

SR

8/5/20

**DECLARATION OF COVENANTS AND RESTRICTIONS
STONY BROOK TOWNHOUSE ADDITION**

PHSC

This Declaration, made this 1st day of December, 2004, by Grace Grooms as Trustee of the Grace Grooms Revocable Trust, hereinafter called the Developer or the Declarant.

WITNESSETH:

WHEREAS, Developer is the Owner of the real and personal property described in Article II of this Declaration and desires to create thereon a townhouse development with certain common improvements and other common facilities for the benefit of the said community; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of said common improvements and other common facilities; and to this end, desires to subject the real property described in Article II to the covenants, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said property and each Owner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation of the values and amenities in said development, to create an agency to which should be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated under the laws of the State of Oklahoma, as a non-profit corporation, Stony Brook Townhouse Homeowners Association, Inc. for the purpose of exercising the functions aforesaid:

NOW THEREFORE, the Developer declares that the real property described in Article II is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges, and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

**ARTICLE I
DEFINITIONS**

SECTION 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings;

(a) The "Addition" shall mean Stony Brook Townhouse Addition, according to the recorded plat thereof.

- (b) "Association" shall mean and refer to Stony Brook Townhouse Homeowners Association, Inc., its successors and assigns.
- (c) "The Properties" shall mean and refer to all such properties as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.
- (d) "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the owners.
- (e) "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the properties with the exception of common properties as heretofore defined.
- (f) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- (g) "Member" shall mean and refer to every person or entity who holds membership in the Association.

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

SECTION 2.1. The real and personal property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County of Muskogee, State of Oklahoma, and is more particularly described as the streets and common areas within Stony Brook Townhouse Addition to the City of Muskogee, Oklahoma, as shown on the plat filed in the office of the Muskogee County Clerk in Book _____ at page _____, all of which real property shall hereinafter be referred to as "The Property".

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

SECTION 3.1. MEMBERSHIP. Every person or entity who is a record owner of a fee or undivided fee interest in any lot shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association. Ownership of such lot shall be the sole qualification for membership.

SECTION 3.2. VOTING RIGHTS. The Association shall have two classes of voting membership.

CLASS A. Class A members shall be all those owners as defined in Section 1 with the exception of the Developer. Class A members shall be entitled to one vote for each lot in which they hold the interests required for membership by Section I. When more than one person holds such interest or interests in any lot: all such persons shall be members, and the vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such lot.

CLASS B. The Class B member shall be the Developer. The Class B member shall be entitled to three votes for each lot in which it holds the interest required for membership by Section I, Article III, provided that the Class B membership shall cease and become converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) December 1, 2014.

ARTICLE IV ANNEXATION OF ADDITIONAL PROPERTIES

SECTION 4. 1. Annexation of additional property shall require the assent of two-thirds (2/3) of the Class A members called for this purpose, written notice of which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirement set forth above, and the required quorum at such subsequent meeting shall be one-half of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership or two-thirds (2/3) of the Class B membership are not present in person or by proxy, members not present may give their written assent to the action taken thereat. Annexation under this Section requires that consent of two-thirds (2/3) of each class of members.

ARTICLE V PROPERTY RIGHTS IN THE COMMON PROPERTIES

SECTION 5.1. MEMBERS' EASEMENTS OF ENJOYMENT. Subject to the provisions of Section 5.3, every member shall have a right and easement of enjoyment in and to the common properties and such easement shall be appurtenant. to and shall pass with the title to every lot.

SECTION 5.2. TITLE TO COMMON PROPERTIES. The Developer agrees to convey title to the common properties, other than dedicated streets, to the Association free and clear of all liens and encumbrances prior to the conveyance of any lot described on in the Addition.

SECTION 5.3. EXTENT OF MEMBERS' EASEMENTS. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) the right of the Association, as provided in its Certificate of Incorporation and By-Laws, to suspend the voting rights and right to use of common facilities by a member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations and

(b) The right of the Association to dedicate or transfer all or any part of the common properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members, provided that no such dedication or transfer, determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by members entitled to cast two-thirds (2/3) of the votes of each class of membership has been recorded, agreeing to such dedication, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every member at least ninety (90) days in advance of any action taken.

(c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the common area and facilities and in aid thereof to mortgage said common properties and the rights of such mortgage in said common properties shall be subordinate to the rights of the homeowners hereunder.

SECTION 5.4. Any Member may delegate, in accordance with the By-Laws, his right of enjoyment to the common properties to his tenants, or contract purchasers who reside on the property.

