

Approved: March 2, 2010
Date

MINUTES OF THE SENATE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Roger Reitz at 9:30 a.m. on February 16, 2010 in Room 144-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Reed Holwegner, Kansas Legislative Research Department
Noell Memmott, Committee Assistant

Conferees appearing before the Committee:

CJ Sullivan, Resident, Quivira Falls Community Association
Nila Ridings, Resident, Quivira Falls Community Association
Walt Vernon, President, Quivira Falls Community Association

Others attending:

See attached list.

The hearing continued on **SB 470 - Kansas uniform common interest owners bill of rights.**

CJ Sullivan, Resident, Quivira Falls Community Association, spoke in favor of the bill (Attachment 1). She expressed concern over the lack of accounting audits and failed maintenance on dwellings.

Nila Ridings, Resident, Quivira Falls Community Association, testified in favor of the bill (Attachment 2). She voiced her concern over lack of accounting audits and lawsuits the community was responsible for paying. She submitted a petition to the committee signed by 100 citizens of the greater Kansas City area in favor of **SB 470.**

Walt Vernon, President, Quivira Falls Community Association (Attachment 3). Mr. Vernon testified in opposition to the bill. He explained his position was that there is no need for a Kansas Uniform Common Interest Owners Bill of Rights. He thinks each community is operating in good faith and has covenants that legally protect both the board and the homeowners.

Written testimony in favor of the bill was submitted by Norma Campaneris (Attachment 4). She also provided copies of the proposed Covenants of Quivira Falls Community Association (Attachment 5).

Luke Bell, Vice President of Governmental Affairs, Kansas Association of Realtors, submitted written testimony with a neutral position on the bill. (Attachment 6).

Senator Huntington addressed areas of the bill where there was concern and provided possible changes in the wording of various sections.

The next meeting is scheduled for February 23, 2010.

The meeting was adjourned at 10:30 a.m.

Feb
16

MEMORANDUM

To: The Honorable Senator Roger Reitz, committee chair
The Honorable Susan Wagle, committee vice-chair
The Honorable Kelly Kultala, ranking minority member
Members, Senate Committee on Local Government

From: CJ Sullivan
10967 Wesgate Rd
Overland Park, KS 66210

Date: February 15, 2010

Regarding: SB 470 An ACT enacting the Kansas uniform common interest owners bill of rights act

Today I offer testimony in support of SB 470

I live in a common interest community in Overland Park, KS. We are a community of 513 units that include duplexes, multi attached and stand-alone homes. Our association collects over \$1,000,000. annually in monthly HOA dues and is responsible for lawn care, trash, unit exterior maintenance and common building upkeep. Several years ago a group of neighbors uncovered and discovered many disturbing facts.

- 1)The association was thousands of dollars past due on many accounts including trash, water, waste water, truck payments, siding and decking contractors to name a few.
- 2)There had not been a audit in over ten years of \$10,000,000. of collected dues
- 3)Siding on our attached and unattached home was rotting. The community was in city code violation on about 200 units. Funds that were to be set aside for a ten year exterior siding replacement were non existent.
- 4)Community members were discouraged from attending Board meetings, our petitions to unseat Board members were not allowed, Board meetings became closed to the community and community members were denied requests to see the financial records

In a effort to assist our community, we attempted to get help from city, county and state officials, lawmakers, agencies and organizations. Time after time we were informed that there were no laws in the state of Kansas that could assist us in this dire situation. Our Representatives and Senators responded to our call for help and SB470 is the result of hundreds of hours of work in this unified effort. I believe this law would guide HOA Boards to be more transparent with the membership of communities they serve.

I do request that communities collecting over \$100,000. annually be required to have a yearly outside qualified audit. I also ask your reconsideration of the wording of Section 19 © – the “emergency” could mean almost anything to many governing HOA Boards and the resulting assessment could result in additional monthly dues of hundreds of dollars.

Thank You.

Senate Local Government

2-16-2010

Attachment 1

February 10, 2010

To:

The Honorable Senator Roger Reitz, Committee Chair Person
The Honorable Senator Susan Wagle, Committee Vice-Chair Person
The Honorable Senator Kelly Kultala, Ranking Minority Member

From:

Nila Ridings
Overland Park, Kansas

RE: SB 470

I cannot offer my testimony with any candy-coating, therefore I will ask for your understanding with regards to my forthright approach to this bill.

In theory, maintenance-provided homes associations are the perfect solution to owning a home without the full responsibility of exterior maintenance, and in some cases, having the luxury of amenities that neighborhoods without homes associations do not have. In truth, my experience has proven that homes associations are dreams that build wealth for developers, builders, realtors, property managers, and real estate attorneys. They provide maximum land utilization with attached housing and minimal footage lots. They create an increased tax base for the county and city where they are located. In reality, they ultimately become a never-ending nightmare for the massive amounts of home owners that invest in the dream...turned nightmare.

For the past four and one half years I have lived the reality of what was promised and what is real. The handful of people that will testify before you today represent a very small number of those suffering because they made the mistake of buying property in a homes association. You will see by the petitions I am presenting there are supporters of SB 470 from homes associations in various areas of Kansas. Conversations with them revealed some have tried to sell, others want to sell, and some will be moving across the state line and won't ever live in another area with a homes association again. Regardless whether single family or multi-family the comments were the same.

My history:

My father was a builder and developer. He believed in restricting subdivisions for building but was strongly against homes associations. He has been deceased for twenty-two years and now I clearly understand why he told me to never buy a home in an area governed by a homes association.

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Attachment

2-1

The Dream vs. Reality (Scam):

Building a dream community with pools, tennis courts, fitness centers, car washes, clubhouses and various other amenities and turning it over to unskilled, power hungry amateurs or unlicensed and/or unskilled property managers is a disaster waiting to happen. To sell these properties the developers bring in real estate agents to promote the property and hype the amenities. The dues are generally low but once the community is finished the monthly dues and assessments continue to rise because the board knows the buyers are locked in by a contract at the time of the sale and in many cases poor decision making takes its toll on the finances. They hold the leverage of putting liens on individual properties and ultimately can damage the credit of a very responsible and credit-worthy person. All this can be done to a homeowner with no laws to protect them even if the homes associations has failed to fulfill their end of the contract.

Why do homes associations fail:

1) Board members, in most cases, are not skilled business managers, yet they are trusted to manage multi-millions of dollars worth of real estate and in the community where I live, 1.5 million dollars per year in dues. They hire attorneys to handle every dispute; creating ill-will, anger, frustration, and a hostile environment. All this is done while spending the dues that should be used for the betterment of the community to fight a single homeowner over things that could have been solved by a simple reasonable discussion.

2) No audits on the dues collected. In Quivira Falls the same person was the HOA president for over 25 years. When he died in June of 2008, the community was severely in debt, water and waste water bills had not been paid for 18 months, he was running for the board of an HOA in Carlsbad, CA. where he purchased two units, and oddly enough his brother held a board position at an HOA in Lenexa, KS. This all seems very suspicious when Quivira Falls had not had an audit for 9 years and over 10 million dollars remains unaccounted for to this day. An investigation by an Overland Park detective revealed cash on the ledgers but bank statements reflected there were no cash deposits ever made! With the person handling the deposits and bank accounts (which should have been done by the treasurer, but he refused to allow that to happen) now being deceased these financial questions will forever remain unanswered and an HOA remains dilapidated and devastated because of him and his cronies. Thus, I suggest audits be required on HOA's with annual dues collected of \$250,000.00 or more and included in SB 470.

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3) According to the Real Estate Commissioners office in Topeka, property management companies are not licensed, certified or governed. The woman I spoke with at their office on August 12, 2009 advised she hoped property management companies would be included in this bill as they receive a large volume of complaints from residents about them. This confirms for me that hiring property managers gives no more assurance for integrity, transparency, or professionalism than having unskilled amateurs in charge.

4) HOA's fail to perform their duties and homeowners stop paying dues.

I had a dream, too!

I purchased a maintenance-provided home. I thought it was the perfect path to my dream....no mowing, painting, snow shoveling...just living the life I'd worked hard for...all my life. That dream is gone now. My retirement investments have been spent on repairs on my house that should have been done by the homes association, I shovel snow, and have taken care of all the repairs and maintenance on my property. I have additional damage due to their neglect in maintaining the property attached to me, and last but not least, I've spent thousands upon thousands of dollars on a lawsuit to try and gain access to the financial records that according to the by laws I had a right to see and the judge concurred with his ruling in my favor. I withheld my dues because the HOA breached the contract I had with them and now we are in a lawsuit where they sued me for \$3,200. in back dues and I've countersued for \$40,000.00 to cover damages they allowed to happen to my house. Is this the dream I had? No, not by any means, but I realize it's time for somebody to stand up for what's right and try to protect other innocent people from getting caught in these horrible situations. I won't sell my problem and make another person a victim. I will stand up and do all that is humanly possible to try and create change.

I realize no bill will be designed to stop every bad actor, but we must acknowledge that in today's society the business climate has changed and we cannot be left with a blind faith and trust that all will go well.

I predict a future real estate crisis in our country will be when consumers become educated on these scams known as homes associations. Please do not let Kansans continue to be taken advantage of and help stop this insanity by passing SB 470.

My thoughts on some of the questions that have been discussed.

Q. Should the HOA be able to prohibit those not paying their dues from voting on issues within their community?

A. Are people who haven't paid their taxes allowed to vote for State Representatives, Senators, Governor and the President of the United States? I believe the correct answer is, yes. Therefore, no one should be denied voting rights within their homes associations, either.

Q. Should people who haven't paid their dues not be allowed to have trash pick-up, and water?

A. There is a reason why people aren't paying their dues. In most cases it's because the homes association hasn't kept up their end of the contract. Having the right to shut off water and trash pick-up is unreasonable.

Q. Developers spend their money to build neighborhoods and start homes associations so they should be able to do what they think is best.

A. I have all the respect in the world for what developers and builders. However, once they turn the HOA over to residents in essence they are creating a business partnership or one large family between every owner forever after. It's like an arranged marriage. Would you want every neighbor you have to be your in-laws or business partners? If you answered, no then why would anyone think communities of hundreds of homeowners work harmoniously as business partners or relatives? What the developer is really doing is making as much money as possible on the high density housing and adding amenities to attract people into that style of living. If they want to do what they think is best they should be required to have a surety bond for 100 years on the community to be sure there is always enough money to keep it running as they established and intended it to be.

Q. Should single family homes be exempt from SB 470?

A. Absolutely not. In talking with people at random across Kansas and around the country that live in homes associations the problems are all the same: Money disappears; power hungry board members that bully residents; random and unfounded lawsuits; streets that aren't maintained; landscaping that is allowed to grow out of control; pool maintenance problems with outrageous expenses; board members and property managers giving work contracts to themselves, or their friends and relatives; board members don't obey the covenants but expecting everyone else to; developers that file bankruptcy before the community is finished; builders using money from one community's dues to pay bills on another; and more. Regardless of the type of structures all homes associations in Kansas should fall under SB 470.

STATEMENT

To: The Kansas House and Senate
Local Government Committees

Date: February 8, 2010

From: W. N. "Walt" Vernon, President
Quivira Falls Community Association (QFCA, QF, or Association)
10990 Westgate Ave.
Overland Park, KS 66210

Subject: SB 470 and HB 247
2472,

PURPOSE: To demonstrate there is no need to enact a Kansas uniform common interest owners bill of rights, to challenge specific sections thereof, and to suggest alternatives

Attached are 1) proposals on mediation, education, and replacement of Directors, 2) comments on particular provisions and 3) background of author, history of QFCA and disclaimer

PREFACE: Testimony and letters regarding past problems at QFCA have been given to both committees. In response, the facts are that under new leadership and management, supported by a majority of the members, improvements are underway to resolve the financial and delayed maintenance problems at QF.

1. It is the members of any homes association, not the Kansas Legislature, who can take the necessary action to replace ineffective directors, officers, or managers and thereby change the direction of the association. The proposed new legislation will have no effect on this process, positive or negative, nor would it have made any difference if it had been in effect during the times of the problems and turmoil noted in the introduction.

2. No study, comprehensive or partial, has been made of the management, operation, and condition of the thousands of home associations across the state to demonstrate a need (or lack thereof) for such a complex, comprehensive, bill. Such an in-depth study would take significant time and resources requiring the involvement of experts from many fields: management, financial, construction and engineering. There is no evidence, compelling or otherwise, before the Kansas Legislature or Senate, of a need for such a bill, aside from a few horror stories.

All the satisfactorily managed Kansas homes associations should not be burdened with such an all encompassing set of complex requirements because of a few problem situations. Not every problem needs to be, should be, or even can be fixed by passing a new law.

3. The Kansas Judicial Council's Advisory Homes Association Committee effort was a fine example of legal scholarship and draftsmanship by its talented Executive Director. The principal witness/expert was an eastern law professor who spoke for a so-called uniform or model bill he helped draft. The Committee had no evidence of need before it - the proposed bill only says that because there are many such associations, new rules should be adopted.

4. Most such associations operate under Articles of Incorporation, Declaration of Covenants, By-laws and board resolutions drafted by talented, expensive lawyers of the developers when starting the project. Most are recorded and thus available to members who are charged with constructive notice thereof. New owners should (and probably do) get a copy from their realtor, title company or the seller.

Our association has some 50 pages of association responsibilities and member rights in several documents. I would be pleased to supply copies of their Tables of Contents, to show the many subjects covered or even send a full set if requested. Even a casual comparison of our documents and the model or uniform bill will show that if passed, it will not add substantially to the situations covered nor to the procedures and protections already in existence at QFCA.

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Attachment 3-1

5. Should the model or uniform bill pass, little of substance will change. Most, if not all, of Kansas Homes associations' existing rules and procedures will still apply. The same people, be they good, bad, or indifferent, will be Directors, Officers, and managers. Their members will be given the same information as before.

