

AMENDED & RESTATED  
DECLARATION OF RESTRICTIONS  
FAIRWAY HILLS

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RECITALS:

- A. The Fairway Hills subdivision ("Fairway Hills") consists of the lots and tracts located in the City of Shawnee, Johnson County, Kansas, as further described on Exhibit A attached hereto.
- B. Fairway Hills is subject to the following Declarations (collectively, the "Existing Declaration"):
1. Declaration of Restrictions, Fairway Hills, 1<sup>st</sup> Plat, recorded August 14, 1996, as Document Number 2626442, at Book 4962, Page 333, in the office of the Register of Deeds for Johnson County, Kansas;
  2. Amendment to Declaration of Restrictions, Fairway Hills, 1<sup>st</sup> Plat, recorded August 27, 1996, as Document Number 2629925, at Book 4972, Page 405, in the office of the Register of Deeds for Johnson County, Kansas;
  3. Fairway Hills, 6<sup>th</sup> Plat, Fairway Hills, 7<sup>th</sup> Plat, Declaration of Restrictions and Home Owners' Association Declaration, recorded September 23, 1998, as Document Number 2887297, at Book 5858, Page 90, in the office of the Register of Deeds for Johnson County, Kansas; and
  4. Fairway Hills, 8<sup>th</sup> Plat, Fairway Hills, 9<sup>th</sup> Plat, recorded March 25, 1999, as Document Number 2967645, at Book 6107, Page 554, in the office of the Register of Deeds for Johnson County, Kansas.
- C. Pursuant to its terms, the Existing Declaration may be amended by the owners of a majority of the lots subject to the Existing Declaration, by an instrument signed and acknowledged by the owners agreeing to the amendment and filed with the Register of Deeds for Johnson County, Kansas, within two (2) years prior to December 31, 2016.
- D. The undersigned owners, representing a majority of the lots subject to the Existing Declaration, desire to amend and restate the Existing Declaration, in its entirety, as set forth in this Amended and Restated Declaration.

NOW, THEREFORE, in consideration of the premises, the undersigned owners, for themselves and their successors, grantees and assigns, hereby agree that the Existing Declarations, from and after December 31, 2016, are hereby amended, replaced, and restated in their entirety, and all of the lots, tracts, and land described on Exhibit A shall be and they are hereby restricted as to their use in the manner set forth in this Amended and Restated Declaration.

1. DEFINITION OF TERMS USED: For the purposes of this Amended and Restated Declaration, the following terms are defined as follows:

a. “Association” means Fairway Hills Homes Association, a Kansas not-for-profit corporation.

b. “Declaration” means this Amended and Restated Declaration of Restrictions for Fairway Hills.

c. “Fairway Hills” means all of the land described on Exhibit A. If other land is added to that described on Exhibit A, then “Fairway Hills” will mean all land which is from time to time subjected to the terms of this agreement, including any future modifications.

d. “Improved Property” means a single Lot under a single ownership and use, and on which Lot a residence or any other building (if permitted under the terms of this Declaration) is erected or is in the process of erection. Any other land covered by this Declaration is considered to be vacant and unimproved.

e. “Lot” means any numbered lot as platted. .

f. “Outbuilding” means a covered structure, not directly attached to the residence located on the same Lot.

g. “Owner” means any person or legal entity holding title to any Lot within the Property.

h. “Street” means any street, road, drive, or terrace of whatever name, as shown on any plat.

i. “Tract” means any area identified by a letter of the alphabet or as otherwise identified as a “Tract” on any plat.

## 2. PERSONS BOUND BY THESE RESTRICTIONS:

a. Those who execute this Declaration and all persons and legal entities who or which now own or hereafter acquire any interest in property included in Fairway Hills agree and covenant with the other owners of property included in Fairway Hills, and with their successors and assigns, to conform to and observe the following covenants, restrictions, and stipulations as to the use thereof and the construction, maintenance, and improvement of residences and Lots for a period of time ending on December 31, 2021 (the “Initial Term”), and shall be automatically continued thereafter for successive periods of five (5) years each (each a “Renewal Term”).

b. This Declaration may be released, changed, amended, or altered (a “Modification”) at any time upon the affirmative vote of sixty-seven percent (67%) of the Owners; however, only a simple majority of the Owners is required for any Modification that is to be effective as of the end of the Initial Term or any Renewal Term and is filed with the Register of Deeds of Johnson County, Kansas, within two (2) years prior to the expiration of the Initial Term or Renewal Term, as applicable. A Modification may be approved only after a special meeting called for that purpose upon mailed notices to all

Owners, must be in writing, and must be signed and acknowledged by the owners of the Lots agreeing thereto.

c. This Declaration may be enforced by injunction, mandatory or otherwise; and the Association may recover its reasonable attorneys' fees in connection with such proceedings.

