

Lawyer's Title of Oklahoma City, Inc.
Lawyer's Title Building - Suite 100
1141 N. Robinson
Oklahoma City, OK 73103

Doc # 2003092945
Bk 8872
Pg 1835-1875
DATE 05/30/03 13:29:33
Filing Fee \$93.00
Documentary Tax \$0.00
State of Oklahoma
County of Oklahoma
Oklahoma County Clerk
Carolynn Caudill

**COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS OF
GRAMERCY PARK
A REAL ESTATE DEVELOPMENT**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, (hereinafter "Developer"), states:

A. Developer is the owner of certain real estate located in the City of Oklahoma City, Oklahoma County, Oklahoma, platted into blocks, lots, streets and easements as shown on the Plat thereof, recorded in the records of Oklahoma County, State of Oklahoma at the book 61 at Page 23; and described on Exhibit "A" hereto. The Plat shall be referred to herein as the "Property" or "Project".

B. Developer expressly declares its intention to bring the Property herein within the provisions of 60 O. S. §851 through 855, inclusive, as a Real Estate Development in order to insure the areas or any portion of or interest in them and to enforce all mutual, common or reciprocal interests in or restrictions upon all portions of such separately owned lots, parcels or areas, or both.

C. The Project may be referred to as Gramercy Park. The owner of each separately owned lot, parcel or area shall receive title not only to it but to an undivided interest in the common elements in the ratio expressed herein.

D. Developer further expressly states that the Project shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold and improved, subject to the following Covenants, Restrictions and Reciprocal Easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property and the Project, and every part thereof, for the benefit of the Developer and its successors in title and it shall be incumbent upon the successors in title to adhere thereto; and any person or persons, corporation or corporations hereafter becoming the owner or owners, either directly or through any subsequent transfers or in any manner whatsoever, of any such lots, parcels or areas shall take, hold and convey same, subject to the Covenants, Restrictions and Reciprocal Easements herein. It is understood that all of the area in the Real Estate Development shown on the Plat attached hereto which is not a separately owned lot, parcel or area shall be owned in common by the owners of the separately owned lots, parcels or areas, except streets and parcels dedicated to the public.

E. The Covenants herein and provisions for common element ownership and maintenance are subject to amendment as provided in Article 10 hereof.

Article 1

Definitions

- 1.1 "Assessments" shall mean that portion of the cost of maintaining, improving, repairing, operating and managing the property which is to be paid by each separate owner as determined by the Owners' Association or as provided herein.
- 1.2 "Board" or "Board of Directors" shall mean and refer to the form of administration specified in the "By-laws".
- 1.3 "By-Laws" shall mean and refer to the By-Laws governing the administration of the Property, attached hereto as Exhibit "D" as amended from time to time.
- 1.4 "Commons Elements" or "Common Areas" mean and include all of the area shown on the Plat (1) not included in a lot or block to be separately owned, or (2) in connection with which there has been granted herein a reciprocal easement for egress, ingress, repair, maintenance, replacement and upkeep, being but not limited to, the Private Street, private drainage easements, gates, landscaping, and common areas "A" & "B" and any others that may be subjected hereto pursuant to Article 10 hereof
- 1.5 "Common Expenses" mean and include:
 - 1.5.1 Expenses of administration, maintenance, repair or replacement of the common elements and reciprocal easements and those portions of each parcel designated herein to be so maintained, repaired, replaced, governed and insured as a common expense.
 - 1.5.2 Expenses agreed upon as common by all the separate owners.
 - 1.5.3 Expenses declared common by the provisions of the By-Laws.
 - 1.5.4 Expenses estimated by the Board of Directors as being necessary for operating the property, together with any reasonable reserves for such purposes as found and determined by the Board and all sums designated common expenses by or pursuant to the project documents.
- 1.6 "Common interests" shall mean the proportion of undivided interest in the common elements which is appurtenant to each separately owned lot graphically shown on Exhibit "A" and any subsequent phases described in Article 10, below.
- 1.7 "Common profit" means the balance of all income, rents, profits and revenues from the common elements and facilities remaining after the deduction of the common elements.
- 1.8 "Institutional lender" shall mean any bank, savings and loan association, insurance company or other financial institution holding a recorded first mortgage on any unit.
- 1.9 "Majority Owners" means the owners of more than fifty percent (50%) of the aggregate interest in the common elements. Any specified percentage of owners means such percentage in the aggregate of such undivided ownership.
- 1.10 "Member" shall mean and refer to an owner.
- 1.11 "Mortgage" shall include a deed of trust as well as a mortgage.

- 1.12 "Mortgagee" shall include the beneficiary or holder of a deed of trust as well as a mortgagee.
- 1.13 "Mortgagor" shall include the trustor of a deed of trust as well as mortgagor.
- 1.14 "Owner" or "Owners" shall mean and refer to the record holder or holders of title to any separate lot in the Property. This shall exclude persons or entities having any interest merely as a security for the performance of any obligation.
- 1.15 "Owners' Association" means the incorporated association composed of all of the separate owners of the lots in the Plat and denominated the "Gramercy Park Homeowners Association".
- 1.16 "Person" means a natural person, a corporation, a partnership, a trustee or other legal entity.
- 1.17 "Plat" Shall mean the Plats recorded in the offices of the County Clerk, a copy of the first of which is attached hereto as Exhibit "A".
- 1.18 "Project" shall mean and refer to the entire Property including all structures and improvements erected or to be erected thereon.
- 1.19 "Project documents" means and includes these Covenants, Restrictions and Reciprocal Easements as same may be amended from time to time, the exhibits attached hereto, the Plat and By-Laws of the Owners' Association and the rules and regulations for the members as established from time to time.
- 1.20 "Property" means and includes the land, whether leasehold or fee simple, the buildings, all improvements and structures thereon and all easements, rights and appurtenances belonging thereto.
- 1.21 "Reciprocal Easements" mean and includes the duties, privileges, obligations and rights shared by this Real Estate Development and any owners of lots in subsequent plats making reference and agreeing thereto.
- 1.22 "Tract" means this Real Estate Development.

