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**FIFTH SUPPLEMENTAL AMENDED AND RESTATED**

**DECLARATION OF PRAIRIE POINT**

THIS FIFTH SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF PRAIRIE POINT is made as of the 14<sup>th</sup> day of July, 2014, by **PRAIRIE POINT HOMES, LLC**, a Kansas limited liability company (the “**Developer**”).

RECITALS:

A. Developer executed an AMENDED AND RESTATED DECLARATION OF PRAIRIE POINT as of the 26th day of March, 2010, filed for record on April 28, 2010 in the office of the Register of Deeds of Johnson County, Kansas and recorded in Book 201004 at Page 007851 concerning the following described real property:

i. Lots 7 and 10, Lots 22 through 44, Lots 50 through 55, Lot 58, and the south part of Tract B, Camelot Reserve First Plat, a subdivision in the City of Olathe, Kansas, filed for record on June 20, 2005 in the office of the Register of Deeds of Johnson County, Kansas and recorded in Book 200506 at Page 008790.

ii. Final Plat of Prairie Point, First Plat, a replat of Lots 1 through 6, 8, 9, 11 through 21, 45 through 49, 56, 57 59 through 88, Tract A, Part of Tract B, Tract C, Tract D, Tract E and Part of 107<sup>th</sup> Place, 107<sup>th</sup> Terrace, 108<sup>th</sup> Street, 108<sup>th</sup> Terrace and Theden Street Right of Way as platted in Camelot Reserve First Plat, and part of the North One-Half of the Southwest One-Quarter of Section 11, Township 13 South, Range 23 East all within the City of Olathe, Johnson County, Kansas, filed as Instrument No. T20100004321, in Book 201002 at Page 002101, in the Office of the Register of Deeds of Johnson County, Kansas ("Prairie Point, First Plat").

iii. The Prairie Point, First Plat (as described above) includes Lots 1 through 6, 8, 9, 11 through 21, 45 through 49, 56, 57 and 59 through 93, and Tracts A through E.

B. Developer executed a FIRST SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF PRAIRIE POINT as of the 15<sup>th</sup> day of August, 2011, filed for record on August 16, 2011 in the office of the Register of Deeds of Johnson County, Kansas and recorded in Book 201108 at Page 005011 concerning the following described real property:

Lots 94 through 113 and Tracts G, H and I of the Final Plat of Prairie Point, Second Plat (a replat of Tract G, Prairie Point, First Plat and parts of 108<sup>th</sup> Terrace and 108<sup>th</sup> Street Right of Ways as platted in Camelot Reserve First Plat, and a plat of part of the North One-Half of the Southwest One-Quarter of Section 11, Township 13 South, Range 23 East, all in the City of Olathe, Johnson County, Kansas, filed as Instrument No. 20110711-0002269, in Book 201107 at Page 002269, in the Office of the Register of Deeds of Johnson County, Kansas

C. Developer executed a SECOND SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF PRAIRIE POINT as of the 14<sup>th</sup> day of November, 2011, filed for record on December 29, 2011 in the office of the Register of Deeds of Johnson County, Kansas and recorded in Book 201112 at Page 010017 concerning the following described real property:

Lots 20, 21 and 114 through 133 and Tract G of the FINAL PLAT OF PRAIRIE POINT, THIRD PLAT (a replat of all of Lots 20 and 21 as platted in PRAIRIE POINT, FIRST PLAT, all of Tract "G" as platted in PRAIRIE POINT, SECOND PLAT, part of Lot 1 as platted in PLC at ONWHS, and also part of the North One-Half of the Southwest One-Quarter of Section 11, Township 13 South, Range 23 East, in the City of Olathe, Johnson County, Kansas), filed as Instrument No. T20110066337, Book 201112 at Page 003114, in the Office of the Register of Deeds of Johnson County, Kansas.

D. Developer executed a THIRD SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF PRAIRIE POINT as of the 15<sup>th</sup> day of August, 2012, filed for record on August 17, 2012 in the office of the Register of Deeds of Johnson County, Kansas and recorded in Book 201208 at Page 006834 concerning the following described real property:

Lots 134 through 183 and Tracts J and K of the FINAL PLAT OF PRAIRIE POINT, FOURTH PLAT (A REPLAT OF PART OF Lot 1 as platted in PLC at ONWHS, and also part of the North One-Half of the Southeast One-Quarter of Section 11, Township 13 South, Range 23 East, in the City of Olathe, Johnson County, Kansas), filed as Instrument No. T20120054625, in Book 201208 at Page 0005496, in the Office of the Register of Deeds of Johnson County, Kansas.