d. If any Owner violates or attempts to violate any provision of this Declaration, any other Owner may prosecute any proceedings at law or equity against the Owner violating or attempting to violate this Declaration.

e. Invalidation of any one provision of this Declaration by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

### 3. LOT USE FOR SINGLE FAMILY RESIDENCES:

a. No Lot in Fairway Hills shall be used for any purpose except a single-family residence. No building shall be erected, altered, placed, or permitted to remain on any Lot, other than one detached single-family dwelling not to exceed three (3) stories in height and an attached private garage for not less than two cars.

b. No Lot shall be divided or subdivided. If an Owner owns contiguous Lots, they may be combined into a single homesite, but only upon obtaining the prior written approval of the City of Shawnee, Kansas, and the Board of Directors of the Association (each such approved combination of Lots being called a "Combined Lot"). For purpose of assessments, a Combined Lot shall be deemed only one Lot, and all assessments with respect to a Combined Lot shall constitute a lien upon the entire Combined Lot. The Owner of a Combined Lot shall be entitled to the rights of only one vote in matters concerning the Association. After combining Lots, the Combined Lot shall remain as such, and the Owner(s) thereof may not at any time rent, sell, or otherwise transfer or convey less than all of such Combined Lot.

### 4. ARCHITECTURAL CONTROL:

a. No building, structure, appurtenance, or improvement of any type may be erected, placed or altered on any Lot until construction plans and specifications, including a plan showing location on the Lot, have been approved by the Architectural Control Committee ("ACC"). The ACC shall have the absolute discretion to approve or disapprove such plans, and shall consider same in connection with this Declaration, quality and type of workmanship and materials, harmony of external design and colors with existing structures and landscape, and location with respect to topography and finished grade elevation. All exterior materials and the color of all exterior materials (including the color of decks and porches) shall be subject to the approval of the ACC.

b. The ACC's function in reviewing site and building designs is to assure that a high quality of compatible development is consistently achieved. In order to meet special situations that may not be foreseen, it may be desirable from time to time for the ACC to

allow variances of certain requirements. Such variances shall not be considered precedent-setting. All approvals and consents of the ACC shall be through a process established by the board, or in writing, and oral approvals or consents shall be of no force or effect.

c. The ACC will be composed of the Board of Directors of the Association ("Board of Directors"), or a subcommittee designated by it. In the event of death or resignation of any member of the ACC, the Board of Directors will designate a successor based on the bylaws for the Association. .

d. The Association shall have control over completed homes in Fairway Hills at or after the recording of this Declaration; exclusive control over approval of new homes to be constructed after the date of the filing of this Declaration and said homes are subject to the ACC.

## 5. RESTRICTIONS

a. All Lots are subject to the application of the following restrictions and require the review, interpretation and approval of the ACC:

i. All exterior materials (for example, garage doors, trim, windows) and the color of all exterior materials (including the color of decks and porches) must be approved by the ACC or as established by the Board.

ii. All residences must have windows which are made of materials approved by the ACC; no storm windows are permitted.

iii. The roof of every residence must be constructed of materials approved by the ACC.

iv. No fencing shall be permitted upon any Lot, unless such fencing is made of cedar wood, wrought iron, or other metals of good quality approved by the ACC, and is built with methods and materials which harmonize with external design of existing buildings in Fairway Hills. All fences and fencing must be approved in advance in writing by the ACC and kept in good condition. No fence shall exceed 48 inches in height unless specifically approved for a greater height by the ACC. No animal pens or runs are permitted.

v. An Owner may construct, for the Owner's personal use, one in-ground swimming pool on the Owner's Lot. The design and materials of the in-ground swimming pool must be approved in advance by the ACC. No above-ground or above-grade swimming pools are permitted.

vi. An Owner may install and maintain, for the Owner's personal, non-commercial use, one over-the-air reception device (including a television antenna, satellite dish (less than one meter in diameter) or wireless cable antenna) on the Owner's Lot. The ACC may impose requirements concerning the location, height, and screening of the device as long as the requirements do not (1) unreasonably delay or prevent installation, maintenance or use; (2) unreasonably increase the cost

of installation, maintenance or use; or (3) preclude reception of an acceptable quality signal.

vii. Exterior sculptures, fountains, and other similar yard decor may be installed only with the prior approval of the ACC. No artificial vegetation is permitted on the exterior of any Lot.

viii. All paved surfaces must be of high quality finish such as brick, concrete, or other permanent material approved by the ACC. No asphalt driveways are permitted. Hard surface materials may not cover more than 50% of the front yard of any Lot.

ix. Basketball goals may be erected only with the prior approval of the ACC. All basketball goals must be free-standing on poles, and may not be attached to any residence or building. Poles, nets, hardware, backboards, and braces must be kept in good condition, and backboards must be of a transparent or clear material.