ARTICLE 2
DESCRIPTION OF PROJECT, DIVISION OF
PROPERTY AND CREATION OF PROPERTY RIGHTS

- 2.1 Description of Project.** The description of the lots and blocks and the dimensions, area and location of common elements affording access to each lot and other common elements are graphically shown on the Plat attached hereto and marked Exhibit "A".
- 2.2 Division of Property.** The Property is hereby divided into the following separate freehold estates:
- 2.2.1 Lots.** The lot designation and the statement of its location and immediate area to which it has access and any other data necessary for its proper identification including its proportionate interest in the common elements are graphically shown on the Plat attached hereto and marked Exhibit "A".
- 2.2.2 Common Elements.** The remaining portion of the Property, referred to herein as "common elements", shall include all of the additional contiguous or non-contiguous areas owned in common by the owners of the separately owned lots, parcels or areas likewise graphically shown on Exhibit "A" hereto, together with the reciprocal easements and agreements appurtenant thereto expressed herein. Each owner of each separate lot shall have, as appurtenant to his lot, a fractional, undivided interest in the common area as set forth in Exhibit "A" attached hereto and incorporated by reference. It is specifically understood that the numerator of the fractional interest in the common elements subject to the covenants shall be the lot owned by each lot owner and the denominator shall be the number of lots developed in the total number or plats governed by these covenants and adopted by the developer thereof. Ownership in the Property shall include a lot and such undivided interest in the common elements. The common interest appurtenant to each lot is declared to be permanent in character and cannot be altered without the consent of all the owners affected and the first mortgagees of such owners as expressed in amended Covenants, Restrictions and Reciprocal Easements duly recorded. Such common interest cannot be separated from the lot to which it is appurtenant. Each lot owner may use the common elements in accordance with the purposes for which it is intended without hindering the exercise of or encroaching upon the rights of any other lot owner.
- 2.3 No Separate Conveyance of Undivided Interest.** The Foregoing interests and exclusive easements herein are hereby established and are to be conveyed only with the respective lots and cannot be changed, except as herein set forth. The Developer herein, its successors, assigns and grantees, covenant and agree that the undivided interests in the common elements, the exclusive easements of the common elements, the fee simple title to the respective lots conveyed herewith shall not be separately conveyed and each such undivided interest and exclusive easement shall be deemed to be conveyed or encumbered with its respective lot even though the description in the instrument of conveyance or encumbrance may refer only to the fee simple title to the lot.
- 2.4 Partition Prohibited.** The common elements shall remain undivided and no lot owner shall bring any action for partition or division of any part thereof except as specifically permitted by law.

ARTICLE 3
OWNERS' ASSOCIATION, ADMINISTRATION,
MEMBERSHIP AND VOTING RIGHTS

3.1 Owners' Association to Manage Property

The administration of every Property shall be governed by the By-Laws, a true copy of which shall be annexed hereto as Exhibit "B". Each owner shall comply strictly with the By-Laws and with the administrative rules and regulations adopted pursuant thereto as either of the same may be lawfully amended from time to time and with the covenants, conditions and restrictions set forth either herein or in the deed to his lot.

3.2 Membership

The Owners' Association shall be composed of all of the owners of separate lots as same are herein above described and any owner of a lot in subsequent plats adopting these Covenants. Membership in said Owners' Association shall be deemed conveyed or encumbered with the lot even though such interest is not expressly mentioned or conveyed in the conveyance or other instrument.

3.3 Voting

The owner of each lot shall be entitled to one (1) vote in which they hold the interest required for membership, except that Developer shall be entitled to twenty-three (23) votes for each lot owned by the Developer. When more than one person holds such interests or interest in any lot, all such persons shall be members and the vote for such lot shall be exercised as they among themselves determine, but in no event, shall more than one (1) vote be cast with respect to any lot, except as provided for Developer herein. The total number of votes shall ultimately be determined as additional properties are made subject to this Declaration of Covenants and Restrictions for the Owners' Association.

3.4 Membership Meetings

Regular and special meetings of the Owners' Association shall be held with the frequency, at the time and place and in accordance with the provisions of the By-Laws herein.

3.5 Board of Directors

The affairs of the Owners' Association shall be managed by a Board of Directors, which is hereby established by the annexed By-Laws and which shall conduct regular and special meetings according to the provisions of the By-Laws.

ARTICLE 4
MAINTENANCE AND ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation of Assessments

The Developer, for each lot owned within the project, hereby covenants and each lot owner of the separately owned lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Owners' Association, or a duly authorized agent thereof (collectively referred to as

Owners' Association"): (1) regular assessments or charges and (2) special assessments for capital improvements and unexpected expenses, such assessments to be established and collected as provided herein and in the By-Laws. The annual and special assessments, together with interest, costs and reasonable attorneys' feed, shall be a charge and a continuing lien upon the lot against which each assessment is made, the lien to become effective upon recordation of a notice of assessment. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be a personal obligation of the person who is the owner of such separate lot at the time when the assessment fell due. No owner of any separate lot may exempt himself from liability for his contribution toward the common elements by waiver of the use of enjoyment of any of the common elements or by the abandonment of his separate lot. Notwithstanding anything to the contrary herein, Developer and any Builder who shall buy a lot directly from Developer, shall have any obligation to pay to the Owners' Association any regular, annual or special assessment.

4.2 Purpose of Assessments

The assessments levied by the Owners' Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire project for the improvement and maintenance of the common elements and the areas covered by the reciprocal easements herein for the common good of the project. Annual assessments shall include an adequate reserve fund for maintenance, repairs and replacement of the said common elements and easements. The assessments shall also be for the purpose of defraying the costs of any insurance premiums for any policy or policies of hazard insurance issued with respect to loss of damage to any portion or the whole of the improvements on the Property obtained by the Owners' Association.

