

**VILLAS OF ST. ANDREWS HOMES ASSOCIATION  
 AMENDED AND RESTATED DECLARATION**

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VILLAS OF ST. ANDREWS HOMES ASSOCIATION  
AMENDED AND RESTATED DECLARATION

THIS AMENDED AND RESTATED DECLARATION OF VILLAS OF ST. ANDREWS HOMES ASSOCIATION is made as of the 20 day of March 2019, by Homes Association of Villas of St. Andrews and its undersigned Owners.

WHEREAS, on September 19, 2001, the 143<sup>rd</sup> & Quivira Company, L.L.C. executed the Villas of St. Andrews Homes Association Declaration which was recorded October 11, 2001 in Book 7333 beginning at Page 582 in the office of the Register of Deeds of Johnson County, Kansas; and

WHEREAS, 143<sup>rd</sup> & Quivira Company, LLC executed and filed with the Register of Deeds of Johnson County, Kansas a plat of the subdivision known as "VILLAS OF ST. ANDREWS"; and

WHEREAS, the lots in such plat are part of the area commonly known as "Villas of St. Andrews," 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.

All of Lots 69 through 83, Villas of St. Andrews, Third Plat, a subdivision of land in the City of Olathe, Johnson County, Kansas according to the recorded plat thereof.

and

WHEREAS, pursuant to Article X of the Homes Association Declaration, it may be amended by a duly acknowledged and recorded written agreement signed by Owners of at least two-thirds of the Units in the subdivision; and

WHEREAS, the undersigned Owners of the above-described lots desire to create and maintain a residential neighborhood and a homes association for the purpose of enhancing and protecting the value, desirability, attractiveness and maintenance of the property within the subdivision;

NOW, THEREFORE, in consideration of the premises contained herein, the undersigned Owners of more than two-thirds of the Units in the subdivision, for themselves and for their successors and assigns, and for their future grantees, hereby subject all of the above-described lots to the covenants, charges, assessments and easements hereinafter set forth.

ARTICLE I, DEFINITIONS

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

- (a) "Lot" means any lot as shown as a separate Lot on any recorded plat of all or part of the Subdivision.

- (b) "Unit" means collectively (i) one single family residential unit that has been constructed on any Lot and (ii) the portion of the Lot that is allocated to such unit.
- (c) "Subdivision" means collectively all of the above-described lots and tracts to be part of Villas of St. Andrews, all Common Areas, and all additional property which hereafter may be made subject to this Declaration in the manner provided herein.
- (d) "Developer" means 143<sup>rd</sup> & Quivira, L.L.C., a Kansas limited liability company which has forfeited its status as of July 15, 2007.
- (e) "Owner" means the record owner(s) to title to any Unit.
- (f) "Common Areas" means (i) any entrances, monuments, berms, street islands, and other similar ornamental areas and related utilities, lights, sprinkler systems, trees and landscaping constructed or installed by or for the Developer or the Homes Association at or near the entrance of any street or along any street and any easements related thereto, in the Subdivision, (ii) all landscape easements that may be granted to the Homes Association, for the use, benefit and enjoyment of all Owners within the Subdivision, (iii) the Right of Way Amenities, 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, whether or not any "Common Area" is located on any Lot.
- (g) "Right of Way Amenities" has the meaning set forth in Article XV below.
- (h) "Homes Association" means Villas of St. Andrews Homes Association, the Kansas Not-for-Profit Corporation formed by the Developer for the purpose of serving as the homes association for the Subdivision.
- (i) "Board" means the Board of Directors of the Homes Association.
- (j) "City" means the City of Olathe, Kansas.

## ARTICLE II, HOMES ASSOCIATION MEMBERSHIP

There shall be only one class of membership which shall consist of the Owners of the Units in the District and every such Owner shall be a member.

Where voting rights exist based on Lot ownership each member shall have one vote for each Unit for which he is the Owner; provided, however that when more than one person is an Owner of any particular Unit, all such persons shall be members and the one vote for such Unit shall be exercised as they, among themselves, shall determine, but in no event shall more than one vote be cast with respect to such Unit. During any period in which a member is in default in the

payment of any assessment levied by the Homes Association under this declaration the voting rights of such member shall be suspended until such assessment has been paid in full.

Subject to the foregoing, the Homes Association shall be the sole judge of the qualifications of each Owner to vote and their rights to participate in its meetings and proceedings.

