

STATE OF OKLAHOMA
CLEVELAND COUNTY
FILED & RECORDED

95 MAR 30 'AM 11: 05

PAT DOESON
COUNTY CLERK

58073

BOOK 2625 PAGE 523

3600
1

**DECLARATION OF PROPERTY OWNERS ASSOCIATION
FOR SUTTON PLACE ADDITION SECTION 5**

THIS DECLARATION is made, executed, and is to be effective on the dates shown in the acknowledgments following this instrument by Sutton Place Developers, Inc., a corporation, hereinafter referred to as **DECLARANT**.

WHEREAS, Declarant, together with the parties executing this document, collectively, are the owners of all of Sutton Place Addition Section 5 to Norman, Oklahoma, according to the recorded plat thereof, and as follows:

WHEREAS, Declarant intends to create a community which provides for the construction, upkeep, repair, and maintenance of certain real property as hereinafter described, together with swimming pool and cabana with two shower areas to be built thereon, along with the upkeep of certain entrance areas near the above addition.

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said addition, and for the maintenance, upkeep, improvement and administration of the community property and any other property later made a part of such association, and all improvements now existing or hereinafter erected thereon, and to establish and create an entity and agency for such purpose, and for the purpose of administering and enforcing the covenants and restrictions hereinafter set forth and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, there has heretofore been incorporated under the laws of the State of Oklahoma, as a non-profit corporation, Sutton Place Homeowners Association, Inc., for the purpose of exercising the aforementioned functions.

NOW, THEREFORE, Declarant hereby declares that all of the real property described in Article II hereof is and shall be held, occupied, sold and conveyed subject to the easements, covenants, restrictions, dedications, charges and liens hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property, all of which shall run with said real property and shall be binding on all parties having or acquiring any right, title or interest in said real property or any part thereof, their heirs successors and assigns, and shall inure to the benefit of each owner thereof.

1400 E Imhoff Rd
Norman, Ok 73071

ARTICLE I

DEFINITIONS

Section 1. The following words, when used in this Declaration or any Supplemental Declaration shall, unless the context shall not permit, have the following meanings:

A. "Association" shall mean and refer to Sutton Place Homeowners Association, Inc., a non-profit corporation, incorporated under the laws of the State of Oklahoma, its successors and assigns.

B. "Properties" shall mean and refer to that certain real property described in Article II hereof.

C. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a free 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.

D. "Common Areas" or "Commonly Owned Property" or "Association Property" shall mean:

i. All of Lot Two (2), Block Six (6), Sutton Place Addition Section 5 to Norman, together with a swimming pool, cabana, and shower areas to be built thereon; and

ii. Any other common area or property made a part of or, subsequently annexed to, and made part of this Declaration and Association property;

E. "Lot" shall mean and refer to any lot shown upon the recorded subdivision map of all or any part of the Properties with the exception of the common areas.

F. "Member" shall mean and refer to every person and/or entity who holds membership in the Association.

G. "Person" shall mean an individual, corporation, partnership, Association, trust or other legal entity, or any combination thereof.

H. "Dwelling Unit" shall mean and refer to any portion of a building situated upon the Properties designed and intended for use and occupancy as a residence by a single family.

I. "Developer" shall refer to Declarant, its successors or assigns.

J. "Development" shall mean the real property contained within all of Sutton Place Addition Section 5, a copy of a plat map thereof of which is attached hereto, marked "Exhibit A", and incorporated herein by reference.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

The real property which is, and shall be held, transferred, sold, conveyed and occupied, subject to this declaration is located in the City of Norman, Cleveland County, State of Oklahoma, and is more particularly described as follows:

All of SUTTON PLACE ADDITION SECTION 5, to Norman, according to the recorded plat thereof.

