

DEED OF DEDICATION AND DECLARATION OF RESTRICTIVE COVENANTS KUM & GO #837

KNOW ALL MEN BY THESE PRESENTS:

KG Store #37, LLC hereinafter referred to as the "Owner/Developer, are the owners of the following described land in the City of Broken Arrow, Wagoner County, State of Oklahoma, to-wit:

A Replat of Lot 1, Block 1, BOL Addition & Lot 9, Block 2, PRAIRIE DALE Addition being a part of the East Half of the Southeast Quarter (E1/2, SE1/4) of Section 21, Township 18 North, Range 15 East of the Indian Base and Meridian, Wagoner County, State of Oklahoma, being more particularly described as follows:

Commencing at the Northeast corner of the Southeast Quarter of Section 21, Township 18 North, Range 15 East, thence South 00 Degrees 10 Minutes 50 Seconds West along the East line of the Southeast Quarter a distance of 1,520.00 feet; thence North 89 Degrees 38 Minutes 10 Seconds West, a distance of 24.75 feet to the Northeast Corner of Lot 9 of the partially vacated Plat of Prairie Dale Addition, by Certificate to Vacate, filed in Book 1990 at Page 602 in the County Clerk's office of Wagoner County, Oklahoma for a POINT OF BEGINNING; thence South 00 Degrees 10 Minutes 50 Seconds West, along the East line of said Lot 9, a distance of 139.98 feet (140.0' Plat), to the Southeast corner of said Lot 9, Block 2 of said Prairie Dale Addition; thence South 00 Degrees 10 Minutes 50 Seconds West, parallel to the East line of said Section 21, a distance of 341.19 to the Southeast corner of Vacated Lot 11, Block 2 Prairie Dale Addition; thence North 89 Degrees 52 Minutes 08 Seconds West, along the South line of said Lot 11, a distance of 398.77 feet to the Southwest corner of said Lot 11; thence North 89 Degrees 13 Minutes 31 Seconds East along the West line of said Lot 11, the West line of Lot 1, BOL Addition, and its extension, and along the West line of said Lot 9, a distance of 330.37 feet to the Northwest corner of said Lot 9, thence South 89 Degrees 41 Minutes 32 Seconds East along the North line of said Lot 9, a distance of 357.74 feet (358' Plat) to the POINT OF BEGINNING. Said tract containing 145,220 square feet or 3.334 acres, more or less.

And have caused the above described tract of land to be surveyed, staked, and platted in conformity with the accompanying plat, and has designated the subdivision as "Kum & Go #837", a Subdivision in the City of Broken Arrow, Wagoner County, Oklahoma (hereinafter referred to as "Kum & Go #837" or the "Subdivision").

SECTION I. EASEMENTS AND UTILITIES

A. Utility Easements
The Owner/Developer does hereby dedicate for public use the utility easements as depicted on the accompanying plat as "UE" 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 pipes, wires, conduits, pipes, valves, meters, and equipment for each of such facilities and any other apparatuses thereto, with the rights of ingress and egress to and from the utility easements; provided, however, nothing herein shall be construed to grant to the Owner/Developer 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 relating over, across and along all of the utility easements depicted on the plat, for the purpose of furnishing water and/or sewer services to areas adjacent to the plat. The Owner/Developer hereby reserves to itself and its successors and assigns the right to construct, maintain, operate and shall be enforceable by the City of Broken Arrow, Oklahoma, and by the supplier of any affected utility service, that within the utility easements depicted on the accompanying plat to building, structure or other above or below ground obstruction that interferes with the above set forth uses and purposes of an easement shall be placed, erected, installed or however, nothing herein shall be deemed to prohibit drives, parking areas, curbing, landscaping and customary screening fences and walls that do not constitute an obstruction.

B. Underground Service
1. Overhead poles may be located along the perimeter of the subdivision as necessary if located in utility easements for the purpose of the supply of underground service. Street light poles or standards may be served by underground cable, and except as provided in the immediately preceding sentence, all electric and communication supply lines shall be located underground, in the easement-ways reserved for general utility services and streets, shown on the attached plat. The owner does hereby restrict the utility easements shown and designated on the accompanying plat to a single supply of electrical service.

