



Betty Jo Abitz-Register of Deeds  
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*Betty Jo Abitz*

**DECLARATION OF PROTECTIVE COVENANTS  
FOR CERTAIN LOTS LOCATED IN  
IRVINE ACRES SUBDIVISION, UNIT TWO  
POTTAWATOMIE COUNTY, KANSAS**

**ORIGINAL  
COMPARED WITH RECORD**

THIS DECLARATION is made on the date provided below by David D. Nelson, Trustee of the David D. Nelson Trust Agreement dated January 12, 2005, by Leon Harold Borck, Trustee of the Leon Harold Borck Trust Agreement dated September 23, 1994, and by David D. Nelson, Manager of the Elbo Creek LLC, a Kansas Limited Liability Company (hereinafter "Declarant").

**KNOW ALL MEN BY THESE PRESENT:**

WHEREAS, Declarant is the owner/developer of real estate located within Irvine Acres Subdivision, Unit Two, Pottawatomie County, Kansas, to wit: Lot Thirty-Four (34) through Seventy-One B (71B), inclusive, together with certain land designated as Common Area on the recorded plat of said Irvine Acres Subdivision, Unit Two with said Common Area more fully described as Tracts C, D, and E; and

WHEREAS, Declarant desires to submit and subject the Subdivision, together with all buildings, improvements and fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances, and privileges belonging in any way pertaining thereto, to the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein; and

WHEREAS, this Declaration of Protective Covenants ("Declaration"), its restrictions, terms and conditions are assumed, adopted, and agreed upon by the purchasers of any building Lot situated in the Subdivision of which these covenants are a part and shall be effective at the time a Lot is purchased; and

WHEREAS, for the efficient management of the Subdivision and to enforce the provisions of this Declaration, Declarant wishes this Subdivision to be included in the Irvine Acres Homeowners Association (hereinafter the "Association") which shall consist of the Owners of the Lots included within the Subdivision and which shall exercise such powers and function as are set forth herein; and

WHEREAS, the Association shall be a nonprofit corporation or an unincorporated association governed by the Bylaws of such Corporation or Association, established for the primary purpose of enforcing the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein; and

WHEREAS, Declarant intends that all persons or entities hereafter acquiring any interest in the Subdivision shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions hereinafter set forth, all of which are hereby declared to be in furtherance of the plan to promote and protect the Subdivision; and

WHEREAS, the Subdivision heretofore described, is and shall be held, sold, and conveyed subject to the conditions, covenants, restrictions, reservations, and easements as set forth within this Declaration, which shall run with the real property and shall 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; and

NOW, THEREFORE, in consideration of the premises and for the purposes above set forth, Declarant of the Subdivision does hereby declare, agree, restrict, and covenant that the use, enjoyment, and ownership of the Subdivision shall be and is hereby restricted, limited, conditioned, and protected subject to the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions hereinafter set forth, all of which shall run with said Subdivision and be binding upon all parties having right, title, or interest therein or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of and be the responsibility of each Owner and each Member of the Association.

## **ARTICLE I GENERAL PURPOSES AND OBJECTIVES**

The real property and Lots and Common Area Tracts contained within Irvine Acres Subdivision, Unit Two, more particularly described as Lot Thirty-Four (34) through Seventy-One B (71B) inclusive, together with certain land designated as Common Area more fully described as Tracts C, D, and E, is subject to the conditions, covenants, restrictions, reservations, and easements hereby declared. The objectives of these covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein are to ensure the best use and the most appropriate development and improvement of each building site thereof; to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to prevent the construction of substandard, or unsuitable improvements; to encourage and secure the erection of attractive dwellings thereon; and in general to create and maintain the subdivision in a visually attractive manner and appearance for the mutual benefit and protection of all the owners of Lots in the subdivision.

## ARTICLE II DEFINITIONS

As used herein the following words and terms shall have the following meanings:

- 2.01 “Architectural Control Committee” shall mean the committee of the Association provided for in Article VIII.
- 2.02 “Assessments” shall include the following:
- (A) “Regular Assessments” are amounts paid by each Owner as “Association Dues” for such Owner’s proportionate share of the Common Expense incurred by the Homeowners Association.
  - (B) “Special Assessments” shall mean: (1) a charge against a particular Owner that is directly attributable to such Owner to reimburse the Association for costs incurred in bringing the Owner into compliance with the provisions of these Protective Covenants, the Architectural Control Committee’s determinations, or the Bylaws of the Association; (2) any other charge designated as Special Assessment in this Declaration or the Bylaws of the Association; (3) Reimbursement to the Developer in those cases where Pottawatomie County draws a draft on the Developer’s irrevocable letter of credit for the Development as a result of an Owner’s failure to pay the tax obligations or Special Assessments for county bonded improvements to the Lot; (4) attorney’s fees or other charges payable by such Owner as a Special Assessment pursuant to the provisions of this Declaration; and (5) any charge designated as a Special Assessment in this Declaration, the Association Bylaws, or applicable Association Rules.
- 2.03 “Association” shall mean and refer to the Irvine Acres Homeowners Association, its successors or assigns. The Association shall be a nonprofit corporation or an unincorporated association governed by the Bylaws of such Corporation or Association, established for the primary purpose of enforcing the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein.
- 2.04 “Board of Directors” shall consist of 3 members, one of which will be David D. Nelson, until the last Lot is sold or the Developer relinquishes full or partial responsibility to the Association. The remaining two members shall be elected to the Board of Directors established by the Association under its Bylaws to execute policies and decisions of the membership, prosecute the Association’s objectives and exercise the supervision, control and direction of the Association, and to carry out those other duties and responsibilities as provided for by the Bylaws.
- 2.05 “Building” shall mean a single-family structure on a Lot.

- 2.06 “Bylaws” of the Association shall mean and refer to the Bylaws duly adopted by the Association which shall govern such affairs of the Association such as membership, fees and dues, assessments, meetings, officers, election, committees, mail vote amendments, liabilities, funds and dissolution which are hereby incorporated in these protective covenants by reference and adopted and made a part hereof.
- 2.07 “Common Area” shall mean and refer to those tracts of land delineated and so designated on the recorded plat within the Subdivision as Tracts, and to be owned by the Association upon the conveyance of such common area to the Association by the Declarant.
- 2.08 “Common Elements” shall mean services, systems, or spaces that serve more than one Unit, and shall include all central and appurtenant installations and lines for services such as power, light, telephone, and water, including all shared pipes, ducts, wires, cable and conduits used in connection therewith, and all shared mechanical equipment or spaces necessary for the maintenance of the Building or Duplex Units. Provided, however, these shall only be considered Common Elements to the extent that they are for the common use of more than one Unit of a Building or are necessary for the maintenance or safety of a Duplex Unit or Duplex Unit Owner.
- 2.09 “Common Expenses” shall mean the costs incurred by the Association in conducting activities for which the Association is responsible pursuant to the terms hereof. Common Expenses shall include, but not be limited to, the following:
- (A) the cost of landscaping, maintenance, management, operating, repair, and replacement of all areas and facilities within the Subdivision that are owned, maintained or operated by the Association, including utilities provided directly to the Association;
  - (B) the cost of management and administration of the Association including, but not limited to, compensation paid by the Association to managers, accountants, superintendents, attorneys, consultants, and employees;
  - (C) taxes of any nature owing by the Association and the cost of any insurance maintained by the Association;
  - (D) reasonable reserves for contingencies, replacements, and other proper purposes as deemed appropriate by the Association; and
  - (E) the costs of any other item or items to be provided or performed by the Association pursuant to this Declaration or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association.

