



Saved from 9409 / 11/23/95 jpm
Revised 03/11/96 jst/dag
Revised 09/12/96 jst/jrc/dag
Revised 09/13/96

MILLCENT PARK
DEED OF DEDICATION
AND
RESTRICTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS:

HARRIS-KEANE DEVELOPMENT, L.L.C., an Oklahoma limited liability company, hereinafter referred to as the "Owner/Developer", is the owner of the following described land in the City of Broken Arrow, Tulsa County, State of Oklahoma, to wit:

A tract of land located in a part of the North Half (N/2) of the Southwest Quarter (SW/4) of the Southwest Quarter (SW/4) of Section 16, Township 18 North, Range 14 East of the Indian Meridian, Tulsa County, State of Oklahoma according to the Official U.S. Government Survey thereof, being more particularly described as follows:

The North Half (N/2) of the Southwest Quarter (SW/4) of the Southwest Quarter (SW/4)

LESS

The North 230 feet of the West 473.48 feet

AND LESS

The West 70 feet of the South 429.38 feet thereof,

in Section Sixteen (16), Township Eighteen (18) North, Range Fourteen (14) East of the Indian Meridian, Tulsa County, State of Oklahoma according to the Official U.S. Government Survey thereof.

Said tract contains 730,579 Square Feet or 16.77 acres.

The bearings for the above description are based on a platted bearing of N 00°00'00" E along the west line of "Cedar Springs Estates," an addition in the City of Broken Arrow, Tulsa County, State of Oklahoma, according to the Official Recorded Plat thereof, Plat No. 4037.

and has caused the above described land to be surveyed, staked, platted and subdivided into lots, blocks, reserve areas and streets, in conformity with the accompanying plat, and has designated the subdivision as "Millicent Park", a subdivision in the City of Broken Arrow, Tulsa County, Oklahoma,

SECTION I. PUBLIC STREETS, EASEMENTS AND UTILITIES

A. Public Streets and General Utility Easements

The Owner/Developer does hereby dedicate for public use the streets as depicted on the accompanying plat and does further dedicate for public use the utility easements as depicted

on the accompanying plat as "U/E" or "utility easement", for the several purposes of constructing, maintaining, operating, repairing, replacing, and/or removing any and all public utilities, including storm sewers, sanitary sewers, telephone and communication lines, electric power lines and transformers, gas lines, water lines and cable television lines, together with all 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 the utility easements for the uses and purposes aforesaid, provided however, the Owner/Developer hereby reserves the right to construct, maintain, operate, lay and re-lay water lines and sewer lines, together with the right of ingress and egress for such construction, maintenance, operation, laying and re-laying over, across and along all of the utility easements depicted on the plat, for the purpose of furnishing water and/or sewer services to the area included in the plat. The Owner/Developer herein imposes a restrictive covenant, which covenant shall be binding on each lot owner and shall be enforceable by the City of Broken Arrow, Oklahoma, and by the supplier of any affected utility service, that within the streets and utility easements depicted on the accompanying plat no building, structure or other above or below ground obstruction that interferes with the above set forth uses and purposes of a street or easement shall be placed, erected, installed or maintained, provided however, nothing herein shall be deemed to prohibit drives, parking areas, curbing, landscaping and customary screening fences and walls.

B. Underground Service

1. Overhead lines for the supply of electric, telephone and cable television services may be located along the north boundary of the subdivision if located within the public street and utility easements herein established. Street light poles or standards may be served by overhead line or underground cable and elsewhere throughout the subdivision all supply lines including electric, telephone, cable television and gas lines shall be located underground in the easement ways dedicated for general utility services and in the rights-of-way of the public streets, as depicted on the accompanying plat. Service pedestals and transformers, as sources of supply at secondary voltages, may also be located in easementways.
2. Underground service cables to all structures which may be located within the subdivision may be run from the nearest service pedestal or transformer to the point of usage determined by the location and construction of such structure as may be located upon the lot, provided that upon the installation of a service cable to a particular structure, the supplier of service shall thereafter be deemed to have a definitive, permanent, effective and exclusive right-of-way easement on the lot, covering a 5 foot strip extending 2.5 feet on each side of the service cable, extending from the service pedestal or transformer to the service entrance on the structure.
3. The supplier of electric, telephone, cable television and gas services, through its agents and employees, shall at all times have right of access to all easementways shown on the plat or otherwise provided for in this Deed of Dedication for the purpose of installing, maintaining, removing or replacing any portion of the underground electric, telephone, cable television or gas facilities installed by the supplier of the utility service.
4. The owner of the lot shall be responsible for the protection of the underground service facilities located on his lot and shall prevent the alteration of grade or any construction activity which would interfere with the electric, telephone, cable television or gas facilities. The supplier of service shall be responsible for ordinary maintenance of underground facilities, but the owner shall pay for damage or relocation of such facilities caused or necessitated by acts of the owner or his agents or contractors.

