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# WEST OREM PLACE

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## DECLARATION OF COVENANTS AND RESTRICTIONS

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## ARTICLE I.

### Definitions

The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

- (a) "Association" shall mean and refer to West Orem Place Homeowners' Association, Inc., a Texas non-profit corporation, its successors and assigns.
- (b) "Builder" and or "Builders" shall mean and refer to persons or entities engaged in the business of constructing and selling single family residences who have purchased one or more Lots from Declarant for the purpose of constructing a residence thereon for a third party in accord with the Subdivision Plat and this Declaration.
- (c) "Common Areas" shall mean and refer to all of those areas of land within the West Orem Place Property, owned by the Association, specifically including jogging trails, green areas, entries and waterways, water quality facilities and detention ponds, together with such other property as the Association may, at any time or from time to time, acquire as Common Areas by purchase or otherwise, subject, however, to the easements, limitations, restrictions, dedications, and reservations applicable thereto.
- (d) "Common Facilities" shall mean and refer to all existing and subsequently provided improvements upon or within the Common Areas except those as may be expressly excluded herein. Also, in some instances, Common Facilities may consist of improvements for the use and benefit of the Members, constructed on portions of one or more Lots, on West Orem Place Property, or on acreage owned by Declarant (or Declarant and others) which has not been brought within the scheme of this Declaration. By way of illustration, Common Facilities may include, but not necessarily be limited to the following: structures for recreation, storage or protection of equipment, fountains, statuary, sidewalks, landscaping, swimming pools, tennis courts, water quality facilities, detention ponds and other similar and appurtenant improvements.
- (e) "Declarant" shall mean and refer to S.S.M., L.P., a Texas Limited Partnership. Unless the context clearly indicates otherwise, the term shall be deemed to include Declarant's successors and assigns, provided that no Owner shall ever be deemed to be a successor or assign, unless so stated in an instrument in writing executed by Declarant and recorded in the Official Records of Harris County.
- (f) "Lot" and/or "Lots" shall mean and refer to each of the lots shown on the Subdivision Plat or Plats filed or to be filed of record which are incorporated into the Subdivision.

References herein to "the Lots (or, each Lot) in the Subdivision" shall mean and refer to Lots as defined respectively in this Declaration and all amendments thereto.

- (g) "Member" and/or "Members" shall mean and refer to all those Owners who are members of the Association as provided in Article IV hereof, together with all the owners in the West Orem Place Property who are members of the Association as provided in this Declaration, all Supplemental Declarations, and any amendments to any of the above. The term "Member" is further defined to include and refer to the executors and administrators of any Member, and all other persons, firms, or corporations acquiring or succeeding to the title of the Lot by sale, grant, will, foreclosure, execution, or by any legal process, or by operation of law, or in any other legal manner.
- (h) "Owner" shall mean and refer to the record owner, or if such Lot is subject to a term purchase contract with Declarant, to the contract seller, whether one or more persons or entities, of the fee simple title to any Lot within the Subdivision, but, notwithstanding any applicable theory of mortgagees, shall not mean or refer to any mortgagee unless and until such mortgagee have acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- (i) "West Orem Place Property" shall mean and refer to any portion of West Orem Place heretofore or hereafter brought within the scheme of this Declaration, including the Subdivision.
- (j) "Subdivision" shall mean and refer to the real property described in Article III, Section 1 herein.
- (k) "Subdivision Plat" shall mean and refer to the Map or Plat of West Orem Place , Section One, which has been filed by or on behalf of Declarant, and which is more fully described in Article III, Section 1 hereof.
- (l) "West Orem Place" shall mean and refer to: (i) the Subdivision and; (ii) the property being a 45.41 acre tract situated in the I. & G.N.R.R. Survey, Abstract 953 and the James Hamilton Survey, Abstract 877, City of Houston, Harris County, Texas, and being out of the Mohammed Kazam Khan called 63.38154 acre tract of land as recorded under Harris County Clerk's File No. G239694.

## ARTICLE II.

### Easements

Section 1. Existing Easements. The Subdivision Plat dedicates for use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and further establishes

dedications, limitations, reservations, and restrictions applicable to the Subdivision. Further, Declarant and Declarant's predecessors in title have heretofore granted, created, and dedicated by several recorded instruments, certain other easements and related rights affecting the Subdivision. All dedications, limitations, restrictions, and reservations shown on the Subdivision Plat and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Subdivision or West Orem Place are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed, or other conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Subdivision.

Section 2. Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements for the purpose of most efficiently and economically installing the utilities, cable, drainage or street lights. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve, or otherwise create, at any time or from time to time, easements for public utility purposes (including, without limitation, gas, electricity, telephone, and drainage) in favor of any person or entity furnishing or to furnish utility services, including drainage, to the Subdivision, and/or West Orem Place along and on either or both sides of any Lot line. Such easements for public utility purposes shall have a maximum width of five feet (5') on each side of such Lot line.

Section 3. Title to Easements and Appurtenances Not Conveyed. Title to any Lot conveyed by Declarant by contract, deed, or other conveyance shall not be held or construed in any event to include the title to any roadways or any drainage, water, gas, sewer, storm sewer, electric light, electric power, telegraph or telephone way, or any pipes, lines, poles, or conduits on or in any utility facility or appurtenances thereto, construed by or under Declarant or its agents through, along, or upon any Lot or any part thereof to reserve said Lot or any other portion of the Subdivision, and the right to maintain, repair, sell, or lease such appurtenances to any municipality or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant.

Section 4. Installation and Maintenance. There is hereby created an easement upon, across, over, and under all of the property in the Subdivision for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including, but not limited to, water, sewer, telephones, electricity, gas, cable, drainage, and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across, and under the property in the Subdivision within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any structure. Notwithstanding anything contained in this Section, no sewer, electrical lines, water lines, drainage facilities, or other utilities or appurtenances thereto may be installed or relocated on the property in the Subdivision until approved by Declarant or the Association's Board of Directors.



The utility companies furnishing service shall have the right to remove all trees and other plantings situated within the utility easements shown on the Subdivision Plat, and to trim overhanging trees and shrubs located on portions of the Subdivision abutting such easements to prevent interference with the operations of such utilities.

Section 5. Emergency and Service Vehicles. An easement is hereby granted to all police, fire protection, ambulance, and other emergency vehicles, and to postal service and garbage and trash collection vehicles, and other service vehicles to enter upon the Subdivision in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and management personnel to enter the Subdivision to render any service for which it is responsible as set forth in this Declaration.

Section 6. Underground Electric Service. An underground electric distribution system will be installed within the Subdivision, which will be designated an Underground Residential Subdivision, and which underground service area shall embrace all Lots in the Subdivision. The Owner of each Lot in the Underground Residential Subdivision shall, at his own cost, furnish, install, own, and maintain (all in accordance with the requirements of local governing authorities and the National Electrical Code) the underground service cable and appurtenances from the point of the electric company's metering on the customer's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company, at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot shall, at his own cost, furnish, install, own, and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot. For as long as underground service is maintained in the Underground Residential Subdivision, the electrical service to each Lot herein shall be underground, uniform in character, and exclusively of the type known as single phase 120/240 volt, sixty (60) cycle alternating current.