### ARTICLE III, POWER AND DUTIES OF THE HOMES ASSOCIATION

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 purpose 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 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 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 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 other developers, other homes associations and other parties relating to the joint use, operation and maintenance of any recreational facilities and other 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 means for enforcement provided in the Amended and Restated Declaration of Restrictions for Villas of St. Andrews, the Association shall have the right to assess fines against a Unit Owner or its guests, relatives or lessees, in the manner provided herein, and such fines shall be collectible as any other assessment such that the Association shall have a lien against each Unit for such purpose, as provided in this Declaration.
- (a) The Board of Directors shall be charged with determining where there is probable cause that any of the provisions of the Declaration of Restrictions, the Bylaws, and the rules and regulations of the Association, regarding the use of Units, common elements or Association property, are being or have been violated. In the event the Board determines an instance of such probable cause, the Board shall provide written notice to the person alleged to be in violation, and the Owner of the Unit which that person occupies if that person is not the Owner, of the specific nature of the alleged violation and of the opportunity for a hearing before the Board upon a request made within 10 days of the sending of the notice. The notice shall also specify, and it is hereby provided, that each recurrence of the alleged violation or each day during which it continues shall be deemed a separate offense, subject to a separate

fine for each offense. The notice shall further specify, and it is hereby provided, that in lieu of requesting a hearing, the alleged violator or Unit Owner may respond to the notice, within 10 days of its sending, acknowledging in writing that the violation occurred as alleged and promising that it will henceforth cease and will not recur, and that such acknowledgment and promise, and performance in accordance therewith, shall terminate further enforcement activity of the Association with regard to the violation.

(b) If a hearing is timely requested, the Board shall hold same, and shall hear any defense to the charges, including any witnesses that the alleged violator, the Unit Owner, or the Board may produce. Any party at the hearing may be represented by counsel.

(c) Subsequent to any hearing, or if no hearing is timely requested and if no acknowledgment and promise is timely made, the Board shall determine whether there is sufficient evidence of a violation or violations as provided herein. If the Board determines that there is sufficient evidence, it may levy a fine for each violation in the amount provided herein.

(d) A fine pursuant to this section shall be assessed against the Unit which the violator occupied at the time of the violation, whether or not the violator is an Owner of that Unit, and shall be collectible in the same manner as any other assessment, including by the Association's lien rights as provided in this Declaration.

(e) Nothing herein shall be construed as a prohibition of or a limitation on the right of the Board to pursue other means to enforce the provisions of the various Association documents, including, but not limited to, legal action for damages or injunctive relief.

3. 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 spring start-up/winterization of the sprinkler system for each residence.

(b) The Homes Association shall at all times and at its expense, be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all common Areas 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 there, as contemplated in Article XIII.

(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. Said service shall not include Lot irrigation repairs, the replanting or reseeded 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.

4. 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.

#### ARTICLE IV, MONTHLY ASSESSMENTS

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, 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.
2. The monthly assessment 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 the monthly assessment upon each Unit in the District may be increased 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 at any time by any amount by a vote of the members 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 equal to two months of the annual assessment 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.

#### ARTICLE V, SPECIAL ASSESSMENTS

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, restriction 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 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.

#### ARTICLE VI, DELINQUENT ASSESSMENTS

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 percent per annum from the delinquency date until paid, which interest shall become part of the delinquent assessment and the lien on the Unit. A late charge shall be charged in the amount of five percent of the delinquent amount (or such other reasonable, uniform, late fee as the Board may establish from time to time). 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 and late charges thereon and collection costs, shall also be the personal obligation of the Owner of the Unit at the time when the assessment became due.

(a) If any monthly assessment is not paid within 10 days after the same is due, the entire unpaid balance of all monthly assessments for the remainder of the year shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the monthly assessments.

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 to be determined by the Board, 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.

#### ARTICLE VII, LIMITATION ON EXPENDITURES

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.

#### ARTICLE VIII, NOTICES

1. The Homes Association shall designate from time to time the place where payment of assessments shall be made and other business in connection with the Homes Association may be transacted.

2. All notices required or permitted under this Declaration shall be deemed given if deposited in the United States Mail, postage prepaid, and addressed to the person or last known person entitled to such notice at the address of the Unit. Notice to one co-Owner shall constitute notice to all co-Owners.

#### ARTICLE IX, AMENDMENT AND TERMINATION

1. This Declaration may be terminated, amended or modified, in whole or in part, at any time by a duly acknowledged and recorded written agreement (in one or more counterparts) signed by the Owners of at least two-thirds (2/3) of the Units within the Subdivision as then constituted, however, (i) the written consent of the City shall be required for the termination of this Declaration in its entirety or to any amendment, modification or termination of any provision of this Declaration regarding the Right of Way Amenities and the written consent of the Villas of St. Andrews Homes Association shall be required for the termination of this Declaration in its entirety or for any amendment or modification of this Declaration. If such consent of the City is requested, it shall be made in writing to the City clerk. The City shall have 60 days, after receipt of the request, to rule on the request.
2. Anything set forth in Section I of this Article IX to the contrary notwithstanding, except the provision relating to the requirement of the city's consent, the Homes Association shall have the absolute, unilateral right, power and authority to modify revise, amend or change 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 Veterans Administration, Federal Housing Administration or similar programs, laws and regulations, or (ii) the City requires such action as a condition to approval by the City of some matter relating to the development of the Subdivision.