4.3 Annual Assessments

Until July 1 of the year immediately following the close of the sale of the first lot in the project, the maximum annual assessment per lot shall be such amount as set forth in the project budget approved by the Board of Directors, which amount shall be prorated based on the number of months remaining before July 1 of such year. Thereafter, the Board shall determine and fix the amount of the maximum annual assessment against each lot at least sixty (60) days in advance of each annual assessment; provided, however, that the maximum annual assessment may be neither increased more than ten percent (10%) above nor decreased for the previous year without the vote or written assent of a majority of the lot owners.

4.4 Special Assessments

In addition to the regular annual assessments authorized above, the Board may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement related to common elements, including fixtures and personal property related thereto, or to defray any unanticipated or underestimated expense, for taxes assessed against the common element(s); provided, however, that the aggregate special assessments for any fiscal year shall not exceed five percent (10%) of the budgeted gross expenses of the Owners' Association for that assessment year without the vote or written assent of a majority of the lot owners.

4.5 Allocation of Assessments

Each lot shall bear such fractional share of each aggregate regular and special assessment as corresponds to the fractional undivided interest in the common elements appurtenant to the said separate lot (such interest being set forth on Exhibit "A" and adjusted to reflect the numerator and denominator set forth above in the event of the developer of separate plats adopting and agreeing to these covenants}. Additionally, special assessments may be levied against individual lots for disciplinary reasons as provided in the preceding Sub-Article.

4.6 Date of Commencement of annual Assessment: Due Dates

The regular annual assessments provided for herein may commence as to all lots in the project thereof on the first day of the month following the close of the sale of the first lot in the project. Due dates of assessments shall be established by the Board and notice shall be given to each lot owner at least thirty (30) days prior to any due date.

4.7 Transfer of Lot by Sale or Foreclosure

Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer (except for assessment liens recorded prior to the mortgage} .No sale or transfer shall relieve such lot owner from liability for any assessments thereafter becoming due or from the lien thereof. Where the mortgagee of a first mortgage of record obtains title to a lot as a result of foreclosure of any such first mortgage, such mortgagee shall not be liable for the share of the common expenses or assessments by the Owners' Association chargeable to such lot which became due prior to the acquisition of title to such lot by such mortgagee. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible for all of the lots including such mortgagee. In a voluntary conveyance of a lot, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid assessments by the Owners' Association against the latter for his share of the common expenses up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Owners' Association setting forth the amount of the unpaid assessments due the Owners' Association and such grantee shall not be liable for, nor shall the lot be subject to a lien for, any unpaid assessments made by the Owners' Association against the grantor in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any such assessment becoming due after the date of any such statement.

4.8 Enforcement of Assessment Obligation: Priorities, Discipline

Any part of any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of ten percent (10%) per annum from the due date until paid. When a notice of assessment has been recorded, such assessment shall constitute a lien on each respective lot prior and superior to all other liens except (1) all taxes, bonds, assessments and other levies which by law would be superior thereto and (2) the lien or charge of any first mortgage of record (meaning any recorded mortgage or deed of trust with first priority over other mortgages or deeds of trust) made in good faith and for value. Such lien, when delinquent, may be enforced by sale by the Owners Association, its attorney or other person authorized by this document or by law to make the sale after failure of the owner to pay such assessment. The Owners' Association, acting on

behalf of the lot owners, shall have the power to bid for the lot at the foreclosure sale and acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses, rent and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties against a lot owner who is in default in payment of any assessment after notice and hearing according to the By-Laws.

4.9 Unallocated Taxes.

In the event that any taxes are assessed against the common elements or the personal property of the Owners Association, rather than against the lots, said taxes shall be included in the assessments made under the provisions of this Article and, if necessary, a special assessment may be levied against the lots in an amount equal to said taxes to be paid in two installments thirty (30) days prior to the due date of each tax installment.

ARTICLE 5 **DUTIES AND POWERS OF THE OWNERS ASSOCIATION AND BOARD.**

5.1 Duties and Powers of the Owners Association

The duties and powers of the Owners' Association shall be as required by 1) 60 O.S. §851 through 855, inclusive, as same presently exist or may be hereafter amended relative to Real Estate Development and, to the extent consistent therewith, 2) the By-Laws and as stated herein.

5.2 Duties and Powers of the Board

In addition to the duties and powers enumerated in the By-Laws or elsewhere provided for herein and without limiting the generality thereof and consistent with Article 3, Paragraph 3.5, herein, the Board may enforce the covenants and restrictions of the Real Estate Development specified herein and shall:

5.2.1 Maintain, repair, replace, restore, operate and manage all of the common elements and all facilities, improvements, furnishings, equipment and landscaping thereon and property that may be acquired by the Owners' Association. This obligation shall not extend to the maintenance of any portion or facility of the common elements required to be maintained by an individual owner under this document or the By-Laws.

5.2.2 Enforce the provisions of this document by appropriate means including, without limitation, the expenditures of funds of the Owners' Association, the employment of legal counsel and the commencement of actions.

5.2.3 Maintain such policy or policies of insurance as are required by this document or as the Board deems necessary or desirable in furthering the purposes of and protecting the interests of the Owners' Association.

5.2.4 Grant and reserve easements where necessary for utilities and sewer facilities over the common elements to serve the common elements and the lots.

5.2.5 Have the authority to employ a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Owners' Association, subject to the By-Laws and restrictions imposed by any governmental or quasi-governmental body or agency having jurisdiction over the project.

5.2.6 Adopt reasonable rules not inconsistent with this document or the By-Laws relating to the use of the common elements and all facilities thereon and the conduct of owners and their tenants and guests with respect to the Property and other owners.