The electric company has installed (or will install) the underground electric distribution system in the Underground Residential Subdivision at no cost to Declarant (except for certain conduits, where applicable) upon Declarant's representation that the Underground Residential Subdivision is being developed for single family dwellings of the usual and customary type, constructed upon the Lots, designed to and built for sale to bona fide purchasers.

Section 7. Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns, or flowers and the erection of fences along property lines. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them or either of them, or their respective agents, employees, servants, or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

Further, neither the Declarant nor the supplier of any utility or service using any easement area shall be liable to any Owner or to the Association for any damage done by them, or either of them, or their respective employees, servants, or assigns, to any sidewalks, driveways, fences, or any other object occupying any such easement or any portion thereof, as a result of any activity relating to the construction, maintenance, or repair of any facility in any such easement area. Nothing contained herein shall permit the construction of any building within any easement areas, which is hereby strictly prohibited.

### ARTICLE III.

#### Property Subject to This Declaration

Section 1. Description. The real property which is and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is described as West Orem Place, Section One, a subdivision of 17.97 acres of land located in the I. & G.N.R.R. Co. Survey, A-953, as recorded under Clerk's File No. W525792 of the Plat Records of Harris County, Texas.

Section 2. Mineral Exception. There is hereby excepted from the Subdivision and Declarant will hereinafter except from all its sales and conveyance of the Subdivision, or any part thereof, including the Lots and Common Areas, all oil, gas, and other minerals in, on, and under the Subdivision, but Declarant hereby waives, and will waive in each such conveyance, its right to use the surface of such land for exploration for or development of oil, gas, and other minerals.

Section 3. Additions to Existing Property. Additional lands may become subject to the scheme of this Declaration in the following manner:

- (a) Declarant shall have the unilateral right, privilege, and option, from time to time anytime until all of the West Orem Place has been subjected to this Declaration or December 31, 2023, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association additional real property. Such annexation shall be accomplished by filing in the Public Records of Harris County, Texas a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the consent of Owners or Members, but shall require the consent of the owner of such property if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided herein. Declarant shall have the unilateral right to transfer to any other person the right, privilege and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be a developer of at least a portion of the additional real property and that such transfer is memorialized in a written, recorded instrument executed by the Declarant. In the event that Declarant shall transfer to any other person the right, privilege and option to annex additional property as provided in this sub-paragraph, the Assignee of such

right shall be deemed to be a successor and assign of Declarant as to such additional property.

- (b) Subject to the consent of the owner thereof, the Association may annex additional real property, following the expiration of the right in Section 3(a) of this Article, to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote (i) of Members representing a majority of the Class "A" votes of the Association present at a meeting duly called for such purpose and (ii) of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject hereto. Annexation shall be accomplished by filing of record in the public records of Harris County, Texas, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws of the Association dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 3(b) and to ascertain the presence of a quorum at such meeting.

Section 4. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Section 3 of this Article, which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 5. Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to subject additional real property to the terms of this Declaration pursuant to Subsection 3(a) of this Article, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by the Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the real property desired to be affected by the Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties.

Section 6. No Obligation to Annex. Nothing contained herein, and no development of the Subdivision nor any portion of West Orem Place shall obligate Declarant to include, annex or incorporate any additional portion of West Orem Place or any other real property, now or hereafter owned by Declarant into the West Orem Place Property, and neither the mention or description of West Orem Place nor Declarant's expressed intent to develop West Orem Place according to a uniform plan or scheme of development shall obligate Declarant to include any portion of West Orem Place in such a development, nor obligate Declarant to impose any restriction, encumbrance or condition, of any kind or character, upon any portion of West Orem Place other than the

Subdivision. Declarant shall have the right to create other subdivisions out of West Orem Place which are not annexed to, or made part of the West Orem Place Property, and are not subject to any of the conditions, covenants or restrictions hereof, and nothing contained herein, nor applied hereby, shall limit, encumber or otherwise impair or affect, in any way, Declarant's right to use, convey or otherwise deal with any portion of West Orem Place other than that specifically included within the Subdivision.

## ARTICLE IV.

### The Association

Section 1. Organization. The Association has been organized and formed as a non-profit corporation under the laws of the State of Texas.

Section 2. Purpose. The principal purposes of the Association are the collection, expenditure, and management of the maintenance funds, enforcement of the restrictions contained herein, providing for the maintenance, preservation and architectural control of the West Orem Place Property, the general overall supervision of all of the affairs of and the promotion of the health, safety, and welfare of the Members.

Section 3. Common Area. The Association, subject to the rights of the Members, shall be responsible for the exclusive management and control of the Common Area and the Common Facilities and shall keep them in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof.

Section 4. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests conveyed to it by the Declarant.

Section 5. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration; the Principal Declaration; any Supplemental Declaration as defined in the Principal Declaration; its Articles of Incorporation; its By-Laws; any amendments to any of the above; and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 6. Directors. The Association shall initially act through a Board of Directors having not fewer than three (3) nor more than five (5) directors, which shall manage the affairs of the Association. The initial Directors, who need not be residents in the Subdivision, of the Association have been or shall be selected by Declarant. Each initial Director shall serve until his successor is duly elected and qualified as provided in the Articles of Incorporation of the Association and its By-Laws. Any vacancy, from whatever cause, occurring in the Board of Directors during the initial term

shall be filled by appointment made by the remaining Director or Directors. The person appointed by the remaining Director or Directors to fill such vacancy shall serve for the remainder of the initial term and until his successor is duly elected and qualified.

The Directors shall have the power to select one or more non-voting advisory directors from the residents of the Subdivision to serve for such periods of time as the Board of Directors shall deem appropriate, for the purpose of providing advice and council to the Board of Directors, provided that such advisory directors shall have no right to act on behalf of the Association.

Section 7. Members. Each Owner, whether one or more persons or entities, of a Lot shall, upon and by virtue of becoming such Owner, automatically become a Member of the Association and shall remain a Member thereof until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and shall automatically follow the legal ownership of each Lot and may not be separated from such ownership. Whenever the legal ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued.

Section 8. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all the Members of the Association, with the exception of the Declarant. Class A Members shall be entitled to one vote for each Lot in the Subdivision in which they hold the interest required for membership by this Declaration or any Supplemental Declaration. When more than one person holds such interest or interests in any such 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 Members shall be the Declarant and such other persons or entities so designated in the Principal Declaration or any Supplemental Declaration (as defined in the Principal Declaration). The Class B Members shall be entitled to five (5) votes for each Lot in the Subdivision in which they hold the interest required for membership by this Declaration; the Principal Declaration; and any Supplemental Declaration (as defined in the Principal Declaration); provided, that the Class B memberships shall cease and become converted to Class A memberships on the happening of whichever of the following events occurs earliest:

- (a) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, taking into consideration all Lots owned by the Class B Members;
- (b) On January 1, 2024; or

- (c) When Declarant records an instrument to such effect in the Official Records of Real Property of Harris County, Texas.