What will happen is that a lot of honest, sincere directors and officers, most of whom are not lawyers, contractors, financiers, or professional managers, will have to check (or pay lawyers to check) every provision of each of their governing documents, to see if they are, or are required to be, in compliance with the terms of this new bill. Going forward, every time a board considers any change or new provision, they will have to have their lawyer advise them if they can adopt it.

6. In the real world, the only solution for bad decisions, bad directors, bad officers, and bad managers is their ouster by interested, determined, and organized, members. That is what has occurred at QF. A bad problem situation such as we had will take longer to cure than a not-so-bad situation, so we are still pushing up-hill. But we are on a path to restore maintenance, finances, and property values.

I submit that the QFCA turn-around would make an excellent case study of how an association with issues and member malaise can reform itself into a model community. (As noted, we are there yet, but we are well on our way, despite the noisy efforts of a few to disparage and derail our efforts.)

That is, no situation, no matter how bad, can be resolved in Topeka. The legislature should not and can not oust a duly elected board and its manager. Unpopular directors at a few associations seems to be the impetus for this entire effort, which appears to be an attempt to achieve by laws what elections (the political process) are thought to be unable to do.

If this is the real issue, I have attached some suggestions of ways to address it without imposing a complex regulatory system on associations who do not have any serious problems.

7. The one technical or specific point I will make here is to make a case for the right of a Board of Directors to not allow a non-dues paying member to vote or even appear and speak at board meetings, (they could still make written communications.)

The national press is full of stories about condo and similar associations all over the country being in terrible financial straight, generally due to the economy and members not making dues payments. This severely pinches an association that is required to provide services such as utilities, garbage removal, snow removal, and property maintenance.

Collection of delinquent homes association dues is difficult. Bankruptcy can wipe out an obligation, first mortgages usually take preference over liens for association dues, judgments are hard to collect at best and are often impossible to, and recorded liens to be collected upon the sale of a unit may take years, even generations, to come to fruition.

Threat of a delinquent member being denied the right to vote or speak in a board meeting may not be much of an incentive to pay dues, but it is about all a frustrated, desperate board can do. Often the association has to continue to pay for services for the non-dues paying member, giving them a free ride at the expense of the other dues paying members. No one can make an argument that this is fair.

When I quizzed the eastern law school professor at an Advisory Committee meeting on his point, he admitted that he had never served on the board of an association, much less one with outstanding unpaid dues, and had no ideas on collect save to sue them.

8. As an alternative to passing no bill, so as to not waste the hours and resources expended to date on this issue and process, may I suggest that the bill be amended to either:

A. Make the bill not applicable in situations were an association has in place a rational, fairly comprehensive and substantial set of governing rules, procedures and member rights, but not require that they be identical to every one of the bill's provisions, and/or'

B. Give association members the option to request the act apply by a petition signed by 20% of the members, and be voted on and approved by 2/3 of the members to be applicable to it..

Proposal on Mediation:

I suggest the Kansas version of the Uniform bill include the mediation provisions of the original HB 2253 introduced last session. This would include Sections:

1. (a) (2) "Dispute" [defined],
1. (a) (4) "Mediation" [defined],

All of Section 6 [originally was 5] with the addition to (d) of: "the District attorney, the County Attorney, the City Attorney, any Kansas Judge or any recognized Mediation service, Association, or list. [At the Judicial Council Homes Association Committee meetings, the state's AG representative stated that they lacked interest, personnel and resources to take on this duty.]

-Deletion of Section (h) because the representative of the state's AG stated they lacked interest, personnel or resources to take on this duty.

Proposal on Education

I suggest Section 7 (former 6) of 2253 be included with the observation that I would expect students at Kansas University Law School, working with a professor, or graduate students in the KU government department could draft such documents subject to final AG polishing and issuance.

Proposal on removal of Directors

I suggest that provisions generally along the lines of one of our by-laws be included in the act, as follows:

Section 4. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members in Good Standing of the Association as set forth below:

4. A. A recall election may be instituted by the receipt by the Board Secretary of a petition calling for a recall election for one or more named Directors, signed by at least one-fourth (1/4) of the Members in Good Standing, printing their name, unit, mail address, phone number, and the date of the petition, which must be less than six months old.
4. B. More than one piece of paper may be used to collect signatures so long as each identifies its purpose and the name(s) of the challenged Director(s), complies with these rules, and all signed petitions are presented to the Secretary at the same time.
4. C. The Secretary shall have five (5) business days to check the names, and if enough are valid, conduct a recall election on a regular business day within thirty (30) days of the receipt of the recall petition.
4. D. Directors whose removal is being sought will remain on the Board as Directors with full power unless, and until, the recall effort is successful and their successor(s) has/have been duly elected and attend(s) the first meeting after the election.
4. E. To remove a Director, a majority of Members in Good Standing must vote for the removal. If more than one removal is sought, each must be voted on separately.
4. F. If a Director or Directors is/are removed, an election for replacement Director(s) must be held within sixty (60) days of the recall election.

Additional Comments on specific Provisions of the proposed *Kansas uniform common interests owners bills of rights act*.

As noted above, I do not believe section 1. (a) (3) is accurate nor supported by any evidence considered by the House or Senate, and will not help to insure such associations operate effectively and fairly.

Section 2. (a) is not in touch with current terminology and should be amended by the addition of:

“and sometimes called dues, fees, or charges.”

As noted above, section 3 should be modified so that no part is mandatory if an organization has similar comprehensive rules and procedures, even if not word for word the same, unless adopted by a majority of members.

Section 5. While of no relief to QFCA, Section 5 should be changed so that it is only applicable to Organizations of 25 or more units.

Section 6 (b) should be amended to mesh with section 3.

As noted above, Section 8 (a) (6) (B) should be deleted as an aid in collecting delinquent dues,

Section 8(7) (d) lines 9 - 14 should be deleted. Members should have the opportunity to vote before common property is mortgaged, however a pledge of income does not encumber any real property and should be within the preview of the Board, if deemed in the best interest of the organization.

Add to Section 12 (d) , “Meetings shall be conducted in accordance with traditional rules of meeting procedure and order; minutes shall be taken of actions taken, attendees may be ousted for disruptive, outrageous, improper behavior and excluded for rule violation or being delinquent in payment of dues.

[The law should affirm the right of a presiding officer to maintain order, exclude rowdy individuals and members who have violated organization rules or who have not paid their dues.]

Section 14 (a) line 16, after “absentee” add “or mailed” to make it clear a mailed ballot, if allowed by the by-laws is valid. Note that mailed votes are permitted in Kansas for certain municipal elections. Same word added in Section 14 (b) (4) line 36 after “absentee”. and in (5) line 41 after “absentee” .

Further, wherever the word “proxy” appears, it is to be preceded with “mailed or” throughout the sections on voting.

Another exception to member access to records should be included as (9) for minor and subsidiary journals, lists, logs, workers notes, work files, personal correspondence, emails and computer files, repetitive requests, requests for no declared or no apparent reasons other than harassment,

Section 17 (4) Begin with “Member Notice may be given by putting it in a news letter, posting on a notice bulletin board, leaving a notice at the residence or with someone else who is living in the residence, handing it out in a membership meeting, making it available at the office for members to come get, see or read there, or” and then continue with “any other method ...”

Section 22 should be deleted. Kansans should be free to administer and interpret this law in accordance with Kansas statutory and case law without regard to laws of other states or comments associated with the uniform act.

Background and Disclaimer

My wife and I have owned 12300 W. 107th Terrace, Overland Park, Ks in the QFCA complex since 1989, and lease it to third parties and are current on dues. We reside at 7928 Rosewood, Prairie Village, KS 913-381-4095, walt1935@sbcglobal.net. In May of 2008, I was appointed to the QFCA Board of Directors and in June of 2008 elected to the Board for a three year term in an election where I received the most votes. The next two highest vote getters joined me on the board. In July of 2008 I was elected Vice-President, and in July of 2009, elected President.

This statement does not necessarily represent the views of the owner/members of the 513 units; however, it has been endorsed in principal by its current Board of Directors.

QF consists of 513 single family homes. Approximately 75% are in attached structures, sometimes called townhouses, (2, 4, and 6-plexes) and about 100 are detached, or free standing units. Construction and sales occurred from 1972 to 1980. QFCA was formed and assumed management responsibilities as provided in its Covenants. QF is governed by a 9 person Board of Directors, 3 elected each year for over-lapping 3 year terms. The board annually elects 4 officers. QFCA's governing documents include Articles of Incorporation, Declaration of Covenants, By-Laws, as amended by member votes; and various operational rules and procedures established by resolutions of the Board. Its 2009 income, mostly from dues, was \$1,256,535. However it is owed about \$150,00 in unpaid dues.

For its first 27 years, the Board elected the same owner/member as QF President. Although employed full-time as an architect, he acted as a general manager, assisted by employees and outside contractors as needed. During his last years in office, primarily due to non-payment of dues by many members, the association was unable to meet its maintenance responsibilities and was in debt. He died in spring of 2008. A stucco residing program was began in 1990 but has slowed by lack of income.

In 2007 and 2008, interested and worried members began to meet to effect a change in leadership and direction of the Association. Although a schism developed (and continues), a significant number of members coalesced around reform candidates, and in 2008 and 2009 elections, 6 new reform directors (including myself) were elected, 3 others were appointed and new officers were elected.

Among the many changes were hiring The Tiehen Company, a professional management company to oversee day to day operations; replacing employees; a CPA firm was retained to conduct a financial review and audits; lawsuits were settled and past debts paid or repayment plans begun: service contracts were rebid at cost savings; monthly; monthly and annual financial reports are provided to the members; and revised by-laws were adopted by a majority membership vote. Also a substantial numbers of units have had exterior siding repaired under the oversight of City of Overland Park, (a process that is about 2/3 complete and is continuing) and other deferred maintenance is being addressed; an aggressive effort was instituted to collect past dues (it is having some success); and revised Covenants are in the process of being explained and voted on.

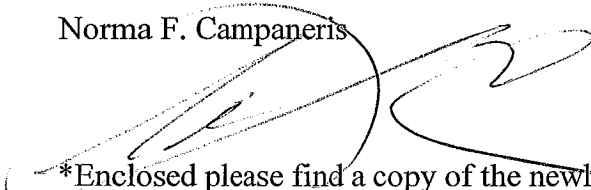
I appreciate the opportunity to submit these remarks. I would be pleased to answer any questions of Representatives, Senators or staff.

I UNEQUIVOCABLY support and pray for the passage of Senate Bill 470 and House Bill 2472. Truthfully, I can see no reason, not any at all, why this has not been law for years. Who could or would oppose? Only those that would or could profit from this injustice.

Home owner associations, fully maintained, with dues in the hundreds of dollars paid in by owners each month, (not associations that owners pay in \$50 to \$200 a year for the pool, etc.) have been "left out to dry", with out of control Board Members, and greedy Management Companies who do what they please with our monies and make totally outrageous "rules", bylaws and covenants that would stand the United States of America Constitution on it's ear. It is now time for this to stop! You say, "Oh, how could that be, why don't the owners dismiss the Board and management companies? It has been tried many times, when the ballot box and rules are ran and counted by the above, "that's how it is". When an owner disagrees with the spending of their dues, he can't speak his mind, he's not allowed to speak at the meetings...if he withholds his dues, a lien is placed on his house, even if his house is literally falling down with wood rot...while the Board has voted to put in a \$700 sprinkling system to keep the \$1,000 worth of annuals (not perennial) flowers alive that they had put in, when they spent \$ 70,000 to cut down trees, as they were spending \$ 3,000 on the new blinds for the \$3,000 newly painted clubhouse, and the now \$6,000 new hardwood floors, again in the clubhouse, after the new \$3,000 roof and the \$2, 500 for the new furnace for the maintainece bldg, sometime after one of the pools had a \$ 20,000 make over; this was during the time that the association was in great debt to Water I, Wastewater, and Deffenbaugh, not to mention delinquent loans for two new pick-up trucks. It was sometime during the above that the board elected to hire a management company to the tune of \$72,000 a year, plus 5 employees with out of sight salaries and benefits, and of course charges for outside venders. Oh, but they have no \$'s to maintain our homes...this is just NOT acceptable...and again STOP IT. Give us some rights. Please!

Note: Over One Million dollars a year is taken in in dues in my association, and there is no Audit! This needs to be part of this bill. Yearly Audits must be required by maintainece free homeowners associations, and not by their Management Co. The board needs to be held responsible, "accountability", not only for funds, re: Audit, but for ever other aspect, including the ballot box! Again, bill needs to contain just that.

Norma F. Campaneris


*Enclosed please find a copy of the newly proposed Covenants...Please read!!! And understand that we own our own townhomes, not the board! How could the home owners pass such insane rules onto themselves...I won't vote for it...but I guarantee that the board will say it passed.

Senate Local Government

2-15-2010

Attachment 4-1

**DESCRIPTION OF 2010 AMENDED AND RESTATED DECLARATION
OF COVENANTS OF
QUIVIRA FALLS COMMUNITY ASSOCIATION (QFCA)**

I History

In 1974, the developer of Quivira Falls subdivision filed Articles of Incorporation with the Kansas Secretary of State for the QFCA and recorded them with the Registrar of Deeds of Johnson County, Kansas. The developer also prepared and filed with the Registrar of Deeds, the original Declaration of Covenants.

Both the Articles of Incorporation and the Covenants were amended in 1990 to conform to requirements of FHA so units being sold could be financed by mortgages guaranteed by FHA.

In addition, there were some amendments to the Covenants so that they would cover and be binding on all 10 plats. The initial filing covered plats 1-7, a later amendment added plat 10, and a third document attached the Declaration to plats 8 and 9.