E. Developer executed a FOURTH SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF PRAIRIE POINT as of the 19<sup>th</sup> day of May, 2014, filed for record on May 28, 2014 in the office of the Register of Deeds of Johnson County, Kansas and recorded in Book 201405 at Page 008535 concerning the following described real property:

Lots 184 through 208 and Tracts L and M of the FINAL PLAT OF PRAIRIE POINT, FIFTH PLAT (part of the Southeast One-Quarter of Section 11, Township 13 South, Range 23 East, in the City of Olathe, Johnson County, Kansas), filed as Instrument No. T20130078274, Book 201311 at Page 000961, in the Office of the Register of Deeds of Johnson County, Kansas.

F. The AMENDED AND RESTATED DECLARATION OF PRAIRIE POINT, the FIRST SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF PRAIRIE POINT, the SECOND SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF PRAIRIE POINT, the THIRD SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF PRAIRIE POINT and the FOURTH SUPPLEMENTAL AMENDED AND RESTATED DECLARATION OF PRAIRIE POINT described in Recitals A, B, C, D and E above are collectively referred to herein as the "**Declaration.**"

G. The lots and tracts enumerated in Recitals A, B, C, D and E above collectively comprise the "Neighborhood."

H. One or more of the recorded plats within the Neighborhood provides that "An easement or license is hereby dedicated to the City of Olathe, to enter upon, over and across those areas outlined and designated on this plat as "Tree Preservation Easement" or "TP/E". Trees shall not be removed from a tree preservation easement without the City of Olathe's permission, unless such trees are dead, diseased or pose a threat to the public or adjacent property. The Homeowners Association, or their designees, shall be responsible for the maintenance of the tree preservation easement, including but not limited to the removal of dead, diseased trees or trees posing a threat to the public or adjacent property."

I. The Developer desires to designate the Owner of each Lot in the Neighborhood that may contain a Tree Preservation Easement to be responsible for the obligations of any Tree Preservation Easement that may exist within such Lot.

J. Article 11 of the Declaration permits the Developer to make changes in the Neighborhood and Article 14, Section 14.2, permits amendments by the Developer.

K. Pursuant to Section 2.8 of the Declaration, the Developer has absolute and exclusive control of the Association until the Turnover Date.

L. The Developer desires to supplement the Declaration as amended and as set forth herein.

NOW, THEREFORE, Developer hereby declares that the Original Declaration as amended is supplemented and amended as set forth herein.

1. The Developer, on behalf of the Association, hereby designates each Owner of a Lot affected by a Tree Preservation Easement located within the Neighborhood as the designee for purposes of being responsible for the maintenance of the Tree Preservation Easement within the Lot that such Owner owns, including but not limited to the removal of dead, diseased trees or trees posing a threat to the public or adjacent property, and submitting requests to the City of Olathe as required, with respect to the Lot which is owned by an Owner, including such Lot

Owner's successors and assigns, which such covenant shall be binding upon and shall run with the ownership of a Lot. Each Lot Owner shall abide by the Tree Preservation Easement and shall indemnify and hold the Developer and the Association harmless from any claim against the Developer and the Association arising out of the failure of a Lot Owner to abide by the obligations arising from the Tree Preservation Easement, including reasonable attorney fees and costs incurred to enforce the obligations of such Owner.

2. In all other respects, the Declaration is hereby ratified, confirmed and approved.

IN WITNESS WHEREOF, Developer has executed this Fifth Supplemental Amended and Restated Declaration as of the date first above written.

PRAIRIE POINT HOMES, LLC, a Kansas limited liability company

By Clay Blair Services Corporation, a Kansas corporation, Manager

By:   
Clay C. Blair, III, President

STATE OF KANSAS            )  
  ) ss.  
COUNTY OF JOHNSON        )

ON THIS 14 day of July, 2014, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Clay C. Blair, III, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me duly sworn, acknowledged that he is the President of Clay Blair Services Corporation, a Kansas corporation, the Manager of Prairie Point Homes, LLC, a Kansas limited liability company, and that he executed such instrument on behalf of said company by his authority as Manager, and said person acknowledged the execution of said instrument to be the act and deed of said limited liability company.

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

Chrisanne M. Golding  
Notary Public  
Printed Name: Chrisanne M. Golding

My Commission Expires:

August 27, 2014