Notwithstanding the foregoing, so long as the Class B Membership exists, the Declarant shall have the right to disapprove any actions of the Board of Directors of the Association and any committee. This right shall be exercisable only by the Declarant or its successors and assigns who specifically take this power in a recorded instrument.

Section 9. Title to Common Areas. The Declarant may retain the legal title to the Common Areas and Common Facilities until such time as it has completed improvements thereon and/or until such time as, in the sole opinion of Declarant, the Association is able to operate and maintain the same. Until title to such Common Areas and Common Facilities has been conveyed to the Association by Declarant, Declarant shall be entitled to exercise all rights and privileges relating to such Common Areas and Common Facilities granted to the Association.

Section 10. Mortgaging of Common Areas. Notwithstanding any other provision hereof, no portion of the Common Areas shall be mortgaged or conveyed (except that Common Areas may be conveyed by the Declarant to the Association as otherwise provided herein) without the consent of at least two-thirds (2/3) of the Class A members present and voting at a regular meeting of the members or at a special meeting of the members called for the purpose of approving such mortgage or conveyance.

Section 11. Non-Liability. Neither Declarant nor the Association shall have any liability whatsoever to any Owner or any party as a result of damage to any person or persons using the Common Areas or Common Facilities.

## ARTICLE V.

### Property Rights in the Common Areas and Common Facilities

Section 1. Members' Non-Exclusive Easement of Enjoyment. Subject to the Provisions of Section 2 of this Article V, every Member shall have a common right and the non-exclusive easement of enjoyment in and to the Common Areas and Common Facilities and such right and easement shall be appurtenant to and shall pass with the title to each Lot in the Subdivision.

Section 2. Extent of Members' Non-Exclusive Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association, in its discretion, to charge reasonable admission and other fees for the use of the recreational Common Facilities and to make, publish, and enforce reasonable rules and regulations governing the use and enjoyment of the Common Areas and Common Facilities or any part thereof, all of which reasonable rules and regulations shall be binding upon, complied with, and observed by each

Member. These rules and regulations may include provisions to govern and control the use of such Common Areas and Common Facilities by guests or invitees of the Members, including, without limitation, the number of guests or invitees who may use such Common Areas and Common Facilities or any part thereof at the same time;

- (b) The right of the Association to grant or dedicate easements in, on, under, or above such Common Areas or any part thereof to any public or governmental agency or authority or to any utility company for any service to the West Orem Place Property or any part thereof;
- (c) The right of the Association to transfer any storm sewer line, sanitary sewer line, water line, or any other utility facility or equipment situated in any part of such Common Areas and owned by the Association to any public or political authority or agency or to any utility company rendering or to render service to the West Orem Place Property or any part thereof;
- (d) The right of the Association to enter into management and/or operating contracts or agreements relative to the maintenance and operation of such Common Areas and Common Facilities in such instances and on such terms as its Board of Directors may deem appropriate; the right of the Association to operate recreational facilities and related concessions located on such Common Areas; the right of the Association to enter lease agreements or concession agreements granting leasehold, concession, or other operating rights relative to Common Facilities in such instances and on such terms as its Board of Directors may deem appropriate;
- (e) The right of the Association to suspend the voting rights of a Member or his right to use any recreational Common Facility during any period he is in default in excess of thirty (30) days in the payment of any maintenance charge assessment against his Lot; and to suspend such rights for a period not to exceed sixty (60) days for any infractions of its published rules and regulations; and the aforesaid rights of the Association shall not be exclusive, but shall be cumulative of and in addition to all other rights and remedies which the Association may have in this Declaration and the Principal Declaration or in its By-Laws or at law or in equity on account of such default or infraction;
- (f) The restrictions as to use of the Common Areas provided for in Article VIII hereof.

Section 3. Delegation of Use. Any member may delegate his right of use and enjoyment of the Common Areas and Common Facilities, together with all non-exclusive easement rights granted to Members in this Declaration and the Principal Declaration, to the members of his family, his tenants, guests (subject to Section 2(a) above), or contract purchasers who reside on his Lot.

Section 4. Common Areas. Common Areas as such may be used for such purposes as the Board may determine, including but not limited to the following: the erection, construction, and maintenance of decorative statuary, fountains, landscaping and planting, sprinkler system and electrical or gas lighting and signage, all as approved by the Architectural Control Committee and as a common expense of all the Members.

## ARTICLE VI.

### Assessments

Section 1. Annual Maintenance Fund. All funds collected by the Association from the Annual Maintenance Assessments provided for in Section 2 of this Article, together with all funds collected by the Association from the annual maintenance assessments imposed on the Lots in the Subdivision by all Supplemental Declarations, shall constitute and be known as the "Annual Maintenance Fund". The Annual Maintenance Fund shall be held, used, and expended by the Association for the common benefit of all Members, and may be used for any and all of the following purposes, by way of illustration and not by way of limitation, to-wit: to promote the health, safety, recreation, and welfare of the Members; the installation, construction, erection, and relocation of improvements related to the enhancement and beautification of the Common Areas and Common Facilities and any other areas provided by this Declaration and the Principal Declaration to be so enhanced, beautified, and maintained by the Association as a common expense to all Members; for necessary maintenance of streets, walkways, fountains, esplanades, parkways, sidewalks, lakes and vacant lots in the West Orem Place Property; collection of garbage and refuse; patrol and security services; fogging and spraying for insect control; street lighting maintenance; landscaping, mowing, removal of weeds and debris, the general maintenance of grass, shrubbery, flower beds and trees, the maintenance of walks, walkways, and all other things and purposes consistent herewith and/or desirable in the discretion of the Board of Directors of the Association in maintaining the character and value of the West Orem Place Property; operation and maintenance of water quality facilities and detention ponds, enforcement of the restrictions and covenants imposed on the West Orem Place Property by this Declaration, the Principal Declaration and all Supplemental Declarations; and for any and all other purposes which are, in the discretion of the Board of Directors of the Association, desirable in maintaining the value and character of the West Orem Place Property for the common benefit of all the Members. The uses of the Annual Maintenance Fund described herein shall not be obligatory, but shall be at the sole discretion of the Board of Directors of The Association.

In the event Declarant shall designate Common Facilities for the use and benefit of all the Members which are situated on property owned by Declarant (or affiliated or subsidiary entities) but which then has not been brought within the scheme of this Declaration, the Association shall have the right and authority to allocate and expend such amounts from the Annual Maintenance Fund for construction, repair, maintenance, upkeep, beautification, improvement or replacement of such Common Facilities as its Board of Directors shall determine, in its sole discretion.



