

**DECLARATION
OF
RESTRICTIONS AND COVENANTS**

This Declaration made this _____ day of _____, 20____, by the City of Tescott, (hereinafter referred to as "Declarant"):

**ARTICLE 1
RECITALS**

- 1.01 Declarant has an interest in certain real property in the County of Ottawa, State of Kansas, described in Exhibit "A" which is attached hereto and by reference made a part thereof (hereinafter referred to as the "Property").
- 1.02 In order to establish a general plan for the improvement and development of the Property, Declarant desires to impose on it mutual, beneficial restrictions for the benefit of all the lands in the Property and for the benefit of the Declarant and the future owners of those lands.
- 1.03 The real property is owned by Declarant as of the date of this Declaration in the County of Ottawa, State of Kansas, described in Exhibit "A".
- 1.04 These covenants are intended to insure the proper development and use of the Property and to protect the owner of each parcel within the Property against improper development and use of parcels within the Property and of the Property as a whole as will depreciate the value of his parcels, to prevent haphazard and inharmonious improvements, and in general to provide adequately for a high type and quality of improvement and use of the Property. As a whole, Declarant desires to subject each Property and each parcel within each Property to be held, improved and conveyed subject to those covenants which shall be enforceable in accordance with the Declaration by Declarant and by each owner of a parcel of parcels of real property.

**ARTICLE 2
GENERAL PROVISIONS**

- 2.01 Establishment of Restrictions and Covenants.
Declarant, owner of the Property, hereby declares that the Property shall be transferred, sold, leased, conveyed and occupied subject to the restrictions and covenants herein, each and all of which is and are for and shall insure to the benefit of and pass with each and every parcel of the Property and apply to and bind their heirs, assignees and successors in interest of each and every owner of a parcel or parcels of the Property.
- 2.02 Restrictions Operate as Covenants.
Each purchaser/recipient of any parcel of the Property covenants and agrees with Declarant, its successors and assigns to be bound to use the Property only in accordance with the restrictions herein, and to refrain from using the Property in any way inconsistent with or prohibited by the provisions of this Declaration.
- 2.03 Purpose of Restrictions and Covenants.
It is the intent and purpose of these covenants and restrictions to allow the location on the Property of dwelling units for residential use only. It is the further intent and purpose of these covenants and restrictions to control the development density on the Property, to expressly prohibit certain uses of the Property and to protect the character of all dedicated streets as landscaped streets.
- 2.04 Definitions.
 - a) **Area of Elevation.** Total Height and length of a building as projected to a vertical plane.
 - b) **Building Line.** An imaginary line parallel to the street right-of-way line specifying the closest point to the street right-of-way line that a building may be located.
 - c) **Lot.** The fractional part of blocks as divided and subdivided on the subdivision plat of the Official Record of Ottawa County, Kansas.
 - d) **Manufactured Home, Residential Design.** A manufactured home on permanent foundation which has (a) minimum dimensions of twenty-two body feet in width, (b) a

pitched roof, and (c) siding and roofing materials which are customarily used on site-built home, and which bears a certification plate pursuant to the "Manufactured Housing Improvement Act of 2000", 42 U.S.C.A. 5401, et seq., as amended. Residential manufactured homes shall have a double-pitched roof having a minimum vertical rise of four inches for each twelve inches of horizontal run, and shall be subject to all other manufactured housing regulations of the city.

- e) **Modular Home.** A dwelling structure located on a permanent foundation with permanently connected utilities, consisting of pre-selected, prefabricated units, or modules designed to meet the requirements of the building code and transported to and/or assembled on the site of its permanent foundation; as opposed to a dwelling structure which is custom built on the site of its permanent location; and also as opposed to a manufactured home, either single-wide, double-wide, or a multiple width.
- f) **Front of Lots.** The Front of a Lot is the portion thereof facing on any street. (Thus a Lot may have two Fronts where, for instance, it faces onto two streets.)
- g) **Sign.** Any structure, device or contrivance, electric or non-electric, and all parts thereof which are erected or used for advertising purposes upon or within which any poster, bill, bulletin, printing, lettering, painting, device or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted or otherwise fastened or affixed.
- h) **Streets.** Reference to all streets or rights-of-way within these restrictions shall mean dedicated vehicular rights-of-way. Except for sidewalks or access drives, this area shall be landscaped according to the setback area standards contained herein.

