

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

MAGNOLIA GARDENS AT BATTLE CREEK

KNOW ALL MEN BY THESE PRESENTS:

Battle Creek Group, L.L.C., an Oklahoma Limited Liability Company, hereinafter referred to as "Owner/Developer", is the Owner of the following described land in the City of Broken Arrow, County of Tulsa, State of Oklahoma, to-wit:

Part of the SW/4 of Section 27, T-19-N, R-14-E, Tulsa County, Oklahoma, more particularly described as follows:

Commencing at the Southwest Corner of the SW/4 of said Section 27; thence N89°55'42"E along the South line of said Section 27, 690.84 feet; thence N00°04'18"W 549.52 feet; thence along a curve to the right, having a central angle of 54°10'29" and a radius of 235.00 feet for 222.20 feet; thence N54°06'11"E 382.44 feet; thence along a curve to the right, having a central angle of 06°33'55" and a radius of 380.00 feet for 43.54 feet; thence N60°35'15"E 66.48 feet; thence N54°06'11"E 108.96 feet; thence N23°57'45"E 208.54 feet; thence S58°28'46"E 167.92 feet; thence S30°46'30"W 60.00 feet; thence S27°29'38"E 70.00 feet; thence S54°09'23"E 750.00 feet; thence S27°45'52"E 259.39 feet; thence S11°27'19"W 56.44 feet; thence N82°57'53"W 300.39 feet; thence S74°54'53"W 969.55 feet; thence S00°05'57"W 133.60 feet to a point on the South line of said Section 27; thence S89°55'42"W along the South line of said Section 27 301.70 feet to the Point of Beginning, containing 1017728 square feet or 23.36 acres more or less.

and has caused the same to be surveyed, staked and platted into blocks, lots and streets and has designated the same as MAGNOLIA GARDENS AT BATTLE CREEK, a subdivision in the City of Broken Arrow, Tulsa County, Oklahoma.

ARTICLE I. DECLARATION

1.1 Declaration. Developer hereby declares that the Property hereinafter defined shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, uses and obligations, all of which are declared and agreed to be for the protection of the value of the Property and for the benefit of persons acquiring interests therein, shall be deemed to run with the land and shall be a benefit and a burden to any persons acquiring an interest in the Property, their grantees, successors, heirs, legal representatives and assigns.

ARTICLE II. PURPOSE AND PROPERTY AFFECTED

2.1 General Purpose. This Declaration is established to provide that the Property shall be developed and maintained as a single-family residential area of the highest possible quality, value, desirability and attractiveness.

2.2 Property Affected. The Property referred to herein which is hereby made subject to the provisions of this Declaration is described above.

ARTICLE III. DEFINITIONS

3.1 Architectural Control Committee. "Architectural Control Committee" shall mean the Architectural Control Committee appointed as provided in Article VIII of this Declaration.

3.2 Association. "Association" shall mean the Magnolia Gardens Property Owners' Association, an Oklahoma non-profit corporation.

3.3 Board. "Board" shall mean the Board of Directors of the Association.

3.4 Change in the Existing State of Property. "Change in the Existing State of Property" shall mean and include, without limitation: (a) any change or alteration of the construction, installation, alteration or expansion of any temporary or permanent building, structure or other improvement, including but not limited to utility facilities, fencing or recreational equipment; (b) the destruction by voluntary action or the abandonment of any building, structure or other improvement; (c) the excavation, filling or similar disturbance of the surface of the land; (d) the landscaping or planting of trees, shrubs, lawns or plants, including but not limited to vegetable or flower gardens in excess of 200 square feet in area, or the clearing (other than removal of dead trees or shrubs), marring, defacing or damaging of trees or shrubs; (e) any change or alteration, including without limitation any change of color (other than those colors approved from time to time by the applicable standards of the Architectural Control Committee), texture or exterior appearance, of any previously approved Change in the Existing State of Property; and (f) any change or alteration of the color (other than those colors approved from time to time by the applicable standards of the Architectural Control Committee) of awnings, shutters or similar exterior items visible from another Lot or Lots, Common Areas or the private streets, gates, gate house and landscape areas.

3.5 Common Areas. "Common Areas" shall mean all real property in which the Association now or hereafter owns an interest for the common use and enjoyment of its members, as described in Article XI hereof.

3.6 Compliance Expenditures. "Compliance Expenditures" shall mean all costs and expenses, including but not limited to reasonable attorneys' fees, incurred by the Association (or Declarant prior to its transfer of the performance and enforcement of the responsibilities under this Declaration to the Association) in order to cause compliance by any Owner with the provisions hereof or any standards of the Architectural Control Committee in effect.

3.7 Declarant. "Declarant" shall mean the Developer and its successors and assigns. No party shall be deemed a successor or assign of Declarant unless such party is specifically designated as a successor or assign of Declarant under this Declaration by a written Designation of Successor Assign executed by Declarant. The Association hereinafter provided for may become a successor or assign of Declarant.

3.8 Declaration. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions of MAGNOLIA GARDENS at Battle Creek.

3.9 Lot. "Lot" shall mean any parcel of the Property shown on the Plat and identified therein as a lot or site, excluding that portion, if any, of such Lot which is shown on the Plat as being a portion of the Common Areas or street as shown on the plat.

3.10 Member. A "Member" shall mean any person or entity holding membership in the Association.

3.11 Owner. "Owner" shall mean the party or parties who own fee simple title to a Lot or own that estate or interest with respect to a Lot which is most nearly equivalent to fee simple title.

3.12 Plat. "Plat" shall mean the Plat of MAGNOLIA GARDENS at Battle Creek, Broken Arrow, Tulsa County, Oklahoma, recorded in the office of the Tulsa County Register of Deeds, as it may be modified or supplemented from time to time.

3.13 Property. "Property" shall mean the real property referred to in Section 2.2 above.

ARTICLE IV. RESTRICTIONS ON USE OF THE PROPERTY

4.1 Limitation on Improvements. No Lot shall be improved except with a residential structure designed to accommodate no more than a single-family, its servants and occasional guests, plus other improvements and structures as are necessary or customarily incident to a single-family residence, all as approved by the Architectural Control Committee. No permanent outdoor recreational improvements, facilities or equipment shall be permitted except with the specific written consent of the Architectural Control Committee, which consent shall not be granted unless the Architectural Control Committee determines that such improvements, facilities or equipment will not be unduly apparent from other Lots or constitute an infringement of the use and occupancy of other Lots.

4.2 Excavations. No excavation shall be made except in connection with (a) improvements approved as herein provided, and (b) Declarant's development of the Property. Upon completion of such construction, exposed openings shall be backfilled and disturbed ground shall be graded and landscaped.

4.3 Drainage. No Owner shall do any work, construct any improvement, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Areas as established in connection with the approval of the final plat maps applicable to the Property, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Control Committee, the Board, any public authorities having jurisdiction and the owner of the Battle Creek Golf Course if the drainage affects the Battle Creek Golf Course or is utilized by it in any way.

4.4 Maintenance of Landscaping. The Home Owners Association shall maintain the landscaping upon his or her Lot or Lots in good condition. Each Owner shall diligently maintain, cultivate, husband, protect and preserve the shrubs, trees and lawn upon the Lot of the Owner, including, but without limitation: removal of dead branches, dead trees and brush, lawn mowing and performance of other tasks calculated to remove or eliminate material which constitutes or creates a fire hazard or unsightly appearance.

