

167126

**FIRETREE ESTATES, PHASE II
BALDWIN CITY, KANSAS**

DECLARATION OF PROTECTIVE COVENANTS

PART A. PREAMBLE

THIS DECLARATION is made on the date hereinafter set forth on behalf of FireTree Estates, Phase II, a subdivision in the city of Baldwin City, Kansas, by Jerry L. Donnelly, hereinafter referred to as "Declarant,"

WITNESSETH

WHEREAS, Declarant is the owner of the following described real property:

FireTree Estates, Phase II, a subdivision consisting of forty-five (45) single family lots in the City of Baldwin City, Douglas County, Kansas.

WHEREAS, it is desired to develop and maintain said real estate as a quality residential dwelling area.

NOW, THEREFORE, Declarant hereby declares that all of the real estate described above shall be held, sold and conveyed to others subject to the following easements, covenants, conditions and restrictions which are established for the purpose of protecting the value and desirability of, and which shall run with the real estate and be binding on all parties having any right, title or interest in the described real estate or any part thereof and their heirs, successors and assigns, and these protective covenants shall inure to the benefit of each owner thereof.

PART B. DEFINITIONS

B-1 "Declarant" shall mean and refer to Jerry L. Donnelly, an individual.

B-2 "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map or plan of the real estate described above.

B-3 "Frontal Appearance" shall mean that no less than twenty-five percent (25%) of the surface area is constructed of brick, stone, or certain artificial stone applications, if approved in writing by the Architectural Control Committee. Masonry requirements may be waived for approved stucco or dryvit exteriors.

B-4 "Construction Changes" shall mean any change which could be deemed as significant to the Architectural Control Committee, and such alteration shall require written approval by the Architectural Control Committee before any changes are made. A change in the paint scheme, for example, would be considered to be a significant change.

have em.
Jerry L. Donnelly
PO Box 1330
66014

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PART C. LAND USE

C-1 ARCHITECTURAL CONTROL

No building, fence or wall shall be erected, placed or altered on any lot until a complete set of construction plans and specifications, including, but not limited to, specifications on exterior materials and colors, fencing, yard lights, finished elevation, and the location of the dwelling on the site have been approved by the Architectural Control Committee. Harmony of the external design with existing structures shall be a consideration. The Architectural Control Committee shall have complete discretion as to the extent of detail required in plans submitted. The Architectural Control Committee may issue a Construction Checklist, which may be periodically modified, and which must be compiled with by any person seeking approval.

C-2 SINGLE-FAMILY RESIDENCE

Each dwelling shall be constructed upon an individual lot evidenced by a warranty deed to be recorded in the office of the Register of Deeds for Douglas County, Kansas. No dwelling shall be used other than for residential, single-family purposes.

C-3 PERMITTED HEIGHT OF RESIDENCES

The Architectural Control Committee provided for herein shall establish for each lot a maximum height allowance for any building or detached structure to be set on such lot. For the purpose of this paragraph, the height of the building shall be measured on any side of said building which has street frontage and shall be measured from the ground elevation to the peak of the roof line. Acceptable designs shall be limited to one- and two-story structures with a maximum height which does not exceed thirty (30) feet. All plans which are submitted for approval shall have the total height noted on each elevation drawing.

C-4 DWELLING SIZE

The total square footage of the ground floor of any dwelling containing one story shall not be less than one thousand four hundred (1,400) square feet, exclusive of open or screened-in porches, garages, patios or any other area which is not a fully enclosed year-round living area. The total square footage for any dwelling containing more than one story shall not be less than one thousand eight hundred (1,800) square feet, exclusive of open or screened-in porches, garages, patios or any other area which is not a fully enclosed year-round living area.

All dwelling shall include an enclosed garage with a capacity for at least two (2) full-sized vehicles.