Further, if any Common Facilities, whether situated on property within the West Orem Place Property or on property then not subject to the scheme of this Declaration also are for the use and benefit of persons or entities other than the Members, the Association shall have the right and authority to enter into agreements with other persons or entities enjoying the use and benefit of such Common Facilities (or their designee), in such instances and on such terms as its Board of Directors may deem appropriate and acceptable, obligating the Association to contribute, from the Annual Maintenance Fund, a ratable portion of the amounts necessary from time to time to provide for the construction, repair, maintenance, upkeep, beautification, improvement or replacement of such Common Facilities, and providing for other agreements relative to the use and enjoyment of such Common Facilities (including limitations on the extent of the use and enjoyment thereof) by the various persons and entities entitled thereto.

In the event Declarant shall operate any Common Facilities in the West Orem Place Property, or such Common Facility shall be operated by others on behalf of Declarant under agreement authorized hereby, and the actual proceeds realized by Declarant from such operation shall be less than the actual costs incurred by Declarant or such other party in connection with operating and maintaining any such Common Facility, Declarant shall be entitled to be reimbursed from the Annual Maintenance Fund for all costs actually incurred by Declarant or such other party in maintaining and operating such Common Facility, in excess of the actual proceeds realized by Declarant from such operation, as such costs are incurred, to the extent that the balance of the Annual Maintenance Fund from time to time existing exceeds the amount then designated by the Board of Directors of the Association in good faith to be the minimum amount necessary to accomplish the maintenance functions of the Association.

Further, Declarant shall be entitled to be reimbursed from the Annual Maintenance Fund for all ad valorem taxes and other assessments in the nature of property taxes fairly allocable to the Common Areas and Common Facilities and accrued subsequent to the recordation of this Declaration, and prior to the date on which title to such Common Areas and Common Facilities are conveyed to the Association by Declarant, which have been actually paid by Declarant.

The Board of Directors of the Association may, in its sole discretion, give one or more of the purposes set forth in this Section 1. preference over other purposes, so long as the funds expended therefore shall be a part of the appropriate maintenance fund for which they were charged and collected. It is agreed that all expenses incurred and expenditures and decisions made by the Board of Directors of the Association in good faith shall be binding and conclusive on all Members.

Section 2. Covenants for Annual Maintenance Assessments. Subject to the provisions set forth below in Section 3 and Section 4 of this Article relating to the rate at which the annual maintenance assessment imposed herein shall be paid on unimproved Lots and subject to the increases and decreases provided for in Section 5 below, each and every Lot in the Subdivision is hereby severally subjected to and impressed with an annual maintenance charge in the amount of ONE HUNDRED AND NO/100 DOLLARS (\$100.00) per annum per Lot (hereinafter referred to as the "Annual Maintenance Assessment"), which shall run with the land.

Each Owner of a Lot, by his claim or assertion of ownership or by accepting a deed to any such Lot, whether or not it shall be so expressed in such deed, is hereby conclusively deemed to covenant and agree, as a covenant running with the land, to pay to the Association, its successors or assigns, each and all of the charges and assessments against his Lot and/or assessed against him by virtue of his ownership thereof, including the Annual Maintenance Assessment, as the same shall become due and payable, without demand. The charges and assessments herein provided for shall be a charge and a continuing lien upon each Lot, together with all improvements thereon, as hereinafter more particularly stated.

Each Annual Maintenance Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time the obligation to pay the Annual Maintenance Assessment accrued, but no Member shall be personally liable for the payment of any Annual Maintenance Assessment made or becoming due and payable after his ownership ceases. No Member shall be exempt or excused from paying any such charge or assessment by waiver of the use or enjoyment of the Common Areas or Common Facilities, or any part thereof, or by abandonment of his Lot or his interest therein, or by his maintaining same at his own expense, as applicable.

Section 3. Unimproved Lots Owned by Declarant or Builders. Declarant and Builders shall pay fifty percent (50%) of the then existing Annual Maintenance Assessment for each Lot owned by them, unless and until a residential structure has been built thereon and three (3) months have elapsed since the substantial completion of such residence, or the residence has been sold and/or permitted to be occupied, whichever occurs first. Thereafter, commencing on the first day of the next succeeding calendar month, the full Annual Maintenance Assessment then assessed shall become applicable. If the Annual Maintenance Assessment on such Lots has been prepaid at said fifty percent (50%) of the full Annual Maintenance Assessment, then assessed for the portion of the calendar year remaining after the Annual Maintenance Assessment becomes applicable to such Lot, as herein provided, the then Owner of such Lot shall be obligated to pay to the Association, on the date the full Annual Maintenance Assessment becomes applicable, as herein provided, that prorata portion of fifty percent (50%) of the Annual Maintenance Assessment then assessed, which shall bear the same ratio to such fifty percent (50%) of such Annual Maintenance Assessment as the number of full calendar months remaining in such calendar year bears to twelve (12). It shall be the duty of each Builder to notify the Association at the time a residence has been substantially completed or sold and/or permitted to be occupied. The term "substantial completion" as used herein shall mean that the residence is ready for sale or occupancy, except for minor items which must be furnished, completed, corrected, or adjusted. The term "Builder" for the purposes of this Declaration is defined as any person, firm, corporation, or other entity who is engaged in the business of building residential structures for sale or rental purposes, and not for his or its personal use or occupancy.

Section 4. Unimproved Lots Owned by Owners Other Than Declarant and Builders. Owners of unimproved Lots other than Declarant and Builders shall pay fifty percent (50%) of the then existing Annual Maintenance Assessment for each Lot owned by them, until a residential structure has been completed thereon and has been occupied. Thereafter, commencing on the first day of the

next succeeding calendar month, the full Annual Maintenance Assessment then assessed shall become applicable. If the Annual Maintenance Assessment on such Lot has been prepaid at said fifty percent (50%) of the Annual Maintenance Assessment then assessed for the portion of the calendar year remaining after the full Annual Maintenance Assessment becomes applicable as herein provided, then the Owner of such Lot shall be obligated to pay the Association, on the date the full Annual Maintenance Assessment becomes applicable, as herein provided, that prorata portion of fifty percent (50%) of the Annual Maintenance Assessment then assessed, which shall bear the same ratio to fifty percent (50%) of such Annual Maintenance Assessment as the number of full calendar months remaining in such calendar year bears to twelve (12). It shall be the duty of each Owner to notify the Association at the time such residential structure has been completed and occupied.

