

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

ARTICLE I
PROPERTY SUBJECT TO THIS DECLARATION
OF PROTECTIVE COVENANTS

David D. Nelson, Trustee of the David D. Nelson Trust Agreement dated January 12, 2005, an undivided one-half interest of Elbo Creek L.L.C.; and Leon Harold Borck, Trustee of the Leon Harold Borck Agreement dated September 23, 1994, an undivided one-half interest of Elbo Creek L.L.C., and Elbo Creek, L.L.C., (known as the "Declarant or Developer") is the owner of all of the following described real estate located within Elbo Creek Estates, Unit Three Subdivision, Pottawatomie County, Kansas to wit:

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 00 degrees 10 minutes 40 seconds East (assumed bearing) a distance of 1061.60 feet along the West line of said NE ¼ to the TRUE POINT OF BEGINNING; Thence North 89 degrees 49 minutes 20 seconds East a distance of 370.99 feet; thence North 0 degrees 04 minutes 36 seconds West a distance of 375.17 feet; thence South 82 degrees 44 minutes 18 seconds East a distance of 275.04 feet; thence North 72 degrees 06 minutes 01 seconds East a distance of 62.19 feet; thence North 87 degrees 21 minutes 54 seconds East a distance of 122.14 feet; thence South 0 degrees 34 minutes 50 seconds East a distance of 55.63 feet; thence South 1 degree 41 minutes 18 seconds West a distance of 36.20 feet; thence south 4 degrees 45 minutes 14 seconds West a distance of 104.14 feet; thence South 6 degrees 21 minutes 45 seconds West a distance of 95.47 feet; thence South 7 degrees 55 minutes 58 seconds West a distance of 127.22 feet; thence South 0 degrees 05 minutes 25 seconds West a distance of 66.70 feet; thence South 11 degrees 25 minutes 28 seconds East a distance of 155.23 feet to the Northeast Corner of Lot 86 of Elbo Creek Estates, Unit Two, a subdivision in said NE ¼; thence following the Northerly line of said Elbo Creek Estates, Unit Two, South 78 degrees 34 minutes 32 seconds West a distance of 100.00 feet to the Northwest Corner of said Lot 86; thence North 66 degrees 50 minutes 26 seconds West a distance of 72.88 feet to the Northeast corner of Lot 113 of said Elbo Creek Estates Unit Two; thence South 84 degrees 58

minutes 09 seconds West a distance of 251.35 feet to the Northeast corner of Lot 110 of said Elbo Creek Estates Unit Two; thence South 89 degrees 08 minutes 16 seconds West a distance of 161.63 feet to the Northwest corner of Lot 109 of said Elbo Creek Estates Unit Two; thence North 89 degrees 54 minutes 18 seconds West a distance of 60.00 feet to the Northeast corner of Lot 108 of said Elbo Creek Estates Unit Two; thence South 89 degrees 49 minutes 20 seconds West a distance of 180.00 feet to a point on the West line of said NE ¼, said point being the Northwest corner of said Elbo Creek Estates Unit Two; thence leaving the North line of said Elbo Creek Estates, Unit Two, North 0 degrees 10 minutes 40 seconds West along the West line of said NE ¼ a distance of 285.12 feet to the POINT AND PLACE OF BEGINNING. Said tract contains 8.76 acres, more or less. Subject to all public roads, easements, reservations, covenants, and conditions, if any, now of record.

The above described tract contains the following Lots situated in Elbo Creek Estates, Unit Three Subdivision, Pottawatomie County, Kansas, to wit: Lot 114 A & B, Lot 115 A & B, Lot 116 A & B, Lot 117, 118, 119, 120 A & B, 121 A & B, 122 A & B, 123 A & B, 124 A & B, 125, 126 A & B, 127 A & B, 128 A & B, Lot 129 A & B, 130 A & B, 131 A & B, 132 A & B, 133 A & B, 134 A & B, 135 A & B, 136 A & B, inclusive, together with certain land designated as Common Area on the recorded plat of said Elbo Creek Estates, Unit Three Subdivision.

The real property (and each lot contained therein:), 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 insure to the benefit of each owner thereof.

This Declaration of Protective Covenants, its restrictions, terms and conditions are assumed, adopted, and agreed upon by the purchasers of any Building Lot or Duplex Unit situated in the above described tract of which these covenants are a part and shall be effective at the time a lot or unit is purchased.

ARTICLE II GENERAL PURPOSES AND OBJECTIVES

The real property and each lot or unit contained therein, described in Article I hereof, is subject to the conditions, covenants, restrictions, reservations, and easements hereby declared. The objectives of these covenants 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 or duplex units against such improper use of surrounding building sites or duplex units 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

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subdivision in a visually attractive manner and appearance for the mutual benefit and protection of all the owners of lots in the subdivision.