5. The foregoing covenants set forth in this Paragraph B shall be enforceable by the supplier of the electric, telephone, cable television or gas service and the owner of the lot agrees to be bound hereby.

C. Water and Sewer Service

1. The owner of the lot shall be responsible for the protection of the public water and sewer mains located on his lot.
2. Within the depicted utility easement area, 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: valve boxes, fire hydrants and manholes will be adjusted to the new grade by the owner or at the owner's expense.
3. The City of Broken Arrow, Oklahoma, or its successors, shall be responsible for ordinary maintenance of public water and sewer mains, but the owner shall pay for damage or relocation of such facilities caused or necessitated by acts of the owner, his agents or contractors.
4. The City of Broken Arrow, Oklahoma, or its successors, shall at all times have right of access to all easementways depicted on the accompanying plat, or otherwise provided for in this Deed of Dedication, for the purpose of installing, maintaining, removing or replacing any portion of underground water or sewer facilities.
5. The foregoing covenants set forth in this Paragraph C shall be enforceable by the City of Broken Arrow, Oklahoma, or its successors, and the owner of the lot agrees to be bound hereby.

D. Surface Drainage

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

E. Limits Of No Access

The undersigned Owner/Developer hereby relinquishes rights of vehicular ingress or egress from any portion of the property adjacent to South 129th East Avenue (South Olive Avenue) in the bounds designated as "Limits Of No Access" (L.N.A.) on the accompanying plat, which "Limits Of No Access" may be amended or released by the Broken Arrow Planning Commission, or its successor, or as otherwise provided by the statutes and laws of the State of Oklahoma pertaining thereto.

F. Paving and Landscaping Within Easements

The owner of the lot affected shall be responsible for the repair of damage to landscaping and paving occasioned by necessary maintenance of underground water, sewer, storm sewer, natural gas, communication, cable television or electric facilities within the utility easement areas depicted upon the accompanying plat, provided however, the City of Broken Arrow, Oklahoma or the supplier of the utility service shall use reasonable care in the performance of such activities.

SECTION II. LAND USE RESTRICTIONS

A. Use of Land

1. All lots within the subdivision, except "Reserve A," "Reserve B," "Reserve C," "Reserve D," "Reserve E," and "Reserve F", shall be known and described as residential lots and shall be used solely for single family residences and single family purposes.
2. Lot 20R Block 1, Lot 21R Block 1, and Lot 10R Block 2 are reserved for future use as single family lots and no building permit shall issue for Lot 20R Block 1, Lot 21R Block 1, or Lot 10R Block 2 until the City Engineer of the City of Broken Arrow, Oklahoma shall have determined that Lot 20R Block 1, Lot 21R Block 1, or Lot 10R Block 2 as the case may be is in compliance with applicable drainage ordinances and regulations. Upon the recording of a certification of such determination of compliance by the City Engineer, the lot shall thereafter be known and described as a residential lot.
3. The aggregate number of dwelling units to be constructed within the subdivision shall not exceed forty one (41).
4. "Reserve A," "Reserve B," "Reserve C," "Reserve D," "Reserve E," and "Reserve F" shall be limited to use for utilities, open space, landscaping and/or recreation and are reserved for subsequent conveyance to the homeowners' association to be formed pursuant to Section IV. hereof.
5. The restrictions hereinafter set forth within Section II. shall not be applicable to "Reserve A," "Reserve B," "Reserve C," "Reserve D," "Reserve E," and "Reserve F".

B. Fronting and Access Limitation

Each dwelling shall front an interior public street and derive its access solely from an interior public street. On corner lots, the dwelling shall front the greater of the building setback lines if differing building setback lines have been established on the lot.

C. Yards and Setbacks

1. Street Setback. No building shall be erected nearer to a public street than the building setback lines depicted on the accompanying plat.
2. Side Yard. Each lot shall maintain side yards which in the aggregate are not less than 15 feet in width and no side yard shall be less than five (5) feet in width.
3. Rear Yard. The rear yard shall not be less than 20% of the lot depth. Customary accessory structures may be located in the required rear yard, but no building shall be erected nearer than 5 feet to any lot line.
4. Easement Setbacks. No building, whether principal or accessory, shall encroach upon any utility easement as depicted on the accompanying plat.