Section 5. The Annual Maintenance Assessments. The Annual Maintenance Assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors to be the date of commencement, shall be assessed for the balance of the first calendar year in which they are assessed, and payable on the day fixed for commencement, or in equal monthly installments over the balance of the year, at the election of the Board of Directors of the Association. The Annual Maintenance Assessments for each calendar year after the first year shall be due and payable to the Association in advance on January 1st of each year, or in twelve (12) equal monthly installments over such year, at the election of the Board of Directors of the Association. Provided, however, that the following prorata portion of the Annual Maintenance Assessments provided for herein shall be payable at the time set forth in the immediately following sentence. Upon the purchase of his Lot (as evidenced by the date of his term Contract of Sale or Deed, or his occupancy, whichever is earlier), each Member shall be obligated to pay to the Association a prorata portion of the applicable percentage (as determined pursuant to the terms hereof) of the Annual Maintenance Assessment then assessed on such Lot, which shall bear the same ratio to the applicable percentage of the Annual Maintenance Assessment, as the number of full calendar months remaining in the year of purchase bears to twelve (12), and which shall be payable in full upon such purchase or in equal monthly installments over the balance of the year of purchase, as the Board of Directors of the Association may elect.

The Board of Directors of the Association may decrease or increase the amount of the Annual Maintenance Assessments provided for herein at any time and from time to time by the adoption of a resolution for such purpose, but no resolution increasing the Annual Maintenance Assessments shall become effective prior to the expiration of ninety (90) days from the date of its adoption, and the Owner of each Lot shall, within thirty (30) days from such effective date, pay to the Association the proportionate part of such increase for the balance of the year in which such resolution is adopted; provided, however, that no resolution of the Board of Directors which fixes the amounts of the Annual Maintenance Assessment in excess of ten percent (10%) of the maximum allowable Annual Maintenance Assessment for the previous year or in excess of the Annual Maintenance Assessment, as the case may be, last ratified by the Members of the Association in accordance with the provisions of this Section, whichever is greater, shall become effective unless and until such resolution is ratified either (i) by the written assent of the holders of two-thirds (2/3) of the votes of the Membership of the Association if no meeting of the membership is held for ratification, or (ii)

by the assent of two-thirds (2/3) of the votes in person or by proxy, of the Members at a special meeting of the membership of the Association called for this purpose and at which a quorum is present. The written assent or the vote of the applicable Members must be given prior to the effective date of the resolution of the Board of Directors. No increase in the Annual Maintenance Assessments shall take effect retroactively.

If any resolution of the Board of Directors which requires ratification by the assent of the Members of the Association as above provided shall fail to receive such assent, then the amount shall continue in effect duly unchanged in accordance with the above provisions. The Board of Directors may decrease the amount of the Annual Maintenance Assessments without ratification by or assent of the Members of the Association.

Section 6. Special Assessments for Capital Improvements. In addition to the Annual Maintenance Assessments authorized above, the Association may levy in any year, a special assessment applicable to that year only (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, or the Common Facilities 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 (thirty) days nor more than 60 (sixty) days in advance of the meeting setting forth the purpose of the meeting.

Section 7. Quorum for any Action Under Section 6. The quorum required for any action authorized by Section 6 hereof shall be as follows:

At the first meeting called, the presence at the meeting of the applicable Members and proxies entitled to cast more than two thirds (66.67%) of all the votes of the membership entitled to vote thereon shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called and the required quorum at any such subsequent meeting shall be one-half (1/2) the required quorum at the preceding meeting, provided that such reduced quorum requirement shall not be applicable to any such subsequent meeting held more than sixty (60) days following the preceding meeting.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the Annual Maintenance Assessments against each Lot to which it is to apply for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by the Members. Written notice of each assessment shall thereupon be sent to every Member subject thereto.

Section 9. Liens to Secure Assessments. The Annual Maintenance Assessments and the Special Assessments for capital improvements as hereinabove provided for, and all expenses of

collection of either of the foregoing, including attorney's fees incurred by the Association, shall constitute and be secured by separate, valid and subsisting liens, hereby created and fixed, and which shall exist upon and against each applicable Lot and all improvements thereon, for the benefit of the Association and all Members. Subject to the conditions that the Association be made a party to any court proceeding to enforce any lien hereinafter deemed to be superior, the lien hereby created shall be subordinate and inferior to:

- (a) All liens for taxes or special assessments levied by the city, county, or state government, or any political subdivision or special district thereof;
- (b) All liens securing amounts due or to become due under any Contract of Sale, mortgage, vendor's lien, or deed of trust filed for record prior to the date payment of any such charges or assessments become due and payable;
- (c) All liens, including, but not limited to, vendor's liens, deeds of trust, and other security instruments which secure any loan made by any lender to an Owner for any part of the purchase price of any Lot and the improvements thereon, if improved, when the same is purchased, or for any part of the cost of construction, repairing, adding to, or remodeling the residence and appurtenances situated on any Lot to be utilized for residential purposes.

Any foreclosure of any such superior lien under the power of sale of any mortgage, deed of trust, or other security instrument, or through court proceedings in which the Association has been made a party, shall cut off and extinguish the liens securing Annual Maintenance Assessments and Special Assessments which become due and payable prior to such foreclosure date, but no such foreclosure shall free any Lot from the liens securing Annual Maintenance Assessments and Special Assessments thereafter becoming due and payable, nor shall the liability of any Member personally obligated to pay Annual Maintenance Assessments or Special Assessments which become due prior to such foreclosure, be extinguished by any such foreclosure.

## ARTICLE VII.

### Architectural Standards

Section 1. Purpose. In order to preserve the natural setting and beauty of the Subdivision to establish and preserve a harmonious and aesthetically pleasing design for the West Orem Place Property and to protect and promote their value, the Subdivision, the Lots, and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article. Every grantee of any interest in the Subdivision by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article.

Section 2. Architectural Control Committee. An Architectural Control Committee is hereby established, which shall have exclusive jurisdiction over all construction, modifications, additions or alterations on any portion of the Lots in the Subdivision.

Section 3. Architectural Approval. To preserve the architectural and aesthetic appearance of the Subdivision, no construction improvements, or modifications, additions, or alterations to existing improvements, shall be commenced or maintained by any Owner other than Declarants, with respect to any other portion of the Subdivision, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, basketball goals, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants' quarters, or other outbuildings, and burglar bars or other decorative appurtenances, nor shall any exterior addition to or change or alteration therein, whether or not attached to the main structure, be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Architectural Control Committee, a survey showing the location of trees of six (6) inches in diameter at a height of four (4) feet above ground and other significant vegetation) on such Lot showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to the compliance of such plans and specifications with any standards adopted from time to time by the Architectural Control Committee relating to the harmony of external design, location, and appearance in relation to surrounding structures and topography of the proposed improvement. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Architectural Control Committee, and the other copy shall be returned to the Owner marked "approved," "approved with conditions as noted," or "disapproved." The Architectural Control Committee shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, inspectors, or attorneys retained in accordance with the terms hereof. Notwithstanding the foregoing, no permission or approval shall be required to paint in accordance with an originally-approved color scheme, or to rebuild in accordance with originally-approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his residence, or to paint the interior of his residence any color desired. The Architectural Control Committee shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association.

