



AMENDED AND RESTATED
DECLARATION

M. Charlotte Shawver
Register of Deeds
Riley County, Kansas
Book: 806 Page: 2735
Receipt #: 12423 Total Fees: \$104.00
Pages Recorded: 25
Date Recorded: 3/17/2003 10:41:12 AM

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS AMENDED AND RESTATED DECLARATION, made on the date hereinafter set forth by BRITTNEY RIDGE ESTATES INC, hereinafter referred to as "DECLARANT".

WITNESSETH:

WHEREAS, DECLARANTS are the owner of the following property in the CITY OF MANHATTAN, COUNTY OF RILEY, STATE OF KANSAS, to wit:

Lot No. 2500, Lot No. 2502, Lot No. 2503, Lot No. 2504, Lot No. 2505, Lot No. 2506, Lot No. 2507, Lot No. 2508, Lot No. 2509, Lot No. 2510, Lot No. 2511, Lot No. 2512, Lot No. 2514, Lot No. 2515, Lot No. 2516, Lot No. 2517, Lot No. 2518, Lot No. 2519, Lot No. 2521, Lot No. 2522, Lot No. 2523, Lot No. 2524, Lot No. 2525, Lot No. 2526, Lot No. 2527, Lot No. 2528, Lot No. 2529, Lot No. 2530, Lot No. 2531, Lot No. 2532, Lot No. 2534, Lot No. 2536, Lot No. 2538, Lot No. 2540, Lot No. 2542, Lot No. 2544, Lot No. 2546, Lot No. 2554, Lot No. 2550, Lot No. 2552, Lot No. 2556, Lot No. 2558, Lot No. 2560, Lot No. 2562

NOW THEREFORE, DECLARANT hereby submits the LANDS herein described and the IMPROVEMENTS thereon to the TOWNHOME OWNERSHIP ACT pursuant to K.S.A. 58-3701et. seq. and DECLARANT hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each OWNER thereof.

ARTICLE I

DEFINITIONS

Section 1. "ASSOCIATION" shall mean and refer to BRITTNEY RIDGE TOWNHOME ASSOCIATION its successors and assigns.

Section 2. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the PROPERTIES, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 3. "PROPERTIES" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the ASSOCIATION.

Section 4. "COMMON AREA" shall mean all real property (including the improvements thereto) owned by the ASSOCIATION for the common use and enjoyment of the owners. The COMMON AREA to be owned by the ASSOCIATION at the time of the conveyance of the first lot is described as follows:

Brittnay Ridge Townhome Association
Legal Description: Common Area

A TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 10 SOUTH, RANGE 7 EAST OF THE 6TH P.M. IN THE CITY OF MANHATTAN, RILEY COUNTY, KANSAS

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 5, BRISTOW ADDITION, UNIT ONE, TO THE CITY OF MANHATTAN, SAID CORNER BEING S. 89° 12' 18" W. FOR A DISTANCE OF 210.00 FEET AND N. 00° 10' 24" W. FOR A DISTANCE OF 404.09 FEET FROM THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 2; THENCE S. 70° 52' 27" W. FOR A DISTANCE OF 395.67 FEET ALONG THE NORTH LINE OF SAID LOT 5, BRISTOW ADDITION UNIT ONE, TO THE EASTERLY RIGHT-OF-WAY LINE OF CANDLEWOOD DRIVE; THENCE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID CANDLEWOOD DRIVE N. 19° 07' 33" W. FOR A DISTANCE OF 329.73 FEET; THENCE CONTINUING ALONG THE EASTERLY RIGHT-OF-WAY LINE OF SAID CANDLEWOOD DRIVE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 325.13 FEET AND AN ARC LENGTH OF 172.14 FEET, BEING SUBTENDED BY A CHORD OF N. 34° 17' 37" W. FOR A DISTANCE OF 170.14 FEET TO THE SOUTHEASTERLY CORNER OF LOT 19, CANDLEWOOD ADDITION UNIT 7; THENCE ALONG THE EASTERLY LINE OF SAID LOT 19, CANDLEWOOD ADDITION UNIT 7

N. 23° 28' 32" E. FOR A DISTANCE OF 228.59 FEET TO THE SOUTHERLY LINE OF KFB PLAZA, AN ADDITION TO THE CITY OF MANHATTAN;

THENCE S. 87° 22' 29" E. FOR A DISTANCE OF 210.00 FEET ALONG THE SOUTHERLY LINE OF SAID KFB PLAZA;

THENCE S. 62° 20' 09" E. FOR A DISTANCE OF 157.89 FEET ALONG THE SOUTHERLY LINE OF SAID KFB PLAZA TO THE SOUTHEAST CORNER OF SAID KFB PLAZA;