#### ARTICLE X, COVENANTS RUNNING WITH THE LAND

1. All provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon all subsequent grantees of all parts of the Subdivision. By accepting a deed to any of the Lots or Units, each future grantee of any of the Lots or Units shall be deemed to have personally consented and agreed to the provisions of this Declaration as applied to the Lot or Unit owned by such Owner. The provisions of this Declaration shall not benefit or be enforceable by any creditor of the Homes Association in such capacity as a creditor.
2. No delay or failure by any person or entity to exercise any of its rights or remedies with respect to a violation of or default under 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 or default.

3. No waiver of any violation or default 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.

#### ARTICLE XI, SEVERABILITY

Invalidation of any of the provisions set forth herein, or any part thereof, by an order, judgement or decree of any court, or otherwise, shall not invalidate or affect any of the other provisions or parts.

#### ARTICLE XII, COMMON AREAS

The Homes Association shall be responsible for properly repairing, replacing, controlling, maintaining, operating and insuring, as applicable, all Common Areas ( subject to any control thereover maintained by any governmental authority, utility or similar person or entity

#### ARTICLE XIII, RIGHT OF WAY AMENITIES

1. The City agreed to allow the Developer to construct certain Common Area Improvements within certain of the public right-of-way associated with streets in the Subdivision (the "Right of Way Amenities"), subject to the terms and conditions of a certain Right of Way Maintenance Agreement between the Developer and the City. The following provisions of this Article XIII are required to be in this Declaration pursuant to such Right of Way Maintenance Agreement.
2. The Right of Way Amenities, although located within City right-of-way, are the sole responsibility of the Owners, which Owners shall maintain the Homes Association to be used as the vehicle by which to fulfill the obligations of the Homes Association under this Article XIII. Such delegation shall not, however, relieve the Owners of their responsibilities under this Article XIII.
3. The City is hereby released from any and all past, present or future liability for any damage that may be caused at any time to any person or to any real or personal property resulting from or related to, directly or indirectly, the City allowing the Right of Way Amenities to be located in its right-of-way, or otherwise acting or failing to act with respect to the maintenance of the Right of Way Amenities. The City further is hereby released from any and all past, present or future obligations to expend any public funds or to take any other action maintain or improve the Right of Way Amenities.

4. The Homes Association, or upon its failure, the Owners, will indemnify and hold harmless the City, its Mayor, the members of the City Council and the employees and agents of the City from and against any and all losses, damages, costs and expenses, including reasonable attorney's fees, that may be incurred or suffered by any of them 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 Homes Association, or upon its failure, the Owners, will further be required to promptly reimburse the City for any public funds the City may expend with respect to maintenance of the Right of Way amenities in the event the Homes Association fails to maintain the same, although the City is under absolutely no obligation to so maintain.
5. The Homes Association and the Owners understand and agree, if the City or the City's designee does damage to the Right of Way Amenities, repair or replacement of the same shall not be the responsibility of the City or the City's designee.
6. The Homes Association and the Owners understand and agree, should the City determine 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, that upon request of the City, the Homes Association will remove or cause to be removed any or all Right of Way Amenities from the City's right-of-way. Should the Homes Association fail to comply with the City's removal request, the City may remove the same and the Homes Association, or upon its failure, the Owners, shall be obligated to reimburse the City for the removal.
7. The Homes Association, or upon its failure, the Owners shall maintain adequate liability insurance to cover all reasonably insurable risks associated with the maintenance of the Right of Way Amenities and the covenants contained in this Article XV.
8. The City shall be third-party beneficiaries of all provisions of this Declaration relating to the Right of Way Amenities and the City shall have the right to enforce all restrictions, obligations and other provisions regarding the Right of Way Amenities.

IN WITNESS WHEREOF, The Homes Association of Villas of St, Andrews has caused this Declaration to be duly executed the day and year first above written.

VILLAS OF ST. ANDREWS HOMES ASSOCIATION, INC.

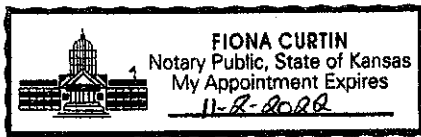
By: Carl Hellebusch  
Name: Carl J. Hellebusch  
Its: Secretary

By: Leland M. Walker  
Name: LELAND M. WALKER  
Its: President

STATE OF KANSAS            )  
  ) ss:  
COUNTY OF JOHNSON    )

On this 20 day of MARCH, 2019, before me, a Notary Public in and for said county and state, came LELAND M. WALKER and CARL J. HELLEBUSCH, who personally appeared and stated that they are the President and Secretary of Villas of St. Andrews Homes Association, Inc., and that they executed the within instrument on behalf of said Homes Association and acknowledged to me that they executed the same for the purposes therein stated.

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



Fiona Curtin  
Notary Public

FIONA CURTIN  
(Printed Name)

My commission expires:  
11-2-2022