Following approval of any plans and specifications by the Architectural Control Committee, representatives of the Architectural Control Committee shall have the right, but not the obligation during reasonable hours to enter upon and inspect any Lot, or any improvements with respect to which construction is underway to determine whether or not the plans and specifications therefore have been approved and are being complied with. In the event the Architectural Control Committee shall determine that such plans and specifications have not been approved or are not being complied with, the Architectural Control Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. In the event the Architectural Control Committee fails to approve or disapprove

in writing any proposed plans and specifications within sixty (60) days after such plans and specifications shall have been submitted, such plans and specifications will be deemed to have been expressly approved, provided the proposed improvements are generally in harmony with the scheme of the development as set forth in this Declaration. Upon approval of plans and specifications, no further approval under this Article shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Refusal of approval of plans and specifications may be based by the Architectural Control Committee upon any ground which is consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

Section 4. Landscaping Approval. To preserve the aesthetic appearance of the Subdivision, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by any Owner unless and until the plans therefore have been submitted to and approved in writing by the Architectural Control Committee. The provisions of this Article regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, and so forth shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling.

Section 5. Limitation of Liability. The Declarant, the Association and the Architectural Control Committee, as well as their agents, employees, or authorized representatives, shall not be liable to any Owner or to any other party for any loss, claim, or demand asserted on account of their administration of their duties pursuant to this Declaration, unless otherwise expressly provided elsewhere herein.

No approval of plans and specifications and no publication of minimum standards and specifications shall ever be construed as representing or implying that such plans and specifications and published standards will, if followed, result in a properly designed or constructed residence; and same shall in no event be construed as representing that any residence constructed in accordance therewith will be built in a good, workmanlike manner.

The acceptance of a deed or other conveyance of a Lot shall be deemed a covenant and agreement on the part of the Owner, his heirs, successors, and assigns, that the Declarant, the Association, and the Architectural Control Committee, their agents, employees, and representatives, shall have no liability hereunder, except as specified herein or due to gross negligence or willful misconduct.

Section 6. Committee Membership. The Architectural Control Committee shall be initially composed of Harris Masterson, IV, Carl J. Stephens and Joel R. Scott, who, by a majority vote, may designate a representative or representatives to act for them. As used herein, the term "Architectural Control Committee" shall refer to the individuals named above, their assignee as permitted herein, or their designated representative(s). In the event of death or resignation of any member or members of the Architectural Control Committee, the remaining member or members shall appoint a successor

member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full right, authority, and power to carry out the functions of the Architectural Control Committee as provided herein, or to designate a representative with like right, authority, and power.

Section 7. Transfer of Authority to the Association. The duties, rights, powers, and authority of the Architectural Control Committee may be assigned at any time, at the option of a majority of the members of the Committee, to the Board of Directors of the Association, and from and after the date of such assignment, and the acceptance thereof by such Directors, the Board of Directors of the Association shall have full right, authority, and power, and shall be obligated, to perform the functions of the Architectural Control Committee as provided herein, including the right to designate a representative or representatives to act for it.

Section 8. Minimum Construction and Maintenance Requirements. The following are minimum construction requirements which must be complied with in the erection and maintenance of improvements on the Lots, together with any additions or alterations thereto:

- (a) Only new construction materials (except for used brick) shall be used and utilized in constructing any structures situated on a Lot. All residential structures situated on any Lot shall have not less than twenty percent (20%) brick construction, at the discretion of the Architectural Control Committee, on the exterior wall area (excluding windows, doors, garage doors), unless other types of materials are expressly approved by the Architectural Control Committee. Any other exterior materials must be stained or painted.
- (b) All exterior construction of the primary residential structure, garage, porches, and any other appurtenances or appendages of every kind and character on any Lot (including, but not limited to, any underground watering system) and all interior construction (including, but not limited to, all electrical outlets in place and functional, all plumbing fixtures installed and operational, all cabinet work completed, all interior wall, ceiling, and doors completed and covered by paint, wallpaper, paneling, or the like, and all floors covered by wood, carpet, tile, or other similar floor covering) shall be completed not later than six (6) months following the commencement of construction, unless delay has been caused by a *force majeure*. For the purposes hereof, the term "commencement of construction" shall be deemed to mean the date on which the foundation forms are set.
- (c) Driveways shall be constructed in accordance with the regulations of the City of Houston and/or any other authorized governmental entity.
- (d) A concrete sidewalk will be constructed in accordance with the regulations of the City of Houston and/or any other authorized governmental entity.



- (e) No window or wall type air conditioners shall be permitted to be used, placed, or maintained on or in any building in any part of the Subdivision; provided, however, that window or wall type air conditioners may be used in any authorized building detached from the main residence if such air conditioner is not visible from any point six feet above any public street.
- (f) Each house built on the Lots shall contain all gas appliances required by Declarant's contract with the gas company. In the event that the house does not use the minimum gas appliances required by Declarant's contract with the gas company, a non-utilization fee is charged by the gas company. Owner of such Lot shall be responsible for the payment of such fee to the extent same results from the non-use of gas by Owner.
- (g) Landscaping shall be done in the front of all newly constructed residential structures at the time the residential structure is being completed and before occupancy. The landscaping shall include fully sodded front and side yards, one (1) tree at least one (1) inch in diameter. A Landscaping plan and Fence plan must be approved by the Architectural Control Committee. Builders shall maintain the lawn and landscaping until each Lot is sold.
- (h) No structure situated on any Lot shall have wood shingle roofs.
- (i) No antenna for transmission or reception of television signals, radio signals, citizen band signals, or any other form of electromagnetic radiation shall be erected, used, or maintained on any Lot, except those (1) which are located totally within the residence situated on said Lot, or (2) which (a) do not extend more than six feet above finished grade elevation and (b) are not visible from any other Lot, Common Area or street when viewed from a point six feet above finished grade elevation or (3) if the previous two options would impair the Lot Owner's ability to receive video programming services through devices designed for over-the-air reception of television broadcast signals, multichannel multipoint distribution service, or direct broadcast satellite services ("Devices"), then the Devices shall be erected, used and maintained in the place where the Devices are least visible from any Lot (other than the Lot on which the Devices are located), Common Area or Street but where reception is not impaired. No television, radio or citizen band signals, nor any other form of electromagnetic radiation shall be permitted to originate from any Lot which may interfere with the reception of television or radio signals of any other Lot in the Subdivision.
- (j) No solar panels will be allowed without specific written approval by the Architectural Control Committee.

