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DECLARATION OF COVENANTS  
ASPEN CREEK I

Dated: January 16, 1984  
Filed: February 1, 1984 at 1:53 PM  
Recorded in Book 4763 Page 1384

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, BELLAMAH COMMUNITY DEVELOPMENT, a New Mexico general partnership, hereinafter referred to as the "Owner", is the owner in fee simple of all the realty comprised of and described as:

ASPEN CREEK I, a Subdivision in the city of Broken Arrow, Tulsa County, State of Oklahoma, according to recorded plat thereof,

being Plat No. 4931 (hereinafter referred to as the "Plat"), in the office of the County Clerk of Tulsa County, Oklahoma, and being hereinafter referred to in its entirety as the "Property" or as "Aspen Creek I";

AND WHEREAS, Aspen Creek I was submitted as part of Planned Unit Development No. 31 pursuant to the provisions of Article 8, Planned Unit Development, of the Broken Arrow Zoning Ordinance No. 302, as amended by Ordinance No. 500, dated August 20, 1973, and which Planned Unit Development No. 31 was approved by the Broken Arrow Planning Commission on December 16, 1982, and by the City Council of Broken Arrow on December 20, 1982;

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 Owner desired to establish restrictions for the purpose of providing for an orderly development and to ensure adequate restrictions for the mutual benefit of the Owner, its successors and assigns, and the city of Broken Arrow, Oklahoma;

NOW, THEREFORE, the Owner does hereby impose the following limitations, restrictions and covenants which shall be binding upon the Owner, its successors and assigns.

## SECTION I.

RESTRICTIONSA. Use of Land:

(1) The development of Aspen Creek I shall be subject to the Planned Unit Development provisions of the Broken Arrow Zoning Ordinances, Article 8, Ordinance No. 302, as the same existed on December 20, 1982.

(2) Lots 1 through 16, Block 1; Lots 1 through 30, Block 2; Lots 1 through 19, Block 3; Lots 1 through 6, and Lot 22, Block 4; and Lots 1 through 37, Block 5, shall be known and described as residential lots and shall be used for detached single-family residences and purposes only.

(3) Lots 20A and B through 39A and B, Block 3; Lots 7A and B through 15A and B, and Lots 17A and B through 21A and B, Block 4, shall be known and described as residential lots and each lot shall be limited to one-single family residence which shall be attached by common wall to one single-family residence located on an adjoining lot. No structure shall contain more than two attached dwelling units.

(4) Lot 16, Block 4, shall be limited to uses for common parking and open space, and is reserved for subsequent conveyance to the property owners' association to be formed pursuant to Section III hereof.

(5) The use of Landscaping Areas A, B, C and D is limited to landscaped open spaces, screening walls and fences, and signage identifying the subdivision.

B. Minimum Lot Size, Yards and Setbacks:

(1) Minimum Lot Size. No lot shall be lot-split or resubdivided, except as necessitated by corrections of encroachments or other boundary deficiencies caused by errors in surveying and/or construction.

(2) Street Setback. No building shall be erected or maintained nearer to a street (public or private) than the building setback lines depicted on the Plat.

(3) Side Yard. Each lot containing a detached dwelling shall maintain side yards of not less than five feet (5') in width each. Each lot containing an attached dwelling unit shall maintain a side yard of at least five feet (5') in width along the side lot line, opposite the lot line along which the units are attached.

**(4) Rear Yard.**

(a) Each lot described within Subparagraph (2) of Subsection A of Section 1, shall maintain a rear yard building setback of at least twenty feet (20'); provided, however, that accessory buildings may be located in the required rear yard setback, but no accessory building shall be erected nearer than five feet (5') to any lot line, nor encroach upon any utility easement.

(b) Each lot described within Subparagraph (3) of Subsection A of Section 1, shall maintain a rear yard building setback of at least fifteen feet (15'); provided, however, that accessory buildings may be located in the required rear yard setback, but no accessory building shall be erected nearer than five feet (5') to any lot line, nor encroach upon any utility easement.

**C. Building Height:**

No portion of any building shall exceed two (2) stories or thirty feet (30') in height, as measured vertically from the ground elevation to the top of the highest top plate.

**D. Site Plan Requirement:**

Prior to the issuance of a building permit for any dwelling, a detailed site plan of the lots proposed to contain dwellings shall be submitted to and approved by the Broken Arrow Planning Commission. Construction and use of the property shall be in substantial compliance with the approved site plan or such amendment thereof as may be later approved by the Broken Arrow Planning Commission or its successor.

**E. Floor Area of Dwellings:**

No detached dwelling shall have less than 900 square feet of finished living area. No attached dwelling shall have less than 800 square feet of finished living area.

