

**DECLARATION OF PROTECTIVE COVENANTS
FOR CERTAIN LOTS LOCATED IN
ELBO CREEK ESTATES, UNIT FIVE SUBDIVISION
POTTAWATOMIE COUNTY, KANSAS**

THIS DECLARATION is made on the date provided below by Elbo Creek, L.L.C. a Kansas Limited Liability Company (hereinafter "Declarant").

KNOW ALL MEN BY THESE PRESENT:

WHEREAS, Declarant is the owner/developer of real estate located within Elbo Creek Estates, Unit Five Subdivision, Pottawatomie County, Kansas, to wit: Lot 167 through Lot 191, inclusive, together with certain land designated as Common Area on the recorded plat of said Elbo Creek Estates Unit Five Subdivision, as more fully described in the legal description attached hereto as **Exhibit "A"** ("Subdivision"); 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 Elbo Creek Estates West 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



Betty Jo Abitz-Register of Deeds
Pottawatomie County, Kansas

Book: 742 Page: 90

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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 each Lot contained therein, described in Exhibit "A", 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 Elbo Creek Estates West 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 mean the Developer alone until after the first 25 Lots located within Elbo Creek Estates, Unit One Subdivision, Pottawatomie County, Kansas, as set forth in the Declarations recorded at Book 469, Page 190 ("Unit One"), are sold or until the Developer relinquishes full or partial responsibility to the Association. After the first 25 Lots in Unit One are sold or the Developer relinquishes full or partial control, it shall mean and refer to the elected board 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 "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.

- 2.06 "Common Area" shall mean and refer to that plat of land delineated and so designated on the recorded plat within the Subdivision, and situated within the tract described in Exhibit A, to be owned by the Association upon the conveyance of such common area to the Association by the Declarant.
- 2.07 "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 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, 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.
- 2.08 "Declarant" shall mean and refer to Elbo Creek, L.L.C., its successors and assigns, or any person or entity to whom Declarant's rights hereunder are assigned in writing, Elbo Creek, L.L.C. being the owner and developer (hereinafter also referred to as "Developer") of the real estate described in Exhibit A and the grantor of the building Lots contained within the Subdivision.
- 2.09 "Declaration" shall mean this Declaration and any amendments thereto.
- 2.10 "Lot" shall mean and refer to each of the above described Lots delineated and numbered 167 through 191, inclusive in Elbo Creek Estates, Unit Five Subdivision. Each Lot is held and sold by the Declarant for the exclusive purpose of constructing single family residential dwellings (one dwelling residence per Lot) in compliance with the covenants, conditions, restrictions, and easements set forth in this Declaration.

- 2.11 "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.
- 2.12 "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.
- 2.13 "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.
- 2.14 "Subdivision" or "Properties" shall mean and refer to the land parcel described in Exhibit A, being a part of Elbo Creek Estates, Unit Five Subdivision.

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 created named "Elbo Creek Estates West 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. The Subdivision shall become a part of the Elbo Creek Estates West Homeowners Association as set forth 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.
- (B) Any Owner of Property within the Subdivision shall become a member automatically and immediately upon receiving title to any Lot. Regular Assessments and, if applicable, Special Assessments, automatically become due and payable upon the earlier of either: (1) the completion of the home; or (2) six (6) months after the first deed to transfer the Lot and Property is filed.
- (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. The Developer alone will form the Board of Directors until the first twenty-five (25) Lots of Unit One are sold or until the Developer relinquishes full or partial responsibility to the Association and has the right to remain as one of the three members of the Board of Directors of said Association until the last Lot of the development of Elbo Creek Estates is sold. Declarant shall have veto power over the Board as set forth herein.

5.06 Inter-Board Cooperative Agreement. A second developmental tract on the east side of Elbo Creek will occur in the future and a second Homeowners Association, called the "Elbo Creek Estates East Homeowners Association" will be formed for that tract. Upon the commencement of the development and purchase of building Lots situated in that tract of land east of Elbo Creek and the formation of a another Homeowners Association, each respective Homeowners Association shall enter into an Inter-Board Cooperative Homeowners Association Agreement that will govern the combined use of the collective common areas; community services; and collectively enforce the covenants, conditions, restriction and easements set forth in this Declaration and the Declaration of use and Covenants for the Property in tract of land east of Elbo Creek. The Inter-Board Cooperative Agreement will also provide for the collective use of common facilities on the respective tracts of land if each side agrees to jointly participate in the cost associated with such facilities.

