

2008-00651



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JIM GRIMES
2536 W 239TH ST
LOUISBURG KS 66053

**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR**

BROADWINGS SUBDIVISION

2008-00651

KATIE FORCK

MIAMI COUNTY REGISTER OF DEEDS
DATE RECORDED: 02/06/2008 04:30:01PM
TOTAL FEES: 32.00 MTG AMOUNT: 0.00
PAGES: 7 RECEIPT: 12759

THIS AMENDED AND RESTATED DECLARATION ("Declaration") is made on the date hereinafter set forth by BROADWINGS, LLC, a Kansas limited liability company, hereinafter referred to as the "Declarant".

WITNESSETH:

WHEREAS, Declarant was the owner of certain real property located within Miami County, Kansas (the "Subdivision"), legally described as follows:

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 BROADWINGS SUBDIVISION, a subdivision as surveyed, platted and recorded in Miami County, Kansas, containing 47.46 acres, more or less, located in the Southeast Quarter of Section 34 and Southwest Quarter of Section 35, Township 15 South, Range 25 East, Miami County, Kansas.

Such lots and any and all improvements and fixtures thereon are herein referred to collectively as the "Lots", and individually as each "Lot".

WHEREAS, while it owned all of the above described Lots, Declarant recorded that certain Declaration of Covenants, Conditions and Restrictions for BROADWINGS SUBDIVISION on September 22, 1998 in the Office of the Register of Deeds of Miami County, Kansas in Book 419 at Page 29 (the "Prior Declaration").

WHEREAS, pursuant to Article 1, Section 1 of the Prior Declaration, Declarant reserved the right to amend the covenants, conditions, or restrictions set forth in the Prior Declaration for a period of ten (10) years from the date recorded, or until such time as all of the Lots have been sold by Declarant, whichever occurs first, and Declarant has not sold all Lots as of the date hereof, which is less than 10 years after the date of recording of the Prior Declaration.

WHEREAS, Declarant desires to set forth this Amended and Restated Declaration of Covenants, Conditions and Restrictions for BROADWINGS SUBDIVISION in order to (1) provide for the preservation of the values and amenities of the Subdivision, and for maintenance of the character and residential integrity of the Subdivision; (2) encourage a rural residential environment by providing for limited animal husbandry, gardening and the use of renewable resources where reasonable; and (3) delete the Right of First Refusal provision.

NOW, THEREFORE, in consideration of the premises, Declarant hereby declares that the Prior Declaration is hereby amended and restated to read as hereinafter set forth (and is completely replaced hereby) and that the Subdivision hereafter shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which are for the purpose of protecting the value and desirability of the Lots, and which shall run with the land and be binding upon all parties and the heirs, personal representatives, successors, transferees and assigns of the parties and any person or entity at any time having any right, title or interest in all or any part of the Subdivision.

**ARTICLE I
GENERAL PROVISIONS**

1. Duration and Modification. These covenants, conditions and restrictions shall be binding for a period of ten (10) years from the date recorded with the Miami County Register of Deeds, after which time said covenants shall automatically be extended for successive ten (10) year periods unless an instrument signed by two-thirds (2/3) of the then owners of the Lots has been recorded agreeing to change said covenants in whole or in part. Said majority may also elect to form a home owner's association which association may level assessments for subdivision improvements and/or amend these covenants. However, Declarant and assigns reserve the right to change or cancel any or all of the covenants, conditions, or restrictions set forth in this instrument for a period of ten (10) years from the date recorded, or until such time as all of the Lots have been sold by Declarant, whichever occurs first. Prior to said time, Declarant shall have at its sole discretion the power to transfer all of its powers and rights herein set forth to a homeowners association, provided that said association is comprised of two-thirds (2/3) of the Lot.

2. Enforcement. These covenants, conditions and restrictions shall be kept by all persons owning, occupying or using a Lot or Lots. If any of the said parties shall violate any of the covenants herein, it shall be lawful, after written notification of such violation is made and 30 days following has expired without correction of the violation, for all or any one of the following persons, with the stated limitations, to enforce this Declaration by bringing an action at law or in equity against the person or persons violating such covenant to enforce the covenants, conditions and restrictions set forth in this Declaration or recover damages for such violation, or both:

- a) Any person(s) owning a Lot or Lots; or
- b) the Declarant, its successors and assigns, for a period of 10 years, or until such time as all of the Lots have been sold by the Declarant, whichever occurs first; or
- c) any person owning land adjacent to the Subdivision with frontage on Pavilion Road (the interior road for the Subdivision), providing such landowner can show that such violation has a material impact upon the use or value thereof.