4.5 Antennas; Trailers and Campers. No facilities, including poles and wires, for the transmission or generation of electricity, telephone messages and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas of any kind shall be allowed. Satellite dishes shall be no larger than twenty-four inches (24") in diameter and shall be screened from view of the street, neighboring lots and golf course. Any installation of a satellite dish shall require the approval of the Architectural Review Committee. No activity shall be conducted on any Lot which interferes with television or radio reception on any other Lot. No boats, boat trailers, house trailers, campers, motor homes, panel trucks, camper trailers, recreational vehicles or similar items shall be stored or parked in the open on any Lots, streets or the Common Areas.

4.6 Trees. With the exception of trees within the perimeter of proposed improvements on any Lot or Common Areas (which improvements are approved by the Architectural Control Committee pursuant to this Declaration) or within ten feet (10') of such improvements, or trees referred to in Section 4.16 hereof, no tree having a diameter of three inches (3") or more (measured from a point two feet [2'] above ground level) shall be removed from any Lot without the express written authorization of the Architectural Control Committee. The Architectural Control Committee, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Property. Except as to the trees within the perimeter of proposed improvements or within ten feet (10') thereof as mentioned above, the Architectural Control Committee may designate certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this Section 4.9, the Architectural Control Committee and its agents may come upon any Lot during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any rules and regulations adopted and promulgated pursuant to the provisions hereof. Neither the Architectural Control Committee nor its agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

4.7 Animals. No birds, reptiles, animals or insects shall be kept or maintained on any Lot except for domestic purposes. Under no circumstances shall any commercial or agricultural business enterprise involving the use of animals be conducted on the Property without the express written consent of the Association. The Association may, from time to time, publish and impose reasonable regulations setting forth the type and number of animals that may be kept on any Lot. Dogs and other animals shall be kept confined at all times to the residence site and must be kept on a leash when outside the residence site and on the Common Areas. Dogs and other animals shall not be allowed to trespass on the Battle Creek Golf Course property whether on leash or not. Owners shall control emitted noises (e.g., barking howling, etc.) at all times to provide quiet enjoyment for all owners. All pets will be kept inside after dark. There shall be no dog pens on any lot.

4.8 Mobile Homes and Prefabricated Buildings. No building, trailer, mobile homes, prefabricated house (other than elements of houses which are prefabricated and approved by the Architectural Control Committee), garage, tent, outbuilding or building in the course of construction shall be used temporarily, or permanently as a residence on any Lot.

4.9 No Storage; Trash. No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot or on the Common Areas, except that building materials may be stored on a Lot during the course of construction of any approved structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open on any day that a pickup is to be made, at such place on the Lot so as to provide access to persons making such pickup. At all other times, such containers shall be stored in such a manner so that they cannot be seen from adjacent and surrounding property. The Architectural Control Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same.

4.10 Sight Lines. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet (2'-6') above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at a point twenty-five feet (25') from the intersection of the street lines (or in the case of a rounded property corner, from the intersection of the street lines extended past the corner), unless written approval of the Architectural Control Committee is obtained. The same sight line restrictions shall apply to any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained to a sufficient height to avoid obstruction of such sight lines.

4.11 Garages. Each dwelling unit shall have an enclosed garage for at least two automobiles and garage doors which face on a street shall be kept closed at all times except for purposes of entry, exit or maintenance. Garage doors shall be wood, no steel doors allowed.

4.12 Noxious, Dangerous and Offensive Activities Prohibited. No noxious, dangerous, offensive activity or loud music shall be carried on or permitted, nor shall anything be done which may become an annoyance or nuisance to the neighborhood.

Only one garage sale per year shall be permitted for all homes in Magnolia Gardens. Garage sales shall be conducted only on Saturdays from 7AM to 5 PM.

4.13 Maintenance of Drainage Channels and Swales. Each Owner shall maintain, mow and keep in good repair and condition any drainage channels and swales located on any Lot owned by such Owner, in accordance with the master drainage plan in effect from time to time.

4.14 Model Homes and Real Estate Offices. All else herein notwithstanding, any Lot owned by Declarant or persons so authorized by Declarant may be used for a model home or real estate office until residences have been constructed on all Lots.

4.15 Occupancy of Residential Structures. No residential structures on any Lot shall be used or occupied by more than a single family, its servants and occasional guests.

4.16 Laundry and Machinery. No clothing or any other household fabric shall be hung in the open on any Lot and no clotheslines or similar devices shall be allowed. No machinery shall be placed or operated upon any Lot, except such machinery as is usual in the maintenance of a private residence, yard or garden. All outside hot tubs/spas shall be masonry enclosed.

4.17 Interior Fences or Walls. Interior fences situated along the sides and rear lot lines shall comply with the following:

(A) No such fence shall exceed four feet (4') in height. No fence shall be erected or maintained nearer to the streets within the subdivision than the building setback lines depicted on the plat, except for decorative fences set forth in paragraph (C) immediately below. Except as set forth in paragraphs (B), (C) and (D) immediately below, all four foot fences occurring on the Lot or property lines will be constructed of four foot (4') green chain link with treated wood post and double rails.

(B) Interior fences on all lots in Block 4 shall be four (4) feet wrought iron

(C) Decorative fences or walls shall be permitted on that portion of any Lot in front of the building setback line. "Decorative fencing or walls" shall not exceed three feet (3') in height and shall be of the same decor, materials, (i.e., wrought iron, etc.) and styling as used in the architecture and construction of the dwelling situated on the Lot.

(D) Notwithstanding the foregoing or anything contained herein to the contrary, perimeter fencing shall be required along and parallel to the common boundary of all Lots within this subdivision and that certain land owned and operated by the Broken Arrow Public Golf Authority as the "Battle Creek Golf Course" which perimeter fencing shall meet the following specifications:

(1) Perimeter fencing shall be required upon all Lots sharing a common boundary with the land owned and operated by the Broken Arrow Public Golf Authority as the "Battle Creek Golf Course", which perimeter fencing shall be constructed along and parallel to said common boundary.

(2) Said perimeter fencing shall be four feet (4') in height.

(3) Said perimeter fencing shall be limited to galvanized chain link construction, and the fencing materials shall be limited to hot-dipped galvanized, residential grade fencing material, which shall be green in color. Post and top and bottom rails shall be 6" diameter wood. Perimeter fencing shall be uniform in height, design and material, and no gates or other openings shall be permitted in the perimeter fencing.

(4) Fencing shall be installed and accepted by the City of Broken Arrow prior to receiving an occupancy permit.

(E) Screening fencing not to exceed 6 feet in height can be constructed inside of the above fencing provided no fence shall be closer than the edge of the house from the side lot line and no nearer than thirty (30) feet from the rear lot line.

(F) No fence or wall shall be erected on any Lot until the plans, specifications and design thereof have been approved by the Architectural Control Committee as provided in Article VII, and the Architectural Control Committee may waive in a particular instance the requirements or limitations set forth in paragraphs (A), (B) and (C) of this Section.

4.18 Outside Burning. There shall be no exterior fires, except barbeque, outside fireplaces, braziers and incinerator fires contained within facilities or receptacles and in approved areas designated for such purposes. No Owner shall permit any condition on his or her Lot which creates a fire hazard or is in violation of fire prevention regulations.

4.19 Noise. No exterior horns, whistles, bells or other sound devices which may annoy neighboring Owners, except doorbells and security devices, shall be placed or used on any Lot, Common Area or improvement thereon.

4.20 No Obstruction. There shall be no obstruction of the pedestrian walkways located upon any Lot for purposes of circulation of foot traffic or any interference with free use thereof, except such obstruction as may be reasonably required in connection with repairs of such walkways.