- 5.07 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.
- 5.08 Limitation of Authority. The Association has no authority to impose any obligation, financial or otherwise, upon Declarant, Developer and/or the Architectural Control Committee.
- 5.09 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.
- 5.10 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 5.10 by written instrument without affecting any rights of control not relinquished.

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.
- 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.
- 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 Developer has the right to be the sole member of this committee until the last Lot in the Elbo Creek Estates is sold.
- 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 seven (7) working days after receipt of all first time construction and within thirty (30) 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) 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.

ARTICLE IX BUILDING/LOT USE RESTRICTIONS

- 9.01 Land use and Building Type. Lots 167 through 191, inclusive, are zoned R-1 and shall be used for single-family household units. 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) approval of compliance with provisions specified herein by the Architectural Control Committee; and (2) all necessary permits have been issued by Pottawatomie County. 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. In the sole discretion of the Architectural Control committee, a slab home may be permitted, but any slab home must be built so that it appears as if it has a 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.
- 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 80 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 recommended. 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 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 one car, attached garage and two (2) exterior on-site parking spaces of 200 square feet per space included within the driveways. 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, five (5) foot wide sidewalks shall be placed across the appropriate side yard nearest paralleling 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 which is visible from any street, Common Area or other Lot unless it is impossible to receive signals from some other location. In that event the receiving device may be placed in a visible location. 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 with 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 beyond the first six (6) months of ownership, such 6 month time period being computed from the date of the first deed transfer from the Developer to an Owner. 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.

Prior to and during construction, all Lots must be maintained in a slightly 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.

- 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 and street, 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 fences must be approved by the Architectural Control Committee whether being constructed by the builder or by the subsequent homeowners. No chain link fences will be allowed. Fences are to be constructed of plastic or Cedar wood, or such material that is comparable in quality and appearance as may be approved by the Architectural Control Committee. On all Lots, no fence will be taller than 6 feet in height, except fences surrounding swimming pools, and no fence will 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.
- 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. 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 Architectural Control Committee or 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. 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 Driveway/Street Parking. No wrecked, decrepit, unserviceable or unused (as defined by the Bylaws or Rules of the Association) vehicles shall be parked on driveways or lawn areas; nor shall said driveway or lawn area be used to make major repairs on automobiles or other vehicles. The parking of trucks above the one-ton category or construction equipment in driveways or on streets on a continuing basis shall be prohibited. The parking of vehicles and/or boats, water craft or trailers of any sort on the street for longer than a twenty-four (24) hour period shall be prohibited. The parking of boats, watercraft, commercial vehicles, or trailers of any sort in driveways for longer than a twenty-four hour period shall also be prohibited.
- 10.02 Household Pets. Owners may keep normal household pets provided they do not constitute a nuisance, a danger, or visual distraction to adjoining Lot Owners or the Subdivision as a whole. Unattended pets shall not be allowed beyond the Owner's property. Outside pens, kennels or structures for the keeping of pets shall be architecturally compatible and 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 Architectural Control Committee. Household pets, in terms of noise, barking, odor, and view should be the problem of the Owner rather than adjacent neighbors, and if the pets cause odor or excessive pet noise, the Owner shall be prohibited from keeping pets on the property. No commercial kennels or breeding facilities shall be kept or placed on any lot.