2. All supply lines in the Subdivision except those mentioned in paragraph 1 above, including electric, telephone, and cable television and gas lines shall be located underground in the easements reserved for general utility services shown on the plat of the subdivision. Service pedestals and transformers, as sources of supply of secondary voltages, may also be located in said easements.

3. Underground service cables and gas service lines to all structures which may be located on all lots in the Subdivision may be run from the nearest gas main, service pedestal or transformer to the point of usage determined by the location and construction of such structure as may be located upon each said lot, provided that upon the installation of such a service cable or gas service line to a particular structure, the supplier of service shall thereafter be deemed to have defined, permanent, installed or however, nothing herein shall be deemed to prohibit drives, parking areas, curbing, landscaping and customary screening fences and walls that do not constitute an obstruction.

4. The supplier of electric, telephone, cable television and gas services, through its authorized agents and employees, shall at all times have right of access to all such easements shown on the plat to the Subdivision or provided for in this deed of dedication for the purpose of installing, maintaining, removing or replacing any portion of the underground electric, telephone, or gas service facilities or service pedestals or transformers. The supplier of electric, telephone, cable television also reserves the perpetual right, privilege and authority, to cut down, trim, or treat any trees and underground on said easement.

C. Water and Sanitary Sewer Services
1. The owner of the lot shall be responsible for the protection of the public water mains, sanitary sewer mains and storm sewers located on his lot.

2. Within the utility easement areas depicted on the accompanying plat, the alteration of grade in excess of 3 feet from the contours existing upon the completion of the installation of a public water main, sanitary sewer main or storm sewer, or any construction activity which would interfere with public water mains, sanitary sewer mains or storm sewers shall be prohibited.

3. Wagoner County Rural Water District No. 4, Oklahoma, or its successors, shall be responsible for the ordinary maintenance of public water mains and sanitary sewer mains, but the owner of the lot shall pay for damage or relocation of such facilities caused or necessitated by acts of the owner of the lot, his agents or contractors.

4. Wagoner County Rural Water District No. 4, Oklahoma, or its successors, shall at all times have the right of access to all easements 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 sanitary sewer facilities.

5. Where waterfalls fall within a utility easement, that portion of the utility easement for the use of Wagoner County Rural Water District No. 4, Oklahoma, or its successors. The easements depicted herein for purpose of providing potable water are dedicated to Wagoner County Rural Water, Sewer, Gas and Solid Waste Management District No. 4. Providers of utilities other than potable water may use said easements for the purpose installing and maintaining their own utilities.

D. Storm Sewer Services
1. The owner of the lot shall be responsible for the protection of the storm sewers located on his lot.

2. Within the utility easement areas depicted on the accompanying plat, the alteration of grade in excess of 1 foot from the contours existing upon the completion of the installation of a storm sewer, or any construction activity which would interfere with public storm sewers shall be prohibited.

3. The City of Broken Arrow, Oklahoma, or its successors, shall be responsible for the ordinary maintenance of public storm sewers, but the owner of the lot shall pay for damage or relocation of such facilities caused or necessitated by acts of the owner of the lot, his agents or contractors.

4. The City of Broken Arrow, Oklahoma, or its successors, shall at all times have rights of access to all easements 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 sewer facilities.

E. Gas Service
1. Within the utility easement areas depicted on the accompanying plat, the alteration of grade in excess of one foot from the contours existing upon the completion of the installation of a gas main or any construction activity which would interfere with a gas main shall be prohibited.

2. The supplier of gas service shall be responsible for ordinary maintenance of gas 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.

3. The supplier of gas service shall at all times have right of access to all easements 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 gas facilities.

4. Underground gas service lines to all structures which may be located within the subdivision may be run from the nearest gas main 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 line to a particular structure, the supplier of service shall thereafter be deemed to have defined, permanent and effective easement on the lot, covering a 5 foot strip extending 2.5 feet on each side of the service line, extending from the gas main to the service entrance on the structure.

F. 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 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 any lot. The foregoing covenants set forth in this Paragraph F shall be enforceable by any affected lot owner and by the City of Broken Arrow, Oklahoma.