4.21 No Business or Commercial Activity. No Lot shall be used at any time for business, commercial or professional activity, including home occupations, except that (a) Declarant and those designated by Declarant may use any portion of the Property owned by Declarant or those designated by Declarant in connection with real estate sales efforts, and (b) individuals may conduct limited business activities as approved by the Board, in its sole discretion, from time to time, which business activities shall not result in any significant traffic from customers or business associates.

4.22 Damage or Destruction of Improvements. In the event of complete or partial damage or destruction of any improvements on a Lot for any reason whatsoever, the Owner of such Lot shall promptly proceed to repair and replace such improvements, subject to approval of the Architectural Control Committee, as though such repair or replacement involved construction of an original structure, or shall promptly proceed to raze the improvement and landscape the Lot formerly occupied by such improvement in a manner approved in writing by the Architectural Control Committee.

4.23 Restrictions Not Exclusive. The restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by applicable zoning laws or the laws, rules or regulations of any governmental authority or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provisions of such laws, rules, regulations, deeds, leases or this Declaration shall be taken to govern and control.

4.24 Solar Panels. No solar panels or similar items may be installed upon any Lot, or upon any improvement on any Lot, without the prior approval of the Architectural Control Committee.

4.25 Basketball Backboards. Basketball backboards and goals shall be installed consistent with good taste and any standards adopted from time to time by the Architectural Control Committee.

4.26 Entrance Treatments; Walls. Declarant hereby reserves the right and easement, in its sole discretion and at its own expense, to construct or install (whether before or after transfer of title to Owners) entrance treatments, landscape, fences and/or walls, of Declarant's own choice, type and design, at the entry of the development. The Association is hereby granted a perpetual, nonexclusive easement to enter upon any Lot on which there is situated an entrance treatment, landscape, fence or wall installed or erected by Declarant and to maintain, improve, repair and/or replace the same. (See landscape easements as shown on the Plat).

4.27 Setback Regulations. All buildings, structures or other improvements to be constructed or maintained on a Lot, except landscaping and necessary crossings by access drives and underground utility lines, shall be set back from the boundaries of the Lot as prescribed below or the ordinances of the City of Broken Arrow, whichever is more restrictive:

Side yard - 5 feet

Side yard abutting public/private street - 20 feet/25 feet (private)

Rear yard - 20 feet

provided, however, but nothing contained in this provision shall be deemed to permit the installation or operation of any lighting equipment in such areas. Additionally, in order to enhance the appearance of the residential development on the Property, Declarant has established recommended set back requirements for such buildings, structures or other improvements which may be more restrictive than those required by either the Plat or applicable ordinances. Variance from the setback requirements recommended by Declarant must be obtained from the Architectural Control Committee prior to initiating construction of any such buildings, structures or improvements and from the City of Broken Arrow.

4.28 Public Streets and General Utility Easements. The Owner does hereby dedicate for the public use, West Omaha Street and North Oak Avenue, as designated on the accompanying plat, and does further dedicate for the public use the utility easements as designated on the accompanying plat, and does dedicate the private streets and Reserve Areas designated on the accompanying plat as utility easements for the several purposes of constructing, maintaining, operating, repairing, 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 fittings, including the poles, wires, conduits, pipes, valves, meters and equipment for each of such facilities and any other appurtenances thereto with the rights of ingress and egress to and upon said utility easements and right-of-ways for the uses and purposes aforesaid; PROVIDED, HOWEVER, that the Owner hereby reserves the right to construct, maintain, operate, lay and relay water lines and sewer lines, together with the right of ingress and egress for such construction, maintenance, operation, laying and relaying over, across and along the public street and utility easement, shown in said plat for the purpose of furnishing water and/or sewer services to the area included in said plat.

No building, structure, or other above or below ground obstruction that will interfere with the purposes aforesaid, will be placed, erected, installed or permitted upon the easements or rights-of-way as shown.

The owner shall be responsible for the repair and replacement of any landscaping and paving located within the utility easement in the event it is necessary to repair any underground water or sewer mains, electric, natural gas, communications or telephone service.

4.29 Private Streets. (Private Street Reserve) The streets, except West Omaha Street and North Oak Avenue, as shown on the accompanying plat are herein designated as private streets for the common use and benefit of the owners of lots within the Subdivision, their guests and invites, for the purpose of providing access to and from the various lots and for providing street paving, parking, entrance security facilities, security gates, lighting, sidewalks, decorative fencing, landscaping, trees, shrubs, ground cover, grass, decorative rock, boulders, pebbles, sand and patterned paving, and are reserved by the Declarant for subsequent conveyance to the property owners' association to be formed as provided in Article IX below for the purpose of the administration and maintenance of the above items and other facilities in the private street reserve and other common areas of the Subdivision subject to the grants contained in the next succeeding paragraph.

The Declarant hereby grants to the City of Broken Arrow, the United States Postal Service and to any public utility providing a utility service to the Subdivision, the right to enter and traverse the private streets and to operate thereon all service, emergency and government vehicles including, but not limited to, police and fire vehicles, code enforcement, waste disposal and equipment, and does further grant to the City of Broken Arrow and to any public utility providing a utility service to the Subdivision the right to make various underground utility crossings of the Reserve Areas as reasonably necessary to provide service, and upon the installation of any such utility line, cable or facility, such grantee shall be deemed to have a definitive perpetual easement covering a strip ten (10) feet in width extending five (5) feet on each side of the utility line, cable or facility.

The City of Broken Arrow shall have no duty, or any obligation to maintain any private street or other facilities in the private street reserve or have any obligation to accept any subsequent tender of dedication of any such private street.

4.30 Electric, Gas and Communication Service

(A) Street light poles or standards shall be served by underground cable and elsewhere throughout MAGNOLIA GARDENS at Battle Creek all supply lines shall be located underground in the easement-ways reserved for general utility services shown on the attached plat. Service pedestals and transformers, as sources of supply at secondary voltages and communication pedestals, may also be located in said easement-ways.

(B) Underground service cables and gas lines to all houses which may be located on all Lots in MAGNOLIA GARDENS at Battle Creek may be run from the nearest service pedestal, transformer or gas main to the point of usage determined by the location and construction of such house as may be located upon each said Lot; provided that upon the installation of such a service cable or gas line to a particular house, the supplier of electric, communication or gas service shall thereafter be deemed to have a definitive, permanent and effective right-of-way easement on said Lot, covering a five foot (5') strip extending two and one-half feet (2.5') on each side of such service cable or gas line, extending from the service pedestal, transformer or gas main to the service entrance on said house.

(C) The supplier of electric, communication or gas service, through their proper agents and employees shall at all times have right of access to all such easement-ways shown on said plat, or provided for in this Declaration for the purpose of installing, maintaining, removing or replacing any portion of said underground electric, communication or gas facilities so installed by them.

(D) The Owner of each Lot shall be responsible for the protection of the underground electric, communication or gas facilities located on his property and shall prevent the alteration of grade or any construction activity which may interfere with said electric, communication or gas facilities. The companies will be responsible for ordinary maintenance of underground electric, communication or gas facilities, but the Owner will pay for damage or relocation of such facilities caused or necessitated by acts of the Owner of his agents or contractors.

(E) The foregoing covenants concerning underground electric, communication and gas facilities shall be enforceable by the supplier of electric, communication and gas service, and the Owner of each Lot agrees to be bound hereby.