ARTICLE III

ASSOCIATION PROPERTY

Section 1. The Association property will be composed of the following:

- i. All of Lot Two (2), Block Six (6), Sutton Place Addition Section 5, the together with a swimming pool and cabana to be built and installed thereon initially at the cost of Declarant. The same of which will be conveyed to the Association after such improvements are constructed thereon. Provided however, the construction of the above items will not commence until there are homes are built upon, and occupancy permits issued on a total of seventeen (17) lots within the addition. The Association will be responsible for the maintenance, upkeep, repair of such common area after the conveyance to the Association; and
- ii. Any other common area or property made a part and parcel of such Association, including, but not limited to, any subsequently annexed property, which shall be made a part of the Association pursuant to the terms of this Declaration.
- iii. The Association will at all times have the right of ingress and egress, and a continuing easement right over and across any adjoining property owners lots for the purpose of repairing and maintaining, or having access to such common area.
- iiii. The Association property shall, at all times, be subject to the general terms and conditions of this Declaration, the By-Laws, and Articles of Incorporation of the Association.
- iiiii. The Association shall, at all times, carry sufficient liability and fire and extended coverage insurance on the Association property, along with any improvements thereon.

iiiiii. The mowing, landscaping, and upkeep of the Common Area of the Association shall be accomplished by professional third parties at the expense of the Association. It is the intent of this paragraph that contracts for the same not be let to homeowners within the addition, nor their relatives.

ARTICLE IV

MEMBERSHIP, CLASSES OF MEMBERS AND VOTING RIGHTS

Section 1. Every person who is a record owner of a fee or undivided interest in a lot in the Development shall be a member of the Association; provided, that any such person who holds such interest merely as a security for the performance of an obligation shall not be a member. Ownership of such lot shall be the sole qualification for membership.

Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment by the Association.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all owners of lots within Sutton Place Addition Section 5 to Norman, and any lot owners subsequently joining the Association located in other platted additions, with the exception of the Declarant. Class A members, when a class vote is required, shall vote as a class. Each Class A member shall be entitled to one vote for each lot in which it holds the interest required for membership by Section 1 of this Article IV. When more than one person holds an interest 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. If one dwelling unit is constructed on two or more lots only one Class A membership will be assigned to such lots containing the single dwelling unit.

Class B. Class B members shall be the Developer. The Class B members shall be entitled to three (3) votes for each lot in which Declarant or Developer holds the interest required for membership by Section 1 of this Article IV.

Section 3. Each class of members shall be entitled to vote, as a class, only when the proposal to be voted in:

- a. provides for an increase in the annual assessment as to such class and which proposed assessment requires the approval by the members of the Association pursuant to Article VI hereof;

- b. provides for special assessments for capital improvements to be assessed against the particular class;
- c. provides for the merger (except as provided in Article VIII), consolidation, liquidation or dissolution of the Association;
- d. provides for the sale of all or substantially all of the assets or properties of the Association; provided, however, that the mortgage, pledge or hypothecation of all or substantially all of the assets or properties of the Association for the purpose of obtaining funds for credit with which to acquire, improve or repair all or any part of such assets or properties of the Association shall not be deemed a sale of all or substantially all of the assets or properties of the Association;
- e. provides for the election of directors by the Association in accordance with the by-laws of the Association.

ARTICLE V

PROPERTY RIGHTS IN THE COMMON AREAS

Section 1. Members Easements of Enjoyment. Each member of the Association shall have the right, and co-equal easement of enjoyment in the Association property, subject to compliance with this Declaration, the By-Laws, and Articles of Incorporation of the Association.

Section 2. The Association shall control, maintain, repair, manage and improve the Common areas/Association property as provided in this Declaration and in its Articles of Incorporation and By-Laws. In that regard, the Association shall, at all times, have a perpetual easement and right to enter upon such Association property and individual lot owners property for the purpose of the repair, maintenance and upkeep of the Common areas. Such right and power of control and management shall be exclusive.