Initially there were 3 classes of membership: A, purchasers of units; B, lots held by the developer; and C, mortgagees (lenders).

Beginning in 2009 through January, 2010, a revised and amended Declaration was created by a committee after many hours of work, to be presented to and approved by the Board of Directors, and approved by the members by a majority vote. The proposal to present to Members for their approval was adopted by the Board of Directors on January 13, 2010.

II Major Changes

1. A limit of one rental unit per owner was added, to apply the day these proposed Covenants become effective.
 - a. While no existing landlord has to sell units currently owned and leased, none can buy and lease any additional units. When title to a leased unit is ultimately conveyed to others (by sale, will, or by the laws of descent and distribution), another cannot be acquired in its stead and placed under lease.
 - b. Moreover, no existing owner of a unit may, after the effective date, own and lease to others, more than one unit.
2. In order to move to a calendar fiscal year for computation and levying of dues, there will be an 18 month period of no regular dues increase. That is, the dues increase to be effective July 1, 2010 will continue until December 31, 2011. A normal dues increase may occur on January 1, 2012, and on each January 1 thereafter.
3. Effective 12 months from the effective date of the revised Declaration, all homeowners must have gutters installed to specs of the Architectural Control Committee or QFCA will install them and add the cost to the owner as part of his/her dues for the next 2 years.

Senate Local Government

2-15-2010

PROPOSED COVENANTS FOR QUIVIRA FALLS COMMUNITY ASSOCIATION

January 24, 2010

Dear Member/Owner,

After 36 years, the Board feels it is time to update the Declaration of Covenants—the document that established the organization and basic rules of the Association. The proposed, revised document is enclosed with a description of the major changes. Please review this document carefully.

In order for it to become effective, two-thirds (2/3) of the member/owners must indicate their approval by signing it at the office or by signing a paper to be attached to it. There will be member/owner meetings at the clubhouse (Thursday, February 18, at 7:00 p.m. and Saturday, February 20, at 10:00 a.m.) to go over the proposal and to answer questions. The Board will then meet on February 24th to make any changes suggested at the member meetings which the Board deems will be an improvement; then, the Board will formally submit it to the member/owners for their signatures.

Member/owners will be mailed an official invitation to either come by the clubhouse to sign* the original document form or to sign and return this form to be attached and made a part of the original. The last day to sign or turn in a signed consent form will be Tuesday, April 6, 2010, by 8 p.m.

*The 1990 document requires the owner's signature rather than secret ballot to revise or change the Covenants. A signature form is included if you would like to use it for your consent.

The enclosed copy of the proposed, revised Declaration is the only one you will receive. Should changes be made, you will get a page(s) to attach to your copy. Keep the proposal and any changes in your unit to refer to as needed and to pass on to the next member/owner.

The proposal does not change the principal duties and responsibilities of the Association or the member/owners nor the terms relating to dues (other than delaying the date on which they can be increased after July 1 of this year for 18 months to January 1, 2012). The revisions are explained on the back of this page as part of the attached packet.

Please give this matter your careful attention. The changes will complement the recently revised By-laws and together will give us a fair and effective system to govern the affairs of the Association.

Please bring your copy of the proposal and your questions to one of the meetings!

Sincerely,

Walt Vernon, President

P.S. If you wish, you may sign and return the consent form at any time beginning today until April 6, 2010, to arrive no later than 8 p.m. A consent form is available in your packet or forms will be available at the meetings and in the office.

(Note: The Association will secure bids from reputable contractors for owners who request them in order to get the best price due to the volume of work. Water splashing up under siding, running along foundations and under drives are in part responsible for problems, which the Association is responsible to repair.)

4. The word "townhouse" and "townhouses" was deleted everywhere it appeared in the Declaration, as it had proven to cause confusion. Initially the units were all attached, sort of like townhouses in the east. Later, many detached (stand-alone, single-family) units were built, but as they were also part of the PUD (Planned Unit Development) and covered by the same covenants, they too were called townhouses. This has caused confusion over the years, so it was replaced with "attached" and "detached" units, as appropriate.
5. References to Class A memberships (buyers and residents), Class B (the developer,) and Class C (the mortgagees) were deleted. Today all of the owners are members and the developer deeded ownership to the Association.
6. Many small changes in the nature of clarifications of the rights and responsibilities of the member/owners and of the Association were made:
7. Some rights of the Association were strengthened in the area of rule enforcement for the benefit of the members in good standing.

Examples:

- a. One change makes it clear that court costs and attorneys fees may be awarded to the Association when it is successful in suing to collect overdue monthly fees.
- b. Another example was rephrasing language to indicate that it is the detached unit owner's responsibility to maintain plants, grass, trees, shrubs, and flowers in his/her full lot and not the Association.

(Plat maps are available at the Johnson County Courthouse or in the Quivira Falls Community Association office.)

ATTENTION

THIS IS AN IMPORTANT LEGAL DOCUMENT.

RETAIN IT IN YOUR RECORDS AND PASS IT ON TO THE NEXT OWNER.

**QUIVIRA FALLS COMMUNITY ASSOCIATION
PROPOSED COVENANTS**

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ATTENTION
THIS IS AN IMPORTANT LEGAL DOCUMENT.
RETAIN IT IN YOUR RECORDS AND PASS IT ON TO THE NEXT OWNER.

QUIVIRA FALLS COMMUNITY ASSOCIATION
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,
AND DEDICATION OF EASEMENTS

Approved by the Board of Directors on January 13, 2010

1. **New language is in BOLD italics.**
2. **Omitted language from the Covenants of 1974 and Amendments of 1990 are crossed through.**
3. **Unchanged language from the Covenants of 1974 and Amendments of 1990 are in normal type.**
4. **Numbering and lettering in the Covenants of 1974 and Amendments of 1990 are sometimes inconsistent. This document corrects those inconsistencies and allows for this document's additions.**

~~Acquiring any right, title or interest in the real property, or a part thereof, and shall inure to the benefit of each owner thereof. THIS DECLARATION AND DEDICATION is made this 11th day of September, 1974 by KANSAS LAND DEVELOPMENT COMPANY, a limited partnership organized, existing and in good standing under the laws of the State of Kansas, referred to hereinafter as the "Declarant."~~

~~WHEREAS, the Declarant is the owner of the following described real estate:~~

~~All of the First Plat in Quivira Falls, a Subdivision to the City of Overland Park, Johnson County, Kansas, And,~~

~~WHEREAS, Declarant has constructed or intends to construct a planned unit development consisting of not more than fifty-three (53) residential units and certain common areas, community facilities and improvements on the above described real estate as more specifically described hereinafter; and~~

~~WHEREAS, Declarant is also the owner of other real estate located in Quivira Falls Subdivision to the City of Overland Park, Johnson County, Kansas, and abutting lands that are not platted as of this date which may be developed by Declarant for additional residential units, common areas, community facilities, and improvements which, when added to the units constructed upon the above described real estate, will not exceed a maximum of one thousand (1,000) units, and which will be subject to the covenants, conditions, restrictions and easements set forth hereinafter by following the procedure set forth hereinafter; and~~

~~WHEREAS, Declarant desires to place certain covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, upon the above described real estate for the benefit of the Declarant, its successors, assigns and its future grantees, to protect the value and desirability of the planned unit development project to be known as "Quivira Falls," and all additions thereto, and~~

~~WHEREAS, Declarant has caused to be incorporated under the laws of the State of Kansas, as a Not For Profit corporation, Quivira Falls Community Association for the purpose of exercising the functions of a community association as set forth hereinafter for the benefit of said real estate and all additions thereto.~~

~~NOW, THEREFORE, Declarant hereby declares that the real property referred to and described above, and such additions thereto as may hereafter be made, pursuant to Article Two hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the property. These easements, covenants, restrictions, and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the real property, or a part thereof, and shall inure to the benefit of each owner thereof.~~

Restatement, Republication, and Amendment of the Declaration of Covenants, Conditions, Restrictions, and Dedication of Easements of Quivira Falls Subdivision.

Whereas the Kansas Land Development Company, a Kansas Limited Partnership, on September 11, 1974, Declared, dedicated, published, and executed that certain declaration of covenants, conditions, restrictions and dedication of easements of Quivira Falls Subdivision and filed same with The Johnson County, Kansas Recorder of Deeds on the same date, Volume 994, pages 632 to 674; and,

Whereas the Quivira Falls Development was platted as a subdivision with the City of Overland Park, Johnson County, Kansas with plats 1 through 7; and,

Whereas said Declaration of Covenants was amended on August 22, 1978, to cover and include all of the tenth plat, filed August 25, 1978, in Vol. 1375, pages 708 and 709 and rerecorded in Vol. 1707, page 708; and,

Whereas the individual owners of the lots in plats 8 and 9 shown on an attached Addendum "A" executed and filed with The Recorder of Deeds of Johnson County, Kansas in 1990, conveyances making their lots subject to the original Covenants; and,

Whereas said Declaration of Covenants was amended on April 4, 1990, by Amendments filed with The Johnson County Recorder of Deeds on June 18, 1990, Volume 3187, pages 602 to 613; and,

Whereas The Quivira Falls Subdivision was ultimately completed consisting of 513 units which were all sold; and,

Whereas the developer(s) caused the creation of The Quivira Falls Community Association, (QFCA) a membership not-for-profit Kansas Corporation, which has assumed the designated role and duties of managing The Subdivision and Association as the successor in interest to the

developer, as spelled out in the original and this Declaration, being herein variously called "QFCA," "Association," and "Declarant;" and,

Whereas the Subdivision consists of 513 residences built as detached (stand-alone) units, and attached units (duplexes, 4-plexes and 6-plexes); and,

Whereas The Subdivision also contains a clubhouse-office structure, an abandoned silo tower, two (2) swimming pools, two (2) tennis courts, a maintenance building, private streets, path ways, landscaped areas, city streets, certain driveways, grassy and treed areas, an entrance sign and structure and more, all collectively referred to as "common areas"; and,

Whereas all of such 513 residences and common areas have been and are subject to the covenants, conditions, restrictions and easements of the original Declaration and are and will be subject to the Covenants, Conditions, Restrictions and Easements of this Restatement, Republication and Amendment of the Declaration; and

Whereas such Covenants, Conditions, Restrictions and Easements were and are for the benefit of Declarant, its member/owners, its successors, assigns, and future grantees of said member/owners to protect the value and desirability of the planned unit development;

Now, therefore, Declarant hereby declares that the real property referred to herein and such additions as may be hereafter made thereto is and shall be held, transferred, sold, conveyed, occupied and enjoyed, subject to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, attractiveness and desirability of the property, and these covenants, conditions, restrictions, easements, charges and liens shall run with the real property and are and shall continue to be binding upon all properties described herein and all persons having or acquiring any right, title, or interest in and to the real property or a part thereof, and shall come into effect to the benefit of the owners thereof acquiring any right, title, or interest in and to the real property or a part thereof, and shall inure to the benefit of the owners thereof.

ARTICLE ONE

Definitions.

The following words when used in this Declaration or any supplemental declaration shall have the following meanings:

- A. **Association:** shall mean and refer to The Quivira Falls Community Association is a *Kansas not-for-profit membership corporation formed pursuant to the Non-Profit Corporation laws of the State of Kansas*, established by Articles of Incorporation filed with the Secretary of State, for the State of Kansas, on the 9th day of September, 1974, and with the Registrar of Deeds for Johnson County, Kansas, on the 11th day of September, 1974, in Book 994, at page 627, and amended on June 18, 1990, as filed with the *Registrar of Deeds for Johnson County Kansas*

B. **Real Estate:** ~~shall mean and refer to~~ The following described real estate:

Blocks one ~~thru seven~~ *through ten* of Quivira Falls Subdivision to the City of Overland Park, Johnson County, Kansas, and such additional real estate as may be made subject to this Declaration or any supplemental declaration prepared and titled for record pursuant to the provisions of Article II herein.

C. **Planned Unit Development (PUD):** *A community or subdivision that consists of common property and improvements that are owned and maintained by a homeowners association for the benefit and use of the individual PUD units. Certain standards of uniformity are required as determined by the Architectural Control Committee and adopted by the Board of Directors.*

D. **Plat:** *A diagram drawn to scale showing all essential data pertaining to the boundaries and subdivisions of a tract of land, as determined by survey or protraction.*

E. **Common Area and Facilities:** ~~shall mean and refer to~~ All of that part of the real estate and all improvements located thereon owned by the Association for the common use and enjoyment of the residents of Quivira Falls Subdivision. Common area and facilities shall include:

1. All real estate owned in fee simple by the Association evidenced by warranty deed or deeds from the Declarant to the Association, recorded in the office of The Registrar of Deeds for Johnson County, Kansas.
2. All Community buildings, swimming pools, tennis courts, playground equipment, recreational facilities, structures, trees, landscaping, lighting equipment, decorative equipment, or other improvements located upon real estate owned by the Association.
3. All paved private drives, streets, and open parking areas located upon real estate owned by the Association.
4. All installations of central services for the benefit of more than one owner, including but not limited to, television antennas, incinerators, trash receptacles, pipes, wires, conduits, sewers, water lines, and other public utility lines and facilities situated thereon.
5. All easements, rights, and appurtenances belonging thereto necessary to the existence, maintenance, and safety of the project.
6. All personal property owned by the Association intended for use in connection with the operation of swimming pools, tennis courts, recreational facilities, buildings, structures, or other facilities of the Association.

F. **Lot:** *The real estate on which one unit is located, whether attached or detached.*

G. **Unit:** ~~shall mean and refer to One single-family residential unit structure that may be a detached single-family residential structure or~~ may be joined together ~~one a single-family residential structure attached to~~ at least one additional single-family unit by a common wall, or walls, and/or roof and/or foundation.

