

DEED OF DEDICATION AND RESTRICTIVE COVENANTS THE PARK AT ALBANY PUD NO. 217

KNOW ALL MEN BY THESE PRESENTS:

LEGAL:

A TRACT OF LAND BEING A PART OF GOVERNMENT LOT 3 OF SECTION 31, TOWNSHIP 19 NORTH, RANGE 15 EAST OF THE INDIAN BASE AND MERIDIAN, WAGONER COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SW CORNER OF SAID GOVERNMENT LOT 3;
THENCE N 01°22'01" W ALONG THE WEST LINE OF LOT 3, A DISTANCE OF 565.90 FEET;
THENCE N 88°50'55" E, A DISTANCE OF 50.14 FEET;
THENCE ON A CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 10°01'38" AND A RADIUS OF 112.00 FEET A DISTANCE OF 19.60 FEET WITH A CHORD BEARING OF N 83°50'06" E A CHORD LENGTH OF 19.58 FEET;
THENCE ON A CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 10°01'38" AND A RADIUS OF 212.00 FEET A DISTANCE OF 37.10 FEET WITH A CHORD BEARING OF N 83°50'06" E A CHORD LENGTH OF 37.05 FEET;
THENCE N 88°50'55" E, A DISTANCE OF 37.84 FEET;
THENCE S 01°00'05" E, A DISTANCE OF 60.00 FEET;
THENCE N 88°50'55" E, A DISTANCE OF 1147.26 FEET TO A POINT ON THE EAST LINE OF LOT 3;
THENCE S 01°40'46" E ALONG SAID EAST LINE, A DISTANCE OF 511.47 FEET TO A POINT ON THE SOUTH LINE OF LOT 3;
THENCE S 88°52'31" W ALONG SAID SOUTH LINE, A DISTANCE OF 1294.24 FEET TO THE POINT OF BEGINNING, CONTAINING 6691.1532 SF OR 15.36 ACRES.

and has caused the above-described land to be surveyed, staked, platted and subdivided into one lot, one block in conformity with the accompanying plat and survey (hereinafter the "Plat") and has entitled and designated the subdivision as "THE PARK AT ALBANY" a subdivision in the City of Broken Arrow, Tulsa County, State of Oklahoma (hereinafter the "Subdivision" or "THE PARK AT ALBANY").

I. EASEMENTS AND UTILITIES

A. Public Streets and General Utility Easements

The Owners/Developers do hereby dedicate for public use the streets, utility easements and rights-of-way as depicted on the Plat as "U/E" or "R/W" for the several purposes of construction, maintaining, operating, repairing, replacing, and/or removing any and all public utilities, including storm sewers, sanitary sewers, telephone and communication lines, electric power lines and transformers, gas lines, water lines, and cable television lines, together with all valves, meters and equipment for each of such facilities and other appurtenances thereto, with the rights of ingress and egress to and upon the utility easements and rights-of-way for the uses and purposes aforesaid, provided however, that the Owners/Developers hereby reserve the right to construct and maintain water lines and sewer lines within the utility easements and rights-of-way for the purpose of furnishing water and/or sewer service to areas within or outside the Plat and the Owners/Developers further reserve the right to construct and maintain within the utility easements and rights-of-way, parking areas, landscaping, screening fences and walls and other nonobstructing improvements.

B. Underground Electric and Communication Service

- Overhead pole lines for the supply of electric and communications service may be located along the West boundary in the addition. Street light poles or standards may be served by underground cable, and elsewhere throughout the Subdivision all supply lines shall be located underground, in the easement-ways reserved for general utility services and public streets, as depicted on the Plat. Service pedestals and transformers, as sources of supply at secondary voltages, may also be located in easement-ways.
- Underground service cables to all structures which may be located within the Subdivision may be run from the nearest service pedestal or transformer to the point of usage determined by the location and construction of the structure as may be located upon a Lot provided, that upon the installation of such a service cable to a particular structure, the supplier of service shall thereafter be deemed to have a definitive, permanent, effective and exclusive right-of-way easement on the Lot covering a 5-foot strip extending 2.5 feet on each side of such service cable, extending from the service pedestal or transformer to the service entrance on the structure.
- The supplier of service, through its agents and employees, shall at all times have the right of access to all the easement-ways depicted on the Plat or provided for in this Deed of Dedication for the purpose of installing, maintaining, removing or replacing any portion of underground electric or communication facilities installed by the supplier of the service.
- The owner of each Lot shall be responsible for the protection of the underground service facilities located on the Lot and shall prevent the alteration of grade or any construction activity which may interfere with electric, telephone or cable television facilities. The supplier of service shall be responsible for ordinary maintenance of underground facilities, but the Owner shall pay for damage or relocation of such facilities caused or necessitated by acts of the Owner or his agents or contractors.