ARTICLE 3 PERMITTED USES

3.10 Each and every parcel of the Property is restricted to the following permitted uses:

- a) Single family dwellings, including conventional construction, modular structures and residential design manufactured housing having no less than 1000 square feet of floor space, excluding garage attachment.
- b) Two-family dwelling structures (single story duplex) having not less than 900 square feet of floor space per dwelling unit, excluding garage attachment.
- c) Customary accessory uses and structures located on the same lot with the principal use including tennis courts, swimming pools, private garages, garden houses, barbecue ovens, and fireplaces, but which do not include uses unrelated to principal use of any activity commonly conducted for gain.
- d) Temporary structures incidental to construction work, but only for the period of such work.
- e) Basements may not be occupied for residential purposes until the building is completed.

ARTICLE 4 PROHIBITED STRUCTURES AND USES

- 4.01 Used structures. No previously used structures of any type shall be moved or placed in whole or in part on any portion of the property, except that a HUD certified residential design manufactured home not exceeding three years of age may be used, provided that the unit had been inspected by the City of Tescott and found to be in compliance with the condition, appearance and quality standards of the City and the restrictions set forth in this document.
- 4.02 Commercial Uses. No structure shall be used or maintained for the purpose of carrying out any business, trade or manufacturing enterprise.
- 4.03 Animals. No herbivorous or carnivorous animals of any kind, wild or domesticated, shall be kept or permitted upon any portion of the property, except no more than two dogs or two cats, or one of each may be kept at any one dwelling unit.
- 4.04 No noxious or offensive or illegal trade or activity shall be carried on or permitted to be carried on within the confines of any of the lots in the sub-division.

- 4.05 No mobile homes, or basement homes or no structure shack, garage, barn, or other outbuilding shall be used on any lot at any time, as a residence or place of business, either temporarily or permanently.
- 4.06 No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept, except in sanitary containers.
- 4.07 No individual sewage disposal system shall be permitted on any lot.

**ARTICLE 5
DEVELOPMENT STANDARDS**

- 5.01 Setbacks. No building shall be located on any one or more Lots nearer to the Front Lot line or Side Lot line than the minimum setback set forth below:
 - a) Front Yard Setback.
 - 1. There shall be a front yard setback having a depth of not less than twenty-five feet.
 - 2. Where a lot is located at the intersection of two or more streets, there shall be a front yard setback on each street side of a corner lot.
 - b.) Side Yard Setback
 - 1. There shall be a side yard setback having a width of not less than six feet.
 - c) Rear Yard Setback.
 - 1. There shall be a rear yard setback having a depth of not less than 6 feet from dedicated ally or utility easement.
- 5.02 Number of Buildings per Lot. Only one principal building (residential structure) shall be erected on any one lot.
- 5.03 Signs. Only the following signs shall be allowed:
 - a) Non-illuminated nameplates subject to the following restrictions:
 - b) Non-illuminated single-or double-faced "For Sale" and "For Rent" signs subject to the following regulations.
 - c) Special Purpose Governmental Signs used to give directions to traffic or pedestrians or to give instructions as to special conditions, Community Directional and/or Identification Signs, and subdivision identification and directional signs erected by the City of Tescott.
- 5.04 Parking. Each owner of a Lot shall provide adequate off street parking to accommodate all parking needs.
 - a) Major recreational equipment such as boats, boat trailers, travel trailers, pick-up campers or coaches, camping buses or pop up tent trailers shall not be stored on a lot except within an enclosed building, or behind the front yard setback line and sufficiently fenced to be shielded from street view.
- 5.05 Landscaping.
 - a) The Front Yard Setback Area of each Lot shall be landscaped with an effective combination of street trees, trees, ground cover and shrubs. All other unpaved areas not utilized for parking shall be landscaped in a similar manner.
- 5.06 Fences. The following restrictions shall apply to the construction of all fences.
 - a) Locations and heights of fences
 - 1. Front Yard. Fences may be erected adjacent to or within a required front yard setback providing such fence shall be no more than sixty inches in height following the natural contour of the ground, except no fence over twenty-four inches in height shall be erected within the corner vision control area.
 - 2. Side Yard or Rear Yard. Fences may be erected adjacent to or within a side or rear yard provided such fence shall be no more than six feet six inches in height following the natural grade of the ground.
 - b) Prohibited Fences. No barbed wire or other sharp fence and no electrically charged fence of any type shall be erected or maintained.