1. The exterior boundary line of each unit joined together with at least one other unit (attached units) shall be the exterior line of its foundation except where a unit has a fireplace, which protrudes beyond the foundation line, in which case the exterior boundary shall include the fireplace and chimney. The unit may also include one detached garage.

2. *The exterior boundary line of each detached unit (one not joined together with any other unit) single-family unit shall be the full lot line conveyed to the owner thereof as shown on the plat plan filed with the City of Overland Park, Kansas, which normally extends beyond the exterior line of the foundation and normally includes yard area which the owner is responsible to maintain.*

H. **Owner:** ~~shall mean and refer to~~ The owner of record, whether one or more persons or entities, of the fee simple title to a lot and unit, including contract sellers. The term "owner" shall not mean any mortgagee or trustee ~~under a deed of trust unless and until~~ such mortgagee or trustee has acquired fee simple title to a unit.

I. **Member:** ~~shall mean and refer to each owner as provided herein in Article Three. Every person or entity who is an owner of fee simple interest in one or more units shall be a Member of the Association. If owned by a single person, he or she shall be the member. If owned by a corporation, partnership, jointly or by a trust, such entity shall name a real person to act as the member to receive official notices, vote, and sign petitions. If held by more than one person, any of the owners, but only one, may vote or sign petitions at one time. A tenant may not be a member.~~

J. **Mortgagee (lender):** ~~shall mean and refer to~~ Any such person, persons, or entities owed money by a member/owner, secured with a mortgage on a QFCA lot and any improvements.

K. **Declarant:** ~~shall mean and refer to~~ *The Quivira Falls Community Association, QFCA, or the Association.*

L. **Quivira Falls:** ~~shall mean and refer to~~ The Subdivision in Overland Park, Kansas, approved for development by Kansas Land Development Company within the approximately two hundred eight (208) acre tract lying northwest of College Boulevard and Quivira Road.

ARTICLE TWO

Property Subject to this Declaration: Additions thereto.

- A. **Property.** The real estate which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration as of the date of this Declaration is *described and defined in Article One, paragraph B.*
- B. **Additions to Existing Property.** Declarant reserves the right to add additional real estate and units to this Declaration in any of the following manners:
- a. ~~If Declarant is the owner of any real estate located in Quivira Falls Subdivision to the City of Overland Park, Johnson County, Kansas, or non-platted land abutting said Subdivision, Declarant may add any part thereof to this Declaration without the consent of Class A members of the Association at any time until July 1, 1994, by filing of record, a supplementary declaration of covenants, conditions, restrictions, and easements set forth in this Declaration; provided, however, that the total number of additional townhouse units constructed, upon said additional real estate so added to this Declaration and the units constructed upon the real estate described in Article One may not exceed one thousand (1,000) in number. Said supplementary declaration may contain such additional covenants, conditions and restrictions applicable solely to said additional real estate as may be necessary or desirable as determined by the Declarant. In no event, however, shall such supplementary declaration modify or add to the covenants established by this declaration for the existing property without the written consent, obtained after at least thirty (30) days notice, of sixty percent (60%) or more of the Class A memberships and all Class B memberships of the Association.~~
 1. *If Declarant wishes to acquire additional land for further development, or wishes to authorize construction and sales of additional units on existing or later acquired property, such acquisition or construction must first be approved by a sixty percent (60%) vote of the members in good-standing with at least thirty (30) days advance notice and any such land or new units will be subject to the terms and conditions of this Declaration.*
 2. Upon a merger or consolidation of the Association with another not-for-profit (such as a condominium association adopted with regard to other property within Quivira Falls Subdivision which might at a future time be developed as a condominium) corporation as provided in its Articles of Incorporation, its properties, rights and obligations may, by operation of law, be transferred to another surviving not-for-profit corporation pursuant to a merger. The surviving or consolidated not-for-profit corporation may administer the covenants, conditions, and restrictions established by this Declaration for the existing property, together with the covenants and restrictions established upon any other property as one project. No such merger or consolidation, however, shall affect any revocation, change, or addition to the covenants, conditions, and restrictions established by this Declaration for the existing property and for any additions thereto established by a supplementary declaration.

ARTICLE THREE

Voting

~~1. Membership and Voting Rights in the Association. Every person or entity who is an owner of fee simple interest in one or more lots and units shall be a member of the Association. Ownership of such unit shall be the sole qualification for Class A membership.~~

A. Voting

- 1. In all meetings, and votes, and elections of the Association, a member in good standing may vote in person or by mailing or delivering an executed ballot. A mailed ballot shall be filed with the Secretary or the designee appointed by the Board of Directors before the meeting or time to vote and may not be used more than six (6) months after signed and dated. A mailed ballot may be revoked by the member at the poll in order to vote in person.*
- 2. The By-Laws may further define and regulate "members in good standing" and "members not in good standing" and the consequences thereto. The By-Laws shall be the definitive authority on such matters.*
- 3. The By-Laws shall contain rules and procedures for voting by mail.*

~~2. Types of Membership in the Association. The Association shall have three classes of voting memberships:~~

~~a. Class A. Class A members shall be all owners except the Declarant. Class A members shall be entitled to one vote for each lot and unit in which they hold the interest required for membership by Article Three, paragraph 1. when more than one person holds such interest in any lot and unit, all such persons shall be members and the vote for such unit shall be exercised as they among themselves, determine; but in no event shall more than one vote be cast with respect to any one unit.~~

~~b. Class B. Each Class B membership shall be issued to the Declarant. Three Class B memberships shall be issued to Declarant for each lot that Declarant proposes to develop with a unit. Each Class B membership shall be entitled to one vote. As each unit is sold by Declarant, the Buyer shall receive a Class A membership, and three Class B memberships shall be cancelled.~~

~~All Class B memberships outstanding shall be surrendered by the Declarant to the Board of Directors of the Association for cancellation, upon the happening of either of the following events, whichever occurs first:~~

~~When one thousand (1,000) UNIT units have been constructed and sold upon the real estate described in Article One, paragraph 2, of this Declaration, and such additional real estate as may be made subject to this Declaration or any supplemental declaration prepared and filed for record pursuant to the provisions of Article Two thereof; or ii. July 1, 1994~~

~~Upon surrender and cancellation of all Class B memberships, Declarant shall have no right, title, or interest in or to the common area and facilities and any and all other personal property or real estate owned by the Association. Upon surrender and~~

cancellation of each Class B membership, the Declarant shall have no right to vote such membership at any regular or special meeting of the Association for any purpose whatsoever.

1. ~~Class C.~~ Class C memberships shall be all of the First Mortgagees. Class C members shall be entitled to one (1) vote for each lot and unit which secures a mortgage or deed of trust. Class C memberships shall be surrendered to the Association and cancelled upon discharge of a mortgage or deed of trust by a mortgagee. Only one (1) Class C membership shall be outstanding with regard to any lot and unit. Class C members shall only be entitled to vote on matters specifically enumerated hereinafter.

B. Quorum, Proxies, for Voting:

1. Ten percent (10%) of the membership of the Association entitled to vote, represented in person or by mailed ballot, shall constitute a quorum at any meeting, *vote, or election* of the Association.

b. ~~At all meetings of the Association, a Class A member may vote in person or by proxy executed in writing by such member. Such proxies shall be filed with the Secretary of the Association before or at the time of a meeting. No proxy shall be valid after twelve (12) months from the date of its execution. Every proxy shall be revocable and shall automatically cease upon conveyance by a member of his lot. No one owner of a Class A membership may vote more than one additional vote by mailed ballot.~~

2. *In all meetings, votes, or elections of the Association, a member may vote in person or by mail or by delivering an executed ballot. A mailed ballot shall be filed with the Secretary or designee appointed by the Board of Directors, before the meeting or time to vote, and may not be used more than six (6) months after signed and dated. A mailed ballot may be revoked by the member at the poll in order to vote in person.*

C. Rights of Mortgagees. The Declaration may not be amended without the approving vote of seventy-five percent (75%) of the first mortgagees upon thirty (30) days notice, the mortgagee of each unit having one vote, to:

1. Change the method of determining the obligations, assessments, dues, or other changes that may be levied against or upon its mortgaged unit.
2. Abandon, partition, subdivide, encumber, sell, or transfer real estate or improvements thereon, which are owned directly or indirectly by the Association provided, however, that the granting of easements for public utilities or other public purposes consistent with the intended use of such property shall not be deemed a transfer within the meaning of this clause.
3. Change, waive, or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of units, the exterior appearance of units, the exterior maintenance of units, the maintenance of party walls, common fences and driveways, or the upkeep of lawns and plantings within Quivira Falls.

4. **However, mortgagees of units have the right, without a vote, to jointly or singly, pay taxes or other charges which are in default and which may have become a charge against any common area, and may pay overdue premiums on hazard insurance policies, or secure hazard insurance coverage on the lapse of a policy for common property, and such first mortgagees making such payment shall be owed immediate reimbursement from the Association.**

D. Articles of Incorporation and By-Laws. Except as specifically set forth in this Declaration, all provisions applicable to notice, *voting*, and quorum requirements for all actions to be taken by the Association shall be as set forth in its Articles of Incorporation and By-Laws. ~~In any event, if any provisions set forth in this Declaration applicable to notice, voting, and quorum requirements are in conflict with any provisions of Kansas laws applicable to not for profit corporations on the date of this Declaration, or at any time after said date, the applicable provisions of Kansas laws shall control.~~

ARTICLE FOUR

Common Areas and Facilities - Rights of Owners and of the Association

- A. **Enjoyment.** Class A Owner Membership in the Association shall be deemed to be conveyed or encumbered with the deed or mortgage applicable to each lot and unit, even though such interest is not expressly mentioned or described in the conveyance, mortgage, or other instrument. Each *Only* owners *who are in good standing* may use the common area and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful rights of other owners.
- B. **Regulations and Suspension of Rights.** The rights and easements of enjoyment created hereby shall be subject to the following:
 1. The right of the Board of Directors of the Association to prescribe rules and regulations and fees governing the use, operation, and maintenance of all common areas and facilities, including all swimming pools, tennis courts, and other recreational facilities.
 - b. The right of the Association to suspend the right of any owner to use all said recreational facilities.
 2. *The right of the Association to suspend the right of any owner to vote, to hold office, to speak at meetings of the Board of Directors, to sign petitions, or to use all said recreational facilities* located upon common areas, and the right of the Association to withhold and not provide services and maintenance normally provided by the Association, for any period during which any assessment against said owner remains unpaid, or for other good and sufficient reasons.
 3. The right of the Association to charge reasonable admission and use fees for the use of any of said recreational facilities to defray costs of the operation thereof.
 4. The right of the Board of Directors of the Association to fix penalties for the violation of said rules and regulations.

5. The right of the Association to borrow money for the benefit of the Association and the owners of units provided, however, the repayment of such loans shall not be or become the personal obligation of the owners of units.

6. ~~The right of the Association to rent the Association club house facility. to Kansas Land Development Company or any affiliated or successor development company for a period of up to ten (10) years for a rental of Two Thousand One Hundred Sixty Dollars (\$2,160.00) per year and such other reasonable terms as the Association and developer deem appropriate.~~

C. **No Restrictions on Access to Units.** The Board of Directors of the Association may not in any event, revoke, limit, restrict, or suspend in any way, the right of any owner to use and enjoy the private drives, streets and parking areas located upon the real estate owned by the Association. As a right running with the real property, ownership of each lot and unit shall include the right to use and enjoy all walks, pavement, driveways, parking area entrances, and exits owned by the Association. There shall always be access by other pedestrians and vehicles to and from each lot and unit to a public street or to a private street leading to such public street *provided, however, the Association may establish parking and other restrictions for purposes of traffic control, ease of entry by members and emergency vehicles, and to allow for removal of abandoned vehicles and establish fines for the violation thereof.*

D. **Rentals.** ~~Provisions, if any, to the contrary are hereby deleted, and the following provisions are adopted and~~ *Effective the date this amendment is passed:*

1. *No owner may lease or rent more than one (1) unit to another person or entity. This rule applies to units acquired after the effective date hereof.*

2. *When a unit is sold by an owner who has more than one rental unit, there can be no replacement or substitution by acquiring another unit.*

3. *All owners who currently or hereafter rent one or more units must register each rental agreement with the Association.*

a. *The form must be signed by both the Owner /Landlord and Renter/tenant, agreeing to receipt of and agreeing to be bound by Section D of this document and other applicable rules of the Association, a copy of which will be provided upon registration*

b. *Failure to register within thirty (30) days of tenant move-in shall subject the owner to penalties by the Board, including fines, ouster of the tenant, or withdrawal of the right to lease one or all of the owner's properties to others.*

4. *All owners who currently or hereafter rent one or more units must pay certain fees:*

a. *A one time fee of fifty dollars (\$50) to register as a QFCA landlord, existing landlords included, and for the first rental unit and tenant;*

b. *Ten dollars (\$10) to register each additional rental unit;*

- c. Ten dollars (\$10) renewal fee per rental unit each January thereafter; and,*
- d. Twenty-five dollars (\$25) to register a new tenant.*
- 5. No short-term leases or rentals (less than one (1) year) are permitted.*
- 6. The Association reserves the right to require the use of a standard form of rental agreement. Both the owner and renter are responsible to obey the rules of the Association.*
- 7. Both owners and renters must carry standard owners and renters liability insurance policies including one hundred thousand (\$100,000) dollars general liability endorsement naming QFCA and other members as additional insured as their interest may appear, file a certificate with the Association office evidencing same, and keep their insurance current.*
- 8. Association notices to owner or renter shall be deemed notice to both, and both shall be liable for fines or other charges levied relating to the renter's activities.*
- 9. The Association has the right to terminate the rental agreement and evict the renter for breach of the agreement, for gross, dangerous, repeated, illegal or destructive conduct or repeated rule violations by renter or relatives, guests, and invitees thereof, and for the owner's failure to pay member dues, charges and assessments for more than ninety (90) days.*
- 10. Owners must maintain their units and equipment properly and make them available for inspection by the Association or City personnel upon request.*

ARTICLE FIVE

Covenant for Maintenance Fees or Charges

- A. Creation of the Lien and Personal Obligation of Fees or Charges; Regular and Special Fees and Charges.** Each owner, by acceptance of the deed therefore, whether or not it shall be so expressed in any such deed of conveyance for each unit owned, hereby covenants and agrees to pay to the Association or its nominee:
1. Regular fees and charges:
 - a. The base monthly assessment covering all required services as provided by Article Five.
 - b. Fees for additional services provided by the Association not covered by the base monthly assessment, which may be established from time to time by the Board of Directors to meet the purposes of the Association, and
 2. Special fees, charges, or assessments to be fixed, established, and collected from time to time.