- 2.10 “Declarant” shall mean and refer to David D. Nelson, Trustee of the David D. Nelson Trust Agreement dated January 12, 2005, Leon Harold Borck, Trustee of the Leon Harold Borck Trust Agreement dated September 23, 1994, and David D. Nelson, Manager of the Elbo Creek LLC, a Kansas Limited Liability Company, (hereinafter also referred to as “Developer”) its successors and assigns, or any person or entity to whom Declarant’s rights hereunder are assigned in writing.
- 2.11 “Declaration” shall mean this Declaration and any amendments thereto.
- 2.12 “Duplex” or “Duplex Unit” shall mean one single family residence on a separate Lot and joined together with another single-family residence with a common wall, roof, and foundation. Each Duplex Unit is a part of the Lot on which it is situated.
- 2.13 “Duplex Building” shall mean a single structure comprised of two Duplex Units which share a common wall, roof, and foundation.
- 2.14 “Lot” shall mean and refer to each of the above described Lots delineated and numbered Lot Thirty-Four (34) through Seventy-One B (71B), inclusive in Irvine Acres Subdivision, Unit 2. Each Lot is held and sold by the Declarant for the exclusive purpose of constructing a single-family residential dwelling or a Duplex Unit (one dwelling residence per Lot) in compliance with the covenants, conditions, restrictions, and easements set forth in this Declaration.
- 2.15 “Member” of the Association shall mean any Person who or which is a record Owner of a fee or undivided fee interest in any Lot. If such Owner is or includes a Person other than an individual, an individual designated in writing must be designated by the Owner to be the Member representative. A Member of the Association shall not include any Owners who have sold their interest under executory contract. During such time as the contract is enforced, the contract vendee shall be considered to be the Member. When more than one Person holds an interest in a Lot, such Persons shall be Members of the Association.
- 2.16 “Owner” shall mean and refer to the “owner of record,” his/her or its successors or assigns, whether one or more persons or entities, of the fee simple fee title to any of the Subdivision. Owners include installment contract purchasers, but exclude those having such interest merely as security for the performance of an obligation.
- 2.17 “Person” shall mean an individual, corporation, partnership, trustee, or other entity capable of holding title to real property, and his, her, or its respective heirs, representatives, successors, and assigns.
- 2.18 “Subdivision” or “Properties” shall mean and refer to Lots and Common Area Tracts contained within Irvine Acres Subdivision, Lot Thirty-Four (34) through

Seventy-One B (71B) inclusive, together with certain land designated as Common Area more fully described as Tracts C, D, and E.

- 2.19 “Vehicle” shall mean any car, truck, boat trailer, motorcycle, go-cart, RV, trailer, etc. that has, or is intended to have, wheels. In addition, boats, canoes, and kayaks that for some reason are not on a trailer, are also considered vehicles.

### **ARTICLE III DECLARATION**

Declarant hereby establishes the Subdivision and this Declaration to govern the design, maintenance, use, and occupancy of Lots and improvements within the Subdivision.

### **ARTICLE IV RIGHT OF USAGE**

- 4.01 Owners’ Easements of Enjoyment. Every owner shall have a right of use and an easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title of every Lot, subject to the following provisions:
- (A) The Association shall have the right to charge reasonable admission and other fees for the use of any Association-owned recreational facility located within the Common Area, as provided by the Bylaws of the Association;
  - (B) The Association shall have the right to suspend the voting rights and right to use by the Owner to such Common Area and facilities, as provided by the Bylaws of the Association;
  - (C) The Association shall have the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for scenic or recreational purposes and subject to such conditions as may be agreed to by the member(s), all as provided by the Bylaws of the Association.
- 4.02 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the right of enjoyment of the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the Property.

### **ARTICLE V CREATION OF ASSOCIATION OF HOMEOWNERS**

- 5.01 Formation of Association. An association of homeowners has been or shall be created and named “Irvine Acres Homeowners Association”. The Association

has adopted or shall adopt Bylaws, which are hereby made a part of these Protective Covenants by reference and are hereby incorporated herein.

5.02 Purpose of the Association. The Association shall be responsible to manage and maintain the collective common areas; common facilities; provide community services; and other matters as provided in or contemplated by this Declaration, the Association Articles, the Association Bylaws, the Association Rules, or Design Standards.

5.03 Association Membership.

- (A) Each Owner shall be a Member of the Association, as defined in Article II. A membership in the Association shall be inseparable from the Lot to which it applies and may not be transferred separately from such Lot. The Subdivision shall become a part of the Irvine Acres Homeowners Association as set forth herein.
- (B) Any Owner of Property within the Subdivision shall become a member automatically and immediately upon receiving title to any Lot.
- (C) Membership in the Association shall provide protective rights and privileges for the Owner but shall also carry corresponding responsibilities, duties, and liabilities as outlined in these covenants and as shall otherwise be lawfully imposed by the Association.

5.04 Association Voting Rights.

The Association shall have two classes of voting membership:

- (A) Class A. Class A members shall be all those Owners as defined in Article II with the exception of the Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership by Article II. When more than one person holds such interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.
- (B) Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to approval and exercise veto power in conjunction with all votes by the Association's members including all votes by the members of the Association Board of Directors, so long as the Class B membership holds ownership in at least eleven percent (11%) of the Subdivision Lots, provided that the Class B membership shall cease and be converted to a Class A membership in the event the Class B membership owns less than eleven percent (11%) of the Subdivision Lots. Said approval and veto power may be exercised by the President or Secretary of the Declarant.