The enforcing party or parties shall, in the discretion of a court of competent jurisdiction, be entitled to recover its or their reasonable attorneys' fees and costs from the person or persons against whom this Declaration is enforced. Any award of damages received by an enforcing party or parties in connection therewith shall constitute a lien upon the Lot or Lots of the parties against whom this Declaration is enforced.

The failure of any of the above named parties to enforce any covenant or restriction contained in this Declaration or any delay in enforcing any such covenant or restriction shall not be deemed a waiver of the right to do so at a subsequent time.

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

4. Covenants Run with the Land. The covenants, conditions and restrictions set forth herein will run with the land and shall be binding upon and inure to the benefit of Declarant and its successors and assigns, and shall be binding on all owners of the Lots and their heirs, successors and assigns.

5. Declarant's Right to Assign. Declarant may, by appropriate agreement made expressly for that purpose, assign or convey to any person or entity all of the rights, reservations and privileges herein reserved by it, and, upon such assignment or conveyance being made, its assigns or grantees may at their option exercise, transfer or assign those rights, or any one or more of them, at any time or times in the same way and manner as though directly reserved by them or it in this instrument. All references in this document to the Declarant shall include assigns or grantees established in accordance with this provision.

ARTICLE II RESTRICTIONS AND COVENANTS

1. Use of Land. The Lots shall be used for single-family residential purposes only. Incidental to residential use, and with restrictions defined herein, outbuildings and agricultural / animal husbandry activities shall be permitted. Also, home business is permitted with restrictions defined herein. All buildings permitted hereby shall be initially new structures. No mobile homes shall be allowed. The structures and grounds on said Lots shall be maintained in a neat and attractive manner.

2. Permitted Structures. No structures shall be erected, altered, placed or permitted to remain on any Lot, other than one (1) detached single-family dwelling not to exceed two and one-half (2 1/2) stories in height, a private garage, and outbuildings incidental to residential uses which are complimentary in appearance to the dwelling. Each residence shall be accompanied by a fully enclosed garage, attached or detached, designed to hold a minimum of two (2) cars. The driveway of each Lot shall contain sufficient area for the off street parking of at least two (2) cars and shall extend to edge of street pavement. All garage doors visible from any street shall be kept closed except when in use to preserve the appearance of the Lots from the street. Preference will be given to side or rear entry garages.

3. Outbuildings:

- a) One large outbuilding such as a barn or storage building may be constructed on any one Lot. Such outbuilding shall be limited to one or two levels above ground, and a ground level enclosed area not to exceed 150% of the enclosed first floor area of the residence constructed on the

same lot, or a total of 3500 square feet, whichever is less. Additional outbuildings of smaller size (ie: greenhouse, stable, tool shed, etc.) shall be permitted pursuant to the approval of Declarant.

- b) Any outbuilding shall be situated on the Lot so as to comply with building setback requirements contained in Paragraph 6 below, and to maintain an appealing visual balance.
- c) All outbuildings shall be constructed using wood, masonry or prefinished metal panels for exterior siding. All exterior building openings shall be equipped with doors or windows so that the entire building can be closed. Attached exterior patio covers or carports will be considered acceptable. No exterior galvanized metal panels on roofs or walls will be permitted. Roofing materials shall be painted prefabricated metal panels, wood or asphalt (composition) shingles, or other materials as approved by Declarant.

4. Dwelling Size. Any residence consisting of a single level above ground shall contain a minimum of eighteen hundred (1800) square feet of enclosed floor area. Any residence consisting of more than one level above ground shall contain a minimum of fourteen hundred (1400) square feet of enclosed floor area on the first level above ground, and a minimum of two thousand (2000) square feet total enclosed floor area. Any residence consisting of a level or part of a level below ground level shall nevertheless contain the foregoing minimum enclosed floor areas above ground level. The words "enclosed floor area" as used herein shall mean and include areas of the residence enclosed and finished for all year occupancy, computed on the outside measurements of the residence, and shall not mean or include any patio areas, basement, garage, carports, porches or attics.