B. Purpose of Regular Fees or Charges. The base monthly assessment levied by the Association shall be used for the following purposes:

1. Routine repair, maintenance and care of private streets, cul-de-sacs and driveways, exterior building surfaces, roofs, trees, shrubs, grass, utility lines and conduits, outdoor lighting equipment, walks and other exterior improvements, common structures and improvements, including exterior fences, as set forth in Article Seven of this Declaration.
2. Ad valorem (property) and other taxes on land and improvements owned by the Association.
3. Management (including necessary legal and accounting expenses of the Association).
4. Contingency reserves as determined from time to time by the Board of Directors of the Association.
5. Insurance premiums for all insurance secured by the Board of Directors of the Association pursuant to this Declaration.
 - a. Policies of casualty insurance as set forth hereinafter in this Declaration, such insurance premiums to be paid from regular fees and charges shall be limited to insurance premiums for public liability and property damage insurance covering all common areas and facilities and worker's compensation insurance to the extent deemed necessary by the Board of Directors to comply with any and all applicable laws.
 - b. Regular Fees and charges may be used for the payment of insurance premiums for casualty insurance applicable to each lot and unit, if a blanket policy of casualty insurance is available under applicable Kansas law, and if the Board of Directors of the Association elects to convert to a blanket policy of actuality insurance all as set forth hereinafter.
6. The payment of such other charges and expenses as may be elsewhere required or authorized by this Declaration or that the Board of Directors of the Association may from time to time determine necessary or desirable to meet the purposes *or responsibilities* of the Association as stated in its Articles of Incorporation, By-Laws, and by this Declaration.

B. Special Fees for Additional Services. ~~Special fees for additional services levied by the Association shall be used for services provided by the Association that are not covered by the base monthly assessment. These fees shall be established from time to time as the Board of Directors determine necessary or desirable to meet the purposes of the Association. Such fees for additional services shall require an affirmative vote of fifty-one percent (51%) of the Class A memberships members who are present and or voting in person or by proxy *by mailed ballot* at the special meeting, *vote, or election* called for the purpose of considering the fees for additional services after not less than thirty (30) days and not more than fifty (50) days notice in writing to each member of the Association, stating the time, purpose, and place of said meeting, *vote, or election*. Such fees for~~

~~additional services shall be due and payable at the time and in the manner specified in the adopted proposition.~~

- C. **Special Fee, Assessments or Charges.** The Board of Directors *may levy a special fee, charge, or assessment for additional services not covered by the base assessment, for deferred maintenance, maintenance or services, construction, reconstruction, or estimated repairs and replacements of any capital improvements, or sums the Association is legally obligated to pay, the cost of which exceeds normal monthly fees.* Such special , charges, or assessments shall, however, require an affirmative vote of fifty-one percent (51%) of the Class A memberships, ~~and all of the Class B memberships~~ *members in good standing* who are present ~~or by proxy~~ *and voting in person or by mailed ballot*, at a special meeting, ~~vote, or election~~ called for the purpose of considering the special fee or charge after not less than thirty (30) days and not more than fifty (50) days notice in writing to each member of the Association, stating the time, purpose, and place of said meeting. Such special fees or charges shall be due and payable at the time and in the manner as approved by fifty-one (51%) of the Class A memberships ~~and all of the Class B memberships~~ *members in good standing*, voting at said meeting, ~~vote, or election.~~

D. **Budget**

1. Prior to ~~July 1~~ *January 1* of each calendar year, the Board of Directors of the Association shall prepare a budget for the ensuing twelve (12) months and such budget shall cover the estimated costs of maintaining the common areas and performing all of the obligations and exercising the powers established under this Declaration.
2. On the basis of this budget, the base monthly assessments and any fees for additional services for each owner of each unit for the ensuing year shall be established by the Association.
3. Base monthly assessments as estimated under such budget shall be borne equally by the owners of the units: Fees for additional services need not be borne equally.

E. **Audit.**

All computations relating to obligations to be performed under this Declaration shall be accomplished in accordance with accepted accounting practices and the Association shall employ a firm of Certified Public Accountants to render a written audit of its operations for each calendar year and a copy of such written audit shall be available to the owners and mortgagees of each unit. Upon reasonable notice, mortgagees and owners shall have the right to examine the books and records of the Association at the offices of the Association.

F. **Fees. Limit Thereon.**

~~Until July 1, 1974, the maximum regular fees or charges shall be \$35.00 per unit per month.~~

1. ~~From and after June 1, 1975~~ The maximum base monthly assessment may be increased each year by the Board of Directors of the Association without a vote of the memberships in conformance with the annual rise, if any, of the Kansas City

Consumer Price Index for Urban Wage Earner's and Clerical Workers, All Items, published by the United States Department of Labor, Bureau of Labor Statistics for the most recent reporting period preceding the effective date of the increase in Association fees.

2. ~~From and after June 1, 1975~~ The base monthly assessment may be increased each year by the Board of Directors of the amount of increase, if any, authorized by the Consumer Price Index formula set forth above, and an additional three percent (3%) above the fees or charges for the previous year without a vote of the memberships.
3. ~~From and after July 1, 1975~~ All increases above the amount authorized by the Consumer Price Index formula *plus* three percent (3%) shall not be effective unless approved by the Board of Directors and sixty percent (60%) of the votes of ~~Class A memberships and all Class B memberships~~ all members in good standing who are voting in person or ~~by proxy~~ *by mailed ballot* at a meeting *or election* duly called for said purpose, written notice of which shall be sent to all ~~Class A and Class B~~ members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting setting forth the purpose of the meeting.
4. Regular fees or charges shall remain constant from ~~July 1 through June 30~~ at January 1 through December 31 of each year, *beginning January 1, 2012.*

G. **Uniform Rate of Fees or Charges.** Both regular and special fees and charges must be fixed by the Board of Directors of the Association at a uniform rate for all units *except for those charges that benefit a designated group of owners.* *

**Examples would be yard fees for detached homes and the water pool for attached units, which lack individual water meters.*

H. **Date of Commencement of Regular Fees or Charges. Due Date.** Regular fees or charges shall be due and payable to the Association on the first day of each month in equal monthly installments. ~~All unit owners of any completed unit other than the Declarant, its successors or assigns, shall be obligated to pay assessments when the warranty deed conveying fee simple title to the completed unit has been issued and delivered.~~ Assessments may also be paid by, for, and on behalf of owners by their mortgagees or holders of a deed for trust under such terms and agreements, as the Association may from time to time deem appropriate by action of its Board of Directors.

I. **Duties of the Board of Directors with Respect to Fees or Charges.**

1. ~~At least thirty (30) days prior to July 1, 1975 and~~ At least thirty (30) days in advance of each annual assessment period of January 1 through December 31 thereafter, the Board of Directors shall, by resolution, determine the amount of the regular fees or charges pursuant to Article Five, *paragraphs C. 1, 4-5.*
2. Written notice of such regular fees or charges shall be given to each unit owner. Failure of the Association to give written notice of any regular fee or charge prior to January 1 of any year shall not invalidate any such fee or charge levied thereafter, nor

shall failure to levy any regular fee or charge for any one year affect the right of the Association's Board of Directors to do so for any subsequent year.

3. *Unit owners become subject to Association fees and charges upon receiving a warranty deed for said unit on a pro rata basis commencing on the date the sale is closed and the title is thus transferred.*
4. *The Board of Directors The Association shall, upon demand at any time, furnish to any owner liable for fees or charges hereunder, a certificate in writing signed by the President, the Secretary of the Association, or their designee, setting forth whether all fees or charges have been paid to date. A reasonable charge may be made by the Board of Directors for the issuance of such certificate. Such certificate shall be recorded in the office of the Registrar of Deeds for Johnson County, Kansas and upon recording shall constitute conclusive evidence of payment of any fee or charge for the period stated in the certificate.*
5. *The Association, acting by its Board of Directors, shall enforce payment of the fees or charges in accordance with the provisions of paragraph 6 of this Article Five.*
6. *The costs of efforts to collect delinquent charges (fees, assessments, fines, etc.), foreclose liens, enforce Association Covenants and rules, such as fees of attorneys, collection agents, tow companies, and court and litigation costs, are the responsibility of the owner owing such monies or refusing to honor the Covenants or rules, and shall be part of any Court Order or Judgment, as the Court and Kansas Law allows.*
7. *Notwithstanding any other provisions hereof, dues effective July 1, 2010, shall continue for eighteen (18) months until December 31, 2011. Effective January 1, 2012, dues may be increased as otherwise provided in the Declaration of Covenants and, thereafter, dues may be increased each January 1.*

J. Effect of Non-payment of Fees or Charges, the Personal Obligation of the Owner; the Lien; Remedies of Association; Maintenance and Enforcement of Lien by Declarant.

1. *If any fee or charge or any part thereof is not paid on the date when due, then the unpaid amount of such fee or charge shall become delinquent and shall there upon be a continuing lien on the lot and unit of the non-paying owner, and shall bind such unit in the hands of the then owner, his heirs, executors, administrators, successors, and assigns. No owner may waive, have waived, or otherwise escape liability for the fees or charges provided herein by non-use of any common areas and facilities owned by the Association or by abandonment of his lot and unit.*
2. *The lien may be recorded with the Recorder of Deeds of Johnson County, Kansas, when fees are more and charges are more than ninety (90) days overdue; however, a lien may nonetheless be enforced whether or not it is recorded.*
3. *If any fee or charge or part thereof is not paid within thirty (30) days after the due date, the same may bear interest thereon at one and one-half percent (1 ½%) per month*

(eighteen percent [18%] per annum) if the Board of Directors, by resolution, elects to assess interest on any such non-paid fee or charge.

4. The Association, acting by its Board of Directors, may, by resolution, elect to commence an action in the District Court of Johnson County, Kansas, against the owner personally obligated to pay the same and the owner of record of any lot and townhouse unit, in the event the same has been transferred, to enforce payment of said delinquent fee or charge and to foreclose the lien against said lot and townhouse unit. The lien against any lot and townhouse unit shall continue for period of two (2) years from the date of delinquency and no longer unless such action shall have been filed. In the event such action is filed within one year from the date of delinquency, the lien shall continue until termination of the action and until sale of the lot and townhouse unit under the execution of judgment establishing the same *until the debt is paid or the unit sold and so much of the debt is paid out of the proceeds as allowed by law or these covenants.*

K. Subordination of the Lien to Mortgagees; Notice of Non-Payment to Mortgagees.

1. The lien of the fees or charges, regular and special, provided for herein shall be subordinate and inferior to the lien of any first mortgage ~~or deed of trust~~ now or hereafter placed upon any lot and unit subject to fees or charges, provided, however, that such subordination shall apply only to the fee or charge which becomes due and payable prior to the sale, whether public or private, of such unit, pursuant to a decree of foreclosure of any such mortgage ~~or pursuant to the terms and conditions of any such deed of trust~~ or a deed in lieu of foreclosure.
2. Said sale or deed in lieu of foreclosure shall not relieve such unit from liability for the amount of any fees or charges thereafter becoming due, nor from the lien of any such subsequent fee or charge.
3. Any holder of a first mortgage ~~or deed of trust~~ who acquires title of any lot or unit pursuant to foreclosure or deed in lieu of foreclosure, shall take title free of any claims for unpaid fees or charges against the lot and unit which accrued prior to the date title is acquired by said holder of the mortgage ~~or deed of trust~~ except for claims for a pro rata share of such unpaid taxes or charges resulting from a pro rata reallocation of such unpaid fees or charges to all lots and units, including the lot and unit so acquired by the holder of the mortgage. ~~or deed of trust.~~

- L. **Notice.** The mortgagee under each unit may be given written notice by the Quivira Falls Community Association if the owner is in default of the payment of any dues or assessments imposed by the Association or is in default with respect to any other obligation imposed by the Association, and the mortgagee will receive written notification from the Association of any default which is not cured within sixty (60) days.

M. Exempt Property. The following property subject to this Declaration and dedication shall be exempted from the fees, charges, and liens created herein:

1. All property dedicated to and accepted by any municipality or public utility for public use and purposes.
2. All common areas and facilities.