- (k) Each Lot in the Subdivision shall be graded and appropriate drainage facilities installed to provide for drainage from the rear of each Lot to the street adjacent to the Lot. The plans and specifications for each residence shall include specifications for the manner and method of such drainage. Said system shall meet Federal Housing Authority requirements and be completed prior to the occupancy of the residence of the Lot, and the Owner shall do nothing that will interfere with such drainage, and shall maintain such at all times for the purpose for which it was constructed.
- (l) No flagpole shall be permanently erected on any Lot unless written approval therefor has been obtained from the Architectural Control Committee excluding temporary flagpoles associated with model homes.
- (m) If the United States Postal Service permits or requires rural mailboxes for the Subdivision, each residence shall have a mailbox. The cost of installing such mailbox and the maintenance and repair thereof shall be the expense of the Owners.

Notwithstanding the foregoing, if any applicable construction standard is imposed by any governmental authority, the governmental standard shall apply unless (i) the standard set forth in this Section is more stringent and (ii) application of the standard set forth in this Section does not violate such governmental standard, in which case the standard set forth in this Section shall apply. It shall be the obligation of each Owner to maintain his Lot according to the standards set forth in this Section. In the event that improvements on the Lot deteriorate or are destroyed to the degree that they would no longer satisfy the requirements set forth in this Article VII if they were newly constructed, the Owner shall thereupon rebuild, replant or take such other action as shall be necessary to bring his Lot into compliance with the provisions hereof.

Section 9. Size of Residence. No residential structure erected on any Lot shall have more than two (2) stories. The ground floor area, exclusive of open porches and garages, shall not be less than 800 square feet for a one (1) story home. The ground floor area plus the upper floor area of a one and one-half (1 ½) or two (2) story home shall not be less than 1,000 square feet.

Section 10. Building Location. The building setback lines for each Lot shall be as following:

- (a) Front Building Setback. No structure shall be located nearer to the front Lot line than shown on the Subdivision Plat.
- (b) Rear Building Setback. No main residential building or garage, nor any part thereof, shall be located nearer to the rear Lot line than (i) the interior line of the utility easement across the back of the Lot as shown on the Subdivision Plat; or (ii) the rear setback line across the back of the Lot, if any, as shown on the Subdivision Plat.

Notwithstanding the foregoing, no residential building, or any part thereof, shall be located on any utility easement or any other easement shown on the Subdivision Plat.

- (c) Side Building Setback. No residential building, nor any part thereof, shall be located nearer than five (5) feet to the side Lot Line. No garage, nor any part thereof, shall be located nearer than five (5) feet from the side Lot line; provided that, on corner Lots, no garage which faces the side Lot line shall be nearer than twenty (20) feet to such side Lot line. Notwithstanding the foregoing, no residential building, or any part thereof, shall be located on any sanitary sewer easement, storm sewer easement, or any other easement shown on the Subdivision Plat.

Unless otherwise approved in writing by the Architectural Control Committee, each main residential structure will face the front of the Lot. For the purpose of this Declaration, the front Lot Line of each Lot shall be the property line having the shortest dimension abutting a street.

Each garage shall be provided with driveway access across the front of the Lot to the street in front of the Lot, except corner Lots which may have driveway access from the side of the Lot to the street.

The Architectural Control Committee shall have absolute discretion to determine the orientation and location of the front elevation of the residential structure with respect to the front building setback line, and may require, in its sole discretion, that such front elevation be situated on or a specified distance behind such front building setback line.

Notwithstanding the foregoing, if any applicable standard regarding building location is imposed by any governmental authority, the governmental standard shall apply unless (i) the standard set forth in this Section 10 is more stringent and (ii) application of the standard set forth in this Section 10 does not violate such governmental standard, in which case the standard set forth in this Section 10 shall apply.

Section 11. Walls, Fences, and Hedges. No walls, fences, or hedges shall be erected or maintained nearer to the front Lot line of any Lot, than the building setback lines as shown on the Subdivision Plat or as provided for in Section 10 of this Article. Any rear or side fences and walls must be not less than six (6) feet nor more than seven (7) feet in height. The foregoing provisions for side and rear fences or walls may be altered upon written approval of the Architectural Control Committee.

Fences shall be of ornamental iron, wood, masonry construction, or other materials approved in writing by the Architectural Control Committee. No chain link fences shall be permitted on any Lot.

Ownership of any wall, fence, hedge or other barrier erected on a Lot by Declarant or a Builder shall pass with title to such Lot and it shall be the Owner's responsibility to maintain said

fence thereafter. In the event of default on the part of such Owner of any Lot in maintaining said fence and such failure continuing after ten (10) days written notice thereof, Declarant or its successors or assigns or the Association may, at its option, without liability to any Owner or occupant in trespass or otherwise, enter upon said Lot and cause said fence to be repaired or maintained or to do any other thing necessary to secure compliance with this Declaration or any Supplemental Declaration, so as to place said fence in a satisfactory condition, and may charge the Owner of such Lot for the cost of such work. The Owner agrees by the purchase of such Lot to pay such statement immediately upon receipt thereof.

In the event of joint ownership, each owner shall be jointly and severally liable for the payment of his proportionate share of any such statement. Each such charge, together with interest thereon at the rate of ten percent (10%) per annum and reasonable costs and collection, shall be a charge and continuing lien upon such Lot, as well as the continuing personal obligation of the Owner of such Lot at the time of such charge.

The lien securing such charges shall be second, subordinate and inferior to all liens, present and future, given, granted and created by or at the instance of request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or improvement or any such Lot.

No hedge or shrub shall obstruct sight lines at elevation between two (2) and six (6) feet above the streets on any lines and a line connecting same at points twenty-five (25) feet from the intersection of the street curbs. All trees shall be so maintained so as to comply with this provision; that is, no limbs, foliage, or other parts thereof shall obstruct said sight lines at said elevations.

Section 12. Exceptions. Notwithstanding the foregoing provisions of this Article, Declarant shall have the exclusive right to (1) make exceptions without being in violation herein, to one or more use restrictions herein; and (2) erect, place and maintain, or permit one or more Builders to erect, place and maintain, on their respective Lots such facilities (including, but not limited to, offices, temporary construction trailers, storage areas, model homes and other units, flagpoles and signs) as in Declarant's sole discretion may be reasonable or convenient to improve or enhance the salability of the West Orem Place Property, the Subdivision or any Lots therein or all or any portion of the entire development of West Orem Place.

## ARTICLE VIII.

### Building and Use Restrictions

Section 1. Residence Buildings. No building or other structure shall be built, placed, constructed, reconstructed, or altered on any Lot other than for a single family dwelling designed for use as a single family Home, including, without limitation, a garage and bona fide servants quarters. No structure shall be occupied or used until the exterior construction thereof is complete. Each single family residence situated on a Lot shall have a garage for not less than two (2) nor more

than three (3) automobiles. Notwithstanding the foregoing, up to twenty percent (20%) of the residences situated on Lots may have a garage for one (1) automobile; provided, however, that no two (2) Lots shall have a garage for one (1) automobile unless such two (2) Lots are separated by at least two (2) other Lots. For purposes of determining whether a garage for one (1) automobile is permitted on a Lot, such Lot shall be ineligible for a garage for one (1) automobile if any Lot which is contiguous to such Lot is itself contiguous to any Lot which already has a garage for one (1) automobile.