ARTICLE VI COVENANT FOR MAINTENANCE ASSESSMENTS

SECTION 6.1. CREATION OF LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS AND SPECIAL ASSESSMENTS. Declarant, for each lot owned in Stony Brook Townhouse Addition, shall be deemed to covenant and agree, and each owner of any lot in Stony Brook Townhouse Addition, except those exempt under Section 11 of this Article, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to pay to the Association monthly assessments or charges and special assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, and said amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or special assessment is made. Each such assessment

and special assessment, together with such interest thereon, cost of collection and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment or special assessment fell due. The personal obligation for delinquent assessment or special assessment shall not pass to his successors in title unless expressly assumed by them.

SECTION 6.2. PURPOSE OF ASSESSMENTS.

6.2.1. There shall be a general assessments levied by the Association which shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents of the properties and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the common properties and of the homes situated upon the properties.

6.2.2. There shall also be a ground maintenance assessment which shall be used exclusively for the purpose of maintenance of all common flower beds and shrubberies, mowing, and sprinkler maintenance as a part of the services provided by the Association.

SECTION 6.3. BASIS OF ANNUAL ASSESSMENTS. Each lot shall, as of the date set under Section 8 hereof, be subject to a general monthly assessment of \$150.00 for single family lots and \$100.00 per month for townhouse lots, and a monthly grounds assessment of not more than \$YYYYYY per month based upon reasonable costs of grounds developments, upkeep and maintenance. The Board of Directors may raise or lower said monthly assessment amount by not more than 5% in any year, as they may deem necessary in their discretion.

SECTION 6.4. CHANGE IN BASIS AND MAXIMUM OF ANNUAL ASSESSMENTS.

Subject to the limitations of Section 6.3 hereof, the Association may change the maximum of the assessment fixed by Section 6.3 hereof provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

SECTION 6.5. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.

In addition to the assessments authorized Section 6.2 above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the common area, including the necessary fixtures and personal property related thereto, provided, that, any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of

which shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting setting forth the purpose of the meeting.

SECTION 6.6. QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 6.4 AND 6.5.

The quorum required for any action authorized by Sections 6.4 and 6.5 hereof shall be as follows: At the first meeting called, as provided in Section 6.4 and 6.5 hereof, the presence at the meeting of members, or of written proxies, or the written ballot of members not in attendance, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting another meeting may be called, subject to the notice requirements set forth in Sections 6.4 and 6.5 and the required quorum at any such Subsequent meeting shall be one-half of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6.7. DATE OF COMMENCEMENT OF MONTHLY ASSESSMENTS: DUE DATES.

The monthly assessments provided for herein shall commence as to all lots at such time as may be approved by a majority of the members. The Board of Directors shall fix the amount of the monthly assessment at least 30 days in advance of said commencement date and any change in the monthly assessment must be fixed by the Board of Directors at least 30 days in advance of the commencement of the changed assessment amount. Written notice of the assessment shall thereupon be sent to every owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. Such certificate shall be conclusive evidence of the facts stated.

SECTION 6.8. INFORMAL MEETINGS

Any meeting which is required to be held hereunder may be held informally upon the written consent of a majority of members, so long as all matters conducted at such a meeting is reflected by a written report signed by the Secretary of the Association.

SECTION 6.9. VOTE BY WRITTEN BALLOT.

Any member may cast a vote by written ballot on an issue submitted for vote, without the necessity of physical attendance at a meeting.

SECTION 6.10. EFFECT OF NON-PAYMENT OF ASSESSMENT: THE PERSONAL OBLIGATION OF THE OWNER: THE LIEN REMEDIES OF THE ASSOCIATION.

If the assessments are not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them.

If the assessment is not paid within 30 days after the delinquent date, the assessment shall bear interest from the date of delinquency at the rate of ten (10) percent per annum, and the Association may bring an action at law against the owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or abandonment of his lot.

SECTION 6.11. SUBORDINATION OF THE LIEN TO MORTGAGES.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and to any executory land sales contract owned by the Veterans Administration or its assigns, wherein the named seller is the administrator of Veterans affairs, whether such contract is recorded or not. The lien of the assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Oklahoma. Sale or transfer of any lot shall not affect the assessment liens. However, the sale or transfer of any lot pursuant to mortgage foreclosure of any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

SECTION 6.12. EXEMPT PROPERTY.

The following property subject to the Declaration shall be exempt from the assessments, charges and liens created herein:

- (a) All properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- (b) All common properties as defined in Article I, Section 1 hereof.