4.31 Water and Sewer Service

- (A) The Owner of each Lot shall be responsible for the protection of the public water and sewer mains located on or in his Lot.
- (B) Within the depicted utility easement areas, 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, to include: valvae boxes, fire hydrants and manholes will be adjusted to the new grade by the owner or at the owner's expense.
- (C) The City of Broken Arrow or its successors will be responsible for ordinary maintenance of public water and sewer mains, but the Owner will pay for damage or relocation of such facilities caused or necessitated by acts of the Owner, his agents or contractors.
- (D) The City of Broken Arrow or its successors, through its proper agents and employees, shall at all times have right of access with their equipment to all such easement-ways shown on said plat, or provided for in this Declaration for the purpose of installing, maintaining, removing or replacing any portion of said underground water or sewer facilities.
- (E) The Owner of the Lot shall be responsible for the repair of damage to landscaping and paving occasioned by necessary maintenance or repair of the public water or sewer facilities within the easement areas; provided, however, the City of Broken Arrow shall use reasonable care in the performance of such activities.
- (F) The foregoing covenants set forth in this paragraph (B) shall be enforceable by the City of Broken Arrow or its successors, and the Owner of each lot agrees to be bound hereby.

4.32 Limits of No Access. The undersigned Declarant hereby relinquishes right of vehicular ingress or egress from any portion of the property adjacent to East Omaha Street (East 51st Street South) within the bounds designed as "Limits of No Access" (L.N.A.) as shown on the attached plat, which "Limits of No Access" may be modified, amended, or released by the concurring approval of the Department of Public Works and the Broken Arrow Planning Commission, or its successor, or as otherwise provided by the Statutes and Laws of the State of Oklahoma pertaining thereto.

The foregoing covenant concerning Limits of No Access shall be enforceable by the City of Broken Arrow, and the Owner of each Lot agrees to be bound hereby.

4.33 Landscaping Easement. Areas designated on the Plat as "Landscaping Easement" are hereby designated by the Owner as perpetual easements for the benefit of Homeowners' Association, Inc. for the purpose of providing a landscaped green area and sprinkler system, proper visual screening of the Addition from surrounding areas and for the construction and maintenance of any screening fence or wall.

4.34 Sidewalk Easements. Areas designated on the Plat as "Sidewalk Easements" are here by designated by the Owner as perpetual easements for the benefit of the Association for the purpose of the installation of sidewalks by the house builders and for the utilization of the same by the home owners of Magnolia Gardens at Battle Creek, their guest and invitees.

ARTICLE V. PLANNED UNIT DEVELOPMENT RESTRICTIONS

WHEREAS, MAGNOLIA GARDENS at Battle Creek was submitted as a Planned Unit Development (Designated as PUD No. 94 Battle Creek) as provided in the revised ordinances of the City of Broken Arrow, Oklahoma (Broken Arrow Zoning Code), as the same existed on July 10, 1989, which PUD No. 94 was approved by the City of Broken Arrow Planning Commission on September 28, 1995, and by the City Council of the City of Broken Arrow, Oklahoma on November 16, 1995, and.

WHEREAS, the Planned Unit Development provisions of the City of 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 Declarant desires to establish restrictions for the purpose of providing for an orderly development and to insure adequate restrictions for the mutual benefit of the Declarant, its successors and assigns, and the City of Broken Arrow, Oklahoma;

THEREFORE, the Declarant does hereby impose the following restrictions and covenants which shall be covenants running with the land and shall be binding upon the Declarant, its successors and assigns, and shall be enforceable as hereinafter set forth.

5.1 Use of Land

- (A) The development of Magnolia Gardens at Battle Creek shall be subject to the planned unit development provisions of the City of Broken Arrow Zoning Code, as the same existed on July 10, 1989, or as subsequently amended.
- (B) All lots shall be known and described as residential lots and shall be limited to use for detached single-family residences and customary accessory uses.
- (C) The number of dwellings within the subdivision shall not exceed one hundred one (101).
- (D) RESERVE AREAS:

Reserve "A" and Overland Drainage Easement - For the common use and benefit of the City of Broken Arrow, the "Overland Drainage Easement and Reserve "A" shown on the accompanying plat is established for the purpose of permitting the flow, conveyance and discharge of storm water runoff from various lots within the subdivision and for properties outside the subdivision. No fence, building or other obstructions may be placed or maintained in the "Overland Drainage Easement and Reserve Area "A" nor shall there be any alteration of grades or contours in such area unless approved by the City of Broken Arrow. The ownership and maintenance of this area, which consist mainly of keeping the area free of obstruction, debris and mowing, shall be by the Property Owners Association.

Reserve "B" - For the Benefit of the Broken Arrow Public Golf Authority, an Oklahoma Public Trust ("BAPGA") the owner herein dedicates to "BAPGA" those areas designated on the accompanying plat of said Addition as "Reserve Area "B" for the purpose of permitting the unobstructed travel of golf carts, golfers, mowers, and other equipment machinery and personnel associated with the playing of golf and the maintenance, repair, etc. associated with the adjacent golf course. No fencing or other obstructions can be constructed to interfere with those users. The maintenance of this area is the responsibility of the "BAPGA" and/or Battle Creek Golf Course. Reserve Area "B" shall continue for as long as "BAPGA" owns and operates a public golf course facility on the adjacent land. The Owner reserves the right to place, maintain, and replace underground facilities within the Reserve Area to service adjacent lots.

Reserve Areas "C, D, E, F & G" - The Reserve Areas designated above are hereby designated by the Owner as perpetual easements for the benefit of the Magnolia Gardens at Battle Creek Property Owners Association for the purpose of providing a landscaped green area, ponds and streams, sidewalks, proper visual screening of the Addition from surrounding areas and for the construction and maintenance of any screening fence or wall and other landscaping and recreational facilities.

For the common use and benefit of the City of Broken Arrow, the "Overland Drainage Easement in Reserve "C" shown on the accompanying plat is established for the purpose of permitting the flow, conveyance and discharge of storm water runoff from various lots within the subdivision. No fence, building or other obstructions may be placed or maintained in the "Overland Drainage Easement and Reserve Area "C" nor shall there be any alteration of grades or contours in such areas unless approved by the City of Broken Arrow. The ownership and maintenance of these areas shall be by the Property Owners Association.

5.2 Fronting and Access Limitation: Any dwelling erected on any of the Lots herein shall front or present a good frontage on the streets, and for this purpose as applied to inside Lots, it shall mean that the dwelling shall front on the street adjoining, and on any corner lot the dwelling shall front towards the greatest building setback line and shall present a good frontage on both streets adjoining.

5.3 Building Height: The maximum height of the front of the structure shall be thirty-five feet (35').

5.4 Minimum Lot Size: No Lot shall be lot-split or resubdivided into any Lot having an area of less than 5000 square feet; provided, however, that a Lot may be divided into a parcel having less than 5000 if such parcel be held in common ownership with an adjoining parcel and the resulting area of the two parcels is not less than 5000 square feet, with the City of Broken Arrow Planning Commission approval.

ARTICLE VI. PRIVATE BUILDING AND USE RESTRICTIONS

WHEREAS, the Declarant desires to establish restrictions for the purpose of providing for an orderly development and to insure adequate restrictions for the mutual benefit of the Declarant, its successors and assigns.