The foregoing covenants set forth in this Subsection B shall be enforceable by the supplier of service and the Owner of each Lot agrees to be bound hereby.

C. Water and Sewer Service

- The Owner of the Lot shall be responsible for the protection of the public water and sewer mains located on the Lot.
- Within the depicted utility easement areas, the alteration of grade in excess of 3 feet from the contours existing upon the completion of the installation of a public water main or sewer main, or any construction activity which may interfere with public water and sewer mains, shall be prohibited. Within the utility easements, if the ground elevations are altered from the contours existing upon the completion of the installation of a public water or sewer main, all ground level apertures, including valve boxes, fire hydrants and manholes shall be adjusted to the altered ground elevations by the owner of the Lot or at its election. The City of Broken Arrow and Wagoner County Rural Water District No. 4 may make such adjustment at the Lot owner's expense.
- The City of Broken Arrow or its successors shall be responsible for ordinary maintenance of public sanitary sewer mains, and Wagoner County Rural Water District No. 4 or its successors shall be responsible for ordinary maintenance of public water mains, but the Owner shall pay for damage or relocation of such facilities caused or necessitated by acts of the Owner, his agents or contractors.
- The City of Broken Arrow or its successors and Wagoner County Rural Water District No. 4 or its successors shall at all times have right of access with their equipment to all easement-ways depicted on the Plat or otherwise provided for in this Deed of Dedication for the purpose of installing, maintaining, removing or replacing any portion of underground water or sewer facilities.
- Where waterlines fall within a utility easement, that portion of the utility easement is for the use of Wagoner County Rural Water District No. 4, Oklahoma, or its successors. The easements dedicated herein for purpose of providing potable water are dedicated exclusively to Wagoner County Rural Water, Sewer, Gas and Solid Waste Management District No. 4. Providers of utilities other than potable water may use said easements.

The foregoing covenants set forth in this Subsection C shall be enforceable by The City of Broken Arrow or its successors and Wagoner County Rural Water District No. 4 or its successors and the Owner of the Lot agrees to be bound hereby.

D. Gas Service

- The Owner of the Lot shall be responsible for the protection of the underground gas facilities located on the Lot.
- Within the depicted utility easement areas, the alteration of grade or any construction activity which may interfere with the underground gas facilities, shall be prohibited.
- The supplier of gas service or its successors shall be responsible for ordinary maintenance of the gas facilities, but the Owner shall pay for damage or relocation of such facilities caused or necessitated by acts of the Owner, his agents or contractors.
- The supplier of gas service or its successors shall at all times have right of access with their equipment to all easement-ways depicted on the Plat or otherwise provided for in this Deed of Dedication for the purpose of installing, maintaining, removing or replacing any portion of underground gas facilities.
- Underground gas service lines to all structures which may be located within the subdivision may be run from the nearest gas main to the point of usage determined by the location and construction of such structure as may be located upon the lot, provided that upon the installation of a service line to a particular structure, the supplier of service shall thereafter be deemed to have a definitive, permanent and effective easement on the lot, covering a 5 foot strip extending 2.5 feet on each side of the service line, extending from the gas main to the service entrance on the structure.

The foregoing covenants set forth in this Subsection D shall be enforceable by the supplier of gas service or its successors and the owner of the Lot agrees to be bound hereby.

E. Surface Drainage

Each lot, in accordance with the finish grading plan, shall receive and drain in an unobstructed manner the storm and surface waters from lots and drainage areas of higher elevation and from public streets and easements. No lot owner shall construct or permit to be constructed any fencing or other obstructions which would impair the drainage of storm and surface waters over and across the lot owned. The foregoing covenants set forth in this Subsection E shall be enforceable by any affected lot owner or by the City of Broken Arrow, Oklahoma.

F. Paving and Landscaping Within Easements.

The Owner of the Lot affected shall be responsible for the repair of damage to landscaping and paving occasioned by necessary maintenance of underground water, sewer, storm sewer, electric, natural gas and communication facilities as depicted upon the Plat, provided, however, the City of Broken Arrow, Oklahoma or the supplier of the utility service shall use reasonable care in the performance of such activities.