5.3 Maintenance of Project by Board

The Board shall provide maintenance of the common elements as provided in the By-Laws. Specifically, but not limited to, the Board is responsible for the maintenance of the private streets, the detention improvements and for following in compliance with the Oklahoma City Code: (a) maintenance and repairs of the private streets and/or fire lanes, and to provide the funds thereof, for the maintenance and repairs through the use of assessments; (b) maintenance testing and repairs of all functions of the gate; (c) establishing the access code, and assuring that the emergency services have the property code number. Changing the code will not be allowed without proper notification; (d) accompanying the Fire Department officers during annual inspection and testing of the opening systems; and (e) maintaining a service agreement with a qualified contractor to insure year round maintenance. The responsibility of the Board for maintenance and repair shall not extend to repair or replacements arising out of or caused by the willful or negligent act or neglect of an owner or his guests, tenants or invitees. The repair or replacement of any portion of the common elements resulting from such excluded items shall be the responsibility of each owner; provided, however, that, if an owner shall fail to make the repairs or replacements which are the responsibility of such owner, the Board shall have the right (but not the obligation) to make such repairs or replacements and the cost thereof shall be added to the assessments chargeable to such lot and shall be payable to the owners' Association by the owner of such lot.

ARTICLE 6 **UTILITIES**

6.1 Owners' Rights and Duties

The rights and duties of the owners of lots within the project with respect to utilities shall be as follows:

6.1.1 The sanitary sewer, water, electric, gas, television receiving or telephone lines or connections and other services generally referred to as "utilities" servicing the lot of .an owner or owners are not deemed common elements herein.

6.1.2 Whenever sanitary sewer, Water, electric, gas, television receiving or telephone lines or connections are located or installed within the project, which connections serve more than one lot, the owner of each lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service his lot.

6.1.3 In the event of a dispute between owners with respect to the repair or rebuilding of said connections or with respect to the share of the cost thereof, then, upon written request of one of such owners addressed to the Owners' Association, the matter shall be submitted to the Board, which shall decide the dispute and the decision of the Board shall be final and conclusive on the parties.

6.2 Easements for Utilities and Maintenance

Easements over and under the Property for the installation, repair and maintenance of sanitary sewer, water, electric, gas and telephone lines and facilities, heating and air

conditioning facilities, cable or master television antenna lines, drainage facilities, walkways and landscaping as shown on the Plat of the Property and as may be hereafter required or needed to service the Property are hereby reserved by Developer and its successors and assigns, including the Owners' Association, together with its right to grant and transfer the same.

6.3 Owners' Association's Duties

The Owners' Association shall provide oversight for the duties imposed on the Board on paragraph 5.3, above, and shall maintain all utility installations located in the common elements except for those installations maintained by utility companies,

ARTICLE VII

USE RESTRICTIONS

In addition to all of the covenants contained herein, the use of the Property and each lot therein is subject to the following:

7.1 Use of Individual Lots

No lot shall be occupied and used except for uses permitted by the then current Zoning Ordinance of the city of Oklahoma City.

7.2. Nuisances

No noxious, illegal or offensive activities shall be carried on in any lot, or in part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the owners of his respective lot or which shall in any way increase the rate of insurance for the project or cause any insurance policy to be cancelled or to cause a refusal to renew the same or which will impair the structural integrity of any building.

7.3. Vehicle Restrictions

No trailer, camper, mobile home, commercial vehicle, truck (other than a standard size pickup truck), inoperable automobile, boat or similar equipment shall be permitted to remain upon any area within the Property, other than temporarily in the garage. Commercial vehicles shall not include sedans or standard size pickup trucks, which are used both for business and personal use, provided that signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be maintained or operated upon the Property, except as reasonably necessary to the execution of the right or duties of the Board under these covenants, conditions and restrictions.

7.4 Signs

No signs or banners or flags (except patriotic flags) of any type shall be displayed to the public view on any lots or on any portions of the Property except such signs as are

approved by the Board. Nothing in this subsection shall be construed to prohibit one "For Sale," "For Lease," or "For Sale or Lease" sign on each lot. With the homeowners' approval, "political" signs will be permitted.

Nothing contained in this Article 7 shall be construed or interpreted to restrict the activities of Developer or a Builder in connection with the development of the Property and sale of Lots. During the Development Period, Developer or Builder shall be entitled to engage in such activities and to construct, install, erect and maintain such facilities, upon any portion of the Property at any time owned or leased by Developer or a Builder, as in the sole opinion of the Property and sale of the lots; such facilities may include, without limitation, storage areas, signs, parking areas, model residences, construction offices, sales offices and business offices.

7.5 Animals

No animals shall be kept or maintained on any lot except domestic, household pets traditionally kept in individual residences throughout the state of Oklahoma. All such pets shall be kept reasonably confined so as not to become a nuisance. Excessive barking dogs or vicious animals shall constitute a nuisance and may be ordered by the Association to be removed from the property.

7.6 Garbage and Refuse Disposal

All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers.

No mini barn, outbuilding, or other structure which is detached from a Dwelling Unit shall be constructed until after it is approved by the Developer, during the Development Period, and thereafter by the Board of Directors and/or the Architectural Control Committee. All such mini barns and outbuilding shall have siding and roofing which match the existing Dwelling Unit, and shall not exceed (i) 120 square feet, and (ii) 10 feet in height.

No Lot or Dwelling Unit located thereon shall be used for any purpose other than as a single family residence, except a home occupation which is both permitted under the applicable zoning ordinance and which also complies with the following guidelines:

- (a) Any home occupation must be conducted entirely within the residence and conducted solely by a member of the immediate family residing in said dwelling unit;
- (b) Any home occupation must be clearly incidental and secondary to the use of the dwelling unit for residential purposes;

- (c) There can be no sign or display that will indicate from the exterior of the dwelling unit that the dwelling unit is being used, in whole or in part, for any purposes other than that of a residential dwelling.
- (d) No commodity can be sold from the Lot or dwelling unit located thereon.
- (e) No person can be employed other than a member of the immediate family residing in the dwelling unit.
- (f) No manufacturer or assembly operations can be conducted; and
- (g) Customers cannot enter upon the Lot or dwelling unit for the purpose of conducting business.