THEREFORE, the Declarant does hereby impose the following restrictions and covenants which shall be covenants running with the land, and shall be binding upon the Declarant, its successors and assigns:

6.1 Architectural Control Committee – Plan Review:

(A) No building, fence, or wall shall be erected, placed or altered on any Lot in this subdivision until two (2) sets of the building plans (floor plans and elevations) and specifications, drainage and grading plans, landscape plans, exterior color scheme and material thereof, and plot plan, which plot plan shows the location and facing of such building have been approved in writing by a majority of an Architectural Control Committee composed of W. Robert Goble, Jr., Monte Allison and Forrest Carpenter or their duly authorized representative(s) or successors. In the event of the death or resignation of any member of the above named committee, the remaining member or members shall have full authority to approve or disapprove such plans, specifications, color schemes, materials and plot plan, or to designate a representative or representatives with the like authority, and said remaining member or members shall have authority to fill any vacancy or vacancies created by the death or resignation of any of the aforesaid members, and said newly appointed member shall have the same authority hereunder as their predecessors, as above set forth. In the event the Architectural Control Committee fails to approve or disapprove any such plans, specifications, color scheme, materials and plot plans submitted to it as herein required within thirty (30) days after such submission, or in the event no suit to enjoin the erection of such building or the making of such alteration has been commenced prior to the completion thereof, such approval shall not be required and this covenant shall be deemed to have been fully complied with.

(B) The Architectural Control Committee's purpose is to promote good design and compatibility within the subdivision and in its review of plans or determination of any waiver as hereinafter authorized, may take into consideration the nature and character of the proposed building or structure, the materials of which it is to be built, the availability of alternative materials, the site upon which it is proposed to be erected and the harmony thereof with the surrounding area. The Architectural Control Committee shall not be liable for any approved, disapproved or failure to approve hereunder, and its approval of building plans shall not constitute a warranty or responsibility for building methods, materials, procedures, structural design, grading or drainage, or code violations. The approval, disapproval or failure to approve of any building plans shall not be deemed a waiver of any restriction, unless the Architectural Control Committee is hereinafter authorized to grant the particular waiver. Nothing herein contained shall in any way be deemed to prevent any of the Owners of property in this subdivision from maintaining any legal action relating to improvement within this subdivision which they would otherwise be entitled to maintain.

(C) The powers and duties of the Committee or its designated representative(s) shall cease on the first day of January 2005, or when 90% of the Lots have been closed, whichever occurs first. Thereafter, the powers and duties of the Committee shall be exercised by the Property Owner's Association hereafter provided for.

6.2 Floor Area of Dwellings

(A) Single Story: A single story dwelling shall have at least 1,800 square feet of finished heated living area.

(B) Two Story and Story and a Half: If a dwelling has two levels or stories immediately above and below each other measured vertically and all such levels or stories are above the finished exterior grade of such dwelling, then such dwelling shall have a total of the various levels or stories of at least 2,200 square feet of finished heated living area.

(C) Computation of Living Area: The computation of living area shall not include any basement or attic area used for storage. All living area measurements shall be taken horizontally at the top plat level to the face of the outside wall. Required living area must average at least Ten feet (10') in height, except that in the computation of second or upper story living area, the height shall be seven feet six inches (7'6") for at least one-half of the required living area, and any area of less than five feet (5') in height shall be excluded.

(D) Waiver: The Architectural Control Committee may waive, in the particular instance, the minimum floor area requirements set out in paragraphs (A) and (B).

6.3 Building Material Requirements

(A) Stem Walls. All exposed foundation or stem walls shall be of brick or stone or stucco. No concrete blocks, poured concrete or any other foundation will be exposed. No stem walls will be exposed.

(B) Roofing. The roof of the dwelling erected on any Lot shall be Heritage II (or equal) and shall be dark earth tone in color. A minimum of 10/12 pitch for roof systems on single story and 8/12 for two story dwellings shall be used. Roof vent pipes shall be painted color of the roof.

(C) Exterior Walls. The first story exterior walls of the dwelling erected on any Lot shall be of at least 100% masonry; provided, however, that the area of all windows and doors located in said exterior walls and the area adjacent to patios and under porches shall be excluded in the determination of the area of exterior walls, and further provided that where a part of the exterior wall is extended above the interior room ceiling line due to the construction of a gable-type roof, then that portion of the wall extending above the interior room ceiling height may be constructed of wood material and shall be excluded from the determination of the area of the exterior walls. (Exclusive of fireplace chosen).

Heating and Air conditioning units shall have a masonry screen which matches the primary dwelling.

(D) Windows: All dwellings with windows other than wood will be either anodized or electrostatically painted. Metal window frames will be in color harmony with the exterior color and texture of the residence. No unpainted aluminum or metal will be permitted for window framing. Wood frames will be painted, sealed or stained.

(E) Siding: No steel, aluminum or plastic siding shall be permitted on any building. All wood siding and trim will be constructed of hardy plank material or equal.

(F) Chimneys: All chimneys visible from the street shall be brick, stone or stucco. Chimney caps shall be rectangular and shall be black or dark earth tones.

(G) Mail Boxes: All mail boxes visible from the street shall be cast aluminum or cast iron and shall be "filigree" design (Alma). Mail boxes will be placed on dual post to serve two (2) lots and placed on lots natural line.

(H) Waiver. The Architectural Control Committee may waive, in a particular instance, the building material requirements set out in this subsection; provided, such waiver to be effective must be in writing, dated and signed by a majority of such Committee,

6.4 Commercial Structures. No building or structure shall be placed, erected or used for business, professional trade or commercial purposes on any portion of any Lot.

6.5 Signs Prohibited: The construction or maintenance of advertising signs, or other advertising structures on any Lot is prohibited, except as follows:

(A) Signs advertising the sale or rental of a property are permitted, provided they do not exceed nine square feet (9 sf) in display surface area.

(B) During the development period of Magnolia Gardens at Battle Creek, signs advertising the subdivision or the initial offering of a Lot may be located at the entrances to Magnolia Gardens at Battle Creek and may exceed the minimum size in surface area.

(C) Permanent signs identifying the subdivision may be located at the entrances to Magnolia Gardens at Battle Creek.

6.6 Existing Building. No existing erected building of any sort may be moved onto or placed on any Lot.

6.7 Temporary Structures and Outbuildings

(A) No trailer, tent, garage, barn, outbuilding, nor any structure of a temporary nature shall be at any time used for human habitation, temporarily or permanently.

(B) Except for buildings existing at the time of filing of this plat, any building which is detached from the principal dwelling structure shall be limited to buildings customarily accessory to a single-family dwelling, shall be of a similar architectural design as the principal dwelling, and shall not be erected until the specifications and design thereof are approved by the Architectural Control Committee.

6.8 Vehicle Storage and Parking. No inoperative vehicle shall be stored on any Lot except within an enclosed garage. No motor home, boat trailer, travel trailer or similar recreational vehicle shall be located, parked or stored within a side, front or rear yard, except within an enclosed attached garage.

Visitor to Residents who come in Motor Homes may park in designated off street parking spaces with a "Permit". (Permits issued by Architectural Committee/Home Owners Association) and shall be for no longer than three (3) days.

6.9 Landscaping Requirements. Each Lot Owner shall completely sod the front yard of the house to the street curb and sod the back yard after completion of construction of the house.

Each Lot Owner shall have two (2) trees of two and one-half inch (2 1/2") caliper or larger within the front yard area and one (1) tree of two and one half (2 1/2") caliper or larger in the back yard area.