II. PLANNED UNIT DEVELOPMENT RESTRICTIONS

WHEREAS, THE PARK AT ALBANY was submitted as a planned unit development (entitled PUD 217) as provided within Section 6.4.E of the Zoning Ordinance of the City of Broken Arrow, Oklahoma (Ordinance No. 2931) as amended and existing on, hereinafter the "Broken Arrow Zoning Code", which PUD 217 was affirmatively recommended by the Broken Arrow Planning Commission on June 28th, 2012, and approved by the Council of the City of Broken Arrow, Oklahoma on July 17th, 2012; and

WHEREAS, the planned unit development provisions of the Broken Arrow Zoning Code require the establishment of covenants of record, inuring to and enforceable by the City of Broken Arrow, Oklahoma, sufficient to assure the implementation and continued compliance with the approved planned unit development; and

WHEREAS, the Owners/Developers desire to establish restrictions for the purpose of providing for an orderly development and to ensure adequate restrictions for the mutual benefit of the Owners/Developers, their successors and assigns, and the City of Broken Arrow, Oklahoma;

THEREFORE, the Owners/Developers do hereby impose the following restrictions and covenants which shall be covenants running with the land and shall be binding upon the Owners/Developers, their successors and assigns, and shall be enforceable as hereinafter set forth:

A. Use of Land

The development of THE PARK AT ALBANY shall be subject to the planned unit development approved on July 17th, 2012.

B. Development Standards Lot 1, Block 1 (PUD 217)

Development Area A, shall be subject to the following development standards:

- Use
The uses permitted as a matter of right in the RM residential Multi-Family district, and uses customarily accessory to permitted uses.
- Maximum Number of Dwelling Units
The number of dwelling units within Lot 1, Block 1 shall not exceed 303.
- Maximum Building Height
No building or identification tower shall exceed 45 feet in height to the highest roof ridge line.
- Minimum Open Livability Space
There shall be livability space of not less than 1200 square feet per dwelling unit.
- Minimum Off-street Parking Spaces
A minimum of 1.75 off-street parking spaces shall be required of each Dwelling Unit.
- Building Setbacks
As required by Chapter 4, Table 4.1-2. In addition, all buildings shall setback at least 50 feet from all high pressure pipelines.
35 feet unpaved; 75 feet with parking.
Interior lot lines shall not be required to have a minimum setback distance.
Air conditioning condensing units shall be allowed to be located within a Building Setback or Landscape Buffer, provided that they are screened from a public right-of-way by landscaping materials.
- Minimum Distance Between Buildings
(a) The minimum distance between building shall be 20 feet.
- Building Facades
As required and regulated by Chapter 5, Section 5.5 Multi-Family Residential Building Design Standards except:
(a) The maximum length of any multi-family building shall be 220 feet,
(b) The maximum length of a continuous multi-family roofline shall be 105 feet and
(c) Exterior building materials of the clubhouse, multi-family buildings, garages and accessory buildings (excludes doors and windows) shall be at the minimum percentages (65%, 45%, 25%, or 0%) of brick/stone as reflected on the site plan and building elevations included in Exhibit C of the amended PUD text. The remainder of exterior building walls shall be constructed with cement fiber material.
- Landscaping and Screening
Landscaping
As required and regulated by Chapter 5, Section 5.2.B except Section 5.2.B.1.a.iv is modified to reduce the number of trees required per dwelling unit from two trees to one tree provided each tree shall have a caliper of 3 inches (Zoning Ordinance requires 2 inch caliper) and shrubs are increased as follows:
(a) 7.5 - 3 gallon shrubs are installed per dwelling unit (Zoning Ordinance requires 5 - 3 gallon shrubs - 50 % increase); and
(b) 5 - 1 gallon groundcover or flowering shrubs are installed per dwelling unit (Zoning Ordinance does not require any groundcover or flowering shrubs).
The landscape island required by Section 5.2.B.1.cii.A shall be replaced by striped access aisles located next to walkways that connect to breezeways. Landscape materials otherwise required at the islands shall be located throughout the project.
The other provisions of Section 5.2.B shall remain in full force and effect.
Screening
As required and regulated by Chapter 5, Sections 5.2.D and 5.2.E. An architectural open metal fence with masonry columns and/or walls shall be provided along the West boundary. The maximum continuous length of the architectural open metal fence shall be 50 feet. Along all other property boundaries, an opaque fence, at least 6 feet in height, shall be provided. All bracing and metal posts shall be installed on the inside part of the fence along the north, east and south boundaries. The required screening fences shall be maintained by the owner of the lot on which located.
- Lighting
As permitted and regulated by Chapter 5, Section 5.6 Exterior Lighting for the uses permitted in Area A.
- Other Requirements
Except as above set forth, buildings and other improvements shall comply with the bulk and area requirements of an RM Residential Multi-Family District as set forth within the Broken Arrow Zoning Code.
- Signs
(a) As permitted and regulated by Chapter 5, Section 5.7 Signs for Uses permitted in this PUD. All signs shall be located outside the public right-of-way and utility easements.