C-5 BUILDING, FENCE AND WALL LOCATION

No building shall be located on any lot nearer to the front lot line or the back lot line or nearer to the side street line than the minimum set-back requirements of the City of Baldwin City. No dwelling shall be constructed closer to the side yard line than seven and one-half (7.5) feet. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum building setback line unless similarly approved by both the City of Baldwin City and the Architectural Control Committee. See Item C-10 for restrictions on fencing.

C-6 CONSTRUCTION REQUIREMENTS AND CHANGES

Subject to the requirement concerning "Frontal Appearance" set forth above, exterior walls of all buildings, structures and appurtenances thereto shall be of brick, stone, wood siding, stucco, wood paneling, glass, glass blocks or a combination thereof. All composition siding shall be applied in a manner that it shall not warp or otherwise deter from the overall design of the building structure. All types of composition siding must be applied directly to a hard board surface. All material specifications of the composition siding, which shall include but not be limited to, the manufacturer's name, warranties, recommended application methods, life expectancy and other pertinent information, must be submitted to the Architectural Control Committee for its review and approval. Windows, doors and louvers shall be of wood, metal, glass, or composition materials approved by the Architectural Control Committee. All brick, stone, and stucco applications shall be consistent with the architectural design of the residence. Approval of the design application shall be based on creativity of the design and the coverage of the square footage to which the brick, stone, and stucco is applied. The minimum roof pitch permitted on a dwelling shall be six inches per foot, and the maximum roof pitch shall be twelve inches. The roof shall be covered with wood shingles, wood shakes, copper, slate, tile or heavy (shadow line) composition shingles equal to or better than Timberline brand.

The plans and specifications submitted to the Architectural Control Committee for review and approval shall show a finished grade elevation in front and planting schedule, including trees. No building shall be permitted to stand with its exterior in an unfinished condition for longer than six (6) months after the date of issuance of a building permit. While under construction, the building site shall be kept clean. In the event of fire, windstorm or other damage, no building shall be permitted to remain in a damaged condition longer than six (6) months after the date of damage. For any violation of any of the above, an assessment of five hundred dollars (\$500.00) for each month or portion thereof shall be due and payable from the record title owner of the real estate where said violation exists to the Architectural Control Committee. Such assessment shall be a lien on the subject real estate until paid, and the Architectural Control Committee may file a Lien Statement with the Register of Deeds of Douglas County, Kansas, to make such lien a matter of public notice.

Any "Construction Changes" (see B-4) to the original design, including but not limited to the landscaping plan, exterior building structure, fencing, and exterior lighting, shall require written approval by the Architectural Control Committee.

C-7 LAWN CARE

All lots, including unimproved lots, must be maintained so that grass and natural growth (excluding trees) is cut and trimmed to a height of six (6) inches or less. All lots are subject to the Master Street Tree Plan as filed with the City of Baldwin City. All City Ordinances concerning weeds, brush and general maintenance apply.

C-8 DRAINAGE

No interference with the established drainage pattern over a lot shall be permitted without the prior written approval of the Architectural Control Committee.

C-9 EASEMENTS

Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded final plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the lot, except for those improvements for which a public authority or utility company is responsible.

C-10 FENCING

No chain link fence shall be permitted unless said fence is enclosed, covered or decorated in a manner to be submitted in writing to the Architectural Control Committee for prior approval. All fencing must be shown on the construction plans which are submitted to the Architectural Control Committee for approval. Both the type and height of all fencing must be designated and must conform with local city building codes. All fencing must be approved by the Architectural Control Committee.

C-11 CHIMNEYS

Any exterior chimney which fronts on a street shall be constructed of brick or stone and shall be congruent with the architectural design of the dwelling. All other chimneys may be constructed of either brick, stone, masonry, or fire-code-approved stove pipe which has been enclosed by a framed wooden structure and integrated with the architectural design and construction materials of the dwelling.

C-12 YARD LIGHTS

All improved lots must have one properly installed and maintained yard light which automatically comes on at dusk in the front yard of each lot. The manner in which this is to be addressed by the applicant, as well as any other exterior lighting, shall be noted on all construction plans which are submitted for approval to the Architectural Control Committee.