x. All exterior wooden decks and porches must be constructed of cedar wood (stained or painted to match the color of the residence) or of decking material approved by the ACC.

xi. All Lots, regardless of house location thereon, shall be fully sodded, except that no sodding is required where, in the opinion of the ACC, soil, lighting or topographical conditions would make sodding impractical, and an Owner is not required to clear any tract of trees, bushes, shrubs or natural growths which are kept reasonably attractive and controlled.

xii. No sign of any type (including any mark, symbol, word(s), drawing, or other graphic intended to communicate to a viewer) may be erected, placed or maintained on any Lot or on any structure on a Lot without the prior approval of the ACC, except as follows:

1. One sign not more than five square feet may be maintained offering the residence for sale.

2. One garage sale sign not more than five square feet is permitted on the Lot when a permitted garage sale is being held, provided such signs are erected in accordance with City code and are removed within two hours after the close of the sale.

3. One political sign per candidate or issue not more than five square feet is permitted on the Lot for up to three weeks before the election but must be removed within 24 hours after the election.

4. Subdivision entry signs/markers, directional signs, and advertising signs may be erected and maintained by the Board of Directors within the Common Area or any easement.

b. The following restrictions are not subject to approval nor may they be waived by the ACC:

i. Setbacks.

1. No building may be located nearer than twenty-five (25) feet to an existing Street or the setback required by city ordinance, whichever is more restrictive.

2. No building may be located nearer than five (5) feet to any interior Lot line, or as required by city ordinance, whichever is more restrictive.

3. Eaves, steps, and open porches are not considered a part of a building for purposes of measuring the setback, however, this does not permit any portion of a building or structure to encroach upon an adjacent Lot.

ii. The Board of Directors may establish rules and regulations for the use of a portion of a home by the owner thereof in furtherance of his or her occupation, however, such use shall not otherwise result in the violation of these restrictions or permit advertising (on or off site) or visitation by customers or clients at the home. The use of any Lot for day care (child or adult) purposes is prohibited.

iii. No flat, duplex, or apartment house may be erected on a Lot, even if intended for residential purposes.

iv. No residence may be more than three stories in height, except that split-level construction is permitted.

v. No trailer, tent, shack, garage, barn or outbuilding may at any time be used as a residence, temporarily or permanently, nor is any residence of temporary character permitted.

vi. No dwelling or residence may be occupied until fully completed, except for exterior painting, sod, landscaping, and minor trim details, and such dwelling or residence must be fully completed within twelve (12) months after the first earth excavation is started. In the event of fire, windstorm, or other damage, no building is permitted to remain in a damaged condition longer than three (3) months after the date of the damage.

vii. Dogs, cats, or other common household pets may be kept on a Lot as long as (A) they are not kept, bred, or maintained for any commercial purpose, and (B) no more than a total of three (3) such pets, may be kept or maintained on any Lot. No other animals, livestock, or poultry of any kind may be raised, bred, or kept on any Lot. If an otherwise permitted animal, in the discretion of the Board, constitutes a nuisance or endangers the safety or welfare of any resident of Fairway Hills or the general public, such animal shall be removed from the subdivision by

the owner thereof. If the owner fails or refuses to remove the animal, the Board of Directors may cause the animal to be removed.

viii. No school or other buses, motor homes, mobile homes, autos, campers, camper-trailers, recreational vehicles, tractors or trucks may be parked on any Street for more than twenty-four (24) hours at any one time. No school bus, camper, motor home, mobile home, camper, camper-trailer, recreational vehicle, tractor, truck with a capacity in excess of 3/4 ton, truck with camper attached or boat may be parked or left outside on any Lot for more than twenty-four (24) hours at any one time; such vehicles shall be stored in a garage if kept on a Lot for more than twenty-four (24) hours.

ix. No major repair work may be done on any car, truck, trailer or other vehicle while parked outside the garage or in the Street. No autos, buses, boats, trucks, race cars, wrecked cars, modified stock cars, trailers, or vehicles that are not in operating condition, are not registered or whose presence might create an unsightly appearance or create a nuisance or be a hazard to life or health may be parked or left on any Lot or Street. No trash, old appliances, junk or other refuse may accumulate on any Lot.

x. All doors on garages shall be kept closed, except when opened for the ingress or egress of motor vehicles or other personal property.

xi. No exterior clotheslines or poles (including flagpoles unless attached to a dwelling) may be erected or maintained on any Lot.

xii. No exterior Christmas lights and/or holiday decorations may be erected or maintained on any Lot, except during a sixty (60) day period beginning November 15th of each calendar year.

xiii. No noxious or offensive trade or activity may be carried on upon any Lot, nor may anything be done on a Lot which may be or become an annoyance or nuisance to the neighborhood. Outside trash burning is prohibited.

