

NOTICE OF AMENDMENT  
TO  
DECLARATIONS OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF  
THE BRITTANY FOREST HOMES  
ASSOCIATION

Brittany Forest,  
a subdivision in the City of Olathe,  
Johnson County, Kansas,  
Lots 1-16, 31-34, 40, 41, 43-53, First Plat;  
Lot 78, Second Plat;  
Lots 55-59, 60, 61-66, 69-77, Third Plat;  
Lots 79-94, Fourth Plat;  
Lots 95-152, Fifth Plat;  
Lots 153, 155-157, 159-186, 188-199, Sixth Plat;  
Lot 1, Eighth Plat.

NOTICE OF AMENDMENT

TO

DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

THE BRITTANY FOREST HOMES ASSOCIATION

THIS AMENDMENT is made this \_\_\_ day of \_\_, 2005, by the members of the Brittany Forest Homes Association, Inc., a Kansas not for profit corporation, with address of 14244 West 123rd Terrace, Olathe, KS 66062 (hereinafter referred to as the "Association").

WHEREAS, the Association desires to fully and completely replace any and all previous Covenants, Conditions and Restrictions with a new Declaration of Covenants, Conditions and Restrictions, as described herein and

WHEREAS, the Association deems it desirable for the harmonious and efficient management of this homes association which shall have the responsibilities and powers of (i) owning, administering and maintaining the common areas within residential development; (ii) administering and enforcing the covenants, conditions, and restrictions set forth herein; (iii) collecting and disbursing funds, pursuant to the assessments, spending procedures and charges hereinafter created and pursuant to its by-laws; (iv) coordinating the activities of the members; (v) performing such other acts as are provided for herein or in its by-laws which generally benefits its members; and

WHEREAS, in furtherance of the foregoing the homes association has been incorporated as a not for profit corporation and is in good standing pursuant to the laws of the State of Kansas for the purpose of exercising such powers and responsibilities; and

WHEREAS, certain declarations of Certain declarations of covenants, conditions and restrictions were recorded in the office of the Register of Deeds of Johnson County, Kansas (the "Register's Office") affecting the Brittany Forest residential subdivision, or portions thereof, as follows: Declaration of Covenants, Conditions and Restrictions for the Brittany Forest Residential Development recorded in the Register's Office as document #2312724 on October 25, 1993, in Volume 4114 at Page 29; Amendment to Declaration of Covenants, Conditions and Restrictions for the Brittany Forest Residential Subdivision recorded in the Register's Office as document #2385634 on April 25, 1994, in volume 4311 at Page 753; Declaration of Covenants, Conditions and Restrictions for the Brittany Forest Residential Development recorded in the Register's Office as document #2389934 on April 27, 1994, in Volume 4323 at Page 297; Declaration of Covenants, Conditions and Restrictions for the Brittany Forest Residential Development recorded in the Register's Office as document #2412684 on July 11, 1994, in Volume 4381 at Page 504; Brittany Forest Homes Association First Amendment of Declaration of Covenants, Conditions and Restrictions recorded as document #2744238 on September 22, 1997, in Book 5314 at Page 924; Notice of Amendment to Declarations of Covenants, Conditions and Restrictions of the Brittany Forest Homes Association recorded in the Register's Office as document #3194873 on January 8, 2001 in Book 6816 at Page 790

and any and all duly recorded consents, supplements or amendments thereto (collectively, the "CCRs"); and

WHEREAS, the CCRs provide in Article III, section 3.1 thereof that the CCRs may be changed, modified or removed at any time by agreement of the owners of 75% or more of the total property area restricted by the CCRs, and in Article IV, section 4.16 thereof that the CCRs may be further modified or amended only upon the affirmative vote of eighty percent (80%) of all lot owners of lots subject to the CCRs.