THENCE S. 17° 22' 42" E. FOR A DISTANCE OF 458.71 FEET ALONG THE WEST LINE OF SETH CHILDS ROAD;

THENCE S. 00° 11' 00" E. FOR A DISTANCE OF 11.42 FEET ALONG THE WEST LINE OF SAID SETH CHILDS ROAD TO THE POINT OF BEGINNING;

LESS BRITTNEY RIDGE ESTATES TOWNHOUSE UNITS 2500 THRU 2532, AND LESS BRITTNEY RIDGE ESTATES TOWNHOUSE UNITS 2534, 2536, 2538, 2540, 2542, 2544, 2546, 2548, 2550, 2552, 2554, 2556, 2558, 2560, AND 2562;

THE ABOVE DESCRIBED TRACT CONTAINS 4.832 ACRES.

“COMMON AREA” is more specifically DEFINED as all of the project land described on EXHIBIT “A” which is attached hereto, and the buildings, structures and improvements thereon SAVE and EXCEPT the forty-eight (48) individual townhome units contained in said multiple unit townhome buildings as noted on the plot plan, which are to be separately owned, and specifically include, but are not limited to all land, building foundations, bearing walls and columns, beam supports, roofs, contained in SAID TOWNHOMES. “COMMON AREA” includes cold water lines, yards, gardens, pavements, streets, drives, sidewalks, pipes, wires, conduits, and other facilities serving the project, and in general such common area and facilities shall consist of all the land and improvements and appurtenances of every type thereon excepting said TOWNHOME UNIT spaces which are to be individually and separately conveyed and owned.

Section 5. “LOT” shall mean and refer to any plot of land shown upon any record subdivision map of the PROPERTIES with the exception of the COMMON AREA. See EXHIBIT A for a description of each TOWNHOME UNIT.

Section 6. “DECLARANT” shall mean and refer to BRITTNEY RIDGE ESTATES, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the DECLARANT for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. OWNERS EASEMENTS OF ENJOYMENT. Every owner shall have a right and easement of enjoyment in and to the COMMON AREA, which shall be appurtenant to and shall pass with the title to every LOT, subject to the following provisions:

- (a) the right of the ASSOCIATION to charge reasonable admission and other fees for the use of any recreational facility situated upon the COMMON AREA;
- (b) the right of the ASSOCIATION to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his LOT remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations;
- (c) the right of the ASSOCIATION to dedicate or transfer all or any part of the COMMON AREA to any public agency, authority, organization, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective

unless an instrument agreeing to such dedication or transfer signed by 2/3rds of members has been recorded.

Section 2. DELEGATION OF USE. Any owner may delegate, in accordance with the BY-LAWS, his right of enjoyment to the COMMON AREA and facilities to the member of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot, which is subject to assessment, shall be a member of the ASSOCIATION. Membership shall be appurtenant to and may not be separated from ownership of any LOT, which is subject to assessment.

Section 2. The ASSOCIATION shall have one class of voting membership:

Class A. Member(s) shall be all OWNERS and shall be entitled to one vote for each LOT owned. When more than one person holds an interest in any LOT, all such persons shall be members. The vote for such LOT shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any LOT.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The DECLARANT, for each LOT owned within the PROPERTIES, hereby covenants, and each OWNER of any LOT by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the ASSOCIATION: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the OWNER of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS. The assessments levied by the ASSOCIATION shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the PROPERTIES and for the improvement and maintenance of the COMMON AREA.

Section 3. OPERATING ASSESSMENT. Until January 1 of the year immediately following the conveyance of the first LOT to any OWNER, the annual assessment shall be set by the BOARD OF DIRECTORS per LOT per month.

(a) From and after January 1 of the year immediately following the conveyance of the first LOT to an OWNER, the annual assessment may be increased each year from the previous year without a vote of the membership.

(b) The BOARD OF DIRECTORS may fix the annual assessment at an amount as needed for a specific purpose such as insurance and taxes, but not limited to these.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the operating assessment authorized above, the ASSOCIATION may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in , whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the COMMON AREA, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all LOTS and may be collected on a monthly basis.

Section 6. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of EIGHTEEN PERCENT (18%) per annum. The ASSOCIATION may bring action at law against the OWNER personally obligated to pay the same, or foreclose the lien against the property. The ASSOCIATION may collect collection fees from the delinquent OWNER. No OWNER may waive or otherwise escape liability from the assessments provided for herein by non-use of the COMMON AREA or abandonment of his LOT.

Section 7. SUBORDINATION OF THE LIEN TO MORTGAGES. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any LOT shall not affect the assessment lien. However, the sale or transfer of any LOT pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such LOT from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the PROPERTIES, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location

in relation to surrounding structures and topography by the BOARD OF DIRECTORS of the ASSOCIATION. However, all proposals must meet, comply with, and be consummated according to the PLANNED-UNIT-DEVELOPMENT as described in MANHATTAN CITY ORDINANCE NO. 4632 dated FEBRUARY 20, 1990 and conforming to the ZONING LAWS of the CITY of MANHATTAN, KANSAS.