- 5.05 Board of Directors. David D. Nelson, representing the Declarant, and two (2) other elected members will form the Board of Directors. The Developer will remain a board member until all of the Lots in Irvine Acres are sold or until the Developer relinquishes full or partial responsibility to the Association. Declarant shall have veto power over the Board as set forth herein.
- 5.06 Indemnification. To the fullest extent permitted by law, every director and every officer of the Association, and the members of the Architectural Control Committee, and Declarant (to the extent a claim may be brought against Declarant by reason of its appointment, removal, or control over Board directors, officers, or Architectural Control Committee members) shall be indemnified by the Association, and every other person serving as an employee, or direct agent of the Association, or on behalf of the Association as a member of a committee or otherwise, may in the discretion of the Board, be indemnified by the Association, against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding or any settlement thereof to which such person may be a party, or in which such person may become involved, by reason of such person's being or having served in such capacity on behalf of the Association whether or not such person is a director, an officer, or a member of the Architectural Control Committee, or serving in such other specified capacity at the time such expenses are incurred; provided, however, that prior to agreeing to any such indemnification, the Board shall determine, in good faith, that such officer, director, member of the Architectural Control Committee or other Person, or Declarant, did not act, fail to act, or refuse to act willfully, fraudulently, criminally or with gross negligence, in the performance of his or her duties. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such person may be entitled at law or otherwise.
- 5.07 Limitation of Authority. The Association has no authority to impose any obligation, financial or otherwise, upon Declarant, Developer and/or the Architectural Control Committee.
- 5.08 Non-Liability of Officials. To the fullest extent permitted by law, neither Declarant, the Association president, any directors or officers of the Association, any Architectural Control Committee member, nor any other Members or committees of the Association shall be liable to any Association Member or any Owner or other Person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, inaction, omission, error, or negligence, made in good faith and believed to be within the scope of his or her duties.
- 5.09 Declarant's Control of the Association. Notwithstanding anything in this Article V or elsewhere in this Declaration to the contrary, Declarant shall maintain absolute and exclusive control over the Association and the Architectural Control

Committee, including appointment and removal of the president and all other officers of the Association, all directors of the Board, and all members of the Architectural Control Committee, until the earlier of the following: (i) at such time as Declarant chooses to turn over the operation of the Association to the Association; or (ii) at such time as the last Lot is sold. Until such a time, only Declarant will be entitled to cast any votes with respect to the election and removal of Association officers or directors and members of the Architectural Control Committee, or any other matter requiring the vote or approval of Association or Architectural Control Committee members. Declarant voluntarily may (but shall not be required to) at any time relinquish all or any part of Declarant's control and rights under this Section 5.09 by written instrument without affecting any rights of control not relinquished. Once Declarant relinquishes control or the last Lot is sold, and if there is a dispute between an owner and the ACC, then the Board of Directors shall have the authority to determine the proper course of action. Further, the Board of Directors has final authority over the decisions of the ACC.

## **ARTICLE VI ASSESSMENTS**

- 6.01 Assessments in General. Each Owner (not including any mortgagee as long as it is not the Owner), by and at the time of acceptance of a deed or other conveyance of an interest in a Lot, is deemed to personally covenant and agree to pay the Association all Assessments then due and unpaid to the time of acquiring title and all such charges thereafter falling due under such Owner's ownership. Each new Owner shall be responsible for all applicable Assessments, which are due on the date of closing on the property. The dues will be prorated beginning on the date of closing.

Any builder or general contractor, having purchased a Lot with the intent of constructing a house for speculative sale, shall not be required to pay Assessments until the house is sold, or one year after closing on the original purchase of the lot.

- 6.02 Purpose of Assessments. Except as otherwise herein set forth, the Assessments levied by the Association shall be used: (i) to promote the health, safety, and welfare of Owners; (ii) to enhance the value of the Subdivision; (iii) to pay the costs of administration of the Association; (iv) to pay all other Common Expenses; and/or (v) to otherwise further the interests of the Subdivision.
- 6.03 Regular Assessment. Except as otherwise specifically provided herein, each Owner of a Lot shall pay as its Regular Assessment its proportionate share of the Common Expenses of the Association, as may be provided for in the Association Bylaws, or as determined by the Board of Directors. Regular Assessments may be changed annually upon approval of the Board of Directors or by majority vote of the members.

6.04 Special Assessment. Special Assessments shall be levied by the Developer or Association against an Owner to Reimburse the Association for:

- (A) Costs incurred in bringing an Owner or an Owner's Lot into compliance with the provision of this Declaration, the Association Bylaws, or applicable Association Rules.
- (B) Fines levied or fixed by the Association Board of Directors as provided herein.
- (C) Reimbursement to the Developer in those cases where Pottawatomie County draws a draft on the Developer's irrevocable letter of credit for the Development as a result of an Owner's failure to pay the tax obligations or Special Assessments for county bonded improvements to the Lot.
- (D) Attorneys' fees, interest, and other costs or charges provided to be paid as, or which are incurred in connection with a Special Assessment in accordance with this Declaration, the Association Bylaws, or applicable Association Rules.
- (E) Any charge designated as a Special Assessment in this Declaration, the Association Bylaws, or applicable Association Rules.

6.05 Additional Special Assessments. In the event that the Association undertakes to provide materials or services which benefit individual Owners or Lots and which can be accepted or not by individual Owners, such Owner agrees that the costs thereof shall be a Special Assessment. Prior to and during construction, if the Association is required to maintain or mow a Lot, the Owner of such Lot hereby agrees that the costs thereof shall be a Special Assessment.

## **ARTICLE VII INSURANCE**

7.01 Authority to Purchase. The Association shall purchase and maintain such insurance, and in such types and amounts, as its Board of Directors shall determine from time to time, which shall include without limitation, directors and officers liability coverage with a limit of not less than one million dollars (\$1,000,000.00). Such policies, and endorsements thereon, or copies thereof, shall be deposited with the Association and shall be available to the Association members for inspection upon reasonable request.

7.02 Owner's Responsibility. It shall be each Owner's responsibility to purchase, at his or her own cost, such insurance as he or she deems appropriate for his or her own Lot, improvements thereon, furnishings and personal property therein, personal property stored elsewhere, personal liability, and such other insurance which the Owner desires.

- 7.03 Non-Liability of Association/Board/President. Notwithstanding anything in this Declaration to the contrary, neither the Association, any member of its Board, any officer of the Association, nor the Developer shall be liable to any Owner or Member, Mortgagee, or other Person, if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.

## ARTICLE VIII ARCHITECTURAL CONTROL COMMITTEE

- 8.01 Minimum Standards. Architectural considerations and preservation of natural amenities are major planning objectives in the development of the Subdivision. The items outlined herein are not intended to be unduly restrictive or inflexible, but rather to be used as minimum standards to attain and maintain a desirable level of consistency and quality in community appearance and generally maintain property values throughout the Subdivision.
- 8.02 Architectural Control Committee. The Association shall have a standing committee to be named the Architectural Control Committee, of not less than one nor more than 3 members, to be appointed by the Association Board of Directors to review and implement the requirements of this Article. The Architectural Control Committee shall consist of the Developer alone until the last Lot is sold or until the Developer relinquishes full or partial responsibility to the Association.
- 8.03 Plans Approval. No building, structure, or improvement including, but not limited to basement excavation, grading, walls, fences, major landscaping, etc, shall be commenced, constructed, or maintained on any Lot, nor shall any exterior addition, change, or alteration thereto be made until proposed building plans or improvement plans have been submitted to and approved in writing by the Architectural Control Committee. Generally, building and improvement plans will include, but not be limited to:
- (A) A site plan indicating property lines, location of proposed structure and/or side improvements, and location of easements and setbacks.
  - (B) A floor plan(s) indicating wall lines, room use, window and door locations, and overall structure dimensions.
  - (C) Exterior, street facing elevation indicating architectural treatment, roofline, window and door openings, exterior materials and colors, and proposed ground line.