NOW THEREFORE, in consideration of the real property affected hereby, for itself, the undersigned, being all of the members of the Board of Directors of the Brittany Forest Hornell Association, Inc. (the "Board") hereby state as follows:

1. This Notice of Amendment to Declarations of Covenants, Conditions and Restrictions of the Brittany Forest Homes Association shall apply to the real estate legally described on the attached **Exhibit "A."**
2. During the month of May, 2005, the Board completed a duly noticed and authorized vote of the members of the Association who own real property subject to the CCRs, said vote calling for approval or disapproval of an amendment to the CCRs to wholly replace the CCRs with the document set forth as the attached **Exhibit "B"** (the "Revised CCRs").
3. The Revised CCRs were approved by signatures of voters on signed ballots, said ballots being in the possession of the Secretary of the Board and to be retained in the records of the Association.
4. Of the 172 lots subject to the CCRs, the membership interests represented by 142 lots voted to approve the Revised CCRs.
5. Votes for approval of the Revised CCRs constitute an 82.55% majority approval as counted by the number of lots subject to the CCRs.
6. Votes for approval of the Revised CCRs constitute in excess of 75% majority approval as counted by square feet of the area of real property subject to the CCRs.
7. Each of the undersigned Board members have personally counted the votes and hereby certify that (a) all voters who cast a vote were entitled to vote pursuant to the CCRs and by-laws of the Association; and (b) 82.55% of the membership interests as counted by lots have approved the Revised CCRs; and (c) a majority of 75% or more of the membership interests as counted by square feet of the area of real property subject to the CCRs have approved the Revised CCRs.

## EXHIBIT A

### (Legal Description of Property)

NOW THEREFORE, in consideration of the property for itself, the Association hereby declares that Lots 1-16, 31-34, 40, 41, 43-53 known as BRITTANY FOREST, FIRST PLAT; Lot 78, known as BRITTANY FOREST, SECOND PLAT; Lots 55-59, 60,

A part of Lot 60, BRITTANY FOREST, THIRD PLAT, a subdivision in the City of Olathe, Johnson County, Kansas, more particularly described as follows: Beginning at the Northwest corner of said Lot 60; thence S.  $27^{\circ}$  -28'-24" W. a distance of 123.15 feet; thence N.  $57^{\circ}$  -54'-53" E. a distance of 76.54 feet; thence N.  $15^{\circ}$  -14'-06" E. a distance of 65.3 feet to a point on the north line of said Lot 60; thence west along said north line on a curve to the right with a radius of 50.00 feet an arc distance of 26.11 feet to the Point of Beginning,

A part of Lot 60, BRITTANY FOREST, THIRD PLAT, a subdivision in the City of Olathe, Johnson County, Kansas, more particularly described as follows: Beginning at the Southeast corner of said Lot 60; thence S.  $78^{\circ}$  -13'-40" W. a distance of 26.00 feet; thence N.  $47^{\circ}$  -50'-54" W. a distance of 75.99 feet; thence N.  $15^{\circ}$  -14'-06" E. a distance of 65.31 feet to a point on the north line of said Lot 60; thence east along said north line on a curve to the left with a radius of 50.00 feet an arc distance of 26.11 feet to the northeast corner of said Lot 60; thence S.  $18^{\circ}$  -57' -33" E. a distance of 123 .11 feet to the Point of Beginning,

A part of Lot 60, BRITTANY FOREST, THIRD PLAT, a subdivision in the City of Olathe, Johnson County, Kansas, more particularly described as follows: Beginning at the Southwest corner of said Lot 60; thence N.  $27^{\circ}$  -28'-24" E. a distance of 45.00 feet; thence N.  $57^{\circ}$  -54'-53" E. a distance of 76.54 feet; thence S.  $47^{\circ}$  -50' -54" E. a distance of 75.99 feet; thence S.  $78^{\circ}$  -13'-40" W. a distance of 145.00 feet to the Point of Beginning, Lots 61-66, 69-77, known as BRITTANY FOREST, THIRD PLAT; Lots 79-94, known as BRITTANY FOREST, FOURTH PLAT; Lots 95 -152, known as BRITTANY FOREST, FIFTH PLAT; Lots 153, 155-157, 159-186, 188-199, known as BRITTANY FOREST, SIXTH PLAT; and Lot 1, known as BRITTANY FOREST, EIGHTH PLAT shall be and the same are hereby restricted in the manner hereinafter set forth.