C-13 NUISANCES

No noxious or offensive activity shall be permitted on any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

C-14 TEMPORARY STRUCTURES AND OUTBUILDINGS

No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time as a residence, either temporarily or permanently. No outbuildings or other detached structure appurtenant to the residence shall be erected on any of said lots without the consent in writing of the Architectural Control Committee. No dog pens or dog runs shall be allowed without the specific written approval of the Architectural Control Committee. Request for approval shall require, but not be limited to, the submission of architectural drawings, site location, landscape plan and other noise buffer applications.

C-15 PARKING

No vehicles, including but not limited to recreational vehicles, mobile homes, motor homes, boats, trailers, machinery, commercial vehicles or other similar equipment, shall be parked for a period of more than forty-eight (48) hours on the drive or yard area of any lot or shall in any way be permitted to create a neighborhood nuisance. Vehicles not in daily use shall be stored inside a garage.

No major repair, rebuilding or maintenance of any vehicle shall be permitted, except within a fully-enclosed garage. No major repair, rebuilding or maintenance of any vehicle shall be permitted in open parking areas. This restriction shall include, but is not limited to, automobiles, trucks, campers, trailers, and boats.

C-16 STORAGE

No storage of any type shall be allowed except within the private enclosed residential dwelling or appurtenant garage, and any such storage shall not be permanently exposed to public view. Storage within a garage shall not be so great as to preclude the use of the garage for the purpose of parking residents' cars.

C-17 SIGNS

No sign of any kind shall be displayed to the public view on any lot, except one sign of not more than five (5) square feet advertising the property for sale, or one sign of not more than five (5) square feet used by a building to advertise the property during the construction and sales period or one sign of not more than five (5) square feet which states that the property has been sold and conveyed. Signs advertising a property as sold may not remain on a lot for a period longer than fourteen (14) days from date of installation. No subcontractor signs are allowed.

The Declarant hereby reserves the right to place such signs as deemed necessary or desirable to facilitate traffic flow in the FireTree Estates, Phase II subdivision and between it and surrounding developments and recreational areas. Any purchaser of a lot subject hereto is deemed to have consented to the design, size and placement of any such signs.

C-18 ANTENNAS AND SATELLITES

No exterior antenna, satellite receiver system or any other signal receiving system shall be erected or installed without the prior written consent of the Architectural Control Committee.

C-19 OIL AND MINING OPERATIONS AND OIL TANKS

No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot. No tank for storage of fuel may be maintained above the surface of the ground on any of said lots without the consent in writing of the Architectural Control Committee.

C-20 LIVESTOCK, POULTRY AND HOUSEHOLD PETS

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes. All animals which are housed outside the living residence shall not create a nuisance. See Item C-14 for restrictions on dog pens and dog runs. Complaints concerning the behavior of any animals shall be handled first by contacting the proper officials for the City of Baldwin City.

C-21 GARBAGE AND REFUSE DISPOSAL

No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall only be kept in sanitary containers. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. All sanitary containers which remain outside the residence shall be enclosed, and all enclosures shall be architecturally

designed to match the architecture and the materials of the residence. Variances from this requirement shall be made only with the prior written approval of the Architectural Control Committee.

C-22 SIGHT DISTANCE AT INTERSECTIONS

No fence, wall, hedge or shrub planting which obstructs sightlines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances or such intersections unless the foliage line is maintained at sufficient height to prevent obstruction or such sightlines.

C-23 MAILBOXES

The placement of cluster mailboxes shall be made by the U.S. Postal Service. Any questions regarding the maintenance and service of the boxes shall be coordinated with the U.S. Postal Service.

C-24 OVERHEAD WIRES PROHIBITED

No power or telephone service connection lines shall be erected or maintained above the surface of the ground on any lot.

C-25 PERGOLAS PROHIBITED

No pergola or any detached structure for purely ornamental purposes shall be erected on any part of a lot without the prior consent in writing of the Architectural Control Committee.