- 10.03 Gardens. Garden plots are allowed and encouraged; however, garden plots shall not be permitted in front lawn areas. Garden plots are defined generally as plots for the raising of vegetables and do not include flower borders, landscape planting beds, or minor landscape improvements.
- 10.04 Trash Storage/Removal. Trash shall be stored in metal or plastic, leak-proof, air-tight containers. Trash containers shall be stored within the garage or an enclosed, screened area immediately attached to the dwelling structure and available for removal on designated pickup days. Burning of trash, grass, weeds, etc., is prohibited. The Developer strongly urges the Association to select and contract with a single trash removal company or contractor for the trash removal of the entire Development. If the Association contracts for trash removal, the Association will pay for trash removal services and will assess a proportionate share of the common expenses of the Association for such removal services to each Owner as a Regular Assessment.
- 10.05 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 Westar, AT&T, Cox, and any other utility 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 Sewer and Water Utility District Authority access, on an annual basis, to verify any exterior remote readout meter reading.
- 10.06 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. Home occupations or avocations, such as accountants, day-care or crafts may be conducted in the dwelling house with the approval of the Board of Directors of the Association.
- 10.07 Signs. No signs of any kind shall be displayed on any Lot or Common Area except temporary signs six (6) 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.
- 10.08 Nuisance Activities/Fire Arms. 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. 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 shall be discharged within the Subdivision.
- 10.09 Speed Limit. The speed limit within the Subdivision shall be 25 mph.

- 10.10 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.
- 11.02 Enforcement. The Board of Directors, or until the sale of the last Lot herein, the Developer, David D. Nelson, Trustee of the David D. Nelson Trust Agreement dated January 12, 2005, an undivided one-half interest; and Leon Harold Borck, Trustee of the Leon Harold Borck Agreement dated September 23, 1994, an undivided one-half interest and Elbo Creek, L.L.C. 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 restriction, 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.

[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, owner of an undivided one-half interest; and Leon Harold Borck, Trustee of the Leon Harold Borck Agreement dated September 23, 1994, owner of an undivided one-half interest; and Elbo Creek, L.L.C., the Declarant or Developer herein, has caused this Declaration of Restrictive Covenants to be signed by its Manager, dh

This 7 day of Nov, 2016.

ELBO CREEK, LLC,
a Kansas Limited Liability Company
Declarant

[Handwritten signature of David D. Nelson]
BY: David D. Nelson, Manager

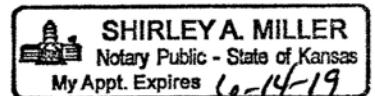
STATE OF KANSAS)
) ss:
COUNTY OF POTTAWATOMIE)

BE IT REMEMBERED, that on this 7 day of November, 2016, before me, the undersigned, a Notary Public in and for said state, personally appeared David D. Nelson, Manager of Elbo Creek, LLC, a Kansas Limited Liability Company, 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 WHERE OF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

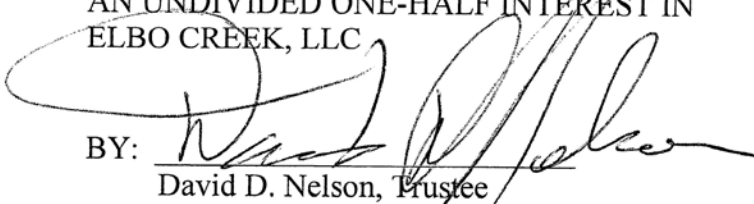
Shirley A. Miller
Notary Public

My Commission Expires: 6-14-2019



WHEREFORE, this Final Declaration of Protective Covenants for Elbo Creek Estates, Unit Five Subdivision is made effective on this 7 day of November, 2016.

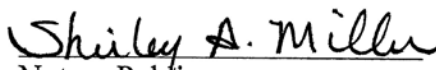
DAVID D. NELSON, TRUSTEE OF THE
DAVID D. NELSON TRUST AGREEMENT,
DATED JANUARY 12, 2005, AND OWNER OF
AN UNDIVIDED ONE-HALF INTEREST IN
ELBO CREEK, LLC

BY: 
David D. Nelson, Trustee

STATE OF KANSAS)
) ss:
COUNTY OF POTTAWATOMIE)

BE IT REMEMBERED, that on this 7 day of November, 2016, 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 and owner of an undivided one-half interest in Elbo Creek, LLC, known to me to be the person who executed the Declaration o behalf of the David D. Nelson Trust Agreement, dated January 12, 2005, 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.