5. Architectural and Building Plan Approval and Control.

- a). No residence, outbuilding, fence, wall, swimming pool, tennis court or any other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to, or change or alteration therein, be made until the plans and specifications are submitted to and approved in writing by Declarant as to quality of design and materials, harmony of external design with existing structures on the Lot and in the neighborhood, location with respect to topography and finish grade elevation, and adherence to the restrictions set forth in this Declaration.
- b) Plans and specifications submitted for approval shall include construction and plat drawings showing enough detail to identify the nature, kind, shape, height, materials and location of the proposed improvement, and shall include a cover letter identifying the submittal and providing place for Declarant's signature to receive the submittal as being complete. The submittal documents shall be kept by the Declarant.
- c) Prior to commencement of work, the selected builder of said improvements shall be approved in writing by the Declarant.
- d) If said plans and specifications are disapproved, reasonable explanation for the disapproval will be given in writing, and reasonable effort will be made to work with the Lot owner to alter the plans and specifications so as to make them mutually acceptable.
- e) The Declarant may waive such requirements as are determined, in its sole discretion, to be unnecessary or inappropriate in specific situations, and may permit compliance with different or alternative requirements. However, no such waiver or alteration of requirements shall otherwise affect the restrictions herein stated with regard to any other Lot or any other situation.
- f) In the event the Declarant fails to approve or disapprove the plans and specifications within 30 days after accepting the submittal, the plans and specifications shall be deemed approved, and written notice shall not be required.
- g) Compliance with the design review process is not a substitute for compliance with Miami County building, zoning and subdivision regulations, and each owner is responsible for obtaining and payment of all approvals, licenses and permits as may be required thereunder prior to construction commencement.
- h) If after approval of the plans and specifications by Declarant, the Lot owner fails to construct the improvements as depicted in the approved plans and specifications or fails to complete the construction of such improvements within the time limit stated herein, such approval of the Declarant shall be null and void and the Lot owner shall be required to re-submit its plans and specifications for review and approval by Declarant in accordance with this Article II.

6. Building Setback. Except as hereinafter provided, no building shall be located on any Lot nearer than 100 feet from the front Lot line or nearer than 40 feet to any side or rear Lot line. Lot 10 is an exception, with a 200 feet minimum setback from the Lot lines along Pavilion Road and 239th Street with driveway entry from Pavilion Road. Two or more contiguous Lots owned by the same persons may be considered one (1) Lot as regards side line restrictions.

7. Nuisance Restriction. No noxious or offensive trade or activity shall be carried on upon any Lot, nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof.

8. Signs. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one (1) sign per Lot consisting of not more than six (6) square feet advertising a Lot as "For Sale". Also, permission is granted to place normal and customary signs advertising garage sales or promoting political campaigns, so long as the same are removed within seven (7) days from placement. Provided, however, the foregoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant or its agents during the construction and sale of the Lots.

9. Home Business. Limited home business shall be permitted subject to the following restrictions and limitations:

- a) Facility for conducting such home business shall be contained strictly within an approved structure, and shall be incidental and subordinate to the principal use as a private residence.
- b) Manufacturing and industrial use is strictly prohibited. This includes, but is not limited to, any business involving regular customer or truck traffic, provided that parcel service is permitted.
- c) No equipment shall be utilized, nor activity engaged in, that creates a nuisance due to appearance, noise, odor, contamination or electrical interference.
- d) No signs advertising the business shall be permitted on or off any Lot or Lots.
- e) Such home occupation shall comply with all zoning ordinances and other regulations of Miami County.

10. Damaged Structures. In the event of fire, windstorm or other damage, no building shall be permitted to remain with its exterior in a damaged condition longer than three (3) months. At the Declarant's sole discretion, time extensions may be granted, but in no event shall the exterior of any building on any Lot be permitted to remain in a damaged condition for more than six (6) months.

11. Vehicles. No repair of any boats, automobiles, motorcycles, trucks, tractors, campers or similar vehicles requiring a continuous time period in excess of 48 hours shall be permitted outside on any Lot at any time unless substantially screened from view from the street; nor shall any disabled vehicle be visibly stored, parked or abandoned on any Lot.