ARTICLE VI

MISCELLANEOUS

It is understood that no outbuildings or any other architectural changes may be constructed or implemented on any of the ASSOCIATION'S PROPERTY without first having the permission of the CITY OF MANHATTAN as the property is governed by PLANNED UNIT DEVELOPMENT as described in MANHATTAN CITY ORDINANCE NO. 4632 dated FEBRUARY 20, 1990.

No pets or animals, livestock, or poultry of any kind shall be raised, bred, or kept at Brittnay Ridge.

No truck, machinery, boat, trailer, camper, derelict or unsightly automobile or other equipment shall be parked, kept or stored on the streets or in the yards around any of the BRITTNAY RIDGE TOWNHOMES within such ASSOCIATION'S PROPERTY BOUNDARY. No external television or radio antennae may be erected or kept on any of the TOWNHOMES or any of the ASSOCIATIONS PROPERTY except by written permission of the BOARD OF DIRECTORS. The permission shall be limited and shall not automatically pass to new owners or tenants. Nor shall any clothesline, of any type, be constructed or maintained.

No ADVERTISING or BILLBOARDS of any type or description shall be permitted or allowed with the exception of realty signs (FOR SALE OR FOR RENT SIGNS) and temporary construction signs.

Parking spaces shall be assigned by the BOARD OF DIRECTORS of BRITTNAY RIDGE TOWNHOME ASSOCIATION in the best interest of the owners of and at the vote of the owners of the ASSOCIATION as per their wishes by vote.

As per the CITY OF MANHATTAN'S PLANNED UNIT DEVELOPMENT, ORDINANCE NO.4632 dated FEBRUARY 20, 1990 the maximum number of bedrooms shall be limited to 192, with a maximum of four bedrooms per dwelling unit and the MAXIMUM number of dwelling units shall be limited to 48 dwelling units.

ARTICLE VII

DUTIES AND OBLIGATIONS

Section 1. EXTERIOR MAINTENANCE OF TOWNHOMES. The ASSOCIATION shall provide maintenance upon the COMMON AREA, including the exterior maintenance upon each

TOWNHOME which is subject to assessment hereunder as follows: paint, repair, replace and care for roofs, patio fences, exterior building surfaces, and other exterior improvements. Such exterior maintenance shall not include glass surfaces. If the need for maintenance or repair is caused through the willful or negligent act of the OWNER, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the ASSESSMENT to which such TOWNHOME is subject. The Management Company may also make such assessment on any lot either to tenants or to property owner. An appeal can be made to the BOARD OF DIRECTORS.

Section 2. COMMON AREA MAINTENANCE. The ASSOCIATION shall maintain, or provide for the maintenance of all COMMON AREAS and all improvements of whatever kind and for whatever purpose, including recreational facilities located thereon, in good order and repair, and shall likewise maintain or provide for the maintenance of utility laterals, fences, and the interior and exterior or recreation facilities and all of the utility buildings. In addition to the above described building maintenance, the ASSOCIATION shall provide all necessary landscaping and gardening to generally maintain and periodically replace when necessary the trees, shrubs, vines, plants, hedges, ground cover, grass and vegetation originally placed on the properties by DECLARANT, and the ASSOCIATION shall maintain the same in a neat and attractive manner.

The ASSOCIATION will manage and maintain the common use open space and facilities. Proof that such an agency has been legally established shall be provided.

The ASSOCIATION maintaining the common areas and facilities shall provide care and management to prevent the loss of taxable value and avoid the creation of a public nuisance within the district. In the event of failure of that ASSOCIATION to fulfill its duties, the CITY shall have the right to serve notice on the ASSOCIATION demanding that specified deficiencies be remedied within a specified time limit and upon failure of the ASSOCIATION to act upon the matters as specified, the CITY shall have the right to enter upon the property and repair the specified deficiencies; the cost of same being assessed against the properties within the district and becoming a tax lien on those properties.

Section 3. PROPERTY TAXES AND ASSESSMENTS. To the extent not assessed to or paid directly by the OWNERS, the ASSOCIATION shall pay all real and personal property taxes and assessments levied upon any portion of the COMMON AREA or other property owned by the ASSOCIATION.

Section 4. TERMITE DAMAGE CONTROL AND REPAIR. It will be the responsibility of the TOWNHOME ASSOCIATION to provide termite and insect damage control and repair. Both internal and external damage control and repair of the infested property will be paid by the ASSOCIATION. The ASSOCIATION will assess each unit on a prorated basis to all units.