Certain lots situated in Elbo Creek Estates, Unit Three, Subdivision, have been designated by the Declarant for the exclusive purpose of construction either single family residential dwellings (one dwelling residence per lot), or for the purpose of constructing duplex dwelling units thereon.

ARTICLE III DEFINITIONS

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

“Duplex Unit” means one single-family residential unit which may be joined together with one additional single-family duplex residence by a common wall or walls, and/or roof, and/or foundation. The term “Duplex Unit” shall not mean an apartment as that term is defined by the statutes of the State of Kansas.

“Duplex Unit Owner” means the person or persons owning the real estate in fee simple on which a duplex unit is located, and shall include an installment contract purchaser who has complied with the provisions of the declaration.

“Declarant” shall mean and refer to Elbo Creek, L.L.C., its successors and assigns, Elbo Creek, L.L.C. being the owner and developer of the above described real estate and the grantor of the above described building lots contained within Elbo Creek Estates, Unit Three, Subdivision.

“Subdivision” or “Properties” shall mean and refer to the land parcel described above, being a part of Elbo Creek Estates, Unit Three, Subdivision.

“Lot” shall mean and refer to each of the above described Lots delineated and numbered One Hundred Seventeen (117) through One Hundred Nineteen (119), and Lot One Hundred Twenty Five (125), in Elbo Creek Estates, Unit Three, Subdivision. Lots 117, 118, 119, and 125 are 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 the Declaration. Lots 114 A & B, 115 A & B, 116 A & B, 120 A & B, 121 A & B, 122 A & B, 123 A & B, 124 A & B, 126 A & B, 127 A & B, 128 A & B, 129 A & B, 130 A & B, 131 A & B, 132 A & B, 133 A & B, 134 A & B, 135 A & B, and 136 A & B are held and sold by Declarant for the exclusive purpose of constructing either single family residential dwellings or alternatively for the purpose of constructing Duplex Units in compliance with the covenants, restrictions and easements set forth in this Declaration.

The “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 above described Lots or Duplex Units which are a part of Elbo Creek Estates, Unit

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Three, Subdivision. Owners include installment contract purchasers, but exclude those having such interest merely as security for the performance of an obligation.

The "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 Article I above, to be owned by the Association upon the conveyance of such common area to the Association by the Declarant.

The "Association" shall mean and refer to the Elbo Creek Estates West Home Owners 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, whose major purpose is to manage and maintain the collective common areas; common facilities; provide community services; and enforce the covenants, conditions, restriction and easements set forth in this Declaration. Any Owner of property within the Subdivision shall become a member automatically and immediately upon receiving title to any Lot. Voting right of members shall be determined by the Bylaws of the Association.

The "Architectural Control Committee" shall mean the Developer alone until the last Lot is sold or until the Developer relinquishes full or partial responsibility to the homeowners association. After approval of the initial residential building plans, as set forth more fully in Article VI, the Developer reserves the right to delegate responsibility for approval of all improvements and further structures on any given Lot to the homeowners associations.

The "Board of Directors" shall mean the Developer alone until after the first twenty-five (25) Lots are sold or until the Developer relinquishes full or partial responsibility to the homeowners association. After the first 25 Lots 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.

The "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.

"Regular Assessments." 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.

"Special Assessments." 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 a Special Assessment in the 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.

ARTICLE IV RIGHTS OF USAGE

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:

- (1) 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;
- (2) 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;
- (3) 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.

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

An association of homeowners has been or shall be created and named "Elbo Creek Estates West Homeowners Association." The Association has adopted or shall adopt Bylaws, which are hereby made apart of these Protective Covenants by reference and are hereby incorporated herein.

These Protective Covenants may be amended as provided by the Bylaws of the Association. Membership in the Association, and voting rights of members shall be

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determined by the Bylaws of the Association. 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.

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. The Developer alone will form the Board of Directors until the first twenty-five (25) Lots of the development of Elbo Creek Estates, Unit One Subdivision are sold or until the Developer relinquishes full or partial responsibility to homeowners 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.

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 the second 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 costs associated with such facilities.

Regular Assessment. As a part of the normal operation of the Association, Regular Assessments may be levied against the Lots in the development of Elbo Creek Estates, unit Three Subdivision. 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.

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 his 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.

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- (c) Reimbursement to the Developer in those cases where Pottawatomic 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.

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 in accepting such material or services, 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 cost thereof shall be a Special Assessment.

ARTICLE VI ARCHITECTURAL CONTROL COMMITTEE

Architectural considerations and preservation of natural amenities are major planning objectives in the development of Elbo Creek Estates, Unit Three 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.

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 Section. The Developer has the right to be the sole member of this committee until the last Lot is sold.