- (D) Exterior fencing, according to the restrictions set forth in Article VIII herein.
  - (E) All improvements shall be constructed and maintained in accordance with approved plans.
- 8.04 The Architectural Control Committee shall act upon the plans and specifications submitted within fifteen (15) working days after receipt of all first time construction and within thirty (30) working days for homeowner revisions and additions. If no action is taken by the Architectural Control Committee within the specified periods, the plans shall be deemed approved. Should the Committee reject a plan or make a request for changes and the plans are subsequently resubmitted, the Committee shall have ten (10) working days upon which to act on the resubmitted plans.
- 8.05 After approval of the initial residential building plans, as set forth more fully in this Article VIII, the Developer reserves the right to delegate responsibility for approval of all improvements and further structures on any given Lot to the Association.
- 8.06 Other Requirements. Approval of plans by the Association in no way abates or deletes compliance with or the securing of any approvals, permits, codes, or ordinances which may be required by Pottawatomie County and/or any future governing authorities, now or in the future. No construction shall be undertaken unless and until the general contractor has been approved by the Architectural Control Committee.

## ARTICLE IX BUILDING/LOT USE RESTRICTIONS

- 9.01 Land use and Building Type. Lots Thirty-Four (34) through Fifty-Seven (57), inclusive, shall be used for single-family household units. Lots Fifty-Eight A (58A) through Seventy-One B (71B), inclusive, shall be used as Duplex Units, as defined in Section 2.12. No manufactured or mobile home shall be permitted. "Modular Homes," defined as off-site, stick built homes that have wooden floor joists, are not permitted.
- 9.02 Approval of Construction Plans. No structure or improvement set out herein shall be commenced or maintained until: (1) the general contractor has been approved by the Architectural Control Committee; and (2) approval of compliance with provisions specified herein by the Architectural Control Committee; and (3) all necessary permits have been issued by Pottawatomie County and other applicable governing authorities. After approval, however, the Owners are encouraged to delay installing structures or improvements, such as fences and sprinkler systems, until such time as the water drainage characteristics of the Lot have been evaluated and characterized.

- 9.03 Basements. All single-family residential dwelling structures erected on the Lots shall have either an enclosed basement or walkout basement with a square footage of at least 50% of the first floor area. An adequate drainage system and exterior waterproofing shall be installed around the perimeter of the basement. The lowest floor of any home, including the garage, must be 24 inches above the final grade at curb level, unless the Owner receives prior written approval for a different level above the final grade from the Architectural Control Committee. Slab homes may be permitted ONLY with the developer's specific approval. The home must be built sufficiently above curb level to appear as if it has a basement. The square footage of the footprint should be larger than the footprint of a basement home and is in no way allowed to give the impression it is a cheaper home.
- 9.04 Roofline. No roofline shall have less than a 5/12 pitch.
- 9.05 Building Construction. Building siding shall be of brick, stone, stucco, wood, masonite or any combination of the above. A minimum of 120 square feet of brick, rock, or other comparable material that has been approved by the Architectural Control Committee, shall be attached on the front of each home.
- 9.06 Exterior Materials and Colors. Exterior surfaces should be of natural appearing materials and colors that blend and are compatible with the natural landscape and adjacent homes. "Earth tone" colors are required. Metal exterior surfaces and metal roofs shall be subject to the review and disapproval or disallowance by the Architectural Control Committee.
- 9.07 Set Back Requirements. All structures shall maintain a minimum front set back distance of twenty-five (25) feet to the wall line from the street ROW/property line and a minimum of eight (8) feet to the nearest structure wall line from all other property lines, and minimum rear set back of distance of fourteen (14) feet to the wall line from the rear property line. A variety in set back distances and first floor elevation from Lot to Lot is encouraged.
- 9.08 Minimum Floor Area/Building Height. All single-family residential dwelling structures within the Subdivision shall have the minimum square feet set out herein. All one level ranch homes will have a minimum of 1400 square feet exclusive of garage, basement, porches, and deck. All Duplex Units shall have a minimum of 1200 square feet exclusive of garage, basement, porches, and deck. All single family dwelling structures of one and one-half (1 ½ ) or two (2) stories in height must have a minimum of 900 square feet on the main floor and 400 square feet on the second floor, exclusive of garage, basement, porches, and decks. The maximum height of any dwelling structure shall be two (2) stories.
- 9.09 Garage and On-site Parking Requirements. Each single-family residential dwelling structure shall include at minimum a two-car attached garage and two (2) exterior on-site parking spaces of 200 square feet per space included within

the driveway. A three-car attached garage shall be considered maximum. If a dwelling has a two-car garage, a separate, single, paved parking pad beside and connected to the dwelling may be allowed, but only with approval of the Architectural Control Committee. No separate parking pads will be allowed if there is a three-car enclosed garage. A Duplex Unit may have a one-car attached garage. If a Duplex Unit has a one-car garage, a separate, single, paved parking pad beside and connected to the dwelling may be allowed, but only with approval of the Architectural Control Committee. All on-site parking spaces shall be located entirely within Lot property boundaries.

- 9.10 Sidewalks. Each Lot shall have a five (5) foot wide sidewalk across the entire front of the Lot and residential dwelling structure, beginning two (2) feet from the street and curb. In addition, for corner Lots, a five (5) foot wide sidewalk shall also be placed across the side yard nearest the street, beginning two (2) feet from the street and curb.
- 9.11 Outside Antenna. No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Subdivision without approval from the Architectural Control Committee. The ACC will base any approval on the ability to eliminate, or at least reduce, the visibility of said apparatus from public streets and Common Areas. No satellite dishes shall be permitted which are larger than one (1) meter in diameter. No television antennas used to receive a distant signal ("stick" antennas), antennas used for AM/FM radio, amateur ("ham") radio, Citizen's Band ("CB") radio or Digital Audio Radio Services ("DARS") shall be placed, allowed, or maintained upon any portion of the Property. The Declarant, by promulgating this Section, is not attempting to violate the Telecommunications Act of 1996 (the "1996 Act"), as same may be amended from time to time. This Section shall be interpreted to be as restrictive as possible while not violating the 1996 Act. In the event that it is impossible to receive an adequate signal from a non-visible location, the installation of antennas shall be subject to rules and regulations which may be promulgated by the Board setting out preferred alternate locations for antennas. The foregoing covenant shall not apply to a "community antenna" necessary for the implementation for a cable TV system to serve the Subdivision and the surrounding areas.
- 9.12 Construction Time Limitations. The major intent in the conveyance and selling of Lots within the Subdivision is to encourage the construction of single-family dwelling units thereon. No Lot shall be purchased and held in a vacant condition beyond one (1) year without approval of the Board of Directors in writing on an annual basis. All construction improvements, alterations, etc., commenced shall be pursued diligently to completion within nine (9) months of the starting date. A vacant Lot will in no way exempt the Lot Owner from Association Regular or Special Assessments or minimum utility charges that are otherwise due. The maintenance and mowing obligations to ensure visual quality of the Subdivision

begin at the date of conveyance. The Board of Directors may assess and levy a reasonable charge against an Owner for failure to comply with the requirements of this paragraph with the concurrence of 66% of the members of the Board.