G. Paving and Landscaping Within Easements
The owner of the land affected shall be responsible for the repair of damage to landscaping and paving occasioned by necessary installation or maintenance of water, sewer, storm sewer, natural gas, communication, cable television, or electric facilities within the utility easement areas depicted upon the accompanying plat, provided however, Wagoner County Rural Water District No. 4, the City of Broken Arrow, Oklahoma or the supplier of the utility service shall use reasonable care in the performance of such activities.

H. Stormwater Detention Easement
1. The owner/developer does hereby dedicate to the City of Broken Arrow Oklahoma for Public Use (Subject to Easements of Record) a perpetual easement on, over, and across the property designated and shown on the accompanying plat as Detention Easement (hereinafter referred to as the "Detention Easement Area") for the purpose of permitting the flow, conveyance, retention, detention and discharge of stormwater runoff from the lot within "Kum & Go #837".

2. Detention, retention, and other drainage facilities constructed within the detention easement area shall be in accordance with the standards and specifications approved by the City of Broken Arrow, Oklahoma.

KUM & GO #837
"PUD 247A"
A REPLAT OF LOT 1, BLOCK 1 OF BOL ADDITION
& LOT 9, BLOCK 2 OF PRAIRIE DALE ADDITION
BEING A PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION
21, TOWNSHIP 18 NORTH, RANGE 15 EAST, A SUBDIVISION IN THE CITY OF
BROKEN ARROW, WAGONER COUNTY, OKLAHOMA

3. Detention, retention, and other drainage facilities shall be maintained by the owner to the extent necessary to achieve the intended drainage, retention, and detention functions including repair of apparatuses and removal of obstructions and siltation and the owner shall provide customary grounds maintenance within the detention easement area in accordance with the following standards:

4. The Stormwater Detention Easement areas and facilities located on the property shall be maintained by the owner of the property upon which the detention easement is located as the City of Broken Arrow, Oklahoma. In the event the owner should fail to properly maintain the detention, retention, and other drainage facilities, the City of Broken Arrow, Oklahoma, or its designated contractor may enter and perform maintenance necessary to the achievement of the intended drainage functions and may remove any obstruction or correct any alteration of grade or contour, and the cost thereof shall be paid by the owner. In the event the owner fails to pay for the maintenance after completion of the maintenance and receipt of a statement of costs, the City of Broken Arrow, Oklahoma, may file of record a copy of the statement of costs, and thereafter the costs shall be a lien against the lot within "Kum & Go #837". A lien established as above provided may be foreclosed by the City of Broken Arrow, Oklahoma.

SECTION II. 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, Easements and Utilities are set forth certain covenants and the enforcement rights pertaining thereto, and additionally the covenants within Section I, whether or not specifically therein so stated, shall inure to the benefit of and shall be enforceable by the City of Broken Arrow, Oklahoma. If the undersigned Owner/Developer, or its successors or assigns, shall violate any of the covenants within Section I, the supplier of utility service or the City of Broken Arrow, Oklahoma may bring an action at law or 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.

B. Duration
These restrictions and covenants, to the extent permitted by applicable law, shall be perpetual but in any event shall be in force and effect for a term 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 in Section I, Easements & Utilities may be amended or terminated at any time by written instrument signed and acknowledged by the owner and by the Planning Commission or its successors with the approval of the City of Broken Arrow, Oklahoma. No amendment that causes utility easement to be vacated is valid until the Owner obtains an appropriate ruling from the district court of Tulsa County, Oklahoma or the written consent of all utility users.

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 or any other part thereof, which shall remain in full force and effect.

PUD 247A DEVELOPMENT REGULATIONS

The property associated with this PUD shall be developed in accordance with the Broken Arrow Zoning Ordinance and the use and development regulation of the City (Commercial Neighborhood) district, except as noted below.

Parking
-Existing: The parking requirement is 1 space per 200 SF of building area plus one space per pumping station. Based on building area of 6,321 GSF and 14 pump spaces, this requires 46 spaces.
-Propose: Modify the parking requirement to 1 space per 300 SF of building area plus one space per pumping station. The spaces for the pumping station are proposed to occur at the actual pump and not in the parking lots. Based on building area of 6,321 GSF and 14 pump spaces, this requires 22 parking spaces and 14 pump station spaces accounted for at the pumps.

