Phase Dev 2

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF SHENANDOAH VALLEY AT BATTLE CREEK

KNOW ALL MEN BY THESE PRESENTS:

BATTLE CREEK LAND DEVELOPMENT, INC., hereinafter referred to as Owner/Developer, are the Owners of the following described land in the City of Broken Arrow, County of Tulsa, State of Oklahoma, to-wit:

A Part of Section Twenty-Seven (27), Township Nineteen (19) North, Range Fourteen (14) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the United States Government Survey thereof, more particularly described as follows, to-wit:

Beginning at a point on the west line of said section 1925.07 feet north of the southwest corner of said Section; Thence N00°02'55"E along said west line 90.73 feet; Thence S89°57'05"E 49.80 feet; Thence easterly 253.18 feet along a curve to the left with a radius of 1638.88 feet, a central angle 8°51'04" and a tangent bearing of N88°19'59"E; Thence N26°24'49"E 252.34 feet; Thence N47°59'36"E 524.47 feet; Thence N86°53'04"E 740.75 feet; Thence S04°57'19"E 184.55 feet; Thence S76°41'36"W 64.75 feet; Thence southwesterly 137.89 feet along a curve to the left with a radius of 390 feet and a central angle of 20°15'28"; Thence S33°16'43"E 52.58 feet; Thence S10°50'42"W 120 feet; Thence S48°07'30"E 278.22 feet; Thence S48°15'14"W 190 feet; Thence S36°59'15"E 61.83 feet; Thence S50°24'51"E 200 feet; Thence S29°22'09"W 550.58 feet; Thence N58°28'46"W 183.24 feet; Thence N23°52'18"E 50.09 feet; Thence N15°18'50"W 120 feet; Thence N61°46'54"W 790.69 feet; Thence S72°02'21"W 92.63 feet; Thence S06°45'43"E 22.12 feet; Thence N33°38'40"W 155.91 feet; Thence S79°28'54"W 27.28 feet; Thence Westerly 24.84 feet along a curve to the left with a radius of 188 feet and a central angle of 07°34'12"; Thence S71°54'42"W 111.55 feet; Thence westerly 67.28 feet along a curve to the right with a radius of 262 feet and a central angle of 14°42'45"; Thence westerly 104.07 feet along a curve to the right with a radius of 1728.88 feet and a central angle of 03°26'56" to the point of beginning; containing 24.55 acres, more or less.

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

SECTION I. STREETS, EASEMENTS AND UTILITIES

1.1 Public Streets and General Utility Easements:

The Owner/Developer does hereby dedicate for the public use the streets, as designated on the accompanying plat, and does further dedicate for the public use the utility easements as designated on the accompanying plat, for the 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 utilities, easements and rights-of-way for the uses and purposes aforesaid. No building, structure, or other above or below ground obstruction will be placed, erected, installed or permitted upon the easements or rights-of-way as shown;

PROVIDED, HOWEVER, that the Owner/Developer 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 all of the utility easements, shown in said plat, for the purpose of furnishing water and/or sewer services to the area included in said plat. The Owner of each lot shall be responsible for the repair and replacement of any landscaping and paving located within the utility easements in the event it is necessary to repair any underground water or sewer mains, electric, natural gas, communication or telephone service.

1.2 Electric, Gas and Communication Service:

(A) Overhead pole lines for the supply of electric or communication service may be located along the West perimeter of Shenandoah Valley at Battle Creek. Street light poles or standards shall be served by underground cable and elsewhere throughout Shenandoah Valley at Battle Creek, all supply lines shall be underground in the easementways 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 easementways.

(B) Underground service cables and gas lines to all houses which may be located on all lots in Shenandoah Valley 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 2.5 feet 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 easementways shown on said plat, or provided for in this Deed of Dedication 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 or 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.

1.3 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: valve 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 easementways shown on said plat, or provided for in this Deed of Dedication 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 1.3 shall be enforceable by the City of Broken Arrow or its successors, and the Owner of each lot agrees to be bound hereby.