ARTICLE VIII

ROADS AND STREETS

All roads and streets contained within the above legal description which encompasses the COMMON AREA more specifically defined as CANDLE CREST CIRCLE (street) are PRIVATELY OWNED and MAINTAINED by the ASSOCIATION. The ROADS and STREETS are owned and maintained for PUBLIC USE, PUBLIC UTILITIES, ACCESS and TRAVEL as well as the use, access, benefit, and enjoyment of the BRITTNEY RIDGE TOWNHOME OWNERS.

ARTICLE IX

PARTY WALLS

Section 1. GENERAL RULES OF LAW TO APPLY. Each wall which is built as a part of the original construction of the homes upon the PROPERTIES and placed on the dividing line between the LOTS shall constitute a party wall, and, to the extent not inconsistent with the provisions of this ARTICLE, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. SHARING OF REPAIR AND MAINTENANCE. The cost of reasonable repair and maintenance of a party wall shall be shared by the OWNERS who made use of the wall in proportion to such use.

Section 3. DESTRUCTION BY FIRE OR OTHER CASUALTY. If a party wall is destroyed or damaged by fire or other casualty, any OWNER who has used the wall may restore it, and if the other OWNERS thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such OWNERS to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

Section 4. WEATHERPROOFING. Notwithstanding any other provision of the ARTICLE an OWNER who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. RIGHT TO CONTRIBUTION RUNS WITH LAND. The right of any OWNER to contribution from any other OWNER under this ARTICLE shall be appurtenant to the land and shall pass to such OWNER'S successors in title.

Section 6. ARBITRATION. In the event of any dispute arising concerning a party wall, or under the provisions of this ARTICLE, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE X

EASEMENTS

Section 1. PERPETUAL EASEMENT. The right of Ingress and Egress to and from all units is hereby granted to the owners of the TOWNHOME units over the common areas and private streets contained herein, and shall not be revoked by reason of non-payment of dues or violation of the Articles and Covenants of BRITTNEY RIDGE TOWNHOME ASSOCIATION.

Section 2. PERMANENT EASEMENT. Permanent easement is hereby granted for the encroachment of any building erected, or to be erected in the future on the COMMON AREAS contained within the BRITTNEY RIDGE Planned Unit Development.

ARTICLE XI

INSURANCE

Section 1. Each townhome owner is assessed an insurance fee to cover his or her unit. The insurance is a blanket policy covering all forty-eight (48) units and common land and property. Property and casualty insurance will be purchased and will be paid through the BRITTNEY RIDGE TOWNHOME ASSOCIATION. In the event that the building is destroyed, it shall be rebuilt unless it is determined not to rebuild by three-fourths (3/4) of the voting members of BRITTNEY RIDGE TOWNHOME ASSOCIATION. A property owner shall be designated by the BOARD OF DIRECTORS to be Insurance Representative. Insurance payment shall be by assessment.

ARTICLE XII

GENERAL PROVISIONS

Section 1. ENFORCEMENT. The ASSOCIATION, or any OWNER, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this DECLARATION. Failure by the ASSOCIATION or by 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.

Section 2. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions, which shall remain in full force and effect.

Section 3. AMENDMENT. The covenants and restrictions of this DECLARATION shall run with and bind the land, for a term of TWENTY (20) years from the date this DECLARATION is recorded, after which time they shall be automatically extended for successive periods of ten (10)

years. This DECLARATION may be amended during the first twenty (20) year period by an instrument signed by not less than Seventy-five percent (75%) of the LOT OWNERS, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the LOT OWNERS. Any amendment must be recorded.

Section 4. ANNEXATION. Additional residential property and COMMON AREA may be annexed to the PROPERTIES with the consent of two-thirds (2/3) of members.

IN WITNESS WHEREOF, the undersigned, being the DECLARANT herein has hereunto set its hand and seal this 19th day of November 2002.

BRITTNAY RIDGE ESTATES, INC.
Declarant

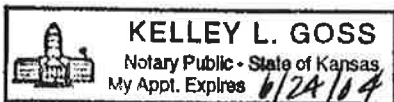
By: [Signature]
DAVID SIMMONS, PRESIDENT

By: [Signature]
HARRY JOHNSTON, SEC

STATE OF KANSAS, RILEY COUNTY, ss:

BE IT REMEMBERED, that on this 19th day of November, 2002 before me, the undersigned, a NOTARY PUBLIC in and for the said COUNTY and STATE, came DAVID SIMMONS and HARRY JOHNSTON who are personally known to me to be the same persons who executed the within instrument of writing, and such persons duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my NOTARIAL SEAL the day and year last above written.



[Signature]
NOTARY PUBLIC Kelley L. Goss

MY APPOINTMENT EXPIRES: June 24, 2004