ARTICLE SIX

Insurance

A. Insurance to be Obtained and Maintained by Association. The Board of Directors of the Association shall obtain and maintain to the extent reasonably available, at the least the following:

1. Casualty insurance naming the Association as insured for the benefit of the owner in an amount equal to the full replacement value (i.e., 100 percent (100%) of "replacement cost" exclusive of land, foundation and excavation, respectively), of the improvements located upon real estate owned by the Association with an "agreed amount" endorsement, without deduction or allowance for depreciation (as determined annually by the Board of Directors with the assistance of the insurance company affording such coverage) such coverage to afford protection against at least the following:
 - a. Loss or damage by fire or other hazards covered by the standard extended coverage endorsement;
 - b. Such other risks as shall customarily be covered with respect to property similar in construction, location and use, including but not limited to, cost of demolition, vandalism, malicious mischief, windstorm, water damage, machinery explosion or damage, and such other insurance as the Board of Directors may from time to time determine; and
2. Public liability insurance, in such amounts, and in such forms as may be considered appropriate by the Board of Directors, including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile, liability for property of others, and any and all other liability incident to the ownership and/or use of the common area and facilities, respectively, such policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an owner because of the negligent acts of the Association or the owners: and,
3. Worker's compensation insurance to the extent necessary to comply with any applicable law, and,
4. A "Legal Expense Indemnity Endorsement" or its equivalent, affording protection for the officers and directors of the Association for expenses and fees incurred by any of them in defending any suit or settling any claim, judgment or cause of action to which any such officer or director shall have been made a party by reason of his or her services as such, and,

5. Fidelity insurance against dishonest acts on the part of directors, managers, trustees, employees, or volunteers responsible for handling funds collected and held for the benefit of the owners shall be maintained naming the Association as insured in an amount equal to no less than one and one-half (1 ½) times the Association's annual operating expenses and reserves.
6. Such other policies of insurance, including blanket policies of insurance for units if authorized by applicable Kansas law and by the Board of Directors of the Association.

B. Insurance to be Obtained and Maintained by Unit Owners. The owner of any lot and unit shall obtain and maintain casualty insurance, insuring all improvements owned by the owner against loss by fire, lightning, windstorm or other casualty and extended coverage in an amount equal to full replacement value (i.e., one hundred percent (100%) of replacement costs, exclusive of land; foundation and excavation, respectively, with an "agreed amount" endorsement without deduction or allowance for depreciation, and the insurer shall waive any "increase of hazard" provision of its policy and any "apportionment of loss" provision of its policy in the event there is any other insurance insuring the same risk. All premiums for such insurance shall be paid by each owner. Such insurance policies shall be in a form acceptable to the Board of Directors of the Association or its manager and shall include a loss payable clause in favor of Quivira Falls Community Association, Inc., as Insurance Trustee, for the benefit of each owner and their mortgagees, as their interests may appear, or jointly, to the unit owner, the Quivira Falls Community Association, Inc., and the mortgagee. In the event of loss, each owner shall give notice to the Board of Directors of the Association or its manager, and the Board of Directors of the Association or its manager shall be authorized to make proof of loss if the same is not promptly made by each owner. All insurance companies are authorized to make payments for such loss directly to the Quivira Falls Community Association, Inc., as Insurance Trustee for each owner and their mortgagee as their interest may appear. The Association, as insurance trustee, shall not be liable for the payment of premiums nor for the renewal or the sufficiency of policies or for the failure to collect any insurance proceeds or for the form or content of the policies. The sole duty of the Association shall be to receive such proceeds as are paid and hold the same in trust for the purposes stated herein for the benefit of the unit owners and their respective mortgagees as their interests may appear. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of any mortgage debt any insurance proceeds. For purposes of administering all provisions of the Declaration relating to insurance, the Association acting by and through its Board of Directors is irrevocably appointed agent for each unit owner and for each mortgagee, ~~holder of deed of trust,~~ or other lien upon a unit. The Association, acting by its Board of Directors or its duly authorized manager, shall have the authority to adjust all claims arising under all insurance policies and the authority to execute and deliver releases upon the payment of claims. The proceeds of insurance collected on account of any casualty by the Association as insurance trustee shall be disbursed only in payment of the costs of replacement, reconstruction, or repair of the damaged improvements. If the cost of replacement, reconstruction, or repair of an individual unit shall exceed the amount of

insurance proceeds received by the insurance trustee, such excess shall be a special assessment against said lot and unit to be paid by the owner of said lot and unit. If the cost of replacement, reconstruction or repair of an individual unit shall so exceed the amount received from said insurance proceeds, said excess cost shall be paid by the unit owner to the Association as insurance trustee to be added to the funds received from said insurance proceeds and the same shall be disbursed for reconstruction or repair of the unit. The Board of Directors of the Association may employ an architect or other qualified person who shall be in charge of all reconstruction and repair of all improvements. Each request for disbursement of insurance proceeds held by the Association as insurance trustee shall include a certificate of the architect or other qualified person employed by the Association to the effect that all work then completed has been performed in accordance with plans and specification approved by the Board of Directors of the Association and all applicable building codes. All insurance policies shall be subject to the extent available to the following provisions:

1. All policies shall be written with a company or companies licensed to do business in the State of Kansas holding a rating of BBB+ or better in Best's Insurance Guide, or some other equivalent insurance guide reference directory.
2. Exclusive authority to negotiate losses under each policy shall be vested in the Board of Directors of the Association, as agent or trustee for the unit owner and his mortgagee.
3. All policies shall provide that such policies may not be canceled or substantially modified including cancellation for nonpayment of premium without at least thirty (30) days prior written notice to the unit owner, the Board of Directors, the Association, and the mortgagee.
4. All policies shall provide that the mortgagee will be notified by the insurance company of any claim for recovery of damages exceeding one thousand (\$1,000) dollars.
5. All policies shall contain a waiver of subrogation by the insurer as to claims against the Association, the Board of Directors, the owner of any individual unit and/or their respective agents, employees and tenants. The owner of any lot and unit may obtain additional insurance at their own expense, including liability insurance to cover accidents or damage to persons or property occurring within his or her own individual unit. Each individual unit owner may purchase insurance upon his own personal property and any additional improvements located within his individual unit. Such insurance shall contain the same waiver of subrogation provisions set forth above. In the event applicable Kansas insurance laws and regulations authorize the Association to purchase one or more blanket policies of casualty insurance, naming the Association as insured for the benefit of every owner and mortgagee, the Board of Directors may elect to purchase and maintain such insurance. In such event, the provisions of this Declaration relating to individual policies of casualty insurance shall no longer apply. Such policy or policies of blanket insurance shall, however, in any event, provide coverage for each unit upon such terms and conditions as the Board of Directors of the Association may deem appropriate, provided however, that in any event, the coverage shall be not less than the coverage required by this Declaration applicable to individual

policies of casualty insurance. Annually, the Association may require evidence of insurance coverage, with all appropriate endorsements and provisions as specified herein from each owner.

ARTICLE SEVEN

Management, Maintenance, Repairs, Alterations, and Improvements

A. **Manager or Managing Agent.** The management, repair, alteration, and improvement of all improvements construction upon real estate owned by the Association and all other property as set forth hereinafter as the responsibility of the Association, shall be the responsibility of the Board of Directors of the Association. The operation of the Homeowners Association will be overseen by a professional manager *or professional property management company* employed by the Association. Said Board of Directors may delegate all or any portion of its authority to a manager or managing agent. Such delegation shall be evidenced by a management contract, which shall not exceed three (3) years in duration, and which shall set forth such duties and responsibilities as the Board of Directors may from time to time determine.

B. **Maintenance, Repair, Alterations, and Improvements**

1. **By the Association:**

- a. From the proceeds of fees and charges received pursuant to Article Five of this Declaration, the Association shall provide routine repair, maintenance and care for interior private streets, *Association buildings and owner unit* surfaces, roofs, walks and other exterior improvements, including exterior fences and all trees, shrubs and grass within the common areas.
- b. The frequency and the materials to be used in the performance of all such routine repair, maintenance, and care shall be in the sole discretion of the Board of Directors of the Association and shall not be subject to the control of any owner.
- c. In the event that the need for such maintenance, care or repair or extraordinary services to any unit is caused by the modification of the original design of a unit, the addition of improvements by the owner, or through the willful or negligent act of an owner, family guests, or invitees, the cost of such maintenance, care or repair not covered by insurance shall be added to and become an additional fee or charge, in addition to the fee or charge to which such owner's unit is subject, and must be paid by or on behalf of said owner within thirty (30) days after written demand therefore from the Board of Directors of the Association and shall be enforceable and secured by a lien as is the case of all other fees or charges.

2. **By Individual Owners** The responsibility of each individual owner: shall be as follows:

a. **Interior.**

To maintain, repair, and replace, *and in some cases, install items inside and outside his unit including, but not limited to, appliances, plumbing, electrical boxes, smoke detectors, wiring, antennas or satellite dishes, furnaces, water heaters, disposals, fireplace and flues, gas logs, air conditioners or compressors, heat pumps, guttering and downspouts, sump pumps, radon devices, doors (including garage doors, entry doors, storm doors, and sliding glass doors), windows, foundation, structural members (beams, rafters, studs, sill plates, etc.) and plants within a small fenced area, which is usually around a concrete patio on the rear or side of units* and related facilities, fixtures or installations and any portion of any utility services located within the lot and unit constructed thereon. including all patios, grass, trees, shrubs and all other improvements located within a fenced yard and within sixteen (16) feet to the rear of the structure.

b. **Exterior**

1. Each owner shall also be responsible for the repair, maintenance, care, painting, and replacement of all *concrete* patios, patio gates, interior patio fences, windows and other glass surfaces, doors, and all interior improvements and fixtures which are appurtenant to each unit, including without limitation, responsibility for all breakage, damage, malfunction, painting, repair and maintenance thereof.
2. *Owners are Each owner shall also be responsible to for the replacement of all elements of their units, including roofs, decks, fences, balconies, exterior siding, windows, doors, and garage doors with approval of the Architectural Control Committee.*
3. *Each owner of a detached, single family unit shall, in addition, be responsible for the maintenance and upkeep of his lot to include, but not limited to, grass, shrubs and trees.*

C. **Improvements and Alterations.** No owner may paint or otherwise decorate or change the appearance of any exterior portion of his unit or fence without the prior written consent of the Board of Directors of the Association.

1. Except *for original construction and* purposes of maintenance and repairs as provided in this declaration, no building, fence, wall, sports equipment, machinery, or other improvements or structures shall be commenced, erected, placed, moved or maintained upon the real estate or the lot of any individual unit; nor shall any exterior addition to or change (including any change in color) or alteration therein be made until the complete plans and specifications showing the precise and exact nature, kind, shape, height, setback, materials, color and location of the same shall have been submitted to and approved in

writing by the Board of Directors of the Association or by an Architectural Control Committee appointed by the Board of Directors.

2. The Architectural Control Committee, if appointed by the Board of Directors, shall be composed of three (3) or more natural persons designated from time to time by the Board of Directors and such persons shall serve at the pleasure of the Board of Directors.
3. In the event the Board of Directors fails to appoint an Architectural Control Committee, then the Board of Directors shall constitute the committee. The affirmative vote of a majority of the members of the Architectural Control Committee shall be required in order to adopt or promulgate any rule or regulation or to make any finding, determination, ruling, or order, or to issue any permit, consent, authorization, approval or the like pursuant to the authority contained in this Declaration.

D. Approvals.

1. Upon approval of the Architectural Control Committee of any plans and specifications submitted pursuant to the provisions of this Declaration and upon approval by the applicable governmental agency authorized to issue building permits, a copy of such plans and specifications and a copy of all building permits as approved shall be deposited among the permanent records of the Association and a copy of such plans and specifications and building permits bearing such approval in writing, shall be returned to the applicant submitting the same.
2. In the event the committee fails to take action regarding any plans and specifications which may be submitted to it pursuant to the provisions of this Declaration within sixty (60) days after such plans and specifications (and all other material and information required by the committee) have been submitted to it in writing, then approval will not be required and this Article will be deemed to have been fully complied with, provided the plans and specifications are in compliance with all other provisions of the Declaration
3. The owner is responsible to obtain a building permit from the City of Overland Park, Kansas, if so required.

E. Limitations.

1. Construction or alterations in accordance with plans and specifications approved by the Architectural Control Committee shall be commenced within six (6) months following the date upon which the same are approved, and shall be substantially completed within twelve (12) months following the date of commencement or within such longer period as the committee shall specify in its approval.
2. In the event construction is not commenced within said period, then approval of the plans and specifications by the committee shall be conclusively deemed to have lapsed, and compliance with the provisions of this article shall again be required.

There shall be no deviation from plans and specifications approved by the committee without the prior consent in writing of the committee.

3. Approval for use on any lot of any particular plans and specifications or design shall not be construed as a waiver of the right of the committee to disapprove such plans and specifications or any elements or features thereof in the event such plans and specifications are subsequently submitted for use upon any other lot or lots

F. Certificate of Compliance. Upon the completion of the construction or alteration of any building, fence, wall, or other improvements or structure in accordance with plans and specifications approved by the Architectural Control Committee, the committee shall, at the request of the owner thereof, issue a certificate of compliance which shall be prima facie evidence that the building, fence, wall, or other improvements or structures referred to in said certificate have been approved by the committee and constructed or installed in full compliance with the provisions of this article, and with such other provisions and requirements of this Declaration as may be applicable.

G. Rules and Regulations. The Architectural Control Committee may from time to time, **recommend** such rules and regulations regarding the form and content of plans and specifications to be submitted for approval **by the Board** and may publish such statements of policy, standards, guidelines, and/or establish such criteria relative to architectural styles or details, or other matters, as it may consider necessary or appropriate **after approval by the Board.**

1. No such rules, regulations, statements, criteria or the like shall be construed as a waiver of the provisions of this article or any other provision or requirement of this Declaration.
2. The Architectural Control Committee may charge and collect a reasonable fee for the examination of any plans and specifications submitted for approval pursuant to the provisions of this article.
3. The decisions of the Architectural Control Committee shall be final **when approved by a majority vote of the Board**, except that any owner who is aggrieved by any action or forbearance from action by the Architectural Control Committee may appeal the decision of the Architectural Control Committee to the Board of Directors of the Association, and, upon the written request of such owner, shall be entitled to a hearing before the Board of Directors.
4. The vote of a majority of the Board of Directors shall be required to **approve**, reverse, or otherwise modify any **recommendation or decision** of the Architectural Control Committee.