1.4 Limits of No Access:

The undersigned Owner/Developer hereby relinquishes right of vehicular ingress or egress from any portion of the property adjacent to Sandusky St. and Trenton St. within the bounds designated as Limits of No Access (LNA) 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.

1.5 Landscape Easement:

The Owner herein establishes for the benefit of the Property Owners Association a perpetual easement as depicted on the accompanying plat as landscape easement, for the purposes of the erection and maintenance of decorative fencing and walls, and landscaping and irrigation system. Maintenance of such facilities shall be the obligation of the Property Owners Association.

SECTION II. PLANNED UNIT DEVELOPMENT RESTRICTIONS

WHEREAS, Shenandoah Valley 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.

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 Owner/Developer desires to establish restrictions for the purpose of providing for an orderly development and to insure adequate restrictions for the mutual benefit of the Owner/Developer, its successors and assigns, and the City of Broken Arrow, Oklahoma;

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.

2.1 Use of Land:

(A) The development of Shenandoah Valley 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 sixty-seven (67).

2.2 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.

2.3 Yards and Setbacks:

(A) 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 unless subsequently modified by the City of Broken Arrow Planning Commission.

(B) Side Yard: Each lot which fronts onto the golf course shall maintain side yards which are not less than five feet (5') in width on one side, and five feet (5') in width on the other side. All other lots shall be required to have one side yard not less than five feet (5') in width with the other side yard being not less than ten feet (10') in width. Side yards abutting a street shall not be less than fifteen feet (15') unless the garage entry is located on such side where it then shall be not less than twenty feet (20').

(C) Rear Yard: Each lot shall maintain a rear yard of at least twenty-five feet (25'); provided, however, the customary accessory structures may be located in the required rear yard, but no building shall be erected nearer than ten feet (10') to rear lot line nor encroach upon any utility easement. For the exact rear yard setback, consult the final plat.

2.4 Building Height: The maximum structure height shall be thirty-five feet (35').

2.5 Minimum Lot Size: No lot shall be lot-split or subdivided into any lot having an area of less than 7,500 square feet; provided, however, that a lot may be divided into a parcel having less than 7,500 square feet if such parcel be held in common ownership with an adjoining parcel and the resulting area of the two parcels is not less than 7,500 square feet, with the City of Broken Arrow Planning Commission approval.

SECTION III. PRIVATE BUILDING AND USE RESTRICTIONS

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

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:

3.1 Architectural Control Committee - Plan Review:

(A) No building, fence or wall shall be erected, placed or altered on any lot in this subdivision until 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 a majority of an Architectural Control Committee (Committee) composed of Buford Williams, Helen Williams, Bland Pittman, or their duly authorized representative(s),assign(s) or successors. In the event of the death or resignation of any member of the above named committee, the remaining member(s) shall have full authority to approve or disapprove such plans, specifications, color schemes, materials and plot plan, or to designate a representative(s) with the like authority, and said remaining member(s) 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 herein after 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 herein after 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 for 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 shall cease on the first day of January, 2000, or when ninety percent (90%) of the lots have been closed, whichever occurs first. Thereafter, the powers and duties of the Committee shall be exercised by the Property Owners Association here after provided for.

3.2 Floor Area of Dwellings:

(A) Single-story. A single-story dwelling shall have at least 1,500 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 1,700 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 plate level to the face of the outside wall. Required living area must average at least seven feet six inches (7'6") 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 floor area requirements set out in Paragraphs A and B of this section.

3.3 Garage:

Each dwelling shall have an enclosed garage for at least two automobiles.

3.4 Building Material Requirements:

(A) Stem Walls. All exposed faces of 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 concrete face of stem walls will be exposed.