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:

- (1) A site plan indicating property lines, location of proposed structure and/or side improvements, and location of easements and setbacks.

- (2) A floor plan(s) indicating wall lines, room use, window and door locations, and overall structure dimensions.
- (3) Exterior, street facing elevation indicating architectural treatment, roofline, window and door openings, exterior materials and colors, and proposed ground line.
- (4) Exterior fencing, according to the restrictions set forth in Article VII herein.
- (5) All improvements shall be constructed and maintained in accordance with approved plans.

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.

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 VII BUILDING / LOT USE RESTRICTIONS

Land Use and Building Type. Lots 114A through 136B inclusive, are zoned R-2 and shall be used for single-family household units. A & B lots are duplex lots and may have adjoining walls, with the dividing line being the division between the A & B lot. No manufactured or mobile home shall be permitted. "Modular Homes," defined as off-site, stick built homes that have wooden floor joists, may be permitted on the Lots, only after the receipt of the prior written approval of the Developer, such approval being in the Developer's sole discretion.

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.

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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.

Roofline. No roofline shall have less than a 5 /12 pitch.

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. In the case of duplexes it shall be a minimum of 80 square feet per side.

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.

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, (except for duplex units which share a party wall) and a 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.

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 1050 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.

All duplex units within the Subdivision shall have the minimum square feet set out herein: each one story / level individual duplex unit shall have a minimum of 800 square feet exclusive of garage, basement, porches, and decks. Each individual duplex unit of one and one-half (1 ½) or two (2) stories in height must have a minimum of 700 square feet on the main floor, exclusive of garage, basement, porches, and decks. The maximum height of any duplex unit shall be two (2) stories.

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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. Each individual duplex unit shall include at minimum a one car, attached garage and one exterior on-site parking space of 200 square feet included within the driveway. All on-site parking space shall be located entirely within Lot property boundaries.

Sidewalks. Sidewalks shall be installed according to current County standards.

Outside Antenna. Television or radio antennas shall not be allowed. Satellite dishes may be allowed if approved by the Architectural Control Committee. The foregoing covenant shall not apply to a "community antenna" necessary for the implementation of a cable TV system to serve the Subdivision and the surrounding areas.

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 (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 (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 sightly manner, and grass and weeds must be regularly mowed. Notwithstanding the terms of Article X of the 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 Deeds Office, enforceable as a lien upon recording of the debt and lien in accordance with Kansas lien law.

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.

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.

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

Exterior Fencing. No chain link fences will be allowed. Fences are to be constructed of plastic or cedar wood, or such other 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.

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.

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.

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 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 term of Article X 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.

ARTICLE VIII PARTY WALLS, ETC

General Rules of Law. Each wall which is built as a part of the original construction of a duplex upon a lot designated therefore, and is placed on the dividing line between two duplex units, shall constitute a party wall, 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.

Sharing of Repair and Maintenance. A party wall shall be maintained and kept in good repair at all times by the duplex unit owners who make use of such party wall. The cost of reasonable repairs and maintenance of a party wall shall be shared equally by the duplex unit owners who make use of the wall.

Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, other than by the willful act or negligence of a duplex unit owner of a duplex unit that is adjacent to a party wall, each of the duplex unit owners of the duplex units that are adjacent to such party wall shall bear an equal share of the expense to repair or rebuild the party wall. If a duplex unit owner of a duplex 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 duplex unit owner shall bear the entire cost of repair or reconstruction thereof. Any repairing or rebuilding of the wall shall be of the same materials or similar materials of the same quality as that used in the original wall or part of the wall, unless otherwise agreed by all of the owners of the

duplex units utilizing such party wall. Any party who engages in construction or repair work upon such party wall shall have the right to enter onto the property of the adjoining owner to the extent that it may be reasonably necessary in connection with that work. When entering upon the property of the adjoining owner, the party shall take and observe due precaution and care to protect the property of the adjoining owner.

Weatherproofing. A duplex unit owner who by his negligent or willful act causes the party wall to be damaged or exposed to the elements shall pay the entire cost of furnishing the necessary repairs or protection from such elements.

Easements. A party wall easement is hereby established over that part of any duplex unit in which any part of a common wall between duplex units is constructed, together with the right to restore any such party wall, and such party wall may contain plumbing lines, vent stacks for plumbing and heating, electricity pipes and conduits and fireplace flues, serving improvements using such party wall. The party wall easements shall be a cross-easement in favor of each duplex unit in which is located a common or party wall.

Because of the nature of utility and building construction it is sometimes necessary to occupy neighboring property with utility service facilities especially on townhome type lots. Under these covenants minimal encroachment on neighboring property shall be allowed for the installations of utility services. This covenant shall serve as permission for utilities to occupy space on the adjoining lot in lieu of a specific easement for such.

