

3585671

AMENDMENT TO HOMES ASSOCIATION DECLARATION OF VILLAS OF ST. ANDREWS

This Amendment, made as of this 7 day of March, 2003, by 143rd & Quivira, L.L.C., a Kansas limited liability company ("Developer").

WHEREAS, Developer is the fee simple owner of the following described real property, situated in the City of Olathe, County of Johnson, State of Kansas, to-wit:

All of Lots 1 through 68, VILLAS OF ST. ANDREWS, a subdivision of land in the City of Olathe, Johnson County, Kansas, according to the recorded plat thereof.

WHEREAS, pursuant to the Homes Association Declaration, recorded in the office of the Register of Deeds, Johnson County, Kansas, in Book 7333, Page 582, (the "Declaration"), Developer imposed upon the Subdivision certain restrictions governing the development and use of said property; and

WHEREAS, Developer reserved in Article X of the Declaration the right to alter, amend, remove, or add to the Declaration by filing amended copies of record in the office of the Register of Deeds, Johnson County; and

WHEREAS, Developer desires to amend said Declaration in accordance with the provisions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises said Declaration is hereby amended in the following manner:

1. Article III, Power and Duties of the Homes Association, is hereby amended to read as follows:

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

(a) To enforce, in the Homes Association's name, any and all building, use or other restrictions, obligations, agreements, reservations or assessments which have been or hereafter may be imposed upon any of the Lots or other part of the Subdivision; provided, however, that this right of enforcement shall not serve to prevent waivers, changes, releases or modifications of restrictions, obligations, agreements or reservations from being made by the parties having the right to make such waivers, changes, releases or modifications under the terms of

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the deeds, declarations or plats in which such restrictions, obligations, agreements and reservations are set forth. The expense and cost of any such enforcement proceedings by the Homes Association shall be paid out of the general funds of the Homes Association, except as herein provided. Nothing herein contained shall be deemed or construed to prevent the Developer or any Owner from enforcing any building, use or other restrictions in its or his own name.

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

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

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

(e) To enter into and perform agreements from time to time with the Developer, other homes associations and other parties regarding the performance of services and matters benefiting such parties and the sharing of the expenses associated herewith.

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

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

(h) To engage the services of a security guard or security patrol service.

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

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

(k) To make, amend and revoke reasonable rules, regulations, restrictions and guidelines (including, without limitation, regarding the use of Common Areas) and to provide means to enforce such rules, regulations and guidelines.

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

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

(a) To the extent not provided as a service by any governmental authority, the Homes Association shall provide for the winterization and summarization of the sprinkler system for each residence.

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

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

(d) ~~The Homes Association shall provide~~ lawn care, consisting of mowing, edging, fertilization and weed control of grass areas (excluding designated natural areas) on all Lots, shall trim trees along the street on the Lots; mulch, ~~seasonal weeding and seasonal trimming of shrubs of the landscape beds in the front and sides of homes, spring start-up/winterization of Lot irrigation systems to include instruction and seasonal system checks, but said service shall not include Lot irrigation repairs, the replanting or reseeding of sod or grass, the replacement of trees, the trimming of trees not located along the streets, the care of bushes, shrubbery, gardens or flowers, or the care if any areas which have been enclosed by an Owner with fencing or hedging or otherwise made inaccessible to the Homes Association.~~

(e) The Homes Association shall provide snow clearing, but no ice removal, for driveways and front yard sidewalks and porches (but not patios) on the Lots as soon as possible when the accumulation reaches two inches or more.

The Homes Association is not obligated to provide chemicals on concrete surfaces.

3. The Board shall have the right to further determine the scope and timing of the services to be provided under Section 2 above and to establish and expend reserves for such services.

2. Article IV, Monthly Assessments, is hereby amended to read as follows:

1. For the purpose of providing a general fund to enable the Homes Association to exercise the powers, render the services and perform the duties provided for herein, all Units in the Subdivision, other than Units then owned by the Developer, shall be subject to a monthly assessment to be paid to the Homes Association by the respective Owners thereof as provided in this Article IV. The amount of such monthly assessment per Unit shall be fixed periodically by the Homes Association, and, until further action of the Homes Association, shall be \$150.00 per month (to be collected monthly or quarterly) for all Units (subject to Section 4 of this Article IV below).