7.7 Radio and Television Antennas

No external radio or TV antennas allowed with the exception of an 18" or smaller dish antenna that is not visible from the street.

7.8 Right to Lease

The respective lots shall not be rented by the owners thereof for transient or hotel purposes. Subject to the foregoing restrictions, the owners of the respective lots shall have the absolute right to lease the lots provided that the lease is made subject to the covenants, restrictions, limitations and uses contained herein and the By-Laws and any reasonable rules and regulations published by the Board.

7.9 Clothes Lines

No exterior clotheslines shall be erected or maintained and there shall be no outside laundering or drying of clothes.

7.10 Power Equipment and Car Maintenance

No power equipment, workshops or car maintenance shall be permitted on the Property except totally within the garage.

7.11 Liability of Owners for Damage to Common Elements

The owner of each lot shall be liable to the Board for all damages to the common elements or improvements thereon caused by such owner or any occupant of his lot or guest.

7.12 No Warranty of Enforceability

The maker hereof has no reason to believe that any of the 13 restrictive covenants in this Article 7 or elsewhere in these covenants, conditions and restrictions are or may be invalid or unenforceable for any reason or to any extent. It makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any owner acquiring a lot in the project in reliance on one or more of such restrictive covenants shall assume all risks of the validity "enforceability thereof, and by acquiring the lot, agrees to hold the maker hereof harmless therefrom.

7.13 Minimum Residence Construction Requirement

No residence shall:

- (i) be less than 1700 square feet, excluding garage and out buildings;
- (ii) "be constructed with less than 80% of its exterior composed of brick;
- (iii) be roofed with any shingle have a weight less than 240 pounds per square of such shingling material;
- (iv) expose any stem wall visible from the street.

Should subsequent plat adopt these covenants, the foregoing restrictions will govern unless specified otherwise.

7.14 Fences

All Fences shall be kept in good repair by the Owner. In general, fences shall be located on the property line, one foot within the property line, or three feet within the property line; provided, however, that no fence shall be located any closer to the front of a residence than six feet behind the face of the residence nearest the front line, not counting patios, terraces, entryways, or steps.

Fences are to be wrought iron painted black, cedar, or white pine. Further, all wooden fences are to be dog-eared, with 1" x 4" vertical boards, and are to remain unpainted. Any individual lot that adjoins any common area, that wants to install a fence, the fence must be 4' wrought iron painted black with top and bottom rail. All approvals of landscape screening materials, design, and location shall be on an individual basis.

7.15 Basketball Goals

No permanent basketball goal shall be erected on any portion of the front of the residence or in the front yard or driveway.

ARTICLE 8
GENERAL PROVISIONS

8.1 Enforcement

The Owners' Association, any owner and any governmental or quasi-governmental agency or municipality having jurisdiction over the project shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this document and, in such action, shall be entitled to recover costs and reasonable attorneys' fees as are ordered by the Court; provided, however, that an individual owner shall have no right to enforce the collection of any assessment levied against any other owner under Article 4 above. Failure by any such person or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

8.2 Invalidity

Should any provision of this document be declared invalid or in conflict with any law of the jurisdiction where the project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

8.3 Amendments

8.3.1 Except as provided in 8.3.2, below, to the extent not inconsistent with 60 O.S. §851, et seq., as same is now or may hereafter be amended, an amendment of the covenants and restrictions herein may be enacted by the vote or written assent of a majority vote of the lot owners; provided, however, that the percentage of the voting power necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for an action to be taken under that clause.

8.3.2 Any amendment to the Covenants, Conditions Restrictions and Reciprocal Easements affecting a change in any of the following provisions herein must be agreed to by vote of at least sixty-seven percent (67%) of the Owners' Association:

- 8.3.2.1 Voting Rights;
- 8.3.2.2 Assessments, assessment liens or subordination of assessment liens;
- 8.3.2.3 Reserves for maintenance, repair and replacement of common areas;
- 8.3.2.4 Responsibility for maintenance and repairs;
- 8.3.2.5 Reallocation of interests in the general or limited common areas or rights to their use;
- 8.3.2.6 Boundaries of any lot;
- 8.3.2.7 Convertibility of lots into common areas or vice versa;
- 8.3.2.8 Expansion or contraction of the project or the addition, annexation or withdrawal to or from the project;
- 8.3.2.9 Insurance or fidelity bonds; 8.3.2.10 Lease of lots;

- 8.3.2.11 Imposition of any restrictions on a lot owner's right to sell or transfer his or her lot;
- 8.3.2.12 A decision by the owner's Association to establish self management when professional management had been required previously by an eligible mortgage holder;
- 8.3.2.13 Restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;
- 8.3.2.14 Any action to terminate the legal status of the project after substantial destruction or condemnation occurs or
- 8.3.2.15 Any provisions that expressly benefit mortgage holders, insurers or guarantors.

8.3.3 Any amendment must be recorded and shall become effective upon being recorded in the office of the County Clerk of Oklahoma County, Oklahoma.

8.3.4 In the event that the owners, by unanimous action, vote to remove a property from the provisions of 60 O. S. §851, et seq., as it now exists or may be hereafter amended, the eligible mortgage holders representing at least sixty-seven percent (67%) of the votes of the mortgaged lots must agree before the action may be effectuated.

8.3.5 with respect to any amendment other than one provided for in section 8.3.2; above, any mortgage holder entitled to notice pursuant to section 8.5.2, below, who fails to submit a response to any notice of any proposal for any such an endowment within thirty (30) days after the notice of the proposal is received shall be deemed to have impliedly approved the proposed action.