**F. Garage:**

Each dwelling shall have a garage for at least one but not more than two automobiles. The use of any garage as a living area is prohibited, and no garage shall be altered or used in any manner that would prevent the parking therein of a full-sized automobile; provided that the dwellings on Lots 1 and 4, of Block 4, may have a garage area that is converted to living space notwithstanding the provisions contained herein.

**G. Exterior Wall Material Requirements:**

The exterior walls of the dwelling (including garages) erected on any lot shall be at least 40% brick, stone or stucco.

**H. Commercial Structures - Temporary Use:**

No building or structure shall be placed, erected, or used for business, professional, trade or commercial purposes on any portion of any lot; provided, however, upon prior written approval of the Architectural Committee, any lot or dwelling thereon may be used as a sales office, model home complex, or storage and construction yard during the construction and sales period.

**I. Livestock and Poultry Prohibited:**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot or part thereof; except that dogs, cats, or other household pets may be kept provided they are not kept, bred or maintained for commercial purposes.

**J. Offensive Activity:**

No offensive activity shall be carried on upon any lot, nor shall any trash or other refuse be thrown, placed or dumped upon any vacant lot; nor shall anything be done which may be, or may become an annoyance or nuisance to the neighborhood. Clothes lines or paraphernalia for outside drying of clothes are prohibited.

**K. Maintenance of Lots:**

A lot owner, whether the lot is developed or vacant, shall maintain the lot in a neat and orderly condition and shall keep the lot mowed and free of debris. No lot shall be used for the storage of materials except for the period thirty (30) days prior to the start of construction and during the construction period. All construction, whether new construction, alterations, additions or remodeling, shall be completed within six (6) months from the date of commencement.

**L. Signs:**

The construction or maintenance of advertising signs or other advertising structures on any lot is prohibited; except that non-illuminated signs advertising the sale or rental of a property are permitted provided they do not exceed five (5) square feet in display surface area. Signs identifying the subdivision or identifying dwellings for sale within the subdivision, may be constructed and maintained within Landscaping Areas A, B, C and D upon prior written consent of the Architectural Committee.

**M. Outbuildings:**

No outbuilding, storage shed or similar structure shall be constructed, or moved onto, or placed on any lot without the prior written approval of the Architectural Committee.

**N. Temporary Structure:**

No trailer, tent, garage, barn, outbuilding, or any structure of a temporary nature shall be at any time used for human habitation, temporarily or permanently.

**O. Vehicle Storage, Parking and Repair:**

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 or truck over 3/4 ton shall be located, parked or stored within a side or front yard; and if not located within an enclosed garage, shall be screened sufficiently to prevent any view thereof from any street within Aspen Creek I. No vehicle shall be repaired on any lot except while parked in an enclosed garage.

**P. Antennae:**

No antennae (amateur radio, citizen's band radio, satellite dish or other, except television antennae of customary size), shall be located upon any lot or dwelling exterior.

**Q. Fences or Walls:**

Fences or walls situated upon residential lots, hereinafter being referred to as "interior fencing", shall comply with the following requirements:

(1) Height and Setback. No interior fence or wall shall exceed six feet (6') in height. No interior fence or wall, except necessary retaining walls, shall be erected or maintained nearer to the streets within the subdivision than the building setback lines depicted on the Plat; provided, however, on corner lots, rear yard and exterior side yard fencing shall extend to and run adjacent to the street right-of-way line, but shall not extend forward of the front building setback line of said corner lot.

(2) Materials. Interior fences or walls shall be of cedar or other weather resistant wood.

(3) Design Review. No fence or wall shall be erected on any lot until the specifications and designs thereof are approved by the Architectural Committee as provided within Section II.

**R. Sight Triangle at Intersections:**

No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between a height of three feet (3') and a height of eight feet (8') above the abutting streets, shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting them at points twenty-five feet (25') from the intersection of the street lines; or in the case of rounded property corners, from the intersection of the street right-of-way lines extended. No tree shall be permitted to remain within the sight triangle above described unless the foliage line is maintained at sufficient height to prevent obstruction of the sight lines.

**S. Mobile Homes Prohibited:**  
Manufactured, mobile or modular homes are prohibited.

**T. Grading:**  
No lot may be landscaped or the contours or grades altered in any manner that would significantly change the drainage characteristics of the lot established by the grading plan approved by the city of Broken Arrow, unless such modification shall have the prior written approval of the city of Broken Arrow.

**U. Access:**  
There shall be no vehicular access to or from West Houston Street (East 81st Street South), to or from any abutting lot.