D. Building Height

No building shall exceed 2½ stories or 35 feet in height.

E. Definitions

In the event of ambiguity of any word or term set forth in Subsections A, B, C, or D of Section II., the meaning thereof shall be deemed to be defined as set forth within the Broken Arrow Zoning Code as the same existed on March 24, 1994, or as subsequently amended.

SECTION III. PRIVATE BUILDING AND USE RESTRICTIONS

WHEREAS, the Owner/Developer desires to establish restrictions for the purpose of providing for the orderly development of the subdivision and conformity and compatibility of improvements therein.

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

A. Architectural Committee - Plan Review

1. No building, fence, wall or free standing mailbox shall be erected, placed or altered on any lot in the subdivision until the plans and specifications have been approved in writing by HARRIS-KEANE DEVELOPMENT, L.L.C., an Oklahoma limited liability company, or its authorized representatives or successors, which are hereinafter referred to as the "Architectural Committee". For each building, the required plans and specifications shall be submitted in duplicate and include a site plan, floor plan, exterior elevations, drainage and grading plans, exterior materials and color scheme. In the event the Architectural Committee fails to approve or disapprove plans and specifications submitted to it as herein required within 10 days after submission, or in the event no suit to enjoin the erection of the building or structure or the making of an alteration has been commenced prior to the 30th day following completion thereof, approval of the Architectural Committee shall not be required and this covenant shall be deemed to have been fully complied with.
2. The Architectural 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 Committee 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. The approval or failure to approve building plans shall not be deemed a waiver of any restriction. Nothing herein contained shall be deemed to prevent any lot owner in the subdivision from prosecuting any legal action relating to improvements within the subdivision which they would otherwise be entitled to prosecute.
3. The powers and duties of the Architectural Committee shall, on the 1st day of January, 2006, be deemed transferred to the homeowners' association provided for in Section IV., or upon written assignment to the homeowners' association by the Architectural Committee, whichever event first occurs, and thereafter the foregoing powers and duties shall be exercised by the board of directors of the homeowners' association.

B. Floor Area of Dwelling

1. Single Story. A single story dwelling shall have at least 2,450 square feet of finished heated living area;

2. 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 at least 1,500 square feet of finished heated living area on the first story or level and shall have a total of the various levels or stories of at least 2,450 square feet of finished heated living area.
3. Computation of Living Area. The computation of living area shall not include any basement, garage, or attic area used for storage. All living area measurements shall be taken horizontally at the top plate level to the face of the outside wall. Required living area must average at least seven (7) feet six (6) inches in height, except that in the computation of second or upper story living area, the height shall be seven (7) feet six (6) inches for at least one half (1/2) of the required living area, and any area of less than five (5) feet in height shall be excluded.
4. Waiver. The Architectural Committee may waive, in the particular instance, upon written request, the floor area requirements set out in Paragraphs 1 and 2 of this Subsection B; PROVIDED, the waiver, to be effective, must be in writing, dated, and executed by the committee.

C. Garages

1. Each dwelling shall have an attached garage providing space for a minimum of two automobiles on each lot. Garages shall be enclosed and carports are prohibited. Glass in garage doors is prohibited.

D. Foundations

Any exposed foundation shall be of brick, stone or stucco. No stem wall shall be exposed.

E. Masonry

1. The first story exterior walls of the dwelling erected on any lot shall be 67% brick, stone, or stucco (excluding windows and doors).
2. Waiver. The Architectural Committee may waive, in the particular instance, upon written request, the requirements set out in Paragraphs 1 of this Subsection E; PROVIDED, the waiver, to be effective, must be in writing, dated, and executed by the committee.

F. Windows

Aluminum windows having a mill finish are prohibited.

G. Roof Pitch

1. No dwelling shall have a roof pitch of less than 6/12 over 75% of the horizontal area covered by roof and no roof shall have a pitch of less than 3/12.
2. Waiver. The Architectural Committee may waive, in the particular instance, upon written request, the foregoing restrictions to permit a dwelling having a flat roof over more than 25% of the horizontal area covered by roof; PROVIDED the waiver, to be effective, must be in writing, dated, and executed by the committee.

H. Roofing Materials

Roofing shall be self-sealing composition roofing shingles (not less than 225# and weathered wood in color), provided however, in the event that such roofing should hereinafter not be reasonably available, alternative roofing of comparable quality shall be permitted upon the determination of the Architectural Committee that the proposed alternative is of comparable or better quality and of a design and color which is compatible with the roofing first above described.