All Lots must be maintained in an attractive manner, and grass and weeds must be regularly mowed. Notwithstanding the terms of Article IX of this Declaration, should an Owner or his contractor fail to comply with this requirement, the Board of Directors may, without providing prior notice to the Owner, perform the mowing or other Lot maintenance and charge the Owner through a Special Assessment to the Owner's Association dues account. The Owner will be provided a notice of such Special Assessment, and if the costs and expenses necessary to correct violations remain unpaid after 60-days, the debt to the Association shall become a lien as of the date of the filing of a notice of said lien in the Pottawatomie County Register of Deeds Office, enforceable as a lien upon recording of the debt and lien in accordance with Kansas lien law.

- 9.13 Landscaping. All ground surfaces disturbed by construction activities shall be promptly graded to ensure positive drainage and to conform and blend with the existing ground surface. Lawn seeding and plant materials installation shall occur within twelve (12) months of dwelling occupancy. A minimum of 3 trees and 6 shrubs shall be installed and maintained on each Lot within 12 months of occupancy. Lawns, bushes, and trees must be maintained in an esthetically appealing manner and lawns must be mowed regularly and kept at a height of 6 inches or less.
- 9.14 Adequate Drainage. The Owners and their contractors are required to ensure that proper and adequate drainage exists on the Lot to ensure that the Lot does not cause drainage or flooding damage to surrounding Lots. As a general rule, the Owners shall ensure that the Lots have proper drainage from the back of the Lot toward the front, unless it is determined by the Architectural Control Committee that it is appropriate for the Lot to drain in another direction to protect that Lot or adjoining Lots. Should flooding or other drainage issues occur on the Owners' Lot that negatively impacts that Lot, surrounding Lots, or the Common Areas, the Owner is required to repair such drainage issue and ensure proper drainage from the Lot. In those cases where the Lot slopes toward the back of the Lot, the Architectural Control Committee may require the Owner to construct or install drainage mechanisms that drain water toward the street as a condition of approval of any Plans by the Committee. The Board of Directors may enforce this provision pursuant to the provisions of Article X, hereinafter.
- 9.15 No Obstructions to Drainage. No Owner shall erect, construct, maintain, permit, or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated as a "drainage easement," or which has been intentionally contoured to facilitate drainage, except that, with the prior consent of the Architectural Control

Committee, nonpermanent structures may be erected in those areas which contain only underground closed conduit storm drainage facilities.

9.16 Underground Utilities. All utilities shall be underground including, but not limited to electric, telephone, cable and/or fiber optics, and TV and internet conductor lines. No overhead wiring or supporting poles of any kind shall be allowed, except for emergency alert systems.

9.17 Exterior Fencing. All fencing shall be approved by the Architectural Review Committee prior to installation. All perimeter fencing shall be black and metal, with an open picket style. Privacy screens of other materials may be permitted by the Architectural Review Committee around patios and swimming pools so long as the materials and design are in harmony with the house. No fences shall be taller than six (6) feet. No fence shall extend past the back corners of the house toward the front of the house. No side yard or front yard fences will be allowed on any Lot, except on corner lots, where side yard fences may be permitted upon the prior written approval of the Architectural Control Committee. No chain link, wire, wood panel or stockage fencing shall be permitted.

Any broken, bent, missing, faded, rusted or otherwise unsightly sections of fencing shall be repaired or replaced. All gates shall be maintained in good working condition.

9.18 Construction Quality. All construction shall meet current standards set forth in (1) the Uniform Building Code by International Conference of Building Officials with modifications as determined by the Architectural Control Committee and (2) building codes and regulations set forth by Pottawatomie County, Kansas.

Trash and debris shall be removed from each construction site on a regular basis. Lightweight material, packaging, and other items shall be weighted down to prevent wind from blowing such materials off the construction site. Mud and debris resulting from activity on the construction site shall be promptly removed from adjoining lots, public roads, and common open space. Erosion control measures must be in place and maintained during construction. Every effort shall be made to preserve topsoil during construction activities and redistribute topsoil over disturbed ground surface areas at the conclusion of grading activities.

9.19 Waiver of Building Restrictions. The intent of the foregoing building restrictions are set forth as standards to encourage quality construction and quality visual appearance throughout the Subdivision. Upon application, any of the included restrictions or conditions may be waived on a case-by-case basis by the Board of Directors if such revisions or variances are determined to be with good cause and/or in the best interest of the Subdivision.

9.20 Stormwater Pollution Prevention Plan. The Developer will obtain a Construction Stormwater Permit ("Permit") for the entire development. That permit will

include a Stormwater Pollution Prevention Plan (“SWP2”) that sets forth the “best management practices” that will be utilized to control erosion, sediment discharges, and reduce the potential of the contamination of stormwater runoff associated with construction activities, as well as comply with the other permit requirements. That Permit will be provided to each Lot Owner at the close of the Lot sale. Each Lot Owner is required to comply with each provision of the Permit. Additionally, each Lot Owner is required to complete a Kansas Department of Health & Environment (“KDHE”) Individual Lot Certification (“ILC”). The ILC is an agreement between the Lot owner and the State of Kansas to implement the SWP2 plan and meet all conditions of the Stormwater Pollution Permit. Construction site soil activities shall not begin until the Lot Owner receives authorization from the KDHE Bureau of Water. Notwithstanding the terms of Article IX of this Declaration, should an Owner or his contractor fail to comply with these requirements, the Board of Directors may, without providing prior notice to the Owner, perform the steps necessary to bring the Lot into compliance with the Permit or SWP2 and charge the Owner through a Special Assessment to the Owner’s Association dues account. The Owner will be provided a notice of such Special Assessment, and if the Costs and expenses necessary to correct violations remain unpaid after 60-days, the debt to the Association may become a lien upon the Lot of the Owner, enforceable as a lien upon recording of the debt and lien in accordance with Kansas lien law.