ARTICLE VI

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the properties, and each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or conveyance, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; and (2) special assessment for capital improvements, such assessments to be fixed, and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which any such

assessment is made, paramount and superior to any homestead or any other exemption provided by law, from the date that notice of such lien is filed of record by the Declarant, the Association or any owner. Each such assessment, together with such interest, costs, and reasonable attorneys fees incurred in the collection thereof shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them, but, nevertheless, the lien above mentioned arising by reason of such assessment, shall continue to be a charge and lien upon the land as above provided.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the properties and in particular the following:

i. For the improvement, care, maintenance, and upkeep of the Common Area, (Lot Two (2), Block Six (6) Sutton Place Addition Section 5) including a pool, cabana area, and showers and any other improvements thereon, together with the cost of labor, equipment and materials relating thereto; and

ii. The mowing, landscaping, and maintenance of the entrance way leading into Sutton Place Addition to Norman. Such area is described as the East side of Porter Avenue to Norman, Oklahoma, and extending North 465 feet from the entrance, and extending South 525 feet from said entrance.

Section 3. Basis and Maximum of Annual Assessments. Until January 1 of the year immediately following the execution and the filing of this Declaration with the County Clerk of Cleveland County, the maximum annual assessment shall be as follows:

Class A Member	\$200 per year
Class B Member	\$ 50 per year

With regard to the above assessments, no Class B members assessments shall not become due and payable until after the proposed pool, cabana and showers are completed and the pool is opened.

From and after January 1, 1996, the maximum annual assessment may be increased each year by the Board of Directors of the Association not more than Twenty (20%) percent above the maximum assessment for the previous year without a vote of the membership.

From and after January 1, 1996, the maximum annual assessment may be increased above Twenty (20%) percent provided, that any such increase as to any class shall have the assent of a majority of the members, of such class, pursuant to votes cast at a meeting duly called for this purpose, written notice of which, setting out the purpose of the meeting, shall be sent to all members not less than ten (10) nor more than forty (40) days in advance of the meeting.

After consideration of current costs and future needs of the Association, the Board of Directors may fix the annual assessment at an amount not in excess of the maximum herein provided.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year, 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 areas, including the necessary fixtures and personal property related thereto; provided, that any such assessment as to any class shall have the assent of at least a majority of the members of such classes pursuant to votes cast in person or by proxy at a meeting duly called for this purpose of the meeting, notice of which shall be sent to all members of such class not less than ten (10) or more than sixty (60) days in advance.

Section 5. Quorum for Meetings. At any meeting of the members of the Association, the presence at the meeting of members or written proxies entitled to cast, one-tenth (1/10) of the votes of the membership shall constitute a quorum; provided, however, that if a quorum is not present at any meeting duly called, the members present, though less than a quorum, may give notice to all members as required herein for the transaction to be considered at an adjourned meeting, and at the adjourned meeting whatever members are present shall constitute a quorum.

Section 6. Commencement Date of Annual Assessments. The annual assessments provided for herein shall commence immediately on the filing of this Declaration with the County Clerk of Cleveland County. For the balance of the year 1995, all Lot owners shall pay their respective assessment set forth therein a pro-rata manner. Thereafter, all annual assessments shall be due and payable on the first day of January of each year, in advance. The Board of Directors will fix the amount of annual assessments against each lot at least thirty (30) days in advance of each annual assessment. The Association shall, upon demand at any time, furnish to any owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board for the issuance of these certificates.

Section 7. Effect of Non-Payment of Assessments and Remedies of the Association. Any assessments which are not paid within thirty (30) days of being due, shall have added thereto a late penalty of Twenty-five Dollars (\$25.00) together with interest thereon from the due date of eighteen (18%) percent per annum, together with a reasonable attorneys fees and costs of collection thereon become a continuing lien on the property which shall bind such property in the hands of the then owner, his heirs, devisees, personal representatives, successors and assigns. The Association may bring an action at law against the owner to recover the amount for which he may become liable and/or may foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the common areas or abandonment of his lot.