Each Lot Owner shall plant a minimum of the equivalent worth of \$1,500.00 in landscaping materials (trees, shrubs, bushes, ground cover, etc.) exclusive of sodding and the trees required above. A landscaping plan shall be submitted to the Architectural Control Committee for approval prior to planting. A minimum of \$1,000.00 for back yard. There shall be sprinkler system in front and backyard

6.10 Ball Flight License. Declarant hereby grants a license to the Broken Arrow Public Golf Authority, and to its successors, assigns and invitees, for the benefit of the land owned and operated by the Broken Arrow Public Golf Authority as "Battle Creek Golf Course", to permit persons lawfully utilizing said golf course to inadvertently, unintentionally or accidentally drive golf balls from said golf course onto the lands described herein (but without any right or authority to enter upon the lands described herein, or any part or portion thereof, to retrieve said golf balls, or otherwise). Declarant and each Lot Owner acknowledged that the inadvertent or unintentional driving of golf balls onto lands described herein from said golf course will not constitute a nuisance or acts of trespass and that the Broken Arrow Public Golf Authority will incur no liability to Declarant or any Lot Owner as a result thereof. Declarant and each Lot Owner acknowledges that the land described herein is and shall be "out-of-bounds" with respect to said golf course, and that "play" will not be permitted from or upon the lands described herein, onto the said golf course, or otherwise (i.e., the driving of golf balls from the land described herein onto the above lands owned and operated by the Broken Arrow Public Golf Authority is prohibited). The foregoing license shall be for the benefit of the Broken Arrow Public Golf Authority, its successors, assigns and invitees, provided, however, the same shall be enforceable solely by the Broken Arrow Public Golf Authority.

ARTICLE VII. ARCHITECTURAL CONTROL

7.1 Approval of Changes Required. The approval of the Architectural Control Committee shall be required for any Change in the Existing State of Property by or on behalf of any party other than Declarant. Except as to Declarant, no work shall be commenced to accomplish a proposed Change in the Existing State of Property until the Architectural Control Committee shall approve the change. No proposed Change in the Existing State of Property shall be deemed to have been approved by the Architectural Control Committee unless such approval is in writing, provided that approval shall be deemed given if the Architectural Control Committee fails to approve or disapprove the proposed change or to make additional requirements or request additional information within thirty (30) days after a full and complete description of the proposed Change in the Existing State of Property has been furnished, together with a specific request for such approval. In the event any Owner is dissatisfied with any decision of the Architectural Control Committee with regard to such Owner's Lot, such Owner shall have the right to appear before the Architectural Control Committee to seek such variance or relief as he or she deems appropriate. However, the final decision of the Architectural Control Committee shall be conclusive on all matters within the scope of its authority under this Declaration.

7.2 Forms of Plans and Specifications. Any proposed Change in the Existing State of Property shall be in such form and shall contain such information as may be required by the Architectural Control Committee's standards as referred to in Section 7.3 below.

7.3 Standards of the Architectural Control Committee. The Architectural Control Committee shall prepare and furnish to any Owner written standards which shall set forth the general purposes of the Architectural Control Committee in reviewing proposed Changes in the Existing State of Property, basic building restrictions and requirements, architectural review procedures and requirements and regulations applicable with respect to construction. Such standards may be amended, modified or supplemented from time to time by the Architectural Control Committee.

7.4 General Criteria for Architectural Control Committee; Adopting Standards. The Architectural Control Committee shall have complete discretion to approve or disapprove any Change in the Existing State of Property. The Architectural Control Committee shall exercise such discretion with the following objectives in mind, among others: (a) to carry out the general purposes expressed in this Declaration; (b) to prevent violation of any specific provision of this Declaration or any Supplementary Declaration; (c) to prevent any change which would be unsafe or hazardous to any persons or properties; (d) to minimize obstruction or diminution of the view of others; (e) to preserve visual continuity and to prevent any marked or unnecessary transition between improved and unimproved areas; (f) to assure that any change will be of good and attractive design and in harmony with development on other portions of the Property; (g) to assure that materials and workmanship for all improvements are of high quality, comparable to other improvements in the area; (h) to assure the safety of persons utilizing the common areas; and (i) to assure the first-class quality of the visual impact of any change as seen from the golf course. The Architectural Control Committee shall establish and modify from time to time standards and guidelines for such Changes in the Existing State of Property as it may deem appropriate.

7.5 Completion of Work After Approval. After approval of the Architectural Control Committee of any proposed Change in the Existing State of Property, the proposed change shall be accomplished as promptly and diligently as possible, in complete conformity with the description of the proposed change, and with any plans and specifications therefor given to the Architectural Control Committee. Failure to accomplish the change within one year after the date of approval or to complete the proposed change strictly in compliance with the description thereof and the plans and specification therefor shall operate automatically to revoke the approval of the proposed change, and, upon demand by the Architectural Control Committee, the Property shall be restored as nearly as possible to its state existing prior to any work in connection with the proposed change. The Architectural Control Committee shall have the right and authority to record a notice to show that any particular Change in the Existing State of Property has not been approved or that any approval given has been revoked.

7.6 Right of Inspection. The Association, the Architectural Control Committee or any of their agents may, at any reasonable time or times, and with reasonable notice, enter upon and inspect any Lot or the exterior of any improvements thereon for the purpose of ascertaining whether the maintenance of such Lot and the maintenance, construction or alteration of structures thereon are in compliance with the provisions hereof; and neither the Architectural Control Committee, the Association nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or inspection.

7.7 Estoppel Certificate. The Association shall be authorized to, and shall, upon the reasonable request of any interested person, after confirming necessary facts with the Architectural Control Committee, furnish a certificate with respect to approval or disapproval by the Architectural Control Committee of any Change in the Existing State of Property, and any person, without actual notice to the contrary, shall be entitled to rely on said certificate with respect to all matters set forth therein. This certificate may be a set of architectural plans signed by the Committee.

7.8 Variances by Architectural Control Committee. The Architectural Control Committee may authorize variance from compliance with any of the provisions, covenants, conditions and restrictions contained in either this Declaration or such Committee's standards in effect from time to time when circumstances such as topography, natural obstructions or hardship may require. Such variances must be evidenced in writing and may be recorded. If such variances are granted, no violation of the provisions, covenants, restrictions or conditions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted, and subsequent Owners may rely on and shall be bound by the provisions set forth in the variance. The granting of such a variance shall not operate to waive any of the provisions, covenants, conditions or restrictions contained in this Declaration for any purpose except as to the particular portion of the Property and the particular provision covered by the variance.

7.9 Development by Declarant. Notwithstanding anything to the contrary contained herein, the provisions of this Article VII shall not apply to Declarant's construction of streets, sewers, utilities, walls, landscaping, recreational improvements, sidewalks and similar items.

ARTICLE VIII. ARCHITECTURAL CONTROL COMMITTEE

8.1 Architectural Control Committee Membership. The Architectural Control Committee shall consist of three (3) members, which members shall initially be appointed by Declarant upon relinquishment of such rights by Declarant as hereafter provided by the Board. Declarant may relinquish its rights or any portion thereof under this Section 8.1 to the Board by advising the Board in writing of its intent to do so, and in such event, the Association shall have the authority of Declarant under this Section. Declarant shall relinquish such rights at or prior to such time as Declarant shall cease to own any lots. The Association shall promptly furnish the names and addresses of the current members of the Architectural Control Committee to any interested person.

8.2 Action by Architectural Control Committee. The vote or written consent of any two (2) members of the Architectural Control Committee shall constitute action by the Architectural Control Committee.

8.3 Power to Employ Consultants. The Architectural Control Committee shall be empowered to employ consultants and agents as it may deem necessary to assist it in the performance of its duties.

ARTICLE IX. FORMATION AND FUNCTIONS OF THE ASSOCIATION

9.1 Formation of Association. The Association has been incorporated as a non-profit corporation for a perpetual term under the laws of the State of Oklahoma.