- 9.21 Erosion Control. All Lots shall be maintained in a clean and orderly manner during construction periods. Erosion control shall be the responsibility of each Lot Owner and in conformance with the stormwater permits issued by the County and/or the State of Kansas. It shall be the responsibility of the Lot Owner to remove all temporary erosion control measures once grass has been established and the threat of erosion has been mitigated. The Association shall have the right to protect any Lot from erosion by planting trees, plants, and shrubs to the extent necessary. Alternatively, erosion control by mechanical means such as providing drainage ways and/or dams or other means deemed necessary by the Association may be implemented. The Association, however, is under no obligation to take such actions as herein above provided. During the improvement of any Lot, every Owner of a Lot shall comply with all applicable State of Kansas statutes and regulations or local governing body rules and regulations to control erosion and prevent off-site damages caused by erosion. The Architectural Control Committee may require any Lot Owner to submit for approval an erosion control and drainage plan, and therein require that such plan be signed off by a licensed Engineer. In order to implement effective and adequate erosion control, the Association and its agents shall have the right, but not the obligation, to enter any Lot for the purpose of correcting or remedying any erosion control violations. Any costs of remediation attributable to a Lot Owner's failure to comply with applicable Kansas statutes and regulations or local governing body rules and regulations to control erosion incurred by the Association shall be the responsibility of the Lot Owner.

## ARTICLE X GENERAL COVENANTS AND RESTRICTIONS

10.01 Property Improvements. The Architectural Control Committee (ACC) must be consulted and provide approval in advance of any construction that modifies the exterior of any house. The ACC must also be consulted and provide approval before any changes or additions are made to the yard surrounding any house. Such items include as examples, but are not limited to:

Fences, storage sheds, car ports, decks and patios, impervious paths or other surfaces, pools, dog runs, green houses, play structures, tree houses, major landscaping, trellises, arbors, gazebos, pergolas, water features, tree clearing, grading, filling, awnings, driveways, parking pads, satellite dishes, television antennas, etc.

Storage sheds must be approved prior to construction, and must meet the following:

- Minimum size is 6 feet by 6 feet.
- Maximum size is 10 feet by 10 feet, with no side longer than 10 feet.
- Construction materials, as well as the colors of shed, trim, and shingles shall match the homeowner's house.
- Rubber, plastic, and barn style sheds are not allowed.
- No shed shall be placed in front of the corner of the house that is the greatest distance from the front of the house.

10.02 Vehicles and Parking. A vehicle is any car, truck, boat trailer, motorcycle, go-cart, RV, trailer, etc., that has, or is intended to have, wheels. Boats that for some reason are not on a trailer, are considered a vehicle. No wrecked, decrepit, unserviceable, unused, or inoperable vehicles shall be parked anywhere on any lot, except in an enclosed garage. No part of any Lot shall be used to make major repairs on automobiles or other vehicles, except in an enclosed garage. The parking of trucks above the one-ton category, construction equipment (i.e trailers, tools, loader, etc.), or any trailers shall be prohibited from parking within the development, except in an enclosed garage beyond the construction phase.

There shall be no parking of any vehicle, at any time, within the unpaved portion of any lot.

Passenger sized cars and pickups are to be parked within the enclosed garage, or on the paved driveway in front of the garage, or on a paved parking pad beside the house but connected to the driveway. A parking pad must be specifically approved by the ACC before construction and shall not be allowed if the house has a 3-car garage. Such vehicles parked on the public street must be moved at least every 24 hours.

The parking of boats no longer than 20 feet, and other small watercraft loaded upon a trailer shall be allowed as follows:

On a concrete paved driveway either in front of a garage stall, or beside the garage. However, the only time this is allowed is from two (2) days before Memorial Day until two (2) days after Labor Day. The rest of the year such vehicles must be within the enclosed garage or stored offsite.

The option of parking a boat on a concrete pad beside the garage is only allowed if the house has two (2) or fewer garage stalls.

Motorhomes, camping trailers, pop-up tents, and similar RVs shall not be parked on any lot, or in the street in front of any lot, for longer than 24 hours, and then only when being prepared for use elsewhere.

- 10.03 Animals. Outside pens, kennels or structures for the keeping of pets shall be placed in the rear yard and shall have a non-permeable floor surface such as concrete or asphalt, and completely screened from the view of adjacent neighbors. All construction of outside enclosures for household pets shall be approved by the ACC. All such structures shall be cleaned often and shall not be allowed to become an odor nuisance.

No animals, livestock (including but not limited to goats, pigs, and chickens) of any kind, other than household pets, shall be kept or maintained on any part of an Owner's property. Dogs and cats may be kept on any lot. No animal shall be kept, bred or maintained for any commercial use or purpose. Unless otherwise posted, no animals are allowed on recreation or common areas.

No animal shall be allowed to become a nuisance. A nuisance animal is defined as: Any animal which chases vehicles or molests passersby; or any animal that shows aggressive behavior to humans or other animals; or any animal which runs at large away from the property owner's lot; or any animal which soils, defiles, or defecates on public or private property, unless the owner immediately removes and properly disposes of the waste; or any animal which causes unsanitary or dangerous conditions to exist; or any animal which continuously barks, howls, whines or otherwise disturbs the peace and quiet of the neighborhood.

Any nuisance animal behavior must be documented in writing to show the pattern of the problem(s) and should be verified by at least two Owners.

Owners are encouraged to call the Sheriff for animal related problems, and 911 if an animal appears to be dangerous.

- 10.04 Lot Maintenance and Appearance. It is the responsibility of each Owner to maintain the appearance of the visible areas of the property. Poorly maintained structures, landscapes, unsightly items (as determined by the Board of Directors) such as tools, furniture, rubbish, etc., are in violation of the Rules. This guideline

also applies to contractors who shall remove trash and debris from their construction sites on a regular basis.

Lawn seeding and plant material installation shall occur within twelve months of dwelling occupancy. A minimum of three trees and six shrubs shall be installed and maintained on each Lot within twelve months of occupancy.

Garden plots are encouraged; however, garden plots shall not be permitted in front lawn areas. Garden plots are defined as plots for the raising of vegetables and do not include flower borders, landscape planting beds, or minor landscape improvements.

Lawn grasses shall be mowed frequently so as to keep them at a height of six (6) inches or less. Partial gravel or rocks used in the yard for landscaping may be allowed, subject to prior approval of the ACC.