Notary Public

My Commission Expires: 6-14-2019



WHEREFORE, this Final Declaration of Protective covenants for Elbo Creek Estates, Unit Five Subdivision is made effective on this 7 day of November 2016.

LEON HAROLD BORCK, TRUSEE OF THE
LEON HAROLD BORCK AGREEMENT,
DATED SEPTEMBER 23, 1995, AND OWNER
OF AN UNDIVIDED ONE-HALF INTEREST IN
ELBO CREEK, LLC

BY: *Leon Harold Borck*
Leon Harold Borck, Trustee

STATE OF KANSAS)
) ss:
COUNTY OF POTTAWATOMIE)

BE IT REMEMBERED, that on this 7 day of November, 2016, before me, the undersigned, a Notary Public in and for said state, personally appeared Leon Harold Borck, Trustee of the Leon Harold Borck Agreement, Dated September 23, 1995 and owner of an undivided one-half interest in Elbo Creek, LLC, known to me to be the person who executed the Declaration on behalf of the Leon Harold Borck Agreement, Dated September 23, 1994, 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.

Shirley A. Miller
Notary Public

My Commission Expires: 6-14-2019



WHEREFORE, this Final Declaration of Protective covenants for Elbo Creek Estates, Unit Five Subdivision is made effective on this 7 day of November, 2016.

EXHIBIT "A"
LEGAL DESCRIPTION

A tract of land in the Northeast One-Quarter (NE ¼) of Section 3; Township 10 South, Range 8 East of the Sixth Principal Meridian, Pottawatomie County, Kansas described as follows:

Commencing at the Northwest Corner of said NE ¼ of said Section 3; thence South 89 degrees 54 feet 38 inches East (assumed bearing) a distance of 372.87 feet along the North line of said NE ¼ to the TRUE POINT OF BEGINNING;

THENCE continuing South 89 degrees 54 feet 38 inches East a distance of 871.04 feet along the North line of said NE ¼ to the Northwest corner of Irvine Subdivision;

THENCE along the West line of said Irvine Subdivision, South 8 degrees 16 feet 24 inches West a distance of 394.05 feet, said point being the Northeast corner of Elbo Creek Estates Unit Four;

THENCE along the North line of said Elbo Creek Estates Unit Four the following THREE COURSES:

COURSE ONE: North 82 degrees 4 feet 2 inches West a distance of 123.51 feet;

COURSE TWO: North 70 degrees 58 feet 28 inches West a Distance of 61.14 feet;

COURSE THREE: North 82 degrees 5 feet 10 inches West a distance of 120.93 feet to the Northwest corner of said Elbo Creek Estates Unit Four;

THENCE along the West line of said Elbo Creek Estates Unit Four the following FOUR COURSES:

COURSE ONE: South 8 degrees 9 feet 30 inches West a distance of 76.02 feet;

COURSE TWO: South 18 degrees 12 feet 10 inches West a distance of 130.16 feet;

COURSE THREE: South 6 degrees 41 feet 24 inches West a distance of 76.11 feet;

COURSE FOUR: South 0 degrees 34 feet 50 inches East a distance of 82.55 feet, said point being the Northeast corner of Elbo Creek Estates Unit Three;

THENCE along the North line of said Elbo Creek Estates Unit Three the following THREE COURSES:

COURSE ONE: South 87 degrees 21 feet 54 inches West a distance

of 122.14 feet;

COURSE TWO: South 72 degrees 6 feet 1 inch West a distance of 62.19 feet;

COURSE THREE: North 82 degrees 44 feet 18 inches West a distance of 275.04 feet to the Northwest corner of said Elbo Creek Estates Unit Three;

THENCE North 0 degrees 4 feet 36 inches West a distance of 684.69 Feet to the Point of Beginning. Said tract contains 10.715 acres, more or less.

Subject to all public roads, easements, reservations, restrictions, covenants and conditions of record.

The above described tract contains the following Lots situated in Elbo Creek Estates, Unit Five Subdivision, Pottawatomie County, Kansas, to wit: Lots 167 through Lots 191, inclusive, together with certain land designated as Common Area on the recorded plat of said Elbo Creek Estates, Unit Five Subdivision.