9.2 Purpose of Association. The Association will be formed to further the common interests of the Members and to perform the functions hereinafter required or permitted to be performed by the Association.

9.3 Association May Take Action if Noncompliance by Owners; Compliance Expenditures. In the event of the failure by an Owner to comply with any provision of this Declaration and any standards in effect from time to time as adopted by the Architectural Control Committee, the Association, after written notice to the Owner mailed or delivered to the Owner at his or her last known address, shall be authorized to and shall have the power to take such action as the Association deems necessary or desirable to cause compliance with the provisions of this Declaration or such standards, and with respect to such Lot Owner, all Compliance Expenditures shall be payable by such Owner on demand by the Association.

9.4 Rules and Regulations; Fines. The Association shall be authorized to and shall have the power to adopt and enforce rules and regulations to regulate use of the Property. Each Owner shall be obligated to comply with and to see that such Owner's tenants, guests and invitees comply with any such rules and regulations. Additionally, the Board may from time to time provide for enforcement of any such rules and regulations and provisions of this Declaration through reasonable and uniformly applied fines.

9.5 Initial Performance by Declarant. The initial performance of the functions of the Association and the Board as specified in this Declaration and the exercise and enforcement of rights (including collection and use of assessments) and remedies given to the Association herein for the purposes herein stated may be conducted by Declarant in lieu of the Association and/or the Board. Declarant shall transfer all of the foregoing rights and responsibilities to the Association or any successor(s) thereto at any time on or before thirty (30) days following the sale of the last Lot owned by Declarant but may transfer such rights and responsibilities at such earlier date as it may so desire.

9.6 Battle Creek Master Property Owners' Association. Battle Creek Property Owners' Association will be the master association combined of MAGNOLIA GARDENS, Shiloh, Wakefield and Gettysburg, and future sections of the Battle Creek development yet to be named. Each sub-association will operate under its own dues structure and be administered by its individual officers of which in the future one will serve as a representative to the master association board.

ARTICLE X. OPERATION OF THE ASSOCIATION; ASSESSMENTS

10.1 Membership in the Association. The Owner of a Lot except the Owner of Lot 1, Block 5 shall automatically be the holder of a membership in the Association appurtenant to that Lot, and the Association membership for that Lot shall automatically pass with fee simple title to that Lot; provided, however, in the event any Owner shall have entered into a contract to sell his or her interest in a Lot during the time such contract is in force, if the contract vendee is in possession of the Lot, he or she shall be considered to be the Member rather than the Owner. There shall be one (1) vote for each lot. When more than one person holds an interest in any lot, all of such persons shall be Members, but, except as provided below, in no event shall more than one (1) vote be cast with respect to any Lot. The vote for such Lot shall be exercised as the Owners thereof may determine among themselves, provided that if they are unable to so determine, none of such Members shall be entitled to vote. Notwithstanding the foregoing, Declarant shall be entitled to three (3) votes for each single Lot of which it is the Owner.

10.2 Board of Directors. The affairs of the Association shall be managed by the Board, which may, however, by resolution, delegate any portion of its authority to an Executive Committee or an Officer, Executive Manager or Director of the Association. The members of the Board shall be elected by the Members; provided, however, Declarant shall have the right to appoint the members of the Board until it either (a) no longer owns a Lot, or (b) relinquishes its right to appoint Board members, whichever first occurs.

10.3 Certificate of Incorporation and Bylaws. The purposes and powers of the Association and the rights and obligations with respect to Members shall be amplified by provisions of the Articles of Incorporation and Bylaws of the Association. Such Articles and Bylaws include provisions with respect to corporate matters, including provisions such as notices, record dates and quorums for meetings of directors and Members, but no such provisions may be inconsistent with any provisions of this Declaration.

10.4 Assessments. All of the Lots except Lot 1, Block 5 shall be subject to an annual assessment charge as set forth in Section 10.5 hereof, which is due and payable by the respective Owners thereof to the Association annually in advance on the first day of January in each year. The Board may permit the annual assessment charge to be paid either annually, semi-annually or monthly and shall have the further right to require payment of the same in advance. Annual assessments shall commence in January 2001. Lots owned by the Declarant are exempt from the annual assessment charge until the ownership is transferred.

10.5 Annual Assessment: (Magnolia Gardens)

(A) The annual assessment (in addition to sums assessed pursuant to other Sections hereof) for the calendar year beginning January 1, 2001, shall be Nine Hundred Dollars (\$900.00) per Lot. The Board may increase the annual assessment for any subsequent calendar year but such increase shall not be in excess of ten percent (10%) compounded above the maximum permitted annual assessment for the previous year, except as provided in 10.5 (B) below.

(A) The annual assessment (in addition to sums assessed pursuant to other Sections hereof) for the calendar year beginning January 1, 2001, shall be Nine Hundred Dollars (\$900.00) per Lot. The Board may increase the annual assessment for any subsequent calendar year but such increase shall not be in excess of ten percent (10%) compounded above the maximum permitted annual assessment for the previous year, except as provided in 10.5 (B) below.

(B) The annual assessment for any year commencing after January 1, 2001, may be increased to an amount greater than that permitted by subsection (A) of this Section 10.5 only by an affirmative vote of the majority of the Members who are voting in person or by proxy at a meeting duly called for such purpose.

10.6 Use of Assessment Funds. Assessment funds shall be used for purposes as the Association shall determine necessary and advisable, which may include but shall not be limited to the following: For improving and maintaining the Common Areas and other property of the Association, including guardhouses and maintenance of each lot in the subdivision; for planting trees and shrubbery and the care thereof; for payment of expenses incidental to the proper operation and maintenance of recreational facilities located within the Common Areas; for maintenance of irrigation systems, for employing night watchmen; for caring for vacant property; for removing grass or weeds; for street cleaning; for street repairs and street lights; for constructing, purchasing, maintaining or operating any community service; for purchase of insurance; for legal costs and expenses; for supplies and fertilizers; for snow removal; or for doing any other thing necessary or advisable, in the opinion of the Association, for the general welfare of the Owners; for expenses incidental to the enforcement of these restrictions for the payment of operating expenses of the Association; or for any other purpose within the purposes for which the Association is incorporated.

10.7 Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association 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 upon the Common Areas, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the members who are voting in person or by proxy at a meeting duly called for such purpose.

10.8 Lien for Assessments, Fines and Compliance Expenditures. The Association shall have a lien against each Lot to secure payment of any assessment, fine, Compliance Expenditure or other amount due and owing the Association by the Owner of that Lot, plus interest from the date such amount was due and payable at a rate equal to four percent (4%) per annum over the prime interest rate, adjusted on each day on which there occurs a change in said prime interest rate (provided that the interest rate shall never exceed the maximum allowed by law), in addition to all costs and expenses of collecting the unpaid amount, including but not limited to reasonable attorneys' fees. The lien may be foreclosed in the manner for foreclosure of mortgages in the State of Oklahoma. The lien provided herein shall be junior to the lien of any first mortgage on any Lot taken in good faith and for value and perfected by recording in the office of the Register of Deeds of Tulsa County, Oklahoma, prior to the time and recording in said office of a Notice of Lien, but shall be prior to any and all other liens. The Notice of Lien shall set forth the amount of any assessment, fine, Compliance Expenditure or other amount due and owing to the Association, specifying the date such amount was due and payable and from which interest accrues, specifying all costs and expenses, including reasonable attorneys' fees, of collecting the unpaid amount to the date of recording such Notice of Lien, describing the Lot affected by the lien and specifying the name or names last known to the Association of the Owner or Owners of the Lot. Each Owner acknowledges and agrees, by acceptance of such Owner's deed or other interest in any Lot subject to this Declaration, that the lien of the Association for assessments due hereunder, and for all other sums which may become due the Association hereunder from an Owner, shall be superior to any homestead exemption as is now or may hereafter be provided by Oklahoma or federal law. The acceptance of a deed or other interest to a Lot subject to this Declaration shall constitute an express waiver of the homestead exemption as against all sums which may become due the Association from the Owner of such Lot.

10.9 Successor's Liability for Assessments. The Association's lien for delinquent assessments, damages, costs, expenses, Compliance Expenditures, attorneys' fees and all other charges allowed hereunder against a Lot shall pass respect to the sale or transfer of any Lot which is subject to any mortgage pursuant to a decree of foreclosure under to an Owner's successors in title, regardless of whether said obligation was expressly assumed by them, except with such mortgage or any proceeding in lieu of foreclosure thereof, which sale or transfer shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. Upon acquisition of title to a Lot, an Owner shall be bound by the terms hereof.

10.10 No Offsets. All assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reductions thereof shall be permitted for any reason, including without limitation any claim of non-use of the Common Areas or any claim that Declarant, the Association, the Board of the Architectural Control Committee is not or has not been properly exercising its duties and powers under this Declaration.

ARTICLE XI. PROPERTY RIGHTS

11.1 Easement in Common Areas. Declarant hereby dedicates and conveys to each Owner a right and easement of enjoyment in and to the Common Areas; provided, however, no Common Areas may be used for recreation, nature study, picnicking or other uses except as authorized from time to time by the Board. Said right and easement shall not be personal but shall be considered to be appurtenant to said Lots, whether specifically set forth in deeds to the Lots or not. Declarant hereby covenants for itself, its successors and assigns that it will convey by special warranty deed, at such time as Declarant no longer owns any Lot, or such earlier date as Declarant shall determine in its sole discretion, a fee simple title to the Common Areas to the Association, free and clear of all encumbrances and liens except any current ad valorem or special assessment taxes. The Association shall accept title to such Common Areas, together with the responsibility to perform any and all functions and duties associated therewith, including the responsibility for the payment of taxes and insurance on the Common Areas and for the proper maintenance of the open spaces. The title to the Common Areas vested in the Association shall be subject to the rights and easements of enjoyment in and to such Common Areas by its Members.

No outdoor cooking around any of the common areas of the water features.

No fishing, No wading, No swimming in any of the water features.

11.2 Description of Common Areas. The Common Areas consist of the following real estate:

(A) All reserve areas as shown on the final Plat is all of the private streets, the landscape medians, gates, gatehouse and its lighting and irrigation system.

(B) All common areas, water features and landscape easement areas as shown on the Plat.

11.3 Reservation of Rights in Common Areas. Notwithstanding any other provision of this Declaration, Declarant reserves the right to grant easements within the Common Areas for the installation, repair and maintenance of water mains, sewers, drainage course, public walkways and other public utilities, provided that such utilities shall be installed in such a manner so as to minimize damage to the natural features of the Common Areas.

ARTICLE XII. MISCELLANEOUS PROVISIONS

12.1 Duration of Declaration. All provisions contained in this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded in the Register of Deeds' office for Tulsa County, Oklahoma, after which time it shall automatically be extended for successive periods of ten (10) years each, unless and until this Section 12.1 is amended or this Declaration is repealed in accordance with Section 12.2 hereof.

12.2 Amendment of Declaration. Any provision contained in this Declaration may be amended or repealed, or additional provisions added to this Declaration, by the recording of a written instrument or instruments specifying the amendment or the repeal, executed by the Owners as shown by the records in the office of the Register of Deeds of the County of Tulsa, Oklahoma, of not less than a majority of the Lots then subject to this Declaration, provided that so long as Declarant owns twenty (20) Lots, any such instrument or instruments shall require the written consent of Declarant.

12.3 Effect of Provisions of Declaration. Each provision of this Declaration shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any of the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument, and each Owner shall be bound by the terms of this Declaration.

12.4 Enforcement and Remedies. The Association, Declarant or any Owner shall have the right to enforce by any proceeding, at law or in equity, all restrictions, conditions, covenants, reservations, liens, Compliance Expenditures and charges now or hereafter imposed by the provisions of this Declaration.

12.5 Limited Liability. Neither Declarant, the Association, the Board, the Architectural Control Committee nor any member, agent or employee of any of the same shall be liable to any party for any act or for any failure to act with respect to any matter if the act or failure to act was in good faith and without malice, and such Declarant, the Association, the Board, the Architectural Control Committee, and any member, agent or employee of the same, shall be reimbursed by the Association for any costs and expenses, including but not limited to attorneys' fees reasonably incurred by them with the prior approval of the Board, which approval shall not unreasonably be withheld or delayed, as a result of threatened or pending litigation in which they are or may be named as parties.

12.6 Successors and Assigns. Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, the Association and each Owner and the heirs, personal representatives, successors and assigns of each. Declarant shall have the right and power to assign and delegate to the Association, or any successor or successors thereto, at any time and from time to time, all or any part of any of the rights, powers and authority contained in this Declaration.

12.7 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.

12.7 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.

12.8 Captions. The captions and headings in this Declaration are for convenience only and shall not be considered in construing any provisions of this Declaration.

12.9 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provisions or of any other provision of this Declaration.

IN WITNESS WHEREOF, Battle Creek Group, L.L.C., has executed this instrument the 15 day of June, 2000.

BATTLE CREEK GROUP, L.L.C.

W. Robert Gobie, Jr.
W. Robert Gobie, Jr., Manager

STATE OF OKLAHOMA)
) ss:
COUNTY OF TULSA)

BE IT REMEMBERED, that on this 15th day of June, 2000, before me, a notary public in and for the county and state aforesaid, personally appeared W. Robert Gobie, Jr. known to me to be the manager of Battle Creek Group, L.L.C., an Oklahoma limited liability company, and the same person executed the above and foregoing Declaration as his free and voluntary act and deed, as such officer, on behalf of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year last above written.

OFFICIAL SEAL

LORI ALLEN

Lori Allen
Notary Public

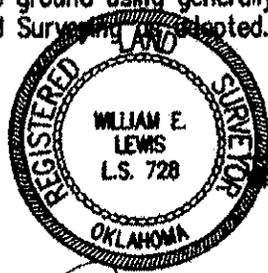
My commission expires
NOTARY PUBLIC STATE OF OKLAHOMA

WAGONER COUNTY

CERTIFICATE OF SURVEY

My Commission Expires 9-1-2002

I, William E. Lewis, 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 Magnolia Gardens at Battle Creek, a subdivision in the City of Broken Arrow, Tulsa County, State of Oklahoma, is a representation of the survey made on the ground using generally accepted practices and meets or exceeds the Oklahoma Minimum Standards for the Practice of Land Surveying adopted.



William E. Lewis
William E. Lewis, Reg. Land Surveyor No. 728

STATE OF OKLAHOMA)
) ss:
COUNTY OF TULSA)

BE IT REMEMBERED, that on this 15th day of June, 2000, before me, a notary public in and for the county and state aforesaid, personally appeared William E. Lewis known to me to be the same person who executed the above and foregoing Declaration as his free and voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year last above written.

OFFICIAL SEAL

LORI ALLEN

Lori Allen
Notary Public

My commission expires
NOTARY PUBLIC STATE OF OKLAHOMA

WAGONER COUNTY

My Commission Expires 9-1-2002

MAGNOLIA GARDENS AT BATTLE CREEK