- 10.05 Trash and Recycling Containers. Trash shall be stored in metal or plastic, leak-proof, air-tight containers. Trash and recycling containers shall be stored within the garage or an enclosed, screened area immediately attached to the dwelling structure. Trash and recycling containers should only be visible and available for removal on designated pickup days. Burning of trash, grass, weeds, etc., is prohibited. The Association will select and contract with a single trash removal company or contractor for the trash removal of the entire Development. The Association will pay for trash removal services and will assess a proportionate share of the common expenses of the Association for such trash removal services to each Owner as a Regular Assessment. Recycling services will remain the responsibility of the Owner to contract.
- 10.06 Easements. Owners grant agents and employees of the Association, the Sewer and Water Utility District Authority, and various utility companies serving the Subdivision, including, but not limited to Evergy, AT&T, Cox Cable, WTC, and any future named cable television company, an easement and access across their Lot, exclusive of dwelling area and as indicated on the plat, for the installation, repair, and maintenance of utilities, drainage, reading of meters, trash pickup, and exterior upkeep of dilapidated, unkempt properties and improvements thereon. The Owner also grants the utility companies access to verify the various exterior remote readout meter readings.
- 10.07 Commercial Activities. The Lots shall be used for residential purposes. No commercial or retail business shall be established or maintained on any lot. No churches or schools shall be permitted on any lot, except a home-school for a single family is allowed. Home occupations or avocations, such as accountants, licensed day-care or crafts may be conducted in the dwelling house with the approval of the Board of Directors of the Association.

- 10.08 Signs. No signs of any kind shall be displayed on any Lot or Common Area except temporary signs six (6) square feet or less in area, and such signs as may be required by legal proceedings, or the prohibition of which is precluded by law, including, but not limited to, political signs covered by K.S.A. 58-3820.
- 10.09 Nuisance Activities/Firearms and Other Weapons. No noxious or offensive activity shall be carried on within the Subdivision, which will constitute a public nuisance, to include noxious smells or excessive noise caused by pets or other activities. No property shall be used as a dumping ground for refuse, trash, garbage, debris or other waste, with all properties to be maintained in a sanitary condition. Outdoor burning of any kind shall be prohibited within the Subdivision unless approved by the Association. No firearms or other weapons such as bows and arrows or crossbows shall be discharged anywhere within the Subdivision.
- 10.10 Speed Limit. The speed limit within the Subdivision shall be 20 mph.
- 10.11 Failure to Pay Taxes or Special Assessments. From time to time, Pottawatomie County will levy property taxes or special assessments on a Lot to pay the principal and interest on bonds issued by Pottawatomie County for improvement projects. All Owners are required to pay any property taxes or special assessments levied against a Lot promptly. If an Owner fails to pay these taxes or assessments, and Pottawatomie County takes a draw on the Developer's letter of credit, the Developer and/or assigns until the last Lot is sold, or the Board of Directors thereafter, shall have the right to levy a Special Assessment on the Lot to reimburse the Developer for the amount drawn on Developers Letter of Credit attributable to said Lots and for all costs incurred by Developer as a result of said draw, including, but not be limited to, interest and attorney's fees. Such Special Assessment shall become a debt of the Owner to the Developer or Association, and shall become a lien upon the Lot of the Owner, as of the date the Developer or Association files a notice of said lien in the Pottawatomie County Register of Deeds Office, enforceable as a lien upon recording of the debt and lien in accordance with Kansas lien law.

## ARTICLE XI GENERAL PROVISIONS

- 11.01 Violation of Covenants. Unless otherwise set forth in a more restrictive manner in this Declaration, whenever an act or omission, an improvement or condition is determined to be in violation of the covenants or restrictions herein by the Board of Directors, the Board of Directors, or the Developer until the last Lot is sold, shall give written notice of the violation of these protective covenants or of any rule, regulation, or directive enforceable under these covenants to the Owner who is in violation specifying the nature of the violation and the remedy necessary to correct the violation. If corrective action is not taken and completed by the Owner within a reasonable time, the Board of Directors or its agent may enter upon the Owner's property and do whatever is necessary and proper to correct the

violation at the Owner's expense. Costs and expenses necessary to correct violations shall be billed to the Owner as a Special Assessment and become a debt of the Owner to the Association and may become a lien upon the Lot of the Owner, enforceable as a lien upon recording of the debt and lien in accordance with Kansas lien law. The Board of Directors may promulgate rules and procedures to fairly and reasonable process and handle violators and violations. Such rules and procedures, at the discretion of the Board of Directors, may include the right for the Board to levy a fine. Any such fine may be billed to the Owner as a Special Assessment and become a debt of the Owner to the Association and may become a lien upon the Lot of the Owner, enforceable as a lien upon recording of the debt and lien in accordance with Kansas lien law.

- 11.02 Enforcement. The Board of Directors, or until the sale of the last Lot herein, David D. Nelson, Trustee of the David D. Nelson Trust Agreement dated January 12, 2005, and Leon Harold Borck Trustee of the Leon Harold Borek Trust Agreement dated September 23, 1994 or assigns, each 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 or by the Developer, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.
- 11.03 Severability. Invalidation of any one of these covenants or restriction by judgment or Court Order shall in no way affect any other provisions, which shall remain in full force and effect.
- 11.04 Term of Covenants. The covenants and restriction of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded after which time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years. These covenants cannot be changed or altered until the last Lot in the development has been sold without the express written consent of the Developer. After the last Lot has been sold or with the written consent of the Developer, these covenants may be terminated or amended as provided by the Bylaws of the Association.
- 11.05 Amendment by Declarant. Amendments to this Declaration made prior to the date that Declarant turns over operation to the Association shall become effective when approved in writing by Declarant and recorded in the Office of the Register of Deeds of Pottawatomie County, Kansas; provided, however, that such amendment shall not materially affect the right of any then existing mortgage holder or Owner. Declarant reserves the right to correct errors that would prevent the covenants, conditions, restrictions, liens, assessments, easements, privileges, rights, and other provisions contained herein from running with the land, and any such amendments shall not be construed as materially affecting the right of any then existing mortgage holder or Owner.

- 11.06 Amendments, Other. Amendments to this Declaration other than those provided in Section 11.05 shall be proposed in the following manner:
- (A) Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment shall be considered.
  - (B) A resolution adopting a proposed amendment may be proposed by any Owner and may be adopted by a two-third (2/3) vote of the Members of the Association.
  - (C) A copy of each amendment shall be filed with the Office of the Register of Deeds of Pottawatomie County, Kansas.
- 11.07 Annexation. Additional property and Common Area may be annexed to the Subdivision by the Declarant until the last Lot is sold. Any annexation must be filed and recorded at the Office of Register of Deeds, Pottawatomie County, Kansas, to be in force. It is understood that the Declarant shall be allowed to include subsequent phases to have coverage under these Protective Covenants.
- 11.08 Township, County, and State Regulations. Where township, county, or state regulations, codes, ordinances, or laws are applicable and more restrictive than these covenants and restrictions, they shall supersede the provisions herein.
- 11.09 Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, its employees, agents and subcontractors, or parties designated by it in connection with the construction, completion, sale, or leasing of the Lots, or any part of the property owned by Declarant.

## ARTICLE XII DUPLEX GENERAL COVENANTS AND RESTRICTIONS

The real property and Lots and Common Area Tracts contained within Irvine Acres Subdivision, Unit Two, more particularly described as Lots Fifty-Eight A (58A) through Seventy-One B (71B) inclusive, together with certain land designated as Common Area more fully described as Tracts C, D, and E, is subject to the conditions, covenants, restrictions, reservations, and easements set forth above, and as provided in this Article XII.