C-26 ABOVE-GROUND SWIMMING POOLS

Above-ground swimming pools are prohibited.

C-27 CLOTHESLINES

The use of outdoor clotheslines is prohibited.

PART D. ARCHITECTURAL CONTROL COMMITTEE

D-1 MEMBERSHIP

The Architectural Control Committee shall be composed of Jerry L. Donnelly, Lawrence, Kansas, Heene A. Donnelly, Lawrence, Kansas, and Ronald W. Derusseau, Ottawa, Kansas. In

the event of the death or resignation of any member of the Committee the remaining members shall have full authority to designate a successor. The members of the Committee shall not be entitled to any compensation for services performed pursuant to this covenant. However, if in their opinion, it is necessary for the Architectural Control Committee to retain professional services to assist them in discharging their duties, they shall have the power to do so and assess the reasonable expense thereof to the applicant or person for whom those services are retained. The assessment shall be a lien on the subject real estate until paid, and the Architectural Control Committee may file a Lien Statement with the Register of Deeds of Douglas County, Kansas, to make such lien a matter of public notice.

After ten (10) years from the date these covenants are recorded, the then record owners of a majority of the lots shall have the power through a duly recorded instrument to change the membership of the Committee, to modify any of its powers and duties or to disband the Committee. In the event that the lot owners shall fail to so act, the Committee shall continue in full force and effect for a total period of thirty (30) years from the date these covenants are recorded, after which time said covenant shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the ten owners of the lots has been recorded, agreeing to change such covenants in whole or in part.

D-2 PROCEDURE

The Architectural Control Committee's approval or disapproval as required in these covenants shall be in writing and upon majority vote. In the event that the Committee or its designated representative fails to approve or disapprove the plans within thirty (30) days after the required materials have been submitted, approval shall not be required, and the related covenants shall be deemed to have been fully complied with. The Architectural Control Committee shall have the sole authority to grant variances to these covenants, conditions and restrictions and variances shall be granted only upon a majority vote.

PART E. GENERAL PROVISIONS

E-1 NONCOMPLIANCE

The Architectural Control Committee may assess a fifty dollar (\$50.00) per day assessment against the title holder of any lot on which construction of any type is commenced prior to approval by the Architectural Control Committee of construction plans of said site or for any other violation hereunder for which there is not a specific assessment otherwise provided. This assessment shall continue to be in effect until construction is stopped and a set of plans has been submitted for review or until any other violation is ceased. Construction shall not commence again until a full set of construction plans has been approved by the Architectural Control Committee

**FIRETREE PARK
FIRETREE ESTATES, PHASE 2
BALDWIN CITY, DOUGLAS COUNTY, KANSAS**

DECLARATION OF PROTECTIVE COVENANTS

PREAMBLE

THIS DECLARATION is made on the date hereinafter set forth by Jerry L. Donnelly and Ilene A. Donnelly, husband and wife, hereinafter referred to as Declarants.

WITNESSETH

WHEREAS, Declarants are the owners of the following described real property:

A 395,936.26 square foot tract of land described as Green Space and Future Community Center as shown by the recorded Final Plat of FireTree Estates, Phase 2, in Baldwin City, Douglas County, Kansas.

WHEREAS, Declarants desire to convey the above described real property by gift to the City of Baldwin City, Kansas, so that this real estate can be incorporated into the City park system and be preserved in perpetuity as public green space, nature area and park.

NOW, THEREFORE, Declarants hereby declare that all of the real estate described above shall be conveyed to The City of Baldwin City, Kansas, subject to the following easements, covenants, conditions and restrictions which are established for the purpose of preserving the subject real property as permanent green space, nature area and park to be used and enjoyed by the citizens of Baldwin City in perpetuity. These covenants and restrictions shall run with the real estate and be binding on all parties having any right, title or interest in the described real estate or any part thereof and their heirs, successors and assigns.

