

**DECLARATION OF PROTECTIVE COVENANTS
FOR CERTAIN LOTS LOCATED IN EAGLES LANDING,
A SUBDIVISION IN POTTAWATOMIE COUNTY, KANSAS**

ARTICLE I

**PROPERTY SUBJECT TO THIS DECLARATION
OF PROTECTIVE COVENANTS**

Duplex Lots 61 – 71.

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

Certain of the lots situated in Eagles Landing, Unit Three, Subdivision, have been designated or zoned as “R-1”, and those lots so designated shall be held and sold by the Declarant for the exclusive purpose of constructing single family residential dwellings (one dwelling residence per lot).

Certain of the lots situated in Eagles Landing, Unit Three, Subdivision, have been designated or zoned as “R-2”, and those lots so designated shall be held and sold by the Declarant for the exclusive purpose of constructing 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 terms 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 this declaration.

“Declarant” shall mean and refer to DMJ, Inc., its successors and assigns, DMJ, Inc. being the owner and developer of the above described real estate and the grantor of the above described building lots contained within Eagles Landing, Unit Three, Subdivision.

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

“Lot” shall mean and refer to each of the above described Lots delineated and numbered Fifty Six (56) through Seventy Six (76), in Eagles Landing, Unit Three, Subdivision. Lots

56, 57, 58, 59, 60, 72, 73, 74, 75, and 76 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 this Declaration.

Lots 61A, 61B, 62A, 62B, 63A, 63B, 64A, 64B, 65A, 65B, 66A, 66B, 67A, 67B, 68A, 68B, 69A, 69B, 70A, 70B, 71A, and 70B 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 Eagles Landing, Unit 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 Eagles Landing South 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 collective common areas; common facilities; community services; and enforce the covenants, conditions, restrictions 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 rights 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 responsibility to the homeowners association.

The 'Board of Directors' 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, elections, 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.

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:

(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 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 members, 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

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.

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 times 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 VI

CREATION OF ASSOCIATION OF HOMEOWNERS

An association of homeowners has been or shall be created and named, 'Eagles Landing South 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. 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 determined by the Bylaws of the Association.

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 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 is sold.

ARTICLE VII

ARCHITECTURAL CONTROL COMMITTEE

Architectural considerations and preservation of natural amenities are major planning objectives in the development of Eagles Landing, 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 Association Board of Directors to review and implement the requirements of this section. The Developer will 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 improvement plans have been submitted and approved in writing by the Architectural Control Committee. Generally, improvement plans will include, but not be limited to:

- (1) A site plan indicating property lines, location of proposed structure and/or site 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, roof line, window and door openings, exterior materials and colors, and proposed ground line.

(4) No chain link fences will be allowed. Fences are to be constructed of plastic or Cedar wood. No fence will be over 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, except on corner lots, where side yard fences may be permitted upon approval by the Architectural Control Committee.

All improvements shall be constructed and maintained in accordance with approved plans. The Architectural Control Committee shall use its discretion and reasonable judgment in evaluating and passing upon all such plans, and shall not be liable to any person for its actions in connection with submitted plans and specifications.

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 committee within the specified periods, the plans shall be deemed approved. Should the committee reject a plan or request for changes and the plans are 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, now or in the future.

ARTICLE VIII

BUILDING RESTRICTIONS

Land Use and Building Type. Lots 56, 57, 58, 59, 60, 72, 73, 74, 75, and 76 are zoned R-1 and shall be used for single family household units. No manufactured or mobile home shall be permitted. Lots 61A, 61B, 62A, 62B, 63A, 63B, 64A, 64B, 65A, 65B, 66A, 66B, 67A, 67B, 68A, 68B, 69A, 69B, 70A, 70B, 71A, and 70B are zoned R-2 , and shall be used for either single family household units, or for duplex units. No manufactured or mobile home shall be permitted.

Approval of Construction Plans. No structure or improvement set out herein shall be commenced or maintained until: (1) approved compliance with provisions specified herein under ‘Architectural Control Committee,’ (2) necessary permits have been issued by Pottawatomie County.

Basements. All houses and duplexes 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 main floor of any home must be 12 inches above final grade.

Roofline. No Roofline shall have less than a 4/12 pitch.

Building Construction. Building siding shall be of brick, stone, stucco, wood, masonite or any combination of the above. A minimum of 150 square feet of Brick or Rock shall be attached on the front of each home on a brick ledge.

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 eave line from the street ROW/property line and a minimum of ten (10) 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 twenty (20) feet to the eave 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 1200 square feet exclusive of garage, basement, porches, and deck. All single family dwelling structures of one and one-half (1 ½) or two (2) stories in height must have a minimum of 1000 square feet on the main floor, exclusive of garage, basement, porches, and decks. The maximum height of any dwelling structure shall be two (2) stories.

All duplex units with the Subdivision shall have the minimum square feet set out herein. Each one story/level individual duplex unit shall have a minimum of 900 square feet exclusive of garage, basement, porches, and deck. Each individual duplex unit of one and one half (1 ½) or two (2) stories in height must have a minimum of 800 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.

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 space shall be located entirely within Lot property boundaries.

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.

Outside Antenna. Television or radio antennas shall not be allowed. Satellite dishes may be allowed if approved by Architectural Control Committee. 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.

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 two (2) years without approval of the Board of Directors in writing on an annual basis. All construction improvements, alterations, et cetera, commenced shall be pursued diligently to completion within nine (9) months of the starting date. A vacant Lot will in no way exempt the Lot Owner from Association assessments or minimum utility charges beyond the first year of ownership, or maintenance obligations to insure visual quality of the Subdivision from 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.

Landscaping. All ground surfaces disturbed by construction activities shall be promptly graded and to insure positive drainage, to conform and blend with the existing ground surface, lawn seeding and plant materials installation, within twelve (12) months of dwelling occupancy. A minimum of 4 trees and 6 shrubs shall be installed and maintained on each Lot within 12 months of occupancy.

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.

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.

ARTICLE IX

GENERAL COVENANTS AND RESTRICTIONS

Driveway 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.

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, odor, and view should be the problem of the Owner rather than adjacent neighbors. 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. Trash shall be stored in metal or plastic, leak-proof, air-tight container. 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, et cetera, is prohibited.

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 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 the 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 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. 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.

ARTICLE X

GENERAL PROVISIONS

Violation of Covenants. 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 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 become a debt of the Owner to the Association and may become a lien (in accordance with K.S.A. 60-1101) upon the Lot of the Owner, enforceable as a lien upon recordation 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.

Enforcement. The Board of Directors, or until the sale of the last Lot herein, the Developer, DMJ, Inc., shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now and hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner 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 restrictions by judgment or Court Order shall in no wise affect any other provisions which shall remain in full force and effect.

Term of Covenants. The covenants and restrictions 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 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 restriction, they shall supersede the provisions herein.