Section 8. Subordination of Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any real estate mortgage or mortgages. Sale of transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot which is subject to any mortgage, pursuant to a decree of foreclosure under such mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments thereof which became due prior to such mortgage, 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 9. Exempt Property. The following property, subject to this declaration, shall be exempt from the assessments:

- a. All properties dedicated to and accepted by a local public authority; and
- b. The common areas; and
- c. Any other common property or area for which the association is responsible; and

ARTICLE VII

Section 1. Enforcement by Association: Declarant has heretofore filed with the County Clerk of Cleveland County, Oklahoma, in Book 2532, Page 765, as amended and filed in Book 2625, Page 521, Cleveland County records, a certain "Owners Certificate, Dedication and Reservations" as to Sutton Place Addition Section 5 to Norman, Oklahoma according to the recorded plat thereof. It shall be the right and duty of the Association to enforce all the terms and conditions set forth in such document.

Section 2. The covenants and restrictions contained in this declaration shall run with and bind the land and 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 twenty (20) years from the date of recordation of this instrument, after which time said covenants shall be automatically extended for successive periods of ten (10) years; provided, however, that the owners of three-fourths (3/4) of the lots herein platted, (which must include any additional lot owners in subsequently annexed property to this Declaration) may at the end of such twenty (20) years term or at the end of any successive ten (10) year period thereafter, by a written instrument, signed by all of such persons, vacate or modify all or any part of this declaration and the covenants herein contained.

ARTICLE VIII

Section 1. RIGHT TO EXPAND; Declarant owns other real property that is bordering, near or adjacent to Sutton Place Addition Section Five (5). Upon and in the event, in the future, Developer, its successors and assigns, plats subsequent additions adjacent, near or bordering Sutton Place Addition Section 5, Developer shall have the right and authority, by Supplementary Declaration, to annex such additional real property to this Declaration. The same will be in the form of a supplementary declaration, be in writing, and contain the following:

- A. Description of the land to be annexed;
- B. A description of any property to become a part and parcel of such Association.

Upon filing the above mentioned Supplementary Declaration, all existing lot owners covered by this Declaration within Sutton Place Addition Section 5, and future lot owners of the property to be annexed shall be bound by the terms of this Declaration and such Supplementary Declaration.

ARTICLE IX

Section 1. RIGHT TO ASSIGN. Declarant may, by appropriate instrument, assign or convey to any person, organization or corporation, any or all of the rights, reservations, easements and privileges herein reserved by Declarant, and upon such assignment or conveyance being made, its assigns or grantees may, at their option exercise, transfer or assign such rights, reservations, easements and privileges or any one or more of them at any time or times, as to those rights directly reserved by it in this instrument.

ARTICLE I

Section 1. **AMENDMENTS.** Declarant, or a representative designated by them, hereby reserves and are granted the right and power to record a Special Amendment to the Declaration at any time and from time to time which amends this Declaration (1) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities and/or (2) to induce any of such agencies or entities to make, purchase, furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the such parties to make or consent to a Special Amendment on behalf of each owner. Each deed, mortgage, trust deed, other evidence or obligation or other instrument affecting a lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power of the such parties to make, execute and record such Special Amendments. No Special Amendment made by such parties shall affect or impair the lien of any first mortgage upon a lot or any warranties made by an owner to a first mortgagee in order to induce any of the above agencies or entities to make, purchase, insure or guarantee the first mortgage on such owner's lot.

Section 2. This Declaration of Property Owner's Association for Sutton Place Addition Section 5 may be amended at any time upon an affirmative vote of three-fourths (3/4) of the voting membership upon a meeting held for such purpose.

ARTICLE XI

Section 1. **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, postage prepaid, to the last known address of the person who appears as a member or owner on the records of the Association at the time of such mailing.

ARTICLE XII

Section 1. **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 restrictions, 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 herein contained shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE XIII

Section 1. **SEVERABILITY.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

In witness whereof, the undersigned Declarant, and remaining owners within Sutton Place Addition Section 5 hereby executes the same as of the date and year shown in the hereinafter acknowledgements.