## **EXHIBIT B**

### **("Revised CCRs")**

#### **REVISED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE BRITTANY FOREST HOMES ASSOCIATION**

##### **ARTICLE I**

###### **1.1 PERSONS BOUND BY THESE RESTRICTIONS.**

All persons and corporations who now own, lease or rent, or shall hereafter acquire any interest in the above enumerated lots hereby restricted shall be taken to hold and agree and covenant with the owners of said lots, and with their successors and assigns, to conform to and observe the following covenants, restrictions, and stipulations as to the use thereof for the period of time ending October 1, 2018, except as provided in Article III of these restrictions, provided however, that each of said restrictions shall be renewed in the manner hereafter set forth. All of these provisions of this Declaration shall be deemed to be covenants running with the land and shall be binding upon its successors and assigns.

###### **1.2 MEMBERSHIP IN ASSOCIATION.**

The owners of all the lots, together with the owners of any other land that may from time to time be made subject to all of the terms and provisions of this Declaration in the manner hereinafter provided for, shall be the members of Brittany Forest Homes Association (hereafter "Association").

###### **1.3 ADDITION OF OTHER LANDS.**

The Association may annex additional real property to the residential development referenced herein, and thereby subject such property to this Declaration, and bind the owners of any interests in real property annexed to the covenants, conditions and restrictions contained in the Declaration.

###### **1.4 LEASING OF PROPERTY**

An Owner is permitted to lease or rent its, his, or her Lot. However, any lease or rental agreement shall be in writing and any tenant shall abide by and be subject to, all of the terms and provisions of the Declarations, the Articles, the Bylaws and Association Rules; and any lease or rental agreement shall comply with the Association documents and shall specify that failure to abide by such provisions and rules shall be a default under the lease or rental agreement.

## ARTICLE

### 2.1 USE OF LAND - TYPE OF RESIDENCE II

None: of the lots hereby restricted may be improved, used or occupied for other than single family residence purposes. Any residence erected or maintained on any of the lots hereby restricted shall be designed for occupancy by a single family only. No structural or landscaping improvements shall be erected, placed, altered or externally improved on any property hereby restricted until the building design, plans, specifications, materials, grading, ground excavations, plot plan and residence location have been approved in writing by the Architectural Committee appointed by the Board of Directors of the Association. The Architectural Committee shall review all aspects of design, including but not limited to drainage, landscaping, external building design, and other features to ensure conformity and harmony with the development.

### 2.2 SIZE OF RESIDENCES.

Any residence erected on property hereby restricted shall not be more than two and one-half stories in height. Any single story ranch residence erected on property hereby restricted shall contain a minimum of 1300 square feet of enclosed floor area. Any 1 1/2 story or tri-level residence erected on property hereby restricted shall contain a minimum of 1700 square feet. Any 2 or 2 1/2 story residence erected on any property hereby restricted shall contain a minimum of 1700 square feet of enclosed floor area. The words "enclosed floor area" as used herein shall mean and include in all cases, areas on the first and I above floors of the residences which are enclosed and finished for occupancy, computed on outside measurements of the residence, and shall not mean or include any areas in basements, garages, porches, or attics.

### 2.3 1 VEHICLES PROHIBITED.

No trailers, trucks larger than 1 1/2 ton, bus, equipment or machinery shall ever be parked, located or otherwise maintained on any property, parking area or street adjoining property hereby restricted. RV's and boats may be parked in these areas temporarily for loading and unloading purposes only.

### 2.4 ARCHITECTURAL RULES.

The Architectural Committee may, subject to review by the Board of Directors, from time to time adopt, amend and repeal rules and regulations to be known as "Architectural Rules." Said rules shall interpret and implement the provisions of the Declaration by setting forth the standards and procedures for the review and approval of proposed Improvements; guidelines for architectural design, placement of any work of Improvement; or color schemes, exterior finishes and materials; and similar features which are recommended for use within the Property, provided that said rules shall not be in derogation of the minimum standards required by the Declaration. In the event of any conflict between the Architectural Rules and the Declarations, the Declaration shall prevail. The Architectural Committee shall be entitled to allow reasonable variances with

respect to the Declarations or any restrictions specified in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships. No detached structures of any nature or design may be erected for storage or any other use; however, structures for children's play such as swingsets and climbing platforms with slides and small portable playhouses shall be permitted. No swimming pools of any kind may be constructed or installed without approval in writing from the Association. No satellite dishes larger than 2 feet in diameter may be constructed on any property. No clotheslines or clothes hangers may be constructed or used outside of any residence.