I. Roof-top Protrusions

Metal rooftop protrusions are prohibited on the front side of the residence.

J. On-site Construction

No existing or off-site built structure shall be moved onto or placed on any lot.

K. Outbuildings

Outbuildings are prohibited.

L. Swimming Pools

Above ground swimming pools are prohibited.

M. Fencing

Fencing shall be in accordance with the City of Broken Arrow Zoning Code (Ordinance No. 1560) Article VIII, Section 11.3. Interior fencing or walls shall not extend beyond the building lines of the lot and, if a residence is built behind the front building line of a lot, no fence may extend beyond that point nearest the street at each end corner of the residence, provided however, on corner lots fencing may extend to within 12.5 feet of the street right-of-way forming a side yard boundary of the lot. Fences shall be of wood, brick, stucco or stone. Chain link, barbed wire, mesh and other metal fencing are prohibited. No fence shall exceed 6 feet in height.

N. Perimeter Fencing

The Owner/Developer herein establishes and reserves for subsequent conveyance to the homeowners' association to be formed pursuant to Section IV, a perpetual exclusive easement to erect and maintain fencing, walls and landscaping along the boundaries of the subdivision adjacent to South 129th East Avenue (South Olive Avenue) within the fence easements depicted on the accompanying plat as "F&E".

O. Antennas

1. Exterior television, "CB" Radio or other type antenna including satellite dishes shall be prohibited.
2. Waiver. The Architectural Committee may waive, in the particular instance, upon written request, the foregoing restrictions; PROVIDED the waiver, to be effective, must be in writing, dated, and executed by the committee.

P. Lot Maintenance

No inoperative vehicle or machinery shall be stored on any lot and each lot shall be maintained in a neat and orderly condition free of rubbish, trash and other debris and shall be cut, trimmed or mowed to prevent growth of weeds or tall grass.

G. Recreational Vehicles

Boats, trailers, campers, motorhomes and similar recreational vehicles and equipment shall not be stored on any lot except within an enclosed garage.

R. Inoperative Vehicles

No inoperative vehicle shall be stored on any lot except within an enclosed garage.

S. Clotheslines

Exposed clothesline poles or other outside drying apparatus are prohibited.

T. Trash Containers

Trash containers, except during periods of collection, shall be stored out of view from abutting streets. No exposed garbage cans, trash can or any trash burning apparatus or structure shall be placed on any lot. The foregoing restriction shall not prohibit the installation of underground garbage and trash storing devices.

U. Mailboxes

As long as a rural type mailbox is in use in Millicent Park for United States Postal Service, all mailbox pedestals shall conform in design to specifications for the subdivision to be established by the Architectural Committee. The mailbox shall be positioned so that the front face is approximately 6 inches in from the base of the curb and 6 feet from the "inside edge" of the driveway. "Inside edge" shall mean the edge of the driveway which borders the largest continuous lot area. The top of the mailbox shall be 42 inches from street level.

V. Animals

No animals, livestock or poultry of any kind may be maintained, bred, sold or kept except that two dogs, two cats or other household pets may be kept provided that they are not used for commercial purposes.

W. Noxious Activity

No noxious or offensive trade or activity shall be carried out upon any lot nor shall anything be done thereon that may be or may become an annoyance or nuisance to the neighborhood.

X. Signage

No sign of any kind shall be displayed to the public view on any lot except one sign of not more than 6 square feet advertising the property for sale or rent or signs used by a builder to advertise the property during the construction and sales period.

Y. Materials and Storage

No lot shall be used for the storage of materials for a period of greater than 30 days prior to the start of construction and the construction shall be completed within 9 months thereafter. Each lot shall be maintained in a neat and orderly condition.

Z. Temporary Trash Receptacle

A temporary trash receptacle is required on each lot during the construction period of the house. The trash receptacle shall be maintained by the lot owner and shall be emptied on a regular basis or as needed.

SECTION IV. HOMEOWNERS' ASSOCIATION

A. Formation of Homeowners' Association

The Owner/Developer has formed or shall cause to be formed the Millicent Park Homeowners' Association, Inc. (hereinafter referred to as the "Association"), a non-profit corporate entity to be established in accordance with the statutes of the State of Oklahoma, and to be formed for the general purposes of maintaining the common areas and enhancing the value, desirability and attractiveness of Millicent Park.

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, or as of the date of recording of the deed, whichever occurs last.