8.4 Encroachments

Each lot within the Property is hereby declared to have an easement over all adjoining lots and the common elements for the purpose of accommodating any encroachment due to engineering error, error in original construction, settlement or shifting of the building or any other cause. There shall be valid easements for the maintenance of said encroachments as long as they shall exist and the rights and obligations of owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event will a valid easement for encroachment be created in favor of an owner or owners if said encroachment occurred due to the willful misconduct of said owner or owners. In the event a structure is partially or totally destroyed and then repaired or rebuilt, the owners of each lot agree that minor encroachments over adjoining lots or common elements shall be permitted and that there shall be a valid easement for the maintenance of said encroachments so long as they shall exist.

8.5 Mortgage Protection Clause

8.5.1 Rights of First Mortgagees.

No breach of any of the covenants, conditions and restrictions contained in this document nor the enforcement of any lien provisions herein shall render invalid the lien of any first mortgage (meaning a mortgage with first priority over any other mortgage) on any lot made in good faith and for value but all of said covenants, conditions and restrictions shall be binding upon and be effective against any owner whose title is derived through foreclosure of trustee's sale or otherwise.

8.5.2 Notice to Lenders

All institutional lenders that have filed with the Owners' Association an appropriate request shall be entitled to receive the following notices in writing from the owners' Association:

8.5.2.1 Notice of any proposed change in the project documents, which notice shall be given thirty (30) days prior the effective date of such change;

8.5.2.2 Notice of default by the owner or trustor of any deed of trust or mortgage on a lot (the beneficial interest in which is held by said institutional lender) in the performance of such owner's or trustee's obligations under the project documents, which default is not cured within thirty (30) days;

8.5.2.3 Notice of any damage or destruction to any individual lot subject to a deed of trust or mortgage (the beneficial interest in which is held by said institutional lender, which damage exceeds One Thousand Dollars (\$1,000.00)), which notice shall be given immediately upon the Board's obtaining knowledge of such damage or destruction; and

8.5.2.4 Notice of any loss to or taking of any portion of the common elements or facilities or improvements thereon, which loss or taking exceeds Ten Thousand Dollars (\$10,000.00), which notice shall be given immediately upon the Board's obtaining knowledge of such loss or taking.

8.5.3. Mortgage Priority; Right to Inspect Records

Notwithstanding any language contained in this document to the contrary, no lot owner and no other party shall have priority over any rights or institutional lenders pursuant to their mortgages in the case of a distribution to lot owners of insurance proceeds or condemnation awards for losses to or taking of lots and/or any portion or element or the common elements. Institutional lenders shall have the right to examine the books and records of the Owners' Association.

8 .6 Insurance; Damage or Destruction

8 .6. 1. Reconstruction by Lot Owners.

In the event of damage to or destruction of any improvement on any lot, the owner shall reconstruct the same as soon as reasonably practicable and in substantially in accordance with the original plans and specifications therefor. Each owner shall have an

easement or reasonable access onto any adjacent lot for purposes of repair or reconstruction of his lot as provided in this Sub-Article.

8.6.2 Association Liability Insurance

The Owners Association shall obtain and continue in effect comprehensive public liability insurance insuring the Owners Association, the Developer and the agents and employees of each and the owners and employees, guests and invitees of the owners against any liability incident to the ownership or use of the common elements and facilities in the common elements and including, if obtainable, a cross-liability endorsement insuring each insured against liability to each other insured and a "severability of interest" endorsement precluding the insurer from denying coverage to one owner because of the negligence of other owners or to the Owners Association. Such insurance shall be in amounts deemed appropriate to the Board and to mortgagees holding first mortgages covering individual lots.

8.6.3 Additional Owners' Association Insurance

The Owners Association may purchase such other, insurance as it may deem necessary, including without limitation, fire and extended coverage on common elements, plate-glass insurance, workmen's compensation, directors liability and errors and omissions insurance, and shall purchase fidelity coverage against dishonest acts by an directors, officers, employees or agents of the Owners' Association (whether said individuals are paid or volunteers) who are responsible for handling funds collected from the owners and belonging to or administered by the Owners' Association as the insured and shall provide coverage in an amount not less than one and one-half (1/2) times the Owners' Associations' estimated annual operating expenses and reserve.

8.6.4 Insurance Premiums

Insurance premiums on policies purchased by the Owners' Association shall be a common expense to be included in the assessments levied by the owners' Association. The acquisition of insurance by the Owners' Association shall be without prejudice to the right of any lot owner to obtain additional individual insurance.

8.6.5 Proceeds from Insurance

If any of the common element improvements are damaged by fire or other casualty, insurance proceeds payable to the owner's Association shall be used to rebuild or repair such damage substantially in accordance with the original plans and specifications therefor. Any excess insurance proceeds shall be deposited to the general funds of the Owners' Association. In the event the proceeds of the owners' Association insurance policy are insufficient to rebuild or repair a common element, then the Owners' Association may use funds from its general account or, if necessary, from levying a special assessment on all unit owners (or on those responsible for the damage) to restore or rebuild said common element.

8.6.6 Waiver of Subrogation; Notice of Cancellation

All property and liability insurance carried by the Owners' Association or the owners shall contain provisions whereby the insurer waives rights of subrogation as to the Owners' Association, officers and directors and any owner, their guests, agents and employees.

8.7 **Limitation of Restrictions on Developer.**

Developer is undertaking certain work in connection with the improvement of the lots. The completion of that work and the sale, rental and other disposal of said lots is essential to the establishment and welfare of the Property. In order that said work may be completed and said property be established as fully occupied as rapidly as possible, nothing in these Covenants, Conditions, Restrictions and Reciprocal Easements shall be understood or construed to:

8.7.1 Prevent Developer, its contractors or subcontractors from doing on the Property or any lot whatever is reasonably necessary or advisable in connection with the completion of the work; or

8.7.2 Prevent Developer or its representatives from erecting, constructing and maintaining on any part or parts of the Property such structures as may be reasonable and necessary for the conduct of its business of completing said work and disposing of the same in parcels by sale, lease or otherwise; or

8.7.3 Prevent Developer from conducting on any part of the Property its business of completing the work and of establishing a plan of lot ownership and of disposing of said Property in lots by sale, lease or otherwise; or

8.7.4 Prevent Developer, its contractors, subcontractors, materialmen or supplier from having free and ready access to the Project, or any additional Development as provided in Article 10, for purposes of completing the total development and erection of improvements on same; or

8.7.5 Prevent Developer from developing subsequent phases pursuant to Article 10 hereof. In this connection, the main gate will remain open from 7:00 AM to 7:00 PM until all construction in all phases is completed.