## 2.5 MAINTENANCE - OWNER RESPONSIBILITY

Except as otherwise stated in these Declarations, each Owner of a Lot shall be responsible for maintaining the lawns and structures located upon its, his or her Lot, including the equipment and fixtures in the structure and its walls, roof, ceilings, windows and doors in a clean, sanitary, workable and attractive condition. If an Owner is required to make any repair or, if the Owner desires to construct any Improvement or install any fixture or equipment that will affect the exterior appearance of the Lot and/or any structure on the Lot, the prior written approval of the Architectural Committee must first be obtained. However, such approval need not be obtained to make emergency repairs, provided that the structure so affected is restored to its original condition at the Owner's expense. All development common areas and lot lawns must be mowed and maintained in a neat and orderly manner. No dumping of grass clippings or yard waste or any other material from any property herein restricted shall be allowed, either on any lot or common area. Any retaining walls constructed must be of stone, brick, or similar decorative masonry.

## 2.6 OIL TANKS PROHIBITED.

With the exception of propane tanks for outdoor cooking grills, no tanks for the storage of fuel may be maintained on any of the property hereby restricted, above the surface of the ground.

## 2.7 NUISANCES.

No noxious or offensive activity shall be carried out upon any property, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, including mechanical work on automotive or other equipment of any kind.

## 2.8 FENCES.

No fence shall be erected or altered without prior written consent of the Architectural Committee or the Board of Directors. In addition to the fence construction and alteration guidelines, which may be adopted by the Association, the Association shall follow the restrictions set forth in this section when giving or withholding consent. The maximum height of any fence shall be six feet (6') and the material shall be limited to wood, wrought iron or decorative masonry. No other metal or chain link or similar fences will be permitted. No dog or animal pens or runs of any kind shall be permitted. The general

standard shall be that fences shall not be placed in a front or side yard, provided, however, that the Architectural Committee may make exceptions for variations needed for special circumstances, at the discretion of the Board.

#### 2.9 ANIMALS PROHIBITED.

No poultry, cows, swine, rabbits, sheep, goats or similar domestic animals, and not more than two pets per residence, shall be kept or maintained at any time on any of the property, or parts thereof. All property and the buildings and appurtenances thereon, shall be kept clean, neat and in proper sanitary condition. No such pets will be kept, bred or maintained for commercial purposes.

#### 2.10 BILLBOARDS PROHIBITED

No signs advertisements, billboards or advertising structure or media of any kind, may be erected or maintained on any of the property hereby restricted, provided, however, that permission is hereby granted for the erection and maintenance of not more than one advertising board on each lot or tract as sold and conveyed, which advertising board shall not be more than five (5) square feet in size and may be used for the sole and exclusive purpose of advertising for the sale or lease the lot or tract upon which it is erected.

#### 2.11 POWER LINES AND TELEPHONE WIRES OR CABLES.

No overhead power lines or overhead telephone wires or cables may be erected or maintained upon any of the property hereby restricted.

#### 2.12 DRIVEWAYS.

All driveways must be improved with hard surface consisting of a minimum of 4" reinforced concrete or other materials approved in writing by the Association. Gravel driveways or driveways consisting of crushed rock base with asphalt prime and seal coat will not be permitted.

### ARTICLE III

#### 3.1 DURATION OF THESE RESTRICTIONS

The restrictions herein set forth shall run with the land and bind the present owner, its successors or assigns, and all the persons claiming by, through or under it shall be taken to hold, agree and covenant with said owners, its successors and assigns with each of them to conform to and observe said restrictions as to the use of the property and the construction of improvements thereon until October 1, 2018 and shall automatically continue thereafter for successive periods of 25 years each; provided, however, that the owners of the fee simple title to 75% or more of the total property area herein restricted may release any of the land hereby restricted from any one or more of said restrictions at the end of the first 25 year period, or at the end of any successive 25 year period



thereafter, by executing and acknowledging an appropriate agreement in writing for such purposes,<sup>1</sup> and filing the same for record at least one year prior to the expiration of the 25 year period; but no restrictions herein set forth shall be personally binding on any corporation, person or persons, except in respect of breaches committed during its, his, hers or their seizing of title to said land.