- 5.07 Corner Vision Control Area. On a corner lot nothing shall be erected, placed, planted, or allowed to grow in such a manner as materially to impede vision to the adjacent streets.
- 5.08 Nuisances. No portion of the Property shall be used in such a manner as to create a nuisance to adjacent lots such as, but no limited to, vibration, sound electro-magnetic disturbance, radiation, air pollution, dust emission of odorous, toxic or noxious matter.

ARTICLE 6 ENFORCEMENT

- 6.01 Abatement and Suit. Violation or breach of any restriction and covenant herein contained shall give to Declarant, and every other owner of property for whose benefit these restrictions and covenants are expressly made, the right to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of these restrictions and covenants to enjoin or prevent them from doing so to cause said violation to be remedied or to recover damages for said violation.
- 6.02 Deemed to Constitute a Nuisance. The result of every action or omission whereby any restriction or covenant herein contained is isolated in whole or in part is hereby declared to be a violation in law or equity and every remedy allowed by law or equity against an owner, either public or private, shall be applicable against every such result and may be exercised by Declarant or by any owner of property for whom these restrictions and covenants are made.
- 6.03 Attorney's Fees. In any legal or equitable proceeding for the enforcement or to restrain the violation of this Declaration or any provision hereof, the losing part or parties shall pay the attorney's fees of the prevailing party or parties, in such amount as determined to be actual costs incurred in such proceedings. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.
- 6.04 Failure to Enforce Not a Waiver of Rights. The failure of Declarant or any other property owner to enforce any restriction herein contained shall in no event be deemed to be a waiver of the right to do so thereafter or of the right to enforce any other restriction or covenant.

ARTICLE 7 TERMINATION AND MODIFICATION

- 7.01 Termination and Modification. This Declaration, or any provision hereof, or any covenant or restriction contained herein, may be terminated, extended, modified or amended, as to the whole of said property or any portion thereof, with the written consent of all of the then owners of the lots as they are recorded of the property specified in Exhibit "A". No such termination, extension, modification, or amendment shall be effective until a proper instrument in writing has been executed and acknowledged and recorded in the office of the Register of Deeds, Ottawa County, Kansas.

ARTICLE 8 MISCELLANEOUS PROVISIONS

- 8.01 Constructive Notice and Acceptance. Upon the recording hereof, every person who now or hereafter owns or acquires any right, title or interest in or to any portion of said property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in said property.
- 8.02 Rights of Mortgages. All restriction and other provisions herein contained shall be deemed subject and subordinate to all mortgages and now or hereafter executed upon land subject to these restrictions and none of said restrictions shall supersede or in any way reduce the security or affect the validity of any such mortgage, provided, however, that if any portion of said property is sold under a foreclosure

of any mortgage, any purchaser of such sale, and his successors and assigns shall hold any and all property so purchased subject to all of the restrictions, covenants and other provisions of this Declaration.

- 8.03 Mutuality, Reciprocity, Runs with Land. All restrictions, covenants and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel of said property; shall create mutual, equitable servitudes upon each parcel in favor of every other parcel; and shall create reciprocal rights and obligations between the respective owners of all parcels of the Property and privity of contract and estate between all grantees of said parcels, their heirs, successors, and assigns..
- 8.04 Effect of Invalidation. If any provisions of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.
- 8.05 Addition of Territory. Declarant may at any time or from time to time add to the Property which is covered by this Declaration, and upon the recording of a notice of addition to territory , the covenants contained in this declaration shall apply to the added land in the same manner as if it were originally covered by this Declaration; and thereafter, the rights, powers and responsibilities of the parties to this Declaration with respect to the added land shall be the same as with respect to the original land, and the rights, privileges, duties, and liabilities of the owners, lessees and occupants of parcels within the added land shall be the same as in the case of the original land.

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the date first hereinabove written.

THE CITY OF TESCOTT

By: _____
Mayor

By: _____
Clerk

STATE OF KANSAS, COUNTY OF OTTAWA, ss:

On _____, 200_, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, known to me to be the persons who executed the within instrument, and who declared and acknowledged to me that they are the Mayor and Clerk, respectively, of the CITY OF TESCOTT, KANSAS, that they executed the within instrument on behalf of said CITY OF TESCOTT, KANSAS, and that such execution was pursuant to authority granted.

Notary Public

My commission expires: _____