xiv. No tanks for the storage of oil or other fluids may be maintained on any Lot, whether above or below the surface of the ground.

xv. No trash, ashes, or other refuse may be thrown, dumped or placed upon any portion of Fairway Hills.

xvi. Lawns, landscaping, and other vegetation must be kept in good condition as soil, climate and other natural conditions permit, and grass may not reach a height of six (6) inches or more or otherwise create an unsightly appearance. If such grass is not kept within the height limitation above, or if any Owner fails or refuses to cut weeds or brush from the Owner's Lot, the Association may cut the grass, weeds, or brush, and the cost incurred by the Association may be collected from the Owner in the same manner as Association dues.

xvii. No tennis courts are permitted except on common areas or areas owned by the Homes Association.

xviii. No storage buildings are permitted on any Lot.

xix. No solar panels or solar collectors may be installed or maintained on the exterior of any residence or on any Lot.

xx. No residence or Lot or any portion thereof may be leased or rented for a period of less than six (6) months. All leases or rental agreements must be in writing, and the Owner of the Lot shall ensure that the tenant complies with this Declaration and the rules and regulations of the Association.

xxi. No hunting or use of firearms or archery equipment is permitted in Fairway Hills.

6. EASEMENTS: Easements for installation and maintenance of utilities and drainage facilities are reserved on the front, side, and rear of each tract. Within these easements, no structure, planting or other material may be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the tract, except for those improvements for which a public authority or utility company is responsible.

7. AREA OF RESIDENCES: Every residence that will be re-constructed on a Lot must have the following square footage:

- a. 2 story residence - 2,200 square feet with no less than 1,500 square feet on the first floor;
- b. 1-1/2 story – 2,000 square feet with no less than 1,800 square feet on the first floor;
- c. 1 story – 1,800 square feet; and
- d. Reverse 1-1/2 story - 2,000 square feet with no less than 1,400 square feet on the first floor.

In calculating the foregoing minimum square footage requirements, unfinished basements, porches, decks, and garages may not be considered.

8. The Owners may, by a simple majority vote, subject additional land to these restrictions and add same to Fairway Hills at any time, by document recorded in the Office of the Register of Deeds of Johnson County, Kansas.

9. Enforcement



Any violation of these restrictions may be enforced by the Board of Directors of the Association, by the levy of fine as provided in the Association By Laws, by the Articles of Incorporation, Fairway Hills Homes Association, and the Homes Association Declaration, Fairway Hills.

Any member of the Association, or the Board of Directors, may also seek to enforce these restrictions through temporary or permanent injunction by action filed in the District Court of Johnson County Kansas.

IN WITNESS WHEREOF, the undersigned have executed this instrument to be effective as of the 31<sup>st</sup> day of December, 2016.

FAIRWAY HILLS HOMES ASSOCIATION

By: Gene Russell  
Name: GENE RUSSELL  
Title: PRESIDENT

By: David N Consiglio  
Name: David N Consiglio  
Title: Secretary

STATE OF KANSAS )

) SS

COUNTY OF JOHNSON )

I, a Notary Public, in and for said County, in the State aforesaid, do hereby that Gene Russell and David N Consiglio personally known to me to be the President and Secretary of Fairway Hills Homes Association, and personally appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument as said officers of said corporation, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have here unto subscribed my name and affixed my official seal the day this 16<sup>th</sup> day of December, 2016.



Patricia D Riley  
Notary Public

Patricia D. Riley  
Printed Name

## EXHIBIT A

### Legal Description

Lots 1 through 24, inclusive, FAIRWAY HILLS, 1<sup>ST</sup> PLAT, a subdivision in the City of Shawnee, Johnson County, Kansas, as shown on the recorded plat thereof;

Lots 186 through 220, inclusive, and Tract L, Fairway Hills, 6<sup>th</sup> Plat, a subdivision in the City of Shawnee, Johnson County, Kansas, according to the recorded plat thereof;

Lots 221 through 259, inclusive, and Tracts M, N and O, Fairway Hills, 7<sup>th</sup> Plat, a subdivision in the City of Shawnee, Johnson County, Kansas, according to the recorded plat thereof;

Lots 260 through 305, inclusive, Fairway Hills, 8<sup>th</sup> Plat, a subdivision in the City of Shawnee, Johnson County, Kansas, according to the recorded plat thereof;

Lots 306 through 336, inclusive, and Tract T, Fairway Hills, 9<sup>th</sup> Plat, a subdivision in the City of Shawnee, Johnson County, Kansas, according to the recorded plat thereof.

Lot 337, Fairway Hills, 10<sup>th</sup> Plat, a subdivision in the City of Shawnee, Johnson County, Kansas, according to the recorded plat thereof.