### 3.2 ACTIONS TO ENFORCE

The Association, or any owner of any property herein restricted, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now and 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.

## ARTICLE IV

### 4.1 POWERS AND DUTIES OF THE ASSOCIATION.

The Association shall have the following powers and duties, which it may exercise and perform in its discretion.

(a) To hold fee simple title to all real estate constituting development common areas, along with all improvements thereon.

(b) To enforce all restrictions, conditions, covenants contained herein, by any proceeding at law or in equity.

(c) To mow, care for, maintain, and do any other things necessary or desirable in the judgment of the officers of the Association to keep any vacant and unimproved property, right of way, development entrance, development common area, and the parking in front of any property herein restricted, neat in appearance and in good order.

(d) To care for, maintain, repair or replace any and all amenities on development common areas, as they exist from time to time, which may, but are not required to include, a pool and its related improvements.

(e) To appoint committees, coordinate activities and perform such other acts as needed to carry out its powers and duties as stated herein, and as provided for in its by-laws.

(f) To levy and collect the assessments, which are provided for in this Declaration including those collected to permit the Association to perform the duties and powers set forth herein, and in accordance with its by-laws.

### 4.11 RIGHT TO IMPOSE SANCTIONS FOR VIOLATIONS

In addition to any other enforcement rights described in the CCR's or Bylaws, or authorized by law and subject to any restrictions on the Association's enforcement rights, including any due process requirements imposed by the CCR's or Bylaws, or by law, the Board of Directors may take any of the following actions against any person or entity,

whose act or failure to act violates or threatens to provide any provision of the CCR' s or Bylaws, or Association Rules:

1. Impose monetary penalties, including late charges and interests;
2. suspend voting rights of the member in the Association;.
3. suspend use privileges for the Common Area, including pool; and
4. commence a legal action for damages, injunctive relief, or both.

The determination of whether to impose any of the forgoing sanctions shall be within the sole discretion of the Board of Directors. Any legal action may be brought in the name of Brittany Forest Home Owners' Association on its own behalf and on behalf of any Member who consents, and the prevailing party on such actions shall recover costs and reasonable attorney's fees. The Board of Directors shall have the power to adopt a schedule of reasonable fines and monetary penalties for violations of the terms of the CCR's and Bylaws, as well as any rules adopted pursuant to same, provided that such schedule is distributed to each Member by personal delivery or first class mail.

#### 4.2 ASSESSMENTS AND GENERAL FUNDS.

The Association may, from year to year, fix and determine the total amount required in a general fund and may levy and collect an annual assessment due March 1st of the current year. Each fiscal year shall begin on January 1 and end on December 31.

The annual assessment for the fiscal year shall be one hundred ninety five dollars (\$195.00) for each assessable lot. A lot will not be assessable before and until the construction of a residence meeting all applicable restrictions is complete and the residence is occupied.

An annual assessment will be due at closing of the purchase of a residence, based on a pro-rated amount for the portion of the fiscal year from date of closing through the end of the forthcoming fiscal year.

It shall be the duty of the Association to notify all owners whose addresses are then listed with the Association giving the amount of the assessment on each lot owned by them and the date when such assessment is due. Failure of the Association to levy an assessment for any one-year shall in no way affect the right of the Association to do so for any subsequent year.

In addition to the annual assessment authorized above, the Association may levy in any year a special assessment applicable to that year only, for the purpose of defraying in whole or in part any prior year's budget deficit, exceptional item of expense, or the cost of any construction, reconstruction, repairs or replacement of any capital improvement or development amenity, including any fixtures or personal property related thereto, to be completed, maintained or cared for by the Association pursuant to the terms hereof, or the Association by laws. Any special assessments shall be due and payable at the time and in the manner determined by the Association

Any and all assessments shall become a lien on the real estate against which they are levied as soon as they are due and payable as set forth above, provided however, that such lien shall be inferior and subordinate to the lien of any valid first mortgage which now exists or which may hereafter be placed on said real estate. In the event of failure of any member to pay an assessment within thirty (30) days from the due date, then such assessment shall become delinquent and accrue a late fee of \$15.00 per month until the Association receives payment in full.