H. Gutters and Downspouts. Pursuant to standards established by the Architectural Control Committee, every unit must have rain gutters and downspouts, with the water directed away from the foundation of the unit.

1. Units lacking gutters when this document is adopted will have twelve (12) months to have them installed or the Association will have them installed and will bill the owner.
2. Installation, maintenance, and repair of guttering and downspouts is the responsibility of the owner.

I. Enforcement. Right to Remove or Correct Violations.

1. In the event any building, fence, wall, sports equipment or other improvements or structure shall be commenced, erected, placed, moved or maintained upon any lot, otherwise than in accordance with the provisions and requirements of this article, then the same shall be considered to have been undertaken in violation of this article and without the approval of the Architectural Control Committee required herein, and, upon written notice from the Board of Directors or the Architectural Control Committee, such building, fence, wall, sports equipment, **shall be promptly removed or otherwise modified so as to be in compliance with the Association's standards and requirements.**
2. In the event the same is not removed, or the violation is not otherwise terminated **or modified** within fifteen (15) days after notice of such violation is delivered to the owner of the lot upon which such violation exists, then the Association shall have the right, through its agents and employees (but only after a resolution of the Board of Directors or the Architectural Control Committee,) to enter upon such lot and to take such steps as may be necessary **to remove, modify,** or otherwise terminate such violation and the cost thereof (including legal and court costs incurred by the Association to enforce the provisions hereof) may be assessed against the lot upon which such violation occurred, and when so assessed, a statement for the amount thereof shall be rendered to the owner of said lot at which time the assessment shall become due and payable and a continuing lien upon such lot, and a binding personal obligation of the owner of such lot, in all respects (and subject to the same limitations) as provided in **Article Five, paragraph G.6** of this Declaration.
3. The Association shall have the further right, through its agents, employees, or committees, to enter upon and inspect any lot or structure (including fenced-in areas) for the purpose of:
 - a. Inspecting, examining, or testing lots or units or any attachments thereto;
 - b. Performing required maintenance;
 - c. Entering, with the approval of two-thirds ($\frac{2}{3}$) of the Board, upon the premises of any unit to make repairs the owner has neglected, failed, or refused to make, or to enter in or upon and restore such unit. The cost of restoration shall be added to and become part of the annual assessment to which the unit is subject.

d. *Such entry shall be preceded by reasonable advance written notice to the owner, who may witness such repairs or restoration, and undertaken at a time agreeable to the owner, unless:*

i. *An urgent or emergency situation exists;*

ii. *The owner cannot be reached;*

iii. *Having received notice, if the owner has failed or refused, for five (5) calendar days to grant access, the Association, or its agents, employees, or committees, may enter and make such tests, inspections, repairs, or restoration as the Association deems to be necessary or appropriate.*

ARTICLE EIGHT

Party Walls and Easements for Encroachments

A. Units may have at least one wall in common with an adjoining unit, upon which common wall or walls will be built on a dividing line between lots. Each such common wall shall be a party wall and the rights and obligations of the owners of such party walls shall be as follows:

1. **General Rules.** To the extent not inconsistent with this article, all laws applicable to party walls and liability for property damage due to negligence or willful acts or omissions in the State of Kansas shall apply thereto. No owner of any unit shall cut through or make penetration through a party wall for any purpose whatsoever.
2. **Party Fence.** Each fence, which is built and placed on the dividing lines between lots and units, shall constitute a party fence, and the general rules of law regarding party walls or fences and liability for property damage due to negligence or willful acts or omissions shall apply to such party fences. No owner of any unit shall cut through or make penetration through a party fence for any purpose whatsoever.
3. **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of the party wall or party fence shall be shared by the owners who make use of the wall or fence, except such repair and maintenance required to be made by the Association as set forth hereinbefore.
4. **Destruction by Fire or Other Casualty.** If a party wall or fence is damaged or destroyed by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of same, said wall or fence shall be repaired or replaced by the owners thereof and the cost of such repairs or replacement shall be borne equally without prejudice. However, any such owner has the right to call for a larger contribution from the other under any rule of law regarding liability for negligence or willful acts or omissions.
5. **Weatherproofing.** Notwithstanding any other provisions of this article, to the extent that such damage is not covered and paid for by the insurance provided for herein, an owner, who by his negligent or willful act causes or permits any party wall or fence or

portion thereof to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

6. **Right to Contributions.** The right of any owner to contributions from any other owner under this article shall be appurtenant to the lot and unit and shall pass to such owner's successors in title.
7. **Arbitration.** In the event of any dispute arising concerning any party wall or party fence, the same shall be determined by compulsory arbitration. Each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision shall be by a majority of all arbitrators. If any party refuses to appoint an arbitrator within ten (10) days after written request therefore, the Board of Directors of the Association shall have the authority to select an arbitrator for the refusing party.

ARTICLE NINE

Utility Easements, Easements for Minor Encroachments, Easements for Ingress and Egress to Lots, and General Easements for Benefit of the Association.

- A. **Utility Easements.** The Declarant will install or cause to be installed lines, pipes, conduits, meters, and other utility facilities referred to as "utility lines," for the purpose of providing such sewer, electricity, gas, water, and telephone services to the individual units, and to the common areas to insure that such utility lines, photocell lights, meters, and other utility equipment shall be kept, maintained, restored, repaired, and replaced. Declarant hereby grants to *The Association, its successors and assigns, hereby grants to* the Johnson County Sewer District, the City of Overland Park, and any and all public utilities, for the benefit of the owners, the following permanent rights, licenses, and easements:
 1. An easement to keep, maintain, restore, repair and replace any such utility lines, photocell lights, meters and other utility equipment over, under, and across any Association property or lot and unit for the purpose of maintaining, restoring, repairing or replacing any utility lines, and for the purpose of reading any meter installed with respect to any utility line.
 2. If, in order to maintain, restore, repair, or replace the utility line or other utility equipment that serves more than one unit, it becomes necessary to break through walls, excavate or otherwise damage a unit or Association property entered, the damages caused by such entry shall be repaired and the unit or Association property entered shall be restored to substantially the same condition as prior to such damage, as a common expense of the Association. Expenses applicable to removal of obstructions in a sewer line from the basement floor to the top floor of an attached unit shall be assumed and paid by the owner of such unit and shall not be a common expense.
 3. If it becomes necessary to maintain, restore, repair, or replace utility lines, which serve more than one unit, then the cost of such maintenance, restoration, repair, or replacement to its former condition shall be common expense of the Association.

- B. Easements for Minor Encroachments.** Each unit and all improvements constructed upon property owned by the Association shall be subject to an easement created by the construction of any overhang of the structures built by the *original* Declarant. A valid easement for said encroachment and for the maintenance of same so long as they stand shall and does exist. In the event any such improvements are partially or totally destroyed and then rebuilt, the Association and the owners of each unit agree that valid easements shall exist for any encroachment resulting there from.
- C. Blanket Easement.** There is hereby created a blanket easement upon, across, over, and under all of the real estate for ingress and egress, installment, operation, replacing, repairing and maintaining utilities, including but not limited to water, sewer, telephone, television, electricity, gas and drainage facilities, together with the right to remove any obstruction that may be placed in such easement area that would constitute interference with the use of such easement or with the use, maintenance, operation or installation of such utilities or drainage facilities.
1. Notwithstanding anything to the contrary contained in this paragraph or in this Declaration, no sewer, electrical line, water line, or other utilities may be installed or relocated upon property owned by the Association or by owners until approved by ~~Declarant so long as it owns any real estate and thereafter~~ by the Association's Board of Directors.
 2. ~~Neither Declarant nor~~ Any utility company or other authorized entity using the easements shall be liable for any damage done by them, their employees or agents, to shrubbery, trees, grass, flowers, or other improvements located on the land covered by said easements.
 3. The owners of the respective units shall not be deemed to separately own pipes, wires, conduits or other service lines running through their property, which are utilized for or serve other units or the common areas, but each owner shall have an easement in and to the aforesaid facilities as shall be necessary for the use, maintenance, and enjoyment of his unit.
 4. The owner of a unit is prohibited from disconnecting any utility line, meter, photocell light device, or any other utility equipment, and all owners of units are prohibited from intentionally interrupting the utility services rendered to owners of other units or the common areas. All expenses incurred by the Association in reconnecting or repairing utility services as the result of the intentional disruption of such service by a unit owner shall be assessed against said owner.
 5. It shall be the obligation of the Association to maintain all sewer lines and facilities from the basement or exterior of units (other than detached single-family units with or without a fence) to the County sewer line, such lines to be located within such easement areas. All expenses for such maintenance shall be common expenses to be paid from fees and charges received by the Association pursuant to this Declaration.

- D. **Easement for Ingress and Egress.** ~~The Declarant hereby dedicates and creates to itself, its successors and assigns, and~~ The Association, its successors and assigns, for the benefit of each owner, has an easement for ingress and egress to each lot and unit over and across all common areas and facilities.
- E. **Association Easement.** ~~The Declarant hereby establishes and reserves to itself, its successors and assigns, and hereby grants to~~ **The Association, its successors and assigns, has an unrestricted** easement over, under, and across all real estate subject to this Declaration, for the benefit of each owner, for the purposes of executing any of the powers, rights or duties granted to or imposed upon the Association by the terms of this Declaration, or the Articles of Incorporation and By-Laws of the Association, *except in an emergency, the owner will be notified prior to entry.*

ARTICLE TEN

Use Restrictions

A. Use of Land as Single Family Residence: Minimum Square Footage.

1. Each unit (*whether an attached or a detached unit, with or without a fence*) will be constructed upon an individual lot evidenced by a warranty deed to be recorded in the office of the Registrar of Deeds for Johnson County, Kansas. Each unit conveyed shall be designated by a separate legal description and shall constitute a fee simple estate subject to the terms, conditions, and provisions hereof.
2. Each unit shall be used solely for a private residence, and no professional business or commercial use shall be made of the same or any portion thereof: nor shall an owner's or tenant's use of the unit endanger the health or disturb the reasonable enjoyment of any other owner or resident.
3. Except for improvements owned by the Association, only units, which are single-family residences that may be joined together by a common wall or walls and/or common roofs and/or foundations, shall be constructed upon the real estate subject to this Declaration. No unit shall be erected or placed upon the real estate unless the same shall contain a minimum of seven hundred fifty (750) square feet of total floor area exclusive of porches, unfinished basements, attics, or garages. No appurtenant building or other structure will be permitted to be constructed on any lot without the prior consent of the Architectural Control Committee as provided herein above.

B. Design and Location of Units: Additional use Restrictions.

1. After the original construction by the *original* Declarant, no units shall be erected, placed, altered, or externally improved on any lot until the building plans and specifications, exterior color scheme, materials, grading and the location thereof have been approved in writing by the Association Board of Directors or the Architectural Control Committee, as set forth in this Declaration.

2. No structure of a temporary character, trailer, vehicle, basement, tent, shack, garage, barn, or other outbuildings shall be used on any lot or within the subdivision at any time as a residence, either temporarily or permanently.
3. No clotheslines, signs, billboard, unsightly objects, or nuisances shall be erected, placed, or permitted. No awnings, canopies, shutters, or radio and television antennas or satellite dish shall be affixed to or *placed* upon *any* exterior wall, window, or roof of a unit without the prior written consent of the Association Board of Directors.
4. No storage of any type shall be allowed at any time on the owner's property except within the private enclosed unit or garage of the owner, and the same shall not be stored in such manner as to be exposed to public view. Storage within a garage shall not be so great as to ~~cause an owner to not use~~ *preclude the owner from parking his car in his garage.*
5. No boat, camper, trailer, truck, mobile home, or self-propelled recreational vehicle of any type whatsoever may be parked, stored, or otherwise located at any location within the area affected by these restrictions except for a period of time reasonably necessary for loading or unloading of personal property into the same by owner. ~~Provided, however, that~~ No person shall be allowed to use such *any* vehicle for cooking or sleeping purposes at any time or for any reason whatsoever. ~~All such vehicles shall be parked within the confines of the storage area designated by the Association for such purposes. A reasonable store fee may be charged by the Association for parking within the storage area.~~
6. No major repair, rebuilding, or maintenance of any vehicle shall be permitted except within the private enclosed garage, if any, of the owner.
 - a. No major repair, rebuilding, or maintenance of any vehicle shall be permitted in open parking areas or carports. This includes, but is not limited to automobiles, trucks, campers, trailers, and boats.
 - b. No non-operable vehicle of any kind, ~~nor~~ or any vehicle without current license tags may be kept on any unit, yard, driveway or street in front of any unit at any time.
 - c. *No owner or tenant can work on or repair any vehicle, boat, camper, trailer, or large equipment of any other person on any street or driveway for pay or other consideration.*
 - d. *No owner or tenant can work on or repair his own vehicle on a street except for emergency repairs or routine maintenance and repair on his vehicle, boat, camper, trailer or equipment in his driveway that can be completed in one day.*
7. The foregoing covenants of this Declaration shall not apply to the activities of the Association ~~or the activities of the Declarant~~ *or* its agents and employees. The Declarant may maintain while constructing and selling units in or upon such portions of the real estate as Declarant may determine, such facilities as in its sole discretion may be necessary or convenient including but without limitation, offices, storage areas, model units and signs.