D. Site Plan Review

No building permit shall be issued for any building or sign to be constructed within The Park at Albany until a site plan and detail sign plan have been submitted to and approved by the City of Broken Arrow in accord with the approved planned unit development and the provisions of the Broken Arrow Zoning Code.

III. ENFORCEMENT, DURATION, AMENDMENT AND SEVERABILITY

A. Enforcement

The restrictions herein set forth are covenants to run with the land and shall be binding upon the Owners/Developers, their successors and assigns. Within the provisions of Section I. Easements and Utilities are set forth certain covenants and the enforcement rights pertaining thereto, and additionally the covenants within Section I whether or not specifically therein so stated shall inure to the benefit of and shall be enforceable by the City of Broken Arrow, Oklahoma. The covenants contained in Section II. Planned Unit Development Restrictions are established pursuant to the Planned Unit Development provisions of the Broken Arrow Zoning Code and shall inure to the benefit of the City of Broken Arrow, Oklahoma and the owners of Lot 1, Block 1 of the Subdivision. If the undersigned Owners/Developers, or their successors or assigns, shall violate any of the covenants within Section II., it shall be lawful for the City of Broken Arrow or any owner of Lot 1, Block 1, to maintain any action at law or in equity against the person or persons violating or attempting to violate any such covenant, to prevent him or them from so doing or to compel compliance with the covenant. In any judicial action brought by an owners of Lot 1, Block 1, which action seeks to enforce the covenants or restrictions set forth herein or to recover damages for the breach thereof, the prevailing party shall be entitled to recover reasonable attorneys fees and costs and expenses incurred in such action.

B. Duration

These restrictions, to the extent permitted by applicable law, shall be perpetual but in any event shall be in force and effect for a term of not less than thirty (30) years from the date of the recording of this Deed of Dedication unless terminated or amended as hereinafter provided.

C. Amendment

The covenants contained within Section I. Easements and Utilities may be amended or terminated at any time by a written instrument signed and acknowledged by the owner of the land to which the amendment or termination is to be applicable and approved by the City of Broken Arrow, Oklahoma. The covenants contained within Section II. Planned Unit Development Restrictions, may be amended or terminated at any time by a written instrument signed and acknowledged by the owner of the land to which the amendment or termination is to be applicable and approved by the City of Broken Arrow, Oklahoma. The provisions of any instrument amending or terminating covenants as above set forth shall be effective from and after the date it is properly recorded.

D. Severability

Invalidation of any restriction set forth herein, or any part thereof, by an order, judgment, or decree of any Court, or otherwise, shall not invalidate or affect any of the other restrictions or any part thereof as set forth herein, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Owners/Developers, have executed this instrument this 21st day of November, 2013.

THE PARK AT ALBANY LIMITED PARTNERSHIP,
an Oklahoma limited partnership
By: CASE LLC, General Partner,
an Oklahoma limited liability company
By: Mike D. Case
Mike D. Case, Manager

STATE OF OKLAHOMA)
COUNTY OF ~~TULSA~~) ss.
This instrument was acknowledged before me this 21st day of November, 2013, by Mike D. Case as Manager of CASE, LLC.
[Signature]
Notary Public

My Commission Number: 03006691
My Commission Expires: 04/24/2015

CERTIFICATE OF SURVEY

I, Jeffrey A. Tuttle, a Registered Professional Land Surveyor, in the State of Oklahoma, do hereby certify that I have carefully and accurately surveyed, subdivided, and platted the tract of land described above, and that the accompanying plat designated herein as "THE PARK AT ALBANY", a subdivision in the City of Broken Arrow, Tulsa County, State of Oklahoma, is a true representation of the survey made on the ground using general accepted practices and meets or exceeds the Oklahoma Minimum Standards for the Practice of Land Surveying.

Certified True Copy
LORI HENDRICKS, COUNTY CLERK
Wagoner County, Oklahoma
By: [Signature]
DEPUTY

CERTIFICATE OF WAGONER COUNTY CLERK
I, Lori Hendricks, the County Clerk of Wagoner County, here now state the subdivision called The Park at Albany, has been filed into Wagoner County Records.

STATE OF OKLAHOMA)
COUNTY OF ~~TULSA~~) ss.
Lori Hendricks
Lori Hendricks, Wagoner County Clerk.

The foregoing Certificate of Survey was acknowledged before me this 21st day of November, 2013, by Jeffrey A. Tuttle.

[Signature]
Notary Public

My Commission Number: 03006691
My Commission Expires: 04/24/2015

PROVED Jan. 15 2013 by the City Council of the City of Broken Arrow, Oklahoma.
Mayor [Signature]
Attest: City Clerk [Signature]