Payment of the delinquent assessment plus any costs of collection including related fees and expenses, may be enforced as a lien on said real estate, or by any other proceeding at law or equity to collect payment.

#### 4.3 SUBORDINATION OF LIEN.

In the event a first mortgage holder forecloses upon the mortgage or takes a deed in lieu of foreclosure, any lien against the lot for unpaid dues or assessments shall be released and discharged at that time. The first mortgage lender shall not be responsible for the payment of any unpaid dues or assessments levied against the owner or the lot pursuant to the terms of this Declaration.

#### 4.4 INCREASE IN ASSESSMENTS

The annual assessments of \$195.00 for each assessable lot may not be increased without a majority vote of the Board of Directors. Said annual assessment may not be increased by more than ten percent (10%) in any one year without the majority vote of all owners.

#### 4.5 EXEMPT PROPERTY.

All property dedicated to and accepted by any municipality or public utility for public use and purposes and, except as otherwise expressly provided in this Declaration, all lots owned by Bell Development Inc. (hereinafter referred to as the "Developer") is wholly exempt from the assessments and liens created hereby.

#### 4.6 SPECIAL ASSESSMENTS.

The Board of Directors shall have the right and power, but not the obligation, to levy special assessments for the purpose of paying for any costs, including attorneys fees, incurred by the Association as a result of enforcement action taken by the Association and necessitated by a violation or threatened violation of the terms of this Declaration, or by a violation or threatened violation of rules or regulations lawfully enacted by the Association, by an owner or such owner's agents, family members, guests, tenants, invitees or contractors against the lot or lots owned by such violator. Such special assessments shall be due in accordance with such terms as may be established by the Board of Directors or this Declaration and shall be secured by the lien and enforceable by the Association as otherwise set forth herein.

#### 4.7 EASEMENTS.

Any foreclosure of the lien securing an assessment shall not terminate any easement granted by the Developer, whether pursuant to this Declaration or otherwise and all such assessments shall be inferior and subordinate to such easements.

#### 4.8 EXPENSE REIMBURSEMENT FROM DEVELOPER.

Notwithstanding any provision herein to the contrary, if the Association incurs any actual and reasonable out-of-pocket expenses as a result of (a) damage caused by the Developer or builder to a lot owner's property, or (b) the failure of Developer or builder to keep the weeds and grass mowed or otherwise adequately maintain their lots, then the Association may seek reimbursement from the Developer or builder for the amount of such out-of-pocket expenses, provided however, that the Association gives Developer or builder prior written notice of the problem and a reasonable opportunity to cure the problem before the Association incurs any related expense on its own.

#### 4.9 ADDRESS NOTIFICATION.

The Association shall notify all owners, whose addresses are listed with the Association, of the official address of the Association and the place where payments shall be made and any other business in connection with the Association may be transacted. The Association shall notify the owners of any change of Association address.

#### 4.10 MEMBERSHIP AND VOTING RIGHTS.

Every owner shall be a member of the Association. Membership shall be appurtenant to and may not be separated from lot ownership. Members shall be entitled to one vote for each lot which they own, provided however, that when more than one person owns any lot; ap such persons shall be entitled to cast only one (1) vote for said lot.

#### 4.11 AMENDMENT OF DECLARATION.

The declaration may be further modified or amended only upon the affirmative vote of eighty percent (80%) of all lot owners.

#### 4.12 ASSOCIATION TO OBSERVE ALL LAWS.

The association shall at all times observe all state, county, city and other laws. If at any time any of the provisions of this Declaration are found to be in conflict with any applicable laws, then such parts of this Declaration as are in conflict with any applicable laws shall become null and void, but no other part of this Declaration shall be affected. The Association shall have the right to make such agents as will enable it to adequately and properly carry out the provisions of this Declaration; subject, however, to the limitations set forth in its by-laws.