12. Certain Personal Property. No boat, camper, trailer, mobile home, truck, camper truck or similar chattel shall be maintained or stored on any Lot, unless it is substantially screened from view from the road. No grading or excavating equipment, tractors, or semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this section shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings, during their period of construction.

13. Storage Tanks. No tank or similar structure for the storage of fuel or any other fluid substance shall be installed or maintained above the surface of the ground or on any of the Lots hereby restricted, unless said tank or similar structure is located adjacent to an approved outbuilding and is substantially screened from view from the road. The location and method of screening shall be subject to review and approval of the Declarant prior to installation.

14. Garbage, Rubbish and Unused Building Materials. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container shall be permitted unless substantially screened from view, except for pickup purposes. No unused building material, junk or rubbish shall be left exposed on any Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible. No garbage, refuse, rubbish or cutting shall be deposited on street, road or Lot.

15. Maintenance Equipment. No garden, lawn or maintenance equipment shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use.
16. Exterior Lighting. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.
17. Construction Limits. Construction of any improvement shall be completed within twelve (12) months from the date of commencement of excavation or construction of said improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the contour of any Lots without written permission of the Declarant.
18. Livestock and Poultry. Raising, breeding and keeping of livestock and poultry for personal use shall be permitted with the following restrictions:
- a) Horses (maximum of 2) or cattle (maximum of 2) shall be permitted provided adequate grazing area and/or feeding facility is provided on said Lot. Sheep, goats, rabbits and chickens shall also be allowed, but permitted quantities shall be reviewed and approved on a per-case basis in writing by Declarant. Further, Declarant reserves the right to, by written notice to Lot owner, reduce the permitted number of animals or poultry on said Lot.
 - b) No swine shall be allowed
 - c) Structures for the support of animals or poultry shall be located and positioned on the Lot so as to minimize the visual impact from the street. Lot and structures shall be maintained in an attractive, clean and sanitary condition. Over-grazing shall not be permitted.
 - d) Accumulated animal and feed waste shall be removed so as to prevent insect infestation or a visual or odor nuisance. No such waste shall be permitted to be deposited, or remain, on any public road right-of-way. No such waste shall be deposited, or remain, on any other Lot within the Subdivision except by express written permission of the owner(s) of the other Lot.
 - e) Household pets and dogs shall be permitted, provided that no more than two (2) adult dogs may be kept and maintained on each Lot, and provided they are kept so as to minimize barking. Pit bull dogs shall not be permitted. Pit bull dogs are those breeds of dogs commonly known as pit bulls, pit bull dogs, pit bull terriers, or a combination of any of those breeds and include bull terriers, Staffordshire bull terriers, American pit bull terriers and American Staffordshire terriers.
 - f) All animals, poultry and household pets shall be contained within their respective Lot areas to prevent them from running at large.
 - g) All animals shall be cared for in a humane and husbandlike manner, which shall include, by example and not limitation, the provision of adequate food and water for such animals. Where appropriate, animals and poultry may be harvested for food, providing such harvesting is done in a discrete and humane manner.
 - h) In no case shall any animal be kept, bred or maintained for any commercial purpose.
19. Gardening. Gardening (growing of vegetables, herbs, fruit, flowers, etc.) is permitted and encouraged provided that:
- a) Reasonable measures are taken to prevent soil erosion.
 - b) Weed / insect control, and soil fertilization, are exercised within generally excepted guidelines.
 - c) Such activity shall be located on the Lot, and performed, so as to minimize the impact on the neighborhood.
20. Fences and Landscaping.
- a) All fences and boundary walls shall be subject to approval by Declarant.
 - b) Any fence or boundary wall erected, kept or maintained around any of said Lots or any part, or parts thereof, shall be in keeping with the design and architecture of the residence upon such

Lot. No such fence or boundary wall shall be more than five (5) feet in height. No fence or boundary wall shall be located less than 25 feet from any public street right-of-way line.