8. No dog or other animal pen or run may be maintained at any time or place.
 - a. No animals, livestock, poultry, *or vicious dogs* of any kind shall be raised, bred or kept at any time or place, *except well-behaved* dogs, cats or other common household pets, not be exceed a total of two (2) which may be kept, provided that they are not kept, bred or maintained for any commercial purposes.
 - b. All such pets must be confined at all times within the interior of the unit, within the fenced area of a patio or on a leash under the direct supervision and control of the owner.
9. All rubbish, trash, garbage, or unsightly debris shall be kept so as not to be seen from the neighboring units and streets.
10. All fixtures and equipment installed within a unit, commencing at a point where the utility lines, pipes, wires, conduit, or systems enter the exterior walls of the unit, shall be maintained and kept in repair by the owner thereof. An owner shall do no act or any work that will impair the structural soundness or integrity of another unit, or impair any easement, or hereditament (anything that can be inherited,) nor do any act nor allow any condition to exist, which will adversely affect the other units or their owners.
11. No vehicles shall be parked on streets or driveways except in designated parking areas nor parked so as to obstruct ingress and egress of owners of units, their families, guests and invitees, except for the reasonable needs of emergency, construction, or service vehicles for a time limited to as briefly as possible. Except for the reasonable needs of emergency, construction, delivery or pickup, or service vehicles, no vehicle exceeding three-quarter (3/4) ton size shall be permitted to park in Quivira Falls.
12. Except in the individual fenced patio areas appurtenant to a unit, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said property, except as installed in accordance with the initial construction of the building or as approved by the Association's Board of Directors or their designated Architectural Control Committee. No chain link boundary fences shall be allowed upon any lot.
13. No noxious, offensive, *dangerous, criminal, or drug-related* activity shall be carried on in any one unit or upon the common areas nor shall anything be done thereon which may be or may become an annoyance or nuisance to other owners and the neighborhood.
14. Owners as well as any other individuals on the property and any structures are subject to applicable ordinances of the City of Overland Park, Kansas.

ARTICLE ELEVEN

General Provisions

A. **Amendments.** The covenants, conditions, and restrictions of this Declaration shall run with and bind the real estate subject to this Declaration, and shall inure to the benefit of and be enforceable by Quivira Falls Community Association, or the owner of any unit, subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of ~~thirty (30) years~~ fifteen years (15) from September 14, 2004. ~~the date this Declaration is recorded.~~ After which time said covenants shall be automatically extended for successive periods of fifteen (15) years unless an instrument signed by a majority of the then owners of the units has been recorded, agreeing to abolish said covenants, conditions and restrictions or to change said covenants, conditions and restrictions in whole or in part; provided, however, that no such agreements to change shall be effective unless made and recorded six (6) months in advance of the effective date of such change; provided, further, that no such agreement to change shall be applicable to existing buildings on the properties; and provided further, that no such change shall be effective on less than thirty (30) days prior notice to owners.

~~1. **Amendment by Declarant.** Until such time as the first townhouse unit is conveyed by Declarant, Declarant at its sole discretion, may abolish said covenants, conditions, and restrictions or change them in whole or in part.~~

B. **Amendment by Owners.** Except as provided in paragraphs 1 and 2 of this Article, the covenants, conditions, and restrictions of this Declaration may be abolished, amended, and/or changed in whole or in part only with the consent of two-thirds (2/3) of all Class A and Class B memberships ~~members as determined by a vote of the members conducted in accordance the voting procedures established elsewhere herein.~~ Notwithstanding the foregoing, without the consent of at least seventy-five percent (75%) of the Class C memberships (based upon one vote for each mortgaged townhouse unit) the covenants, conditions and restrictions set forth in this document may not be amended to:

- a. Change the method of determining the obligations, assessments, dues or other charges which may be levied against an owner of his townhouse unit.
- b. Abandon, partition, subdivide, encumber, sell or transfer real estate of improvements thereon which are owned directly or indirectly by the Association; provided, however, that the granting of easements for public utilities or other public purposes consistent with the intended use of such property be Quivira Falls shall not be deemed a transfer within the meaning of this clause. No amendment or change shall be voted upon until at least thirty (30) days prior written notice has been given each owner and known mortgagee of a townhouse unit.

B. **Amendment by Owners.**

- a. *Except as provided in Article Three, Rights of Mortgagees, paragraph C of this Declaration and as provided in Paragraph above, the covenants, conditions, and restrictions of this Declaration may be abolished, amended, and/or changed in whole or in part only with the approval of two-thirds (2/3) of members.*
- b. *Members shall have at least thirty (30) days notice before they vote.*

- C. **Enforcement.** Enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, condition or restriction either to restrain violation or to recover damages, *costs of suits, including attorneys fees, court costs, experts, and all related costs*, and against the land to enforce any lien created by these covenants; and failure by the Quivira Falls Community Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- D. **Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions here apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.
- E. **Severability.** If any part of the Covenants are ruled illegal or unenforceable by final order of a Court or if any section is rendered unenforceable by operation of law, existing or new, the rest of the Covenants shall nonetheless remain in full force and effect. The Association will follow the ruling or law, and may change the wording of the Covenants to conform thereto without a membership vote.
- F. **Mortgaging of the Common Area.** The Common area cannot be mortgaged or conveyed without the consent of at least two-thirds (2/3) of the members in good-standing who are voting in person or ~~by proxy~~ *by mailed ballot* at the meeting duly called for said purpose, written notice of which shall be sent to all Class A members not less than thirty (30) days in advance of the meeting, *vote or election* setting forth the purpose of the meeting, except that the Association shall have the right to dedicate or transfer part of the common area to any public agency, authority, or any public utility to provide necessary utility services to the owners.
- G. **Notices.** ~~All notices required to be given hereunder shall be deemed to have been delivered when deposited with the United States postal service, postage prepaid, addressed to the owner at the street address assigned to his townhouse unit by the governing body of the City of Overland Park, Kansas, at its delegate, or addressed to Declarant at Robert O. McCollum, 12800 W. 111th St, Overland Park, Kansas~~
1. All notices herein shall be deemed to have been delivered when deposited with the United States Postal Service, postage prepaid, return receipt requested.
 2. *The notice shall be addressed to the owner's unit or such other address as the owner may have instructed the Association to use in writing;*
 3. *Provided however, notice may be given by hand so long as the intended recipient signs and dates an acknowledgement of receipt.*
 4. *Correspondence to the Association by any homeowner should be addressed to the President, Secretary, or Manager of the Association at the Association Office, or to the agent for service as filed with the Kansas Secretary of State.*

H. Effective Date. The amended Declaration of Covenants shall be effective for Members the day after the day voted upon and approved. It shall be effective for non-members the day after a signed copy is filed with the Registrar of Deeds of Johnson County, Kansas.

I. Official Copies and Recording of This Document Dated January 13, 2010.

- a. The original copy of this document consists of thirty-three (33) printed pages and numerous attached un-numbered pages collectively bearing signatures of at least two-thirds (2/3) of the members. Reproduced copies of the revised Declaration need not include the un-numbered attached pages bearing the signatures of such members nor shall such un-numbered be recorded to make this document binding on future members.
- b. The signature of the President or Vice President, attested to by the Secretary on the recorded copy will certify and attest to such signatures being on attached un-numbered pages.
- c. The original document including the un-numbered pages bearing such signatures will be permanently maintained in a bank safety deposit or lock box, and several copies showing the attached un-numbered pages and member signatures will be maintained in the Association office for inspection or copying by members. The Declaration of Covenants and when attested by the Secretary and by a Notary Public shall be filed with the Registrar of Deeds of Johnson County, Kansas.
- d. The President or Vice President may sign official copies of the amended Declaration of Covenants when attested by the Secretary and by a Notary Public, and shall file a copy with the Registrar of Deeds of Johnson County, Kansas.

Signed this the _____ day of _____, 2010 by (Vice) President

Print Name

Signature

(SEAL)

Attest: Secretary

Print Name

Signature

Notary Public

My Commission Expires on _____

State of Kansas)

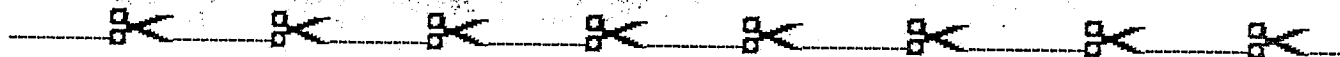
Signed and subscribed to before me the undersigned authority County of Johnson) on the above date to certify which witness my hand and seal of office.

QUIVIRA FALLS COMMUNITY ASSOCIATION
CONSENT FORM FOR COVENANTS AMENDMENTS AND REVISION
Approved by the Board of Directors on January 13, 2010

This is an un-numbered page of that certain Revision of the Declaration of Covenants of the Association, containing the signature(s), printed name(s), unit address(es), and date signed, of one or more member/owners attesting to their consent to the adoption of the revised Declaration of Covenants approved by the Board of Directors on January 13, 2010, to which it will be/is attached. This must be delivered to the office no later than 8 p.m. on April 6, 2010, in order to be valid.

When attached, it will be hand-numbered in ink. The original copy containing all of the signed consents will be maintained in a bank safety deposit or lock box and several copies will be maintained in the Association office for inspection by members; however, the copy signed by the President or Vice President certifying that at least two-thirds (2/3) un-numbered pages bearing the signatures, and attested to by the Secretary, to be filed with the Johnson County Recorder of Deeds, need not bear the attached pages containing the members' signatures, attesting to their consent.

In order for these revised Covenants to be adopted, two-thirds (2/3) or more of the member/owners must give their consent.



To accept the proposed covenants amendments and revision booklet included in this mailing, you must sign a CONSENT FORM. This is a requirement from the last time the Covenants were revised in 1990.

The signature requirement has been removed from future amendment and revision voting. Future amendments and revisions will be made by secret ballot as described in the proposed document.

YOU MAY GIVE YOUR CONSENT BY:

1. CLIPPING AND SIGNING THIS FORM AND RETURNING IT AT ONE OF THE INFORMATIONAL MEETINGS; OR
2. HAND-CARRYING OR MAILING THIS SIGNED FORM TO THE OFFICE TODAY OR AT SOME OTHER TIME SO THAT IT ARRIVES NO LATER THAN 8 P.M. ON APRIL 6, 2010; OR
3. GOING TO THE OFFICE TO SIGN A FORM SUCH AS THIS, WHICH HAS MANY OTHER SIGNATURES ON IT.

CONSENT SIGNATURE

PRINTED NAME

UNIT ADDRESS

DATE



Luke Bell
Vice President of Governmental Affairs
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To: Senate Local Government Committee

Date: February 15, , 2010

Subject: **SB 470** -- Enacting the Kansas Uniform Common Interest Owners Bill of Rights Act and Regulating Homeowners' Associations and Common Interest Communities

Chairman Reitz and members of the Senate Local Government Committee, thank you for the opportunity to appear today on behalf of the Kansas Association of REALTORS® to offer neutral testimony on the provisions of **SB 470**. Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR has faithfully represented the interests of the nearly 9,000 real estate professionals and over 700,000 homeowners in Kansas for the last 90 years. In conjunction with other organizations involved in the housing industry, the association seeks to increase housing opportunities in this state by increasing the availability of affordable and adequate housing for Kansas families.

SB 470 would enact the Kansas Uniform Common Interest Owners Bill of Rights Act that would impose certain new requirements on homeowners' associations and common interest communities in Kansas. If passed by the Kansas Legislature, our state would be the first state to adopt the Uniform Common Interest Owners Bill of Rights Act (UCIOBORA).

KAR Supports the General Intent Behind **SB 470**, But Has Concerns with the Scope and Size of the Uniform Common Interest Owners Bill of Rights Act (UCIOBORA)

First, we would like to emphasize that we generally support the intent behind the provisions of **SB 470** that would provide certain procedural and substantive protections to the residents of common interest communities. In general, we would agree that an increasing number of Kansans in urban areas reside in a common interest community and that those communities should operate in a fair and effective manner.

However, we are very concerned with the implications and possible unintended consequences for existing homeowners' associations and common interest communities of passing such a sweeping piece of legislation that contains 19 pages of new statutory language and 25 new separate statutes that has not been previously reviewed, passed or enforced by any other states at this time.

Although this issue was discussed in some detail by the Kansas Judicial Council, we continue to believe that this issue deserves a very careful and deliberate study in front of the relevant legislative committees. In our opinion, the provisions of **SB 470** have the potential to impair existing contractual relationships and could impose unreasonable burdens on unsophisticated volunteers who serve as a director or officer in a common interest community or homeowners' association.

Senate Local Government

2-15-2010

Attachment 6-1

Certain Retroactive Provisions of SB 470 Have the Potential to Impair and Negatively Affect Existing Contractual Relationships

Under the language in Section 6 on page 3 of the legislation, the act would prohibit an existing common interest community or homeowners' association from enforcing its bylaws, covenants or declarations if those provisions would contradict the provisions of the act. In general, the Kansas Legislature has exercised prudent restraint in the past when presented with similar opportunities to enact retroactive legislation that will negatively affect existing contractual provisions and relationships.

In our opinion, existing covenants and declarations are contractual relationships that could be impaired by the provisions of SB 470. If possible, we believe the Kansas Legislature should exercise qualified restraint when presented with an opportunity to pass retroactive legislation that will impair or negatively affect an existing contractual relationship.

Provisions of SB 470 Could Be Burdensome for Volunteer-Driven Homeowners' Associations and Could Make it More Difficult to Identify Volunteers Who are Willing to Serve in Any Capacity

Moreover, the provisions of SB 470 would impose many new requirements on the operation of common interest communities and homeowners' associations. Based on our general experience with these communities, many individuals who serve as directors and officers in common interest communities and homeowners' associations tend to be volunteers who are unfamiliar with open meetings issues and parliamentary procedures.

By imposing these numerous new requirements on these individuals, it could become increasingly difficult for common interest communities and homeowners' associations to entice interested individuals to serve in any capacity as a director or officer in one of these regulated communities. Furthermore, it has been noted that these new requirements could also make it more difficult for the common interest community or homeowners' association to obtain affordable liability insurance.

For all the foregoing reasons, we would urge the committee to carefully consider the full effects and implications of this legislation. Once again, thank you for the opportunity to provide comments on SB 470 and I would be happy to respond to any questions at the appropriate time.