COVENANTS AND RESTRICTIONS

- A. The majority of the subject real property shall remain, as nearly as practicable, in a natural state with only limited pedestrian or bike trails and associated rest areas.
- B. The Northern 300 feet of the gifted property, which borders FireTree Avenue, may, at the option of the City, be equipped and maintained as a formal park area; provided that any construction, additions or improvements proposed by the City for this formal park area, or any other area within the subject property, shall require the prior, written approval of the FireTree Estates, Phase 3 Architectural Control Committee.
- C. Baldwin Land Company, Inc., a Kansas corporation, as the developer of the FireTree Estates subdivision, and its successors and assigns shall retain

the absolute right to enter upon the subject real estate for any purpose related to the betterment of the FireTree Estates development or the improvement of the quality of life of FireTree residents. The exercise of this right by Baldwin Land Company, Inc. for minor park improvements such as tree trimming, tree planting, turf enhancement, and the establishment of flower beds, shall be at its sole option and discretion. However, Baldwin Land Company shall give the Mayor of Baldwin City at least seven (7) days written notice of any intended major improvements within the park or nature area such as adding structures (gazebos, playground equipment, bridges, etc.) or making terrain alterations which might alter the intended use of the area as stated herein. If the Mayor fails to approve any such major addition to or alteration of the park area suggested by Baldwin Land Company in its written notice, then Council approval shall be required before any such change or addition is initiated.

D. The name of the subject green space/park area shall be FireTree Park.

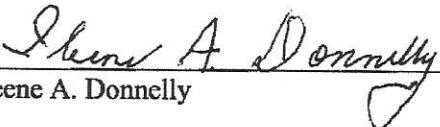
ENFORCEMENT

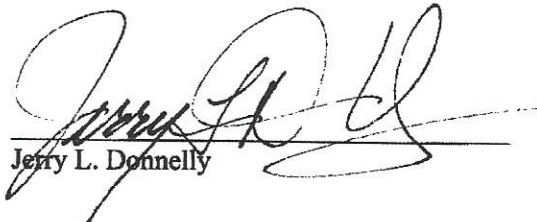
If the City of Baldwin City fails to enforce or honor any of the covenants set forth herein, then Baldwin Land Company, Inc., as the developer of FireTree Estates subdivision, and its successors and assigns shall have the right to enforce hereunder by proceedings at law or equity against any person or corporation violating or attempting to violate any covenants or to restrain violation or to recover damages.

SEVERABILITY

Invalidation of any of these covenants by judgment or court order shall in no wise affect any of the other covenants or provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, these Protective Covenants are executed this 14th day of December, 2001.


Ileene A. Donnelly


Jerry L. Donnelly

STATE OF KANSAS)
) ss:
COUNTY OF DOUGLAS)

This instrument was acknowledged before me on the 14th day of December, 2001, by Jerry L. Donnelly and Ileene A. Donnelly.

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

Carol Ann Lemon
Notary Public

My appointment expires:



The above Declaration of Protective Covenants pertaining to FireTree Park, located in FireTree Estates, Phase 2, Baldwin City, Douglas County, Kansas, are hereby approved and accepted this 19th day of December, 2001.

Kenneth Hayes
Kenneth Hayes, Mayor of
Baldwin City, Kansas

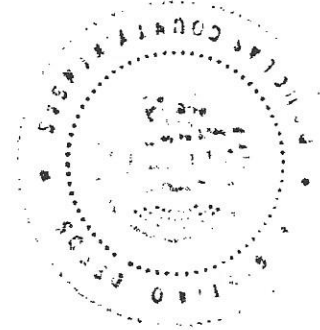
Grant Space Park
Index Numerical Index 017-095
No. 216506 Book 749 Page 1286
State of Kansas, Douglas County, SS.
Recorded in Book 749 Page(s): 1286 - 1288
Filed Dec 20, 2001 1:50 PM Fees \$10.00
Register of Deeds

Attest:

Peggy Nichols
City Clerk

Shirley Newington

City Seal:



ENV.

Gerry Donnelly
P.O. Box 1330
Law - 66044