C. Covenant for Assessments

The Owner/Developer and each subsequent owner of a lot, by acceptance of a deed therefore, is deemed to covenant and agree to pay to the Association assessments to be established by the Board of Directors in accordance with a declaration to be executed and recorded by the Owner/Developer prior to the conveyance of a lot within Millicent Park. An assessment shall be a lien on the lot against which it is made, but the lien shall be subordinate to the lien of any first mortgage.

D. Enforcement 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 set forth within this document, and shall have the right to enforce the covenants to the same extent as a lot owner.

SECTION V. ENFORCEMENT, DURATION, AMENDMENT AND SEVERABILITY

A. Enforcement

The restrictions herein set forth are covenants to run with the land and shall be binding upon the Owner/Developer, its successors and assigns. Within the provisions of Section I. Public Streets, Easements and Utilities are set forth certain covenants and the enforcement rights pertaining thereto. The covenants contained in Section II. Land Use Restrictions are established pursuant to the provisions of the Broken Arrow Zoning Code and shall inure to the

benefit of the City of Broken Arrow, the owners of lots within the subdivision, and shall inure to the benefit of the homeowners' association provided for in Section IV. The covenants within Section III. Private Building and Use Restrictions shall inure only to the benefit of owners of lots within the subdivision and the homeowners' association provided for in Section IV. If the undersigned Owner/Developer, or its successors or assigns, shall violate any of the covenants within Section II., it shall be lawful for any person or persons owning any lot situated within the subdivision or the homeowners' association, or the City of Broken Arrow to maintain any action at law or in equity against the person or persons violating or attempting to violate any such covenant, to prevent him or them from so doing or to compel compliance with the covenant or to recover damages. If the undersigned Owner/Developer, or its successors or assigns, shall violate any of the covenants within Section III., it shall be lawful for any person or persons owning any lot situated within the subdivision or the homeowners' association to maintain any action at law or in equity against the person or persons violating or attempting to violate any such covenant, to prevent him or them from so doing or to compel compliance with the covenant or to recover damages. In any judicial action brought by the homeowners' association or any lot owner, which action seeks to enforce the covenants or restrictions set forth within Section II. or Section III., or to recover damages for the breach thereof, the prevailing party shall be entitled to receive his or its reasonable attorney fees and costs and expenses incurred in such action.

B. Duration

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

C. Amendment

The covenants contained within Section I. Public Streets, Easements and Utilities may be amended or terminated at any time by a written instrument signed and acknowledged by the owner of the lot or lots to which the amendment or termination is to be applicable and by the Broken Arrow Planning Commission, or its successors with the approval of the City of Broken Arrow, Oklahoma. The covenants contained within Section II. Land Use Restrictions may be amended or terminated at any time by a written instrument signed and acknowledged by the Broken Arrow Planning Commission, or its successors, and by the owners of more than 75% of the lots within the subdivision. The covenants within Section III. Private Building and Use Restrictions may be amended or terminated at any time by a written instrument signed and acknowledged by the Owner/Developer during such period that the Owner/Developer is the record owner of at least 5 lots within Millicent Park or alternatively, the covenants within Section III. may be amended or terminated at any time by a written instrument signed and acknowledged by the owners of more than 75% of the lots within the subdivision, provided however in the event of a conflict of amending or terminating instruments, the instrument executed by the Owner/Developer shall govern. The provisions of any such instrument amending or terminating covenants shall be effective from and after the date it is properly recorded.

D. Severability

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

ARCHITECTURAL GUIDELINES *Suggestions.*

- Minimum 12/12 pitch on front gables
- 16/12 or 18/12 pitch on front entries or where applicable
- Multiple gables on front of house
- Gable roofs more predominant than hipped
- If hipped roof use a combination 12/12 side to side and 6/12 front to back so that front gable edge may remain on a 12 pitch
- If roof is cross gabled again use a 12/12 pitch on gables facing street and 6, 7 or 8 pitch on the main body
- No overhang is very common on this style of house
- Flush fascia on all front gables
- Variety of brick, stone and stucco combinations
- Multiple front porch posts (4"x6") with wood brackets
- Timbers over front windows and garage doors
- Timber frame front porch roof
- Masonry archway on front porch
- Arch over garage door
- Tall, narrow lowered vents on front gables
- Tall narrow windows grouped together on front of house (example: 3-2060's with 2020 transoms above)
- 2 - 4/0 3/8 horizontal sliders mulled together in upstairs bedrooms (gives the look of casement windows)
- Shed or gabled dormers with no overhang
- Brick corbels at corners
- 10 lite or 6 lite front door
- Copper roofing on box out windows
- * - Wood 9-Lite Front Dr.*