The garage doors shall be kept closed at all times except upon entering and exiting of automobiles. No garage shall ever be changed, altered, reconstructed or otherwise converted for any purpose inconsistent with the garaging of automobiles. All Owners, their families, tenants and contract purchasers shall, to the greatest extent practicable, utilize such garages for the garaging of vehicles belonging to them.

Section 2. Single Family Residential Use. Each Lot (including land and improvements) shall be used and occupied for single family residential purposes only. No owner or other occupant shall use or occupy his Lot, or permit the same or any part thereof to be used or occupied, for any purpose other than as a private single family residence for the Owner or his tenant and their families and domestic servants employed on the premises. As used herein the term "single family residential purposes" shall be deemed to prohibit specifically, but without limitation, the use of Lots for duplex apartments, garage apartments or other apartment use; and shall be deemed to prohibit specifically the use of any Lot solely for recreational purposes unless a single family residence shall also have been constructed thereon.

No Lot shall be used or occupied for any commercial business, trade, or professional purpose either apart from or in connection with the use thereof as a private residence, whether for profit or not. A single house or any Lot may be leased in its entirety to a single family, but may not be subleased or leased in part to any other parties.

Section 3. Temporary and Other Structures. No structure of a temporary character, no trailer, mobile, modular or prefabricated home, tent, shack, barn, or any other structure or building, other than the residence to be built thereon, shall be placed on any Lot, either temporarily or permanently, and no residence house or other structure appurtenant thereto, shall be moved upon any Lot from another location; except, however, that Declarant reserves the exclusive right to erect, place and maintain, and to permit Builders to erect, place and maintain, such facilities in and upon properties in the Subdivision as in its sole discretion may be necessary during the period of and in connection with the sale of Lots, construction and selling of residences and constructing other improvements in the Subdivision. Such facilities may include, but not necessarily be limited to, temporary office buildings, storage areas, signs, portable toilet facilities and sales offices.

Declarant and Builders shall also have the temporary right to use a residence situated on a Lot as a temporary office or model home during the period of and in connection with construction and sales operation in the Subdivision, but in no event, shall a Builder have such right for a period

in excess of six (6) months from the date of substantial completion of his last residence in the Subdivision. Within thirty days of completion of use of any residence as a model home, a Builder shall remove any temporary features attributable to the use of such residence as a model home and shall bring such residence into full compliance with this Declaration.

Section 4. Noxious or Offensive Activity. No noxious or offensive activity shall be carried on or permitted upon any Lot or upon the Common Areas nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood or to other Owners. The Board of Directors of the Association shall have the sole and exclusive discretion to determine what constitutes a nuisance or annoyance. No trucks larger than three-quarters of a ton, motor vehicles not currently licensed, boats, trailers, campers, and motor or mobile homes shall be permitted to be parked on any Lot so as same may be seen from any street, or on any street; except passenger cars and trucks equal to or less than three-quarters of a ton may be parked on the street in front or on the side of the Lot for a period not to exceed twelve (12) hours in any twenty-four (24) hour period. No repair work, dismantling, or assembling of motor vehicles or other machinery or equipment shall be done or permitted on any street, driveway or any portion of the Common Areas. The use or discharge of firearms, firecrackers, or other fireworks in the Subdivision is prohibited. No motor bikes, motorcycles, motor scooters, "go carts", or other similar vehicles shall be permitted to be operated in the Subdivision, if, in the sole judgment of the Board of Directors of the Association, such operation, by reason of noise or fumes emitted, or by reason of manner of use, shall constitute a nuisance. No exterior speaker, horn, whistle, bell or other sound device, except security devices installed in accordance with approved specifications, shall be located, used or placed on any Lot.

Section 5. Prohibited Conduct. No portion of the Subdivision shall be used for vicious, illegal or immoral conduct, or for any conduct in violation of the ordinances of any City or other jurisdiction having authority, laws of the State of Texas, or laws of the United States, or of the public health, sanitary, building, or fire codes or regulations relating to or affecting the use, occupancy or possession of any portion of the Subdivision.

Section 6. Signs. Except for signs, billboards, or other advertising devices displayed by Declarant or any Builder acting under the authority of Declarant for so long as Declarant or any successors or assigns of Declarant to whom the rights of Declarant under this Section 6 are expressly transferred, shall own any portion of the Subdivision, no sign of any kind shall be displayed to the public view on any Lot or the Common Areas, except;

- (a) Builders may display one (1) sign if not more than five (5) square feet on a Lot to advertise the Lot and any residential structure situated thereon for sale during the sales and/or construction period; and
- (b) Any Owner may display one (1) sign if not more than five (5) square feet on a Lot improved with a residential for sale or rent.

Declarant or its agent shall have the right to remove any sign not complying with the provisions of this Section, and in so doing, shall not be liable and is expressly relieved of any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 7. Animals. No animals, livestock or poultry of any kind shall be raised, bred, or kept on any Lot or on any portion of the Common Areas, except that dogs, cats, and other common household pets (not to exceed two (2) animals) may be kept, but they shall not be bred or kept for commercial purposes. No animals shall be allowed outside of the residence and the rear yard thereof unless on leash and attended by the Owner or his designee.

Section 8. Removal of Dirt. The digging or the removal of any dirt from any Lot or from any portion of the Common Areas is prohibited, except as necessary in conjunction with landscaping or construction or improvements thereon.

Section 9. Garbage and Refuse Storage and Disposal. All Lots and the Common Areas shall at all times be kept in a healthful, sanitary and attractive condition. No Lot or any part of the Common Areas shall be used or maintained as a dumping grounds for garbage, trash, junk or other waste matter. All trash, garbage, or waste matter shall be kept in adequate containers constructed of metal, plastic or masonry materials, with sanitary, tightly fitting covers or lids, which shall be maintained in a clean and sanitary condition and screened from public view. No Lot shall be used for open storage of any materials whatsoever, which storage is visible from the street, except that new building materials used in the construction of improvements erected on any Lot may be placed upon such Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the improvements, after which these materials shall either be removed from the Lot, or stored out of view of the street.

Section 10. Owner's Maintenance. Each Owner and occupant, including lessees, shall at all times be obligated to maintain, repair, replace and renew or cause to be maintained, repaired, replaced or renewed all improvements on a Lot or Tract so owned or occupied (and the area between the boundary lines of adjacent property and adjacent Streets if such area is not otherwise maintained), so as to keep same in a clean, sightly, safe and first-class condition consistent with its original intended appearance. Unless expressly assumed by the Association, an Owner's maintenance obligation shall include, but not be limited to: the maintenance of all visible exterior surfaces of all buildings and other improvements; the prompt removal of all paper, debris, refuse; the removal and replacement of dead and diseased trees and plantings from all areas of its property and all snow and ice from paved areas; the repair, replacement, cleaning and revamping of