ARTICLE VII RESTRICTIONS OF USE OF PROPERTY

The following restrictions shall apply to all Lots and Improvements with the Addition:

- 7.1. All lots and Buildings constructed hereon shall be solely for residential use. No commercial uses shall be permitted on, or in, any building within the subdivision, other than as a construction or sales office for the Developer or contractor during construction and sales of lots and properties in the Addition.
- 7.2. No planting or other landscaping shall be allowed by any Owner other than within an enclosed fence adjoining the townhouse or residence as herein provided.
- 7.3. No fencing shall be allowed other than to enclose an area immediately adjoining the rear of a building constructed within the Addition. Fence may not extend more than fifteen feet from the back of a building toward the rear lot line, nor may a fence extend beyond the exterior side wall of any building. Fences may only be constructed as opaque wooden privacy fences, six feet in height. No chain link, barbed wire, or other wire fencing shall be allowed. All fences shall be subject to prior approval by the design committee of the Association.
- 7.4. No noxious, illegal, or offensive activity shall be allowed upon any portion of any property, nor shall any act be done which constitutes a nuisance or material annoyance to the neighborhood.
- 7.5. No sign or advertising of any kind shall be allowed upon any property other than temporary real estate listing signs, and signs utilized by Developer during the development of the Addition.
- 7.6. No animals, livestock or poultry of any kind shall be kept, raised or bred on any property within the Addition, nor shall any commercial breeding or raising of permitted animals be conducted. No dogs of a breed which has vicious tendencies, specifically including pit bull dogs, Doberman pincers, and rottweiler, shall be kept or allowed on any property within the addition. No dog of a permitted breed which has demonstrated vicious tendencies shall be kept within the Addition.
- 7.7. No exterior antenna for the transmittal or reception of radio or television signals shall be allowed within the Addition. Small, attached satellite reception dishes shall be permitted, on the rear of buildings.
- 7.8. No commercial truck, tractor or semi-trailer, bus or other commercial vehicle of any kind shall be kept within the Addition, nor shall any recreational vehicle, boat, or boat trailer be kept upon any property. No vehicle shall be parked on the non paved portion of any lot, nor shall non-operating vehicles of any kind be kept or stored within the Addition. No vehicle repair shall be allowed on any property within the Addition.

- 7.9. No lot shall be used for storage or dumping of trash or rubbish. All trash, waste and garbage shall be kept in sanitary closed containers within the area provided. The Association shall have the right to take all corrective action deemed necessary by the Association at the expense of the Owner to cure any violation of this provision.
- 7.10. No temporary construction or improvement shall be allowed except as may be approved by the Association. Only construction from building materials, as opposed to pre-fabricated materials, shall be allowed. No tent, trailer, manufactured home, or pre-fabricated building shall be allowed on any property.
- 7.11. Declarant shall have the right to prior approval of any paint color, roofing material, or design change which any Owner may desire to use on any building in the Addition. After the Association is created the Association shall create an Architectural or Design committee, comprised of three (3) members appointed by the Association, which shall exercise such function (except as to Property owned by Declarant).
- 7.12. The Declarant shall have the right to grant easements for utility purposes across all common areas until such time as the common areas are deed to the Association, at which time the Association shall have the right to grant such easements. Declarant, or the Association, as appropriate shall have the grant to grant access across all easements for utilities shown on the recorded Plat of Stony Brook Town House Addition.
- 7.13. The Declarant, or as appropriate, the Association, shall provide all lawn care, mowing and maintenance as a part of the special assessment provided for in Section 6.2.2, and shall have a perpetual license to come upon all property in the Addition for the purpose of ground upkeep and maintenance, and plants. No Owner may place any lawn ornamentation or other object which will interfere with lawn maintenance and care.

ARTICLE VIII

SECTION 8.1. DURATION.

The Covenants and restrictions of this Declaration shall run with and bind the land, shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of ten (10) years from the date this Declaration is recorded, after which time said Covenants shall be automatically extended for successive periods of ten (10) years unless an instrument terminating these covenants and restrictions signed by the then Owners of fifty percent of the Lots has been recorded prior to the commencement of any ten-year period.

SECTION 8.2. AMENDMENTS.

These Covenants and restrictions may be amended during the first ten years from the date of the Declaration, by an instrument signed by not less than ninety percent (90%) of the Lot Owners and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners. Any amendment must be properly recorded.

SECTION 8.3. NOTICES.

Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

SECTION 8.4. ENFORCEMENT.

Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 8.5. SEVERABILITY.

Invalidation of anyone of these covenants or restrictions by judgement or court order shall in no way affect any other provisions which shall remain in full force and effect.

GRACE GROOM REVOCABLE TRUST

By: 
TRUSTEE

STATE OF OKLAHOMA
COUNTY OF MUSKOGEE

I-2005-014483 Book 3474 Pg: 122
10/27/2005 2:33 pm Pg 0112-0122
Fee: \$ 33.00 Doc: \$ 0.00
SS: Karen Anderson - Muskogee County Clerk
State of Oklahoma

On this 27th day of October, ²⁰⁰⁵ 2004, before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Grace Grooms, to me known to be the identical person who signed the name of Grace Grooms Revocable Trust, to the within and foregoing instrument as its Trustee and acknowledged to me that she executed the same as her free and voluntary act and deed and as the free and voluntary act and deed of said Trust, for the uses and purpose therein set forth.

Witness my hand and official seal the day and year last above written.

My Commission Expires:

4/20/09
01006709



Notary Public