## SECTION II

### ARCHITECTURAL COMMITTEE

**A. Architectural Plan Review:**  
No exterior improvements shall be erected, placed, or altered on any lot in this subdivision until the building plans and specifications, drainage and grading 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 Bellamah Community Development or its duly authorized representative or successor, herein referred to as the "Architectural Committee". In the event the Architectural Committee fails to approve or disapprove any such plans, specifications, color scheme, materials and plot plans submitted to it as herein required within ten (10) days after such submission; or in any event, after submission of plans if 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. Purpose:**  
The purpose of the architectural review herein provided for is to promote good design and compatibility within the subdivision, and the Architectural Committee and any successor exercising such power shall not be liable for any approval, disapproval 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.

**C. Modification:**  
The Architectural Committee shall have the power in the particular instance to grant a modification of any of the covenants set forth in Section I of this Declaration, except covenants establishing the permitted principal use of the lot and covenants to which the city of

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Broken Arrow is herein granted an enforcement right. A modification by the Architectural Committee shall be upon its finding in the particular instance that the purposes of the covenants can be achieved without necessity of strict adherence to the covenants, or in the alternative, that the purpose of the covenants cannot be achieved.

**D. Transfer of Duty:**

The architectural review powers and duties of Bellamah Community Development shall terminate on the date Bellamah Community Development shall cease to own at least five (5) acres of the following described property:

Southwest Quarter (SW/4) of Section 10, Township 18 North, Range 4 East, Tulsa County, Oklahoma; LESS AND EXCEPT the South 330 feet of the East 280 feet thereof; AND LESS AND EXCEPT the West 60 feet and the South 50 feet thereof, according to the United States Government Survey thereof, and containing 152 acres, more or less,

or upon written relinquishment by Bellamah Community Development of the architectural review powers and duties, whichever occurs first; and thereafter the architectural review, powers and duties shall be exercised by the Architectural Review Committee, the members of which shall be elected by the then owners of Property at a meeting held for such purpose.

**SECTION III**

**PROPERTY OWNERS' ASSOCIATION**

**A. Formation of Owners' Association:**

The owners have formed or shall cause to be formed the Aspen Creek Property Owners' Association, Inc. (hereinafter referred to as the "Association"), a non-profit entity established pursuant to the Business Corporation Act of the State of Oklahoma, and formed for the general purposes of maintaining the common areas of Aspen Creek I and the open spaces and other common areas planned to be established by the Owner during the development of adjoining and nearby properties.

**B. Membership:**

Every person or entity who is a record owner of the fee interest of a lot shall be a member of the Association, and membership shall be appurtenant to and may not be separated from the ownership of a lot. The acceptance of a deed to a lot shall constitute acceptance of membership to the Association as of the date of incorporation of the Association, or as of the date of recording of the deed, whichever occurs last.

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**C. Covenant for Assessments:**

The owner and each subsequent owner of a lot, by acceptance of a deed therefor, is deemed to covenant and agrees to pay to the Association an annual assessment as established by the Board of Directors. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage.

**D. Certain Rights of the Association:**

Without limitation of such other powers and rights as the Association may have, the Association shall be deemed a beneficiary, to the same extent as a lot owner, of the various covenants within this document contained, and shall have the right to enforce said covenants and agreements.

**SECTION IV****EASEMENTS AND RIGHTS - ATTACHED DWELLINGS****A. Party Walls:**

The rights and duties of the owners of dwellings within Aspen Creek I with respect to party walls and/or walls erected entirely on one lot but close to the next lot line, shall be governed as follows:

1) Each wall, including fences and patio walls, which is constructed as part of the original construction of the dwelling and any part of which is placed on the dividing line or adjacent thereto between separate units, shall constitute a party wall. With respect to any such wall, each of the adjoining owners shall assume the burdens and be entitled to the benefits of these covenants and, to the extent not inconsistent herewith, the general rules of law regarding party walls shall be applied thereto.

2) In the event any such party wall is damaged or destroyed through the act of one adjoining owner or any of his guests, tenants, licensees, agents, or members of his family (whether or not such act is negligent or the fault of any one person), so as to deprive the other adjoining owner of the full use and enjoyment of such wall, then such owner who caused or is responsible for such damage shall forthwith proceed to rebuild and repair the wall to as good a condition as formerly, without cost to the adjoining owner; or shall bear the whole cost of furnishing the adjoining property with protection from the elements such as had previously been provided by the damaged or destroyed wall.

3) In the event any such party wall which does not form a structural part of a dwelling or garage is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one of the adjoining

owners, his agents, tenants, licensees, guests, or family then, in such event, both adjoining owners shall proceed forthwith to rebuild or repair the wall to as good a condition as formerly, at their joint and equal expense.