(B) Roofing. No building shall have a roof pitch of less than 8/12 except that it may have a flat roof equal to no more than twenty per cent (20%) of the area covered by all roof surfaces, subject to approval of Owner. Wood grained composition roofing material having a thirty-five (35) year or more rating (such as"Tamko Heritage 30 Weathered Wood") and slate with a weathered wood color and appearance, shall be used on all homes in the Subdivision. the Committee may, but shall not be obligated to, waive this restriction. PROVIDED, HOWEVER, such waiver to be effective must be in writing, dated and signed by the Committee.

(C) Exterior Walls. The first story exterior walls of the dwelling erected on any lot shall be of at least seventy five percent (75%) 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).

(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 will be permitted for window framing. Wood frames will be painted, sealed or stained.

(E) Chimneys. All chimneys visible from the street shall be brick, stone or stucco. Chimney caps shall be rectangular and shall be a dark earth tone.

(F) Mail Boxes. All mail boxes visible from the street shall be cast aluminum or cast iron and shall be filigree design.

(G) 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.

3.5 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.

3.6 Noxious Activity:

No noxious or offensive trade or 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 become an annoyance or nuisance to the neighborhood.

3.7 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 (9) square feet in display surface area.

(B) During the development period of Shenandoah Valley at Battle Creek, signs advertising the subdivision or the initial offering of a lot may be located at the entrances to Shenandoah Valley at Battle Creek.

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

3.8 Existing Building:

No existing building of any sort may be moved onto or placed on any lot.

3.9 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 as provided within Subsection 3.2 of Section III.

(C) No above ground pools of any type.

3.10 Vehicle Storage and Parking:

No inoperative vehicle shall be stored on any lot except within an enclosed garage. No boats, boat trailers, house trailers, campers, motor homes, panel trucks, camper trailers, recreational vehicles or similar vehicle shall be located, parked or stored within a side, front or rear yard, and if not located within an enclosed garage, shall be screened sufficiently to prevent any view thereof from any golf hole, street or neighboring lot within Shenandoah Valley at Battle Creek.

3.11 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 or satellite dishes of any kind shall be allowed. No activity shall be conducted on any lot which interferes with television or radio reception on any other lot.

3.12 Interior Fences or Walls:

Interior fences situated along the sides and real 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 (B) immediately below. Except as set forth in paragraphs (B) and (C) immediately below, all four foot (4') fences occurring on the lot or property lines and tying back to the house structure will be constructed of four foot (4') green chain link with treated wood posts with top and bottom rails.

(B) 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. NOTE: Screening fences and baffles may be erected up to six feet (6') in height but must be an extension of the house structure line from front to back and side to side and not located on the lot line.

(C) 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 with wooden post, top and bottom rails. Perimeter fencing shall be uniform in height, design and material, and no gates or other openings shall be permitted in the perimeter fencing.

(4) With respect to all lots within the subdivision upon which perimeter fencing is located, any side yard fence located thereon shall be four feet (4') in height and said fence will follow the same specifications as the rear fence.

(D) 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 this Section Architectural Control Committee may waive in a particular instance the requirements or limitations set forth in paragraphs 3.12 (A) and 3.12 (B) of this section.

3.13 Landscaping Requirements:

Each lot Owner shall completely sod the yard from the rear of the lot to the street curb after completion of construction of the house.

Each lot Owner shall plant a minimum of two (2) trees of two and one-half inch (2-1/2") caliper or larger in the front yard.

Each lot Owner shall plant the equivalent worth of $1,000.00 in landscaping materials (trees, shrubs, bushes, ground cover, etc.) exclusive of sodding and the two trees required above. A landscaping plan shall be submitted to the Architectural Control Committee for approval prior to planting.

3.14 Ball Flight License:

Owner/Developer 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). Owner/Developer 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 Owner/Developer or any lot Owner as a result thereof. Owner/Developer 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.

3.15 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" now 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 which consist mainly of keeping the area free of obstruction, debris and mowing, shall be by the Property Owners Association.

Reserves "B & C" - 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 Areas B & C" 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 these areas is the responsibility of the "BAPGA" and\or Battle Creek Golf Course. Reserve Areas "B & C" 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 Areas to service adjacent lots.