So long as Developer, its successors and assigns, owns one or more of the lots established and described in these Covenants, Conditions, Restrictions and Reciprocal Easements and, except as otherwise specifically provided herein, Developer, its successors and assigns, shall be subject to the provisions of these Covenants, Conditions, Restrictions and Reciprocal Easements.

8.8 **Owners' Compliance.**

Each owner, tenant or occupant of a lot shall comply with the provisions of the project documents and all decisions and resolutions of the Owners' Association or its duly authorized representatives, and failure to comply with any such provisions decisions or resolutions shall be grounds for an action to recover sums due for damages (including costs and attorney's fees) and/or for injunctive relief. All agreements and determinations lawfully made by the Owners' Association in accordance with the voting percentages established in these Covenants, Restrictions and Reciprocal Easements or in the By-Laws shall be deemed to be binding on all owners, their successors, and assigns.

8.9 Conflicts of Project Documents

If there is any conflict among or between the project documents, priority shall be given to project documents in the following order: Plat; these covenants, Conditions, Restrictions and Reciprocal Easements; By-Laws; and Rules and Regulations of the Owners' Association.

8.10 Service of Process.

The name of the person to receive service of process together with the residence or place of business of such person in Oklahoma County, Douglas C. Fellrath, 4101 Perimeter Center, Suite 350, OKC, OK 73112, or such other person as the Board may designate by an amendment hereto filed solely for that purpose.

ARTICLE 9 INCONSISTENCIES WITH PLAT

9.1 In the event that a provision herein is inconsistent or conflicts with a specific provision of the owners' certificate and Dedication of the Plats herein the provisions of said Plat shall supercede and govern the use and occupancy of the said Property covered thereby to the extent of the inconsistency; otherwise, the provisions hereof shall obtain.

ARTICLE 10 ADDITIONAL DEVELOPMENT

Developer is the owner of or has property rights in certain real estate situated in the city of Oklahoma city, Oklahoma, of which the property described on Exhibit "A" is a part, the whole of the property subject to this Article 10 being described on Exhibit "C" and delineated on the preliminary plat attached hereto and made a part hereof. Developer may acquire additional property rights which may, after appropriate vote of the Owner's Association, become part of the tract ("additional property"). The property identified on Exhibit "C" and the additional property, shall be known as "the balance". The property identified in Exhibits "A" and "C" and the additional property shall be known as the Development Tract.

In a manner that is consistent with the use restrictions contained in Article 7 hereof, the balance may be developed, in whole or in part, for residential purposes as either a rental apartment project known as a "congregate" as hereinafter more fully described, a unit ownership estate pursuant to Title 60 Okla. Stat. §501, et seq., a Planned unit Development subjected to the provisions of 60 Okla. Stat. §§851-855, inclusive, or single family residences.

10.1 Duration

Easements, covenants, restrictions, benefits and obligations hereunder shall be perpetual and run with the land or until terminated by the provisions of these Covenants or by the law. These Covenants shall create privity of contract and/or estate with and among all grantees of all or

any part of the said entire premises, their heirs, executors, administrators, successors and assigns.

10.2 Indemnity

Each owner agrees to indemnify and hold harmless each other owner from all claims arising from the use of the easements hereby created to the extent that such use occurs within the boundaries of the Development Tract of such owner. The owner of each Development Tract on which construction is performed agrees to indemnify, defend and hold harmless each other owner and each other owner's Development Tract and the improvements located thereon from all loss, cost, damage, liability and expense (including reasonable attorneys' fees) resulting from the assertion of any mechanics', materialmen's or other liens. Each owner agrees to maintain policies of fire and extended coverage insurance and public liability insurance issued by reputable companies in amounts and on policy terms customary for the improvements of such owner. Each owner releases each other owner from any liability for any loss or damage of the type provided by fire and extended coverage insurance and grants to each other owner, on behalf of any insurer providing such insurance, a waiver of any right of subrogation which any insurer of any owner might acquire against any other owner by virtue of payment of any loss covered by such insurance.

10.3

Each of the easements and rights created by this Agreement are appurtenant to the Development Tract to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to such Development tract. For the purpose of each such easement and right, the benefited Tract will constitute the dominant estate and the Burdened Tract will constitute the servient estate. Each covenant contained in this Agreement:

- (a) is made for the direct, mutual and reciprocal benefit of each other Development Tract now or hereafter constituting a part of the total site;
- (b) creates mutual equitable servitudes on each Development Tract in favor of each other Development Tract;
- (c) constitutes a covenant running with the land;
- (d) binds every owner now having or hereafter acquiring an interest in any Development Tract; and
- (e) will inure to the benefit of each owner and each owner's successor's, assigns and mortgagees.

Each owner agrees that, on Conveyance of all or any part of the total site or a Development Tract, the grantee, by accepting such conveyance, will thereby become a new party to and be bound by this Agreement. In each such instance, the owner conveying an interest in the total site or a Development Tract agrees:

- (a) to require the grantee to assume and agree to perform each of the obligations of the conveying owner under this Agreement with respect to the portion of the total site or

Development Tract conveyed to such grantee by means of a written instrument executed, acknowledged and recorded in Oklahoma County, Oklahoma; and (b) to give notice of each such conveyance and agreement to each other owner within ten (10) days after the execution thereof, which notice will be accompanied by a copy of such Conveyance and agreement.

