration, by virtue of that certain "Right-of-Way Maintenance Agreement" dated June 22, 1998 and recorded in the Office of the Register of Deeds of Johnson County, Kansas at Book 5794, at Page 123 on August 4, 1998; and by virtue of that certain "Right-of-Way Maintenance Agreement" dated November 6, 2000 and recorded in the Office of the Register of Deeds of Johnson County, Kansas at Book 6780, at Page 839 on December 1, 2000; and

WHEREAS, it is necessary to amend the Declaration as required by and pursuant to such Right-of-Way Maintenance Agreements.

NOW, THEREFORE, a Section 6a be added to the Declaration to include the following paragraphs:

*SECTION 6A. SPECIAL PROVISIONS RELATED TO RIGHT OF WAY AMENITIES.*

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(1) *The following special provisions shall apply to amenities owned and maintained by the Association in public rights of way:*

a) *"Right Of Way Amenities" shall mean structures, improvements and personal property placed in public rights of way by the Developer or the Association.*

b) *The Association shall set a reasonable portion of annual assessments as in reserve for maintenance of Right Of Way Amenities, and shall create special assessments, as and when necessary, if reserves are insufficient to maintain the Right Of Way Amenities and maintenance is reasonably deemed to be immediately necessary.*

c) *The Association shall and does hereby release the City of Overland Park, Kansas from any and all past, present or future liability for any damages that may be caused to person or property resulting from or related to use and maintenance of Right Of Way Amenities by the Association and the variances granted by the City of Overland Park, Kansas to permit the Right Of Way Amenities. The Association agrees to indemnify and hold harmless the City of Overland Park, Kansas, its Mayor, members of the City Council and employees and agents from and against any and all losses, damages, costs and expenses (including reasonable attorneys' fees) that may be incurred or suffered as a result of or in connection with any claims that may be asserted against any of them in connection with the Right Of Way Amenities. The City of Overland Park, Kansas shall be under no obligation to expend public funds or to take any other action to maintain or improve the Right Of Way Amenities, however in the event the Association fails to reasonably maintain the Right Of Way Amenities, or take such other actions as may be mandated herein, the Association will reimburse the City of Overland Park, Kansas for the cost of maintenance of the Right Of Way Amenities in the event the City of Overland Park, Kansas expends public funds to so maintain same.*

d) *The Developer and the City of Overland Park, Kansas shall be third-party beneficiaries of the provisions of this Declaration relating to the duties and powers of the Association to maintain the Right Of Way Amenities, and the Developer and the City of Overland Park, Kansas shall have the right to enforce such provisions.*

e) *That the Association shall maintain, at its cost, reasonable and adequate liability insurance to ensure against risks associated with the use and maintenance of the Right Of Way Amenities.*

f) *That in the event the City of Overland Park, Kansas determines that the Right Of Way Amenities are endangering the public health, safety or welfare, or have become unsightly or a nuisance, or interfere in any way with the City's use of the right of way, the Association*

*shall remove or cause to be removed any and all of the Right Of Way Amenities at its cost.*

That the Declaration, including the amendment herein, is hereby ratified and affirmed.

IN WITNESS WHEREOF, the Developer has executed this instrument as of the day and date first above written.

HERITAGE DEVELOPMENT OF  
KANSAS, INC., a Minnesota corporation

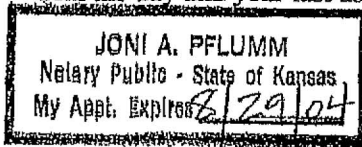
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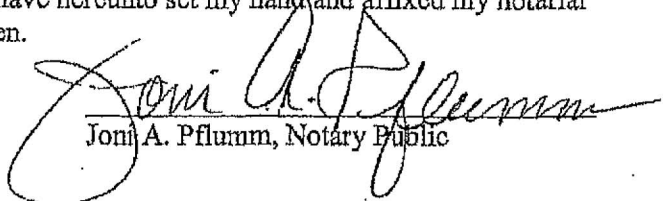
Edward John Dobbs, Vice President

STATE OF KANSAS, JOHNSON COUNTY, SS.:

BE IT REMEMBERED, that on this 5th day of December, 2002, before me the undersigned, a Notary Public in and for the county and state aforesaid, came Edward John Dobbs, Vice President of Heritage Development of Kansas, Inc., a Minnesota corporation, who is personally known to me to be the same person who executed, as such officer, the within instrument on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

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



  
Joni A. Pflumm, Notary Public

My Appointment Expires:

8-29-04

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Lots 1 through 54, inclusive, and tracts A and B, Blackthorne Estates, 1st Plat, a subdivision in the City of Overland Park, Johnson County, Kansas, as shown on the recorded plat thereof.

Lots 55 through 88, inclusive, Blackthorne Estates, 2nd Plat, a subdivision in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof.

Lots 89 through 96, inclusive, Blackthorne Estates, 3rd Plat, a subdivision in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof.

Lots 97 through 146, inclusive, Blackthorne Estates, 4th Plat, a subdivision in the City of Overland Park, Johnson County, Kansas, according to the recorded plat thereof.