Owner
Lot 7, Block 1
Sutton Place Addition
Section 5

Marita K. Hynes
Marita K. Hynes
Judy J. Tate
Judy J. Tate

Lot 2, Block 2
Sutton Place Addition
Section 5

Brent W. Armstrong
Brent W. Armstrong
Shauna M. Armstrong
Shauna M. Armstrong

Lot 4, Block 3
Sutton Place Addition
Section 5

Naomi C. Marsh
Naomi C. Marsh, Attorney In Fact
For Bert M. Marsh, Jr.
Naomi C. Marsh
Naomi C. Marsh

Lot 5, Block 4
Sutton Place Addition
Section 5

John Michael Owen
John Michael Owen
Kimberly Floyd Owen
Kimberly Floyd Owen

Lot 8, Block 4
Sutton Place Addition
Section 5

John M. Russell
John M. Russell
Annette L. Russell
Annette L. Russell

Lot 1, Block 2
Sutton Place Addition
Section 5

Ronald Joe Ferguson
Ronald Joe Ferguson
Vicki Lynne Ferguson
Vicki Lynne Ferguson

Lot 10, Block 2,
Sutton Place Addition
Section 5

PRESTIGE BUILDERS, INC., A
CORPORATION

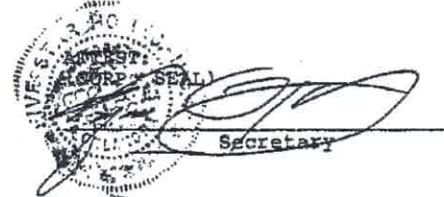
By: Janis Livingston
President


Secretary

Lot 9, Block 2,
Sutton Place Addition
Section 5

FIVE STAR HOMES, INC., A
CORPORATION

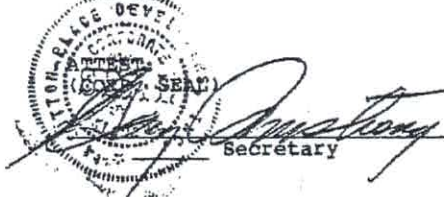
By: Mike Wilson
President


Secretary

Owner:
All other property
located in
Sutton Place Addition
Section 5

SUTTON PLACE DEVELOPERS, INC.,
A CORPORATION

By: Paul Anthony
President


Secretary

STATE OF OKLAHOMA)
) SS:
COUNTY OF CLEVELAND)

The foregoing instrument was acknowledged before me this 28th
day of March, 1995 by Marita K. Hynes and Judy J.
Tate, both single persons.


My Commission Expires: _____

Janice M. Calip
Notary Public

STATE OF OKLAHOMA)
)
COUNTY OF CLEVELAND) SS:

The foregoing instrument was acknowledged before me this 15th
day of March, 1995 by Brent W. Armstrong and Shauna
M. Armstrong, husband and wife.

My Commission Expires: _____
Janice M. Caligi
Notary Public

STATE OF OKLAHOMA)
)
COUNTY OF CLEVELAND) SS:

The foregoing instrument was acknowledged before me this 28th
day of March, 1995 by Bert M. Marsh, Jr. by Naomi
C. Marsh, Attorney in Fact, and Naomi C. Marsh, husband and wife.

My Commission Expires: _____
Janice M. Caligi
Notary Public

STATE OF OKLAHOMA)
)
COUNTY OF CLEVELAND) SS:

The foregoing instrument was acknowledged before me this 10th
day of March, 1995 by John Michael Owen and Kimberly
Elyse Owen, husband and wife.

My Commission Expires: _____
Janice M. Caligi
Notary Public

STATE OF OKLAHOMA)
)
COUNTY OF CLEVELAND) SS:

The foregoing instrument was acknowledged before me this 17th
day of March, 1995 by John M. Russell and Annette
L. Russell, husband and wife.

My Commission Expires: _____
Janice M. Caligi
Notary Public