On such assumption by a grantee and the giving of notice thereof, the conveying owner will thereafter be released from any obligation under this Agreement arising thereafter with respect to the portion of the total site or Development Tract so conveyed. Each owner agrees on the written request of the conveying owner to execute and deliver any appropriate documents or assurances to evidence such release.

10.4 No Dedication

Nothing contained in this Agreement will be deemed to constitute a gift, grant or dedication of any portion of a Development Tract to the general public or for any public purpose whatsoever, it being the intention of the owners that this Agreement will be strictly limited to the private use of the owners and their respective permittees. This Agreement is intended to benefit the owners and their respective successors, assigns and mortgagees and is not intended to constitute any person which is not an owner, a third-party beneficiary hereunder or to give any such person any rights hereunder.

10.5 Amendment

This Agreement and any provision herein contained may be terminated, extended, modified or amended as to the total site or any Development Tract only as provided above. No amendment, modification, extension or interlineation of this Agreement will affect the rights of the holder of any mortgage constituting a lien on any portion of the total site or a Development Tract except as provided herein. No tenant, licensee or other person having only a possessory interest in the improvements constructed on a Development Tract will be required to join in the execution of or consent to any action of the owners taken pursuant.

10.6 Condemnation

In the event the whole, or any part, of a Development Tract is taken for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, an owner benefited by an easement created by this Agreement will not share in any award, compensation or other payment made by reason of the taking of a portion of any Development Tract which is subject to such easement and such award, compensation or other payment will belong entirely to the owner of that portion of the Development Tract which is taken and such owner will have no further liability to any other owner for the loss of such easements, or portion thereof, located on the Development Tract so taken.

10.7 Default; Remedies

The owners agree that the provisions of this Agreement will be enforced as follows:

10.7.1 Injunctive Relief In the event of any violation or threatened violation by any owner of any of the provisions of this Agreement, in addition to the right to collect damages, each owner will have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, written notice of the violation will be given to the owner claimed to have committed such violation.

10.7.2 Self-Help In the event any owner fails to perform any of the provisions of this Agreement, any other owner will have the right, without being obligated to do so, to enter upon the Development Tract and improvements of such defaulting owner and perform the obligations of the defaulting owner hereunder; provided, however, that written notice of such intention, specifying the nature of the alleged default and the actions to be performed, has been given to the defaulting owner not less than ten (10) days prior to the commencement of such action or not less than twenty-four (24) hours prior to such commencement if in the reasonable judgment of the owner giving notice, such default is of an emergency nature. During such ten (10) day or twenty-four (24) hour period, as the case may be, the defaulting owner will have the right to perform or commence performance of action appropriate to remedy such default and, provided such action is diligently carried to completion, the right of such other owner to perform the obligation of the defaulting owner will terminate. If an owner elects to perform the action to have been performed by a defaulting owner, on completion of such action or from time to time if the action is of a continuing nature, an itemized statement of cost thereof will be submitted to the defaulting owner and the amount thereof will be immediately due and payable by the defaulting owner, which amount will bear interest at the rate of fifteen percent (15%) per annum until paid.

10.7.3 Force Majeur If performance of any action by any owner is prevented or delayed by act of God, war, labor disputes or other cause beyond the reasonable control of such owner, the time for performance of such action will be extended for the period that such action is delayed or prevented by such cause

10.7.4 Notice of Default An owner shall be in default under this Agreement unless the owner has received written notice specifying the nature of such default and has failed to cure or commence appropriate action to cure such default within the times herein provided.

10.7.5 No termination No breach of this Agreement will entitle any owner to cancel, rescind or otherwise terminate this Agreement. The foregoing limitation will not effect, in any manner, any other right or remedy which any owner might have by reason of any breach of this Agreement.

10.8 Miscellaneous The owners further agree as follows:

10.8.1 Approvals When approval by any owner is required hereunder, such approval will not be unreasonably withheld. Unless provision is made for a specific period of time, the period of time in which approval will be granted will be thirty (30) days and, if an owner neither approves nor disapproves a proposed action within the period, the owner shall be deemed to have given such owner's approval. If an owner disapproves any action proposed by another

owner hereunder, such disapproval will not be effective unless the reasons for such disapproval are stated in writing.

- 10.8.2 Notices All notices, statements, demands, approvals and other communications given pursuant to this Agreement will be in writing and will be delivered in person or be certified or registered mail, postage prepaid, to the owners at the addresses maintained by the owners on file with the office of the Oklahoma County Assessor for delivery of ad valorem tax statements relating to the Development Tract until such addresses are changed by notice.
- 10.8.3 Attorney's Fees If any owner institutes any action or proceeding against another owner relating to the provisions of this Agreement or any def3.ult hereunder, the unsuccessful owner in such action or proceeding will reimburse the successful owner therein for the reasonable expenses of attorneys' fees and disbursements incurred by the successful owner.
- 10.8.4 Waiver of Default No waiver of any default by any owner will be implied from the failure by any other owner to take any action in respect of such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the: performance of any provision of this Agreement will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act of request by any owner will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The rights and remedies provided by this Agreement are cumulative and no right or remedy will be exclusive of any other or of any other right or remedy at law or in equity which any owner might otherwise have by virtue of a default under this Agreement and the exercise of any right or remedy by any owner will not impair such owner's standing to exercise any other right or remedy.
- 10.8.5 No Partnership Nothing contained in this Agreement and no action by the owners will be deemed or construed by the owners or by any third person to create the relationship of principal and agent or a partnership or a joint venture or any association between or among any of the owners.
- 10.8.6 Severability If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.
- 10.8.7 Governing Law This Agreement will be construed in accordance with the laws of the State of Oklahoma.
- 10.8.8 Captions The captions of the paragraphs of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.
- 10.8.9 Time Time is of the essence of this Agreement.