Reserve Areas "D, E, F, G, H, I, J, K, L & M" - The Reserve Areas designated above are hereby designated by the Owner as perpetual easements for the benefit of the Shenandoah Valley at Battle Creek Property Owners Association for the purpose of providing a landscaped green area and proper visual screening of the Addition from surrounding areas and for the construction and maintenance of any screening fence or wall.

SECTION IV. PROPERTY OWNERS ASSOCIATION

4.1 Formation of Association:

The Owner/Developers have formed or shall cause to be formed the Shenandoah Valley at Battle Creek Property Owners Association, Inc. (hereinafter referred to as the Association), a non-profit entity established pursuant to the General Corporation Act of the State of Oklahoma and formed for the general purposes of maintaining the common areas and enhancing the value, desirability and attractiveness of Shenandoah Valley at Battle Creek.

4.2 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.

4.3 Covenant for Assessments:

The Owners and each subsequent owner of a lot, by acceptance of a deed thereof, is deemed to covenant and agree to pay to the Association an annual assessment as established by the Board of Directors, not to exceed $85.00 per year per lot owned; provided, however, the Board of Directors may increase each year subsequent to the initial assessment year, the maximum assessment by the percentage increase, if any, of the Consumer Price Index occurring over the twelve (12) months ending sixty (60) days prior to the current assessment period or five percent (5%), whichever is greater.

Consumer Price Index shall mean the Index published by the U. S. Department of Labor for the area including Broken Arrow, Oklahoma. Annual assessments exceeding the amount above set forth shall require the assent of seventy-five percent (75%) of the lot Owners within the subdivision. Annual assessments together with ten percent (10%) interest, costs and reasonable attorneys fees shall be a continuing lien on the lot and the personal obligation of the Ownership of the lot at the time of the assessment. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage.

4.4 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.

4.5 Additional Areas:

The Owner may acquire additional property adjacent to Shenandoah Valley at Battle Creek. Consequently, he, his successors and assigns reserve the right to develop and add additional land

in this area to this development and the Property Owners Association. The lot Owners of the combined areas shall be considered as one entity for the mutual enjoyment and responsibilities of the total area.

4.6 Bonding:

It shall be required that the Secretary/Treasurer of the Property Owners Association of Shenandoah Valley at Battle Creek be bonded. The Association will be responsible for obtaining and paying for said appropriate bonding.

SECTION V. ENFORCEMENT, DURATION, AMENDMENT AND SEVERABILITY

5.1 Enforcement. The restrictions herein set forth are covenants to run with the land and shall be binding upon the Owner/Developers, their successors and assigns and all parties claiming under them. Within the provisions of Subsection 1.1, Public Street and General Utility Easements; Subsection 1.2, Electrical, Gas and Communication Service; Subsection 1.5, Water and Sewer Service; Subsection 1.4, Limits of No Access, and Subsection 1.6. The covenants within Section III shall inure to the benefit of Owners of residential lots within the subdivision, and the Property Owners Association provided for in Section IV. If the Owner/Developer or Owners of lots within Shenandoah Valley at Battle Creek, or their 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 Property Owners Association to maintain any action in 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 covenants or to recover damages for such violations.

5.2 Duration:

These restrictions shall remain in full force and effect until January 1, 2019 and shall automatically be continued thereafter for successive periods of ten (10) years each unless terminated or amended as hereinafter provided.

5.3 Amendment or Termination:

The covenant contained within Section I and II may be amended, modified, changed or canceled only by a written instrument signed and acknowledged by the Owners of more than ninety-five percent (95%) of the lots within the subdivision, approved by the City of Broken Arrow and the provisions of such instrument shall be binding from and after the date it is properly recorded. The covenants of Section III and IV herein established may be amended, modified, changed or canceled only by a written instrument signed and acknowledged by the Owners of more than ninety-five percent (95%) of the residential lots within the subdivision, and the provisions of such instrument shall be binding from and after the date it is properly recorded.

5.4 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.