2. The monthly assessments provided for herein shall be due and payable on a monthly or quarterly basis; provided, however, that the first assessment for each Unit shall be due and payable only upon a transfer of title to the Unit from the Developer to a third party (including a home builder) and shall be prorated as of the date thereof. No Unit shall be entitled to receive any services to be provided by and through the Homes Association until such time as the first monthly assessment has been paid with respect thereto.

3. The rate of monthly assessment upon each Unit in the District may be increased (a) by the Board from time to time, without a vote of the members, by up to 10% over the rate of monthly assessment in effect for the preceding year for each of the second through sixth years of the existence of the Homes Association, (b) after the sixth year of existence, by the Board from time to time, without a vote of the members, by up to 5% over the rate of monthly assessment in effect for the preceding year, or (c) at any time by any amount in excess of clause (a) or (b) by a vote of the members (being for this limited purpose solely the Class B members prior to the Turnover Date) at a meeting of the members duly called and held for that purpose in accordance with the Bylaws when a majority of the members present at such meeting and entitled to vote thereon authorize such increase by an affirmative vote for the proposed increase. Notwithstanding the foregoing limits on monthly assessments, the Board, without a vote of the members, shall always have the power to set, and shall set, the rate of monthly assessment at an amount that will permit the Homes Association to perform its duties as provided for herein.

4. An initiation fee of \$250.00 shall be payable by the new Lot Owner to the Villas of St. Andrews Homes Association, for use as part of the general funds of the Homes Association, upon each of the following events with respect to each Lot:

(i) The initial occupancy of the residence on the Lot after the residence is constructed (which initiation fee for this event shall be collected by the Developer from the new Lot Owner and paid over to the Homes Association); and

(ii) Each transfer of ownership of the Lot for value.

3. Article V, Special Assessments, shall be amended to read as follows:

In addition to the monthly assessments provided for herein, the Board (a) shall have the authority to levy from time to time a special assessment against any Unit and its Owner to the extent the Homes Association expends any money (for services or materials, or legal fees and expenses to be used at the direction of the Board of Directors) to correct or eliminate any breach by such Owner of any agreement, obligation, reservation or restriction contained in any deed, declaration or plat covering such Unit (including, without limitation, to maintain or repair any Unit or improvement thereon) and (b) shall levy from time to time special assessments against each and every Unit (other than any Unit then owned by the Developer) in an equal amount that is sufficient, when aggregated, to enable the Homes Association to perform its duties as provided for herein that require any expenditure during any period in an amount in excess of the general and reserve funds of the Homes Association available therefor. Each such special assessment shall be due and payable upon giving notice of the assessment to such Owner.

4. Article VI, Delinquent Assessments, shall be amended to read as follows:

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

2. All liens on any Unit for assessments provided for herein shall be inferior and subordinate to the lien of any valid purchase money first mortgage now existing or which may hereafter be placed upon such Unit. A foreclosure sale or deed in lieu of foreclosure thereunder shall automatically extinguish the lien hereunder for such assessments to the extent applicable to periods prior to such foreclosure or deed in lieu thereof but shall not release such Unit from liability for any assessment applicable to periods thereafter.

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

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

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

5. Article VII, Limitation on Expenditures, shall be amended to read as follows:

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

6. The Declaration as herein amended shall remain in full force and effect in accordance with its terms and shall run with the land as herein provided.

IN WITNESS WHEREOF, the undersigned has executed this Amendment to Declaration of Homes Association Declaration as of the date first above written.

143RD & QUIVIRA, L.L.C.,

a Kansas limited liability company


Matthew M. Adam, Member

\$2000
\$1600

STATE OF KANSAS }
COUNTY OF JOHNSON } SS
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REBECCA L. DAVIS
REGISTER OF DEEDS

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS:
COUNTY OF JOHNSON)

BE IT REMEMBERED, that on this 7 day of March, 2003, before me the undersigned, a Notary Public in and for said County and State, came Matthew M. Adam, who is personally known to me to be the same person who executed the within instrument of writing, and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

Mary Jane Beeman

Notary Public

My Commission Expires: 2/14/2007