- 12.01 Party Walls. All division walls separating the respective Duplex Units within a Duplex Building and the foundation on which they are erected shall be and are hereby considered to be party walls and the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Said party walls shall be for the joint use of the adjoining Owners, and shall be left intact, repaired or replaced in the manner as

originally constructed, and neither party shall alter or change said party wall in any manner, interior decoration excepted. The party wall shall at all times remain in the same position as when erected. Each Owner shall have a perpetual easement for use of the party wall, including any necessary repair.

- 12.02 Party Wall Easement. A party wall easement is hereby established and reserved over that part of the Lots and within the Duplex Units hereinabove described in which any part of the party wall is located or constructed, together with the right to restore such party wall or to restore, replace, repair, or otherwise make operable any plumbing lines, vent stacks for plumbing and heating, electricity, pipes, and conduits serving improvements using such party wall. Such party wall easement shall be a cross easement in favor of each Lot and Duplex Unit adjoining such party wall.
- 12.03 Party Wall Utility Easement. An easement for utility services within each Duplex Building is hereby reserved for the benefit of each Duplex Unit, as dominant tenement, over, under, and through the adjoining Unit as the servient tenement.
- 12.04 Party Wall Repairs. All repairs and replacement of said party walls shall be at the joint and equal expense of adjoining duplex owners unless damage or destruction results from the negligent act of one of the Owners (or a person acting under the license or consent of one of the Owners). If a party wall is destroyed or damaged by fire or other casualty, other than by the willful act or negligence of an Owner of a Unit that is adjacent to a party wall, each of the Owners of the Units that are adjacent to each party wall shall bear an equal share of the expense to repair or rebuild the party wall. If an Owner of a Unit that is adjacent to a party wall or his guests, tenants, lessees, invitees, or licensees shall willfully or negligently cause damage to or destruction of a party wall, such Owner shall bear the entire cost of repair or reconstruction thereof. Whenever a party wall is rebuilt, it shall be constructed in the same place where it now stands, except that such wall shall be built according to code requirements existing at the time of the construction.
- 12.05 Common Elements. Each Owner shall have an undivided interest in the Common Elements. All repairs or replacement of said Common Elements shall be at the joint and equal expense of those Units served by the Common Element, unless the need for the repair or replacement was the result of the negligent act of one of the Owners (or a person acting under the license or consent of one of the Owners). In the event of damage or destruction of such Common Element from the negligence of either Owner, such negligent party shall bear the entire cost of repair or reconstruction.
- 12.06 Driveway Maintenance. The Owners shall maintain their respective driveway improvements so that the appearance of the driveway improvements is one driveway. The Owners shall equally share the cost of any maintenance or repair

of the driveway, except that any damage caused by the negligence of one owner shall be the responsibility of the owner who caused the damage.

- 12.07 Exterior Paint. Both Units of a Duplex Building shall be painted the same color, and Owners should cooperate and coordinate necessary painting of a Building. Each Duplex Building shall be painted in a uniform color, which shall be agreed upon by the Owners of the Units in the Building. In the event that both owners do not agree, any exterior painting shall be done in the existing color(s).
- 12.08 Roof, Foundation and Gutter Maintenance. Each Owner shall maintain and repair, at such Owner's sole expense, the roof, foundation, interior and exterior of the Duplex Unit, and gutters on their Unit so as to protect the structure and interior. When the roof or gutters need to be replaced, the Owners shall cooperate and coordinate such replacement so that the roof or gutters of the entire building are replaced at the same time to maintain a uniform appearance. In the event that repairs or replacement are made to the roof or gutters on only one Unit of the Duplex Building, such repair or replacement shall be in conformity with the color, size, shape and texture of the existing materials to maintain a uniform appearance to the greatest extent possible.

**[Remainder of Page Intentionally Left Blank; Signature Pages Follow]**

IN WITNESS WHEREOF, David D. Nelson, Trustee of the David D. Nelson Trust Agreement dated January 12, 2005; the Declarant or Developer herein, has caused the Declaration of Restrictive Covenants to be signed, this 2<sup>ND</sup> day of September 2022.

BY: David D. Nelson  
David D. Nelson, Trustee

STATE OF KANSAS

COUNTY OF POTTAWATOMIE

BE IT REMEMBERED, that on this 2<sup>ND</sup> day of September 2022, before me, the undersigned, a Notary Public in and for said state, personally appeared David D. Nelson, Trustee of the David D. Nelson Trust Agreement, dated January 12, 2005, known to me to be the person who executed the Declaration on behalf of the David D. Nelson Trust Agreement, dated January 12, 2005, and acknowledged to me that he executed the same for the purposes therein stated.

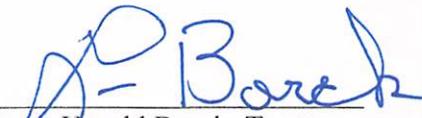
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.



Krista Hess-Klug  
Notary Public

My Commission Expires: 11/17/2022

IN WITNESS WHEREOF, Leon Harold Borck, Trustee of the Leon Harold Borck Trust Agreement dated September 23, 1994; the Declarant or Developer herein, has caused the Declaration of Restrictive Covenants to be signed, this 2<sup>ND</sup> day of September, 2022.

BY:   
Leon Harold Borck, Trustee

STATE OF KANSAS

COUNTY OF POTTAWATOMIE

BE IT REMEMBERED, that on this 2<sup>ND</sup> day of September, 2022, before me, the undersigned, a Notary Public in and for said state, personally appeared Leon Harold Borck, Trustee of the Leon Harold Borck Trust Agreement dated September 23, 1994, known to me to be the person who executed the Declaration on behalf of the Leon Harold Borck Trust Agreement dated September 23, 1994, and acknowledged to me that he executed the same for the purposes therein stated.

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



  
Notary Public

My Commission Expires: 11/17/2022

IN WITNESS WHEREOF, David D. Nelson, Manager of the Elbo Creek LLC; the Declarant or Developer herein, has caused the Declaration of Restrictive Covenants to be signed, this 2<sup>nd</sup> day of September, 2022.

ELBO CREEK, LLC,  
BY: David D. Nelson  
David D. Nelson, Manager

STATE OF KANSAS

COUNTY OF POTTAWATOMIE

BE IT REMEMBERED, that on this 2<sup>nd</sup> day of September, 2022, before me, the undersigned, a Notary Public in and for said state, personally appeared David D. Nelson, Manager of the Elbo Creek LLC, known to me to be the person who executed the Declaration on behalf of Elbo Creek, LLC, by authority of its Members and acknowledged to me that he executed the same for the purposes therein stated.

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



Krista Hess-Klug  
Notary Public

My commission Expires: 11/17/2022