Drives
-Existing: The maximum drive width shall be 36' wide.
-Propose: Modify to allow for a maximum drive width of 40' wide.
-Existing: The maximum drive curb radius is 15'.
-Propose: Modify to allow for a maximum drive curb radius of 25' for access to Highway 51 and 40' for access to Oneta Road.

-Existing: The distance between the centerline of the driveways and the centerline of intersecting streets shall be a minimum of 20'.
-Propose: Modify to allow for a minimum of 15' between the centerline of the driveways and the centerline of intersecting streets shall be a minimum of 210'. Only one point of access shall be allowed to State Highway 51, and two points of access shall be allowed to Oneta Road. The access points shall be located as shown on the conceptual site plan.

-Existing: All curb cuts shall be spaced at least 250' apart, centerline-to-centerline. In addition, the centerline of the access point shall either align with or be offset at least 200' from any access points on the opposite side of the street when a raised median is not present.
-Propose: Modify to allow all curb cuts shall be spaced at least 120' apart, centerline-to-centerline. In addition, the centerline of the access point shall be less than 20' of offset or greater than 80' from any access points on the opposite side of the street when a raised median is not present. The access point shall be located as shown on the conceptual site plan.

Signs
-Existing: No freestanding sign is permitted within 1,500 feet of a pre-existing off-premises advertising sign.
-Propose: Modify so that no freestanding sign is permitted within 300 feet of a pre-existing off-premises advertising sign.
-Existing: A freestanding sign shall not exceed 20' in height except as modified by the following: additional height may be granted for additional setbacks, measure from the ultimate right-of-way line on a 1' vertical to a 2' horizontal basis, to a maximum of 30' high.
-Propose: Modify to a freestanding sign shall be installed in accordance with the Zoning Ordinance, but shall not exceed 30 feet in height. Sign shall be located at least 20 feet away from the property line. Display area of sign shall not exceed 100 square feet and shall have a maximum of 2 sides.

Setbacks
-Existing: In a CN zoning district, the minimum front yard building setback is 50'.
-Propose: Modify to in a CN zoning district, the minimum front yard building setback along Highway 51 is 40'.
Landscaping
-Existing: The landscape edge shall be a minimum width of 10'.
-Propose: Modify so that the landscape edge shall be a minimum width of 12' along Highway 51 and 10' wide along Oneta Road.

-Existing: One tree is required per 50 linear feet of street frontage.
-Propose: Landscaping shall be provided in accordance with the Zoning Ordinance except that one tree shall be installed per 30 linear feet of street frontage along both State Highway 51 and Oneta Road. The required trees shall be located adjacent to the respective street frontage. All trees installed on the property shall be medium to large trees, except where there are conflicts with easements. A fence shall be installed along the east property line north of the northern access line.
-Existing: Whenever a residential use is proposed adjacent to a property with a residential zoning or residential use, the nonresidential use shall provide a landscape buffer of at least 10' in width within the nonresidential property, planted with either a minimum of 1 medium to large evergreen tree and 10 shrubs for each 30 linear feet or 1 medium to large evergreen tree for each 20 linear feet. A berm or masonry wall may be placed within the landscape edge in lieu of the required shrubs.
-Propose: Whenever a nonresidential use is proposed adjacent to a property with a residential zoning or residential use, the nonresidential use shall provide a landscape buffer of at least 20' in width within the nonresidential property planted with 1 medium to large evergreen tree for each 20 linear feet. In areas where the existing utility easements occur or within buffer, tree plantings may be shifted to provide buffer, but not impact utility easements which may result in trees outside of buffer. In areas where grade elevation is higher at the improvements than the grade in the buffer, tree plantings may be shifted outside the buffer to provide a higher screen and closer to the improvements.

Lighting
-Existing: Light poles shall not be placed in utility easements adjacent to street right-of-ways.
-Propose: Modify to allow one light pole to be placed in utility easements adjacent to street right-of-ways and property owner assumes all liability and replacement responsibilities for any damage to light poles placed in utility easements. The light shall be a maximum of a 14' high pole and located near the air machine as shown on the conceptual site plan.
Additional Requirements and Allowances

-An 8' high wood screen fence is required along the north property line and portions of the west and east property line. Fence shall be installed in accordance with the Zoning Ordinance along the north property line, except that it shall not be installed over the existing sanitary line at the northwest corner of the property. A fence shall be installed along the west property line where property abuts a residential use. Along with property line, the fence shall be shifted east from property line to accommodate existing sanitary sewer line and easement. A fence shall be installed along the east property line north of the northern access line or shall be raised above ground along bottom so that it does not block the stormwater flow. The commercial property owner shall be responsible for the maintenance of the fence. Since the fence will be installed along the common property line, installation of the fence shall be coordinated with the adjacent property owner.