Common or Shared Driveways. In the event a common or shared driveway serves two individual duplex units, the owners of each duplex unit served by such common driveway shall maintain and keep in good repair at all time such shared driveway, and the cost of reasonable repairs and maintenance of a shared driveway shall be paid equally by the duplex unit owners who make use of such shared driveway.

ARTICLE IX GENERAL COVENANTS AND RESTRICTIONS

Driveway / Street Parking. No wrecked, decrepit, unserviceable or unused 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.

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.

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.

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.

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 Kansas Power and Light Company, Southwestern Bell Telephone Company, 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 installations, 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.

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.

Signs. No signs of any kind shall be displayed on any Lot or Common Area except temporary signs five (5) feet or less in area.

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.

Speed Limit. The speed limit within the Subdivision shall be 25mph.

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 improvements 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 X GENERAL PROVISIONS

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 reasonably process and handle violators and violations.

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.

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.

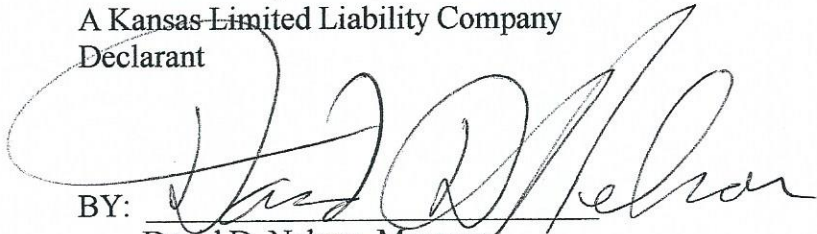
Term of Covenants. The covenants and restriction of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded after which time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years. 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.

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 coverage under these Protective Covenants.

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.

IN WITNESS WHEREOF, 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., the Declarant or Developer herein, has caused this Declaration of Restrictive Covenants to be signed by its Manager, this 20th day of March, 2013.

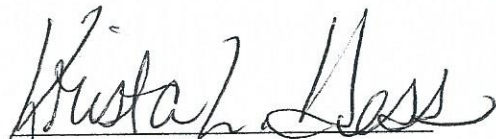
ELBO CREEK, L.L.C.,
A Kansas Limited Liability Company
Declarant

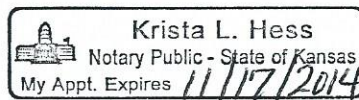
BY: 
David D. Nelson, Manager

STATE OF KANSAS
COUNTY OF POTTAWATOMIE

BE IT REMEMBERED, that on this 20th day of March, 2013, before me, the undersigned, a Notary Public in and for said state, personally appeared David D. Nelson, Manager of Elbo Creek, L.L.C. a Kansas Limited Liability Company, known to me to be the person who executed the Declaration on behalf of Elbo Creek, L.L.C., 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: 11/17/2014

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WHEREFORE, this Final Declaration of Protective Covenants for Elbo Creek Estates, Unit Three Subdivision is made effective on this 20th day of March, 2013.

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, L.L.C.

By: *David D. Nelson*
David D. Nelson, Trustee

STATE OF KANSAS
COUNTY OF POTTAWATOMIE

BE IT REMEMBERED, that on this 20th day of March 2013, 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, L.L.C., known to me to be the person who executed the Declaration on 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.

Krista L. Hess
Notary Public



My commission Expires: 11/17/2014

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WHEREFORE, this Final Declaration of Protective covenants for Elbo Creek Estates, Unit Three Subdivision is made effective on this 20th day of March, 2013.

LEON HAROLD BORCK, TRUSTEE OF THE LEON HAROLD BORCK AGREEMENT, DATED SEPTEMBER 23, 1995, AND OWNER OF AN UNDIVIDED ONE-HALF INTEREST I ELBO CREEK, L.L.C.

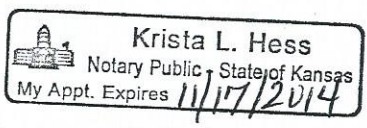
By: *Leon Harold Borck*
Leon Harold Borck, Trustee

STATE OF KANSAS
COUNTY OF POTTAWATOMIE

BE IT REMEMBERED, that on this 20th day of March, 2013, 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, L.L.C., known to me to be the person who executed the Declaration on behalf of the Leon Harold Borck Agreement, Dated September 23, 1995, 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 L. Hess
Notary Public



My commission Expires: 11/17/2014



Betty Jo Abitz-Register of Deeds
Pottawatomie County, Kansas
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Receipt #: 84721
Pages Recorded: 19
Recording Fee: \$80.00
Authorized By: *Betty Jo Abitz*

Date Recorded: 4/2/2013 1:56:08 PM



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