- c) For fences that are highly visible from the road, preference shall be given to material of an ornamental nature, and solid privacy-type fences shall not be allowed.
- d) All fences and boundary walls shall be maintained in a neat and attractive manner.
- e) Upon completion of any dwelling hereunder, including walks, driveways, patios, and other approved appurtenances, as set forth in these restrictions, all areas disturbed in any way during construction shall be finish-graded and sodded, seeded, or planted with ground cover to provide attractive appearance and control soil erosion.

21. Temporary Residences. No trailer, basement, tent, shack, garage, barn or other outbuilding placed or erected on any Lot shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

22. Building Materials. Driveways shall be constructed of asphalt, concrete, brick or laid stone. However, gravel is also permitted provided it is maintained in a clean and attractive fashion, and kept free of vegetation growth. All foundations shall be constructed of poured concrete. Fireplace chimneys shall be covered with brick, rock or wood. The roof of all residences shall be covered with asphalt or wooden shingles. Any other materials shall only be used with written approval of Declarant.

23. Antennas and Towers. Antennas and towers of reasonable size, character and purpose shall be allowed to be placed on a Lot in a position which minimizes the impact on the attractiveness of the Lot, pursuant to the approval of Declarant.

ARTICLE III UTILITIES AND EASEMENTS

1. Drainage Easements. Lots 2, 3 and 6 include natural drainage areas shown on the final plat of the subdivision as drainage easements. The easement area of each Lot shall be maintained by the owner of the Lot in a condition to serve the intended drainage purpose, and, as much as possible, maintain its natural state.

2. Utility Easement. Easements for installation, repair and maintenance of utilities and drainage are reserved as shown on the recorded plat of the Subdivision. In addition to the respective rights of utilities to the effective use of reserved utility easements, no trees, shrubbery, structures, buildings or fences shall be placed or maintained within the area of the easements which may interfere with the access, function or maintenance thereof.

3. Utilities. Utilities from Rural Water District #2 of Miami County, Kansas City Power and Light Company (KCPL), and Cass County (Missouri) Telephone Company are provided underground within the utility easement at the border of each Lot, and shall be utilized as primary source of utilities for improvements on each Lot. Further:

- a) All connections to said utilities shall be located underground wherever possible, and the cost of such connections and usage shall be the responsibility of each Lot owner.
- b) The Lots are included under the "Residential Incentives" program sponsored by KCPL. Therefore, all residences and associated improvements shall be TOTAL ELECTRIC. This includes all HVAC systems, water heating (50 gallon minimum) and household appliances (with the exception of fireplace log lighters). All electrical installations must meet KCPL requirements. The use of alternative secondary energy sources are not excluded under this program.
- c) The installation and use of alternative secondary sources of heat, electricity and water shall be allowed, but shall be subject to the review and approval of Declarant.

4. Sewage Disposal. Single-family wastewater treatment facilities shall be installed to serve each individual dwelling in the Subdivision. Only underground sewer systems shall be permitted on the Lots. Such facilities shall be designed and constructed in accordance with applicable provisions of the Kansas State laws, Miami County Sanitation Code and regulations. All effluent from said treatment facilities shall be contained on each individual Lot in accordance with said laws, code and regulations. All dispersal lines and treatment appurtenances shall be located at least ten (10) feet from the nearest Lot line.

IN WITNESS WHEREOF, Declarant, by authority of its Members, has caused this instrument to be executed this 6th day of February, 2008.

BROADWINGS, LLC,
a Kansas limited liability company

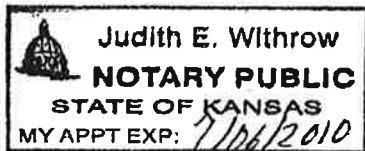
By: James L. Grimes
James L. Grimes, Member

By: Ronna P. Grimes
Ronna P. Grimes, Member

STATE OF KANSAS)
COUNTY OF ~~WASH~~) SS.
Johnson

BE IT REMEMBERED, That on this 6th day of February, 2008, before me, the undersigned, a Notary Public within and for the County and State aforesaid, came James L. Grimes and Ronna P. Grimes, as members of BROADWINGS, LLC, who are personally known to be the identical persons who executed the above and foregoing instrument and who acknowledged the execution of the same.

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



Judith E. Withrow
Signature of Notary Public
Judith E Withrow
Printed Name of Notary Public

My Appointment expires 7/06/2010