-Freestanding signs, including the pole structure, shall be covered/constructed so that the facing material is similar to the building facing material.
-At the driveways, lanes shall be striped for entrance and exit lanes.
-If allowable by Oklahoma Department of Transportation, a paved shoulder taper transition will be provided along Highway 51 to transition to driveway.
-No sculpture shall be allowed on the site with an overall height of 8' tall measure from the top of foundation. Sculpture shall have a footprint no larger than 4' X 9'.
-A sign shall be installed that states "Overnight Parking Prohibited".

PLC5-431B

OWNER'S CERTIFICATE

In Witness Whereof, KG Store #837, LLC, has executed this instrument this 22nd day of Dec, 2016.

KG Store #837, LLC

Niki Depaulis

Printed Name: Niki Depaulis

Title: SUB STONE DEVELOPMENT

STATE OF Iowa
COUNTY OF Dallas SS

On this 22nd day of December, 2016, in the year 2016, a Notary Public in and for said state, personally appeared NIKI DEPAULIS, to me personally known, who being by me duly sworn did say that he/she is the Sub Stone Dev. of KG Store #837, LLC, a Limited Liability Company of the State of Oklahoma and that said document was signed in behalf of said Limited Liability Company by authority of its MANAGER and said NIKI DEPAULIS acknowledged said document to be the free act and deed of said Limited Liability Company and acknowledged to me that he/she executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in W. Boy Meiny the day and year first above written.

Notary Public: Emily A. Meyer

"Notary Seal"

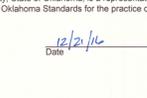
Print Name: Emily A. Meyer

My term of office expires September 2, 2019

CERTIFICATE OF SURVEY

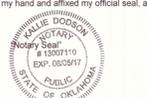
Know all men by these presents: That I, Nicholas S. Schrader, a licensed professional land surveyor in the State of Oklahoma, do hereby certify that I have carefully and accurately surveyed, subdivided, and platted the tract of land described above, and that the accompanying plat designated herein as KUM & GO #837, a Subdivision in the City of Broken Arrow, Wagoner County, State of Oklahoma, is a representation of the survey made on the ground using generally accepted practices and meets or exceeds the Oklahoma Standards for the practice of land surveying.

Nicholas S. Schrader, OK PLS 1998
Olson Associates, OK CA 2483
nschrader@olsonassociates.com



The foregoing Certificate of Survey was acknowledged before me on this 21st day of December, 2016, by Nicholas S. Schrader, in the day and year first above written.

Notary Public: Kallej Johnson



Print Name: Kallej Johnson

My term of office expires 08/05/2017

CERTIFICATE OF WAGONER COUNTY CLERK

I, Lori Hendricks, The County Clerk of Wagoner County, do here and now state the subdivision called KUM & GO #837 as been filed into Wagoner County Records.

Lori Hendricks
County Clerk, Wagoner County Clerk

CERTIFICATE OF TREASURER

I, the undersigned, the duly qualified and acting County Treasurer of Wagoner County, Wagoner County, Oklahoma hereby certify that according to the tax rolls the taxes on the above description are paid.

Print Name: Lori Hendricks
Signature: Lori Hendricks
Title: Deputy

CERTIFICATE OF CITY COUNCIL

APPROVED Sept. 6, 2016 by the City Council of the City of Broken Arrow, Oklahoma.

Mayor: Chris Hoover
attest: City Clerk Deputy

Certified True Copy
LORI HENDRICKS, COUNTY CLERK
Wagoner County, Oklahoma

KUM & GO #837
"PUD 247A"
Case No.: PT15-119A
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Table with columns: DATE, REVISION, BY. Includes OLSSON ASSOCIATES logo and contact information: 550 St. Louis Street, Springfield, MO 65806. TEL: 417.880.8802, FAX: 417.890.8808, www.olsonconsulting.com