4) In the event any such party wall which does form a structural part of a dwelling or garage is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time) other than the act of one of the adjoining owners, his agents, tenants, licensees, guests or family then, in such event, each owner of the dwelling or garage of which such party wall forms a structural part, shall proceed to rebuild or repair his part of the wall to as good a condition as formerly, or both owners shall jointly bear the whole cost of furnishing the adjoining property with protection from the elements, such as had been previously provided by the damaged or destroyed wall.

5) The rights and responsibilities of any owner to or from any other owner under this section shall be appurtenant to the land and shall pass to such owner's successors in title.

6) In addition to meeting the other requirements of this Declaration of Covenants and of any building code or similar regulations or ordinances, any owner proposing to modify, make additions to or rebuild his party wall in any manner which requires the extension or other alteration of any party wall, shall first obtain the written consent of the adjoining owner.

7) In the event of a dispute between owners with respect to the repair or rebuilding of a party wall, or with respect to the sharing of the costs thereof, the matter shall be submitted to three arbitrators, one chosen by each of the owners and the third by the two so chosen. A determination of the matter signed by any two of the three arbitrators shall be binding upon the owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

8) Any party wall constructed adjacent to a side lot line must be a wall without any openings. No window or window opening may ever be installed in such a wall.

9) Each owner of an attached dwelling shall be jointly responsible with the adjoining owner for the maintenance of the exterior of the building. No change of paint, masonry or roof color shall be made without the consent of the owner of the attached single-family dwelling.

**B. EASEMENTS - MAINTENANCE AND CONSTRUCTION:**

It is contemplated that the original construction upon all or some of the lots will include construction of party walls and fences, and walls and fences erected entirely on one lot but close to the next lot line. It is further contemplated that in order to maintain, repair, resurface and/or paint such walls and fences, it will be necessary for the owner of the lot upon which such wall or fence is located to have access upon the adjoining lot for such purposes. Now, therefore, a five foot (5') wide easement running parallel to the construction of each such exterior wall or fence is hereby established. Said side easements shall run with the land and shall be binding upon the undersigned owner, his heirs, assigns and successors in title. Said side easements shall be subject to and governed by the following conditions and covenants:

- 1) Except during the original construction period, the easement areas shall be kept clear and unobstructed to provide open access for the city and owners thereof. No building or improvements shall be constructed or erected within the easement areas, nor shall anything be piled on or leaned against any wall adjacent to the easement areas, except patio floors and/or landscaping.
- 2) The dominant owner of the side easement shall have the right to enter upon the easement area to the extent such entry is necessary to carry out the resurfacing, painting or repair of the exterior surfaces of walls or structures adjacent to the easement area, or to perform any work necessary for the maintenance and upkeep of his property. Such right of entry shall be exercised in such a manner as to interfere as little as is reasonably possible with the possession and enjoyment of the easement area and shall be preceded by reasonable notice whenever circumstances permit. In case of emergency, entry shall be immediate.
- 3) The dominant owner of an easement area shall be responsible to the servient owner for all damage to the easement area resulting from the use of the area by the dominant owner.
- 4) In the event any portion of the footings, walls and/or foundation of an adjacent dwelling or garage encroaches on an easement area, a valid easement for any such encroachment and for the maintenance of same, so long as it stands, shall and does exist; however, said encroachment shall not exceed a maximum of 0.3 foot.
- 5) The dominant owner of an easement area shall be held harmless from any liability arising from the servient owner's use and enjoyment of the easement area. The servient owner of the easement area shall be held harmless from any liability arising from the use or enjoyment of the easement area by the dominant owner, his agents, invitees, licensees, guests, or members of his family.

6) No part of the easement areas shall be used for any purpose or in any manner which shall increase the rate at which insurance against loss by fire, or the perils of extended coverage or bodily injury, or property damage liability insurance covering the adjacent property, may be obtained, or cause such premises to be uninsurable against such risks, or any policy or policies representing such insurance to be cancelled or suspended, or the company issuing same to refuse renewal thereof.

#### SECTION V

##### RESERVATIONS OF OWNER

Bellamah Community Development hereby reserves and is granted the right and power to record a Special Amendment to this Declaration of Covenants at any time and from time to time, which amends these covenants (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (ii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages on any lot covered by these covenants; (iii) as may be necessary to maintain the consistency of this Declaration with the "Declaration of Covenants and Restrictions of the Aspen Creek Property Owners' Association, Inc." as it may be initially recorded and from time to time amended or modified.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Bellamah Community Development to make or consent to a Special Amendment on behalf of each owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a lot and the acceptance thereof, shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power of Bellamah Community Development to make, execute and record Special Amendments. No Special Amendment made by Bellamah Community Development shall affect or impair the lien of any first mortgage in order to induce any of the above agencies or entities to make, purchase, insure or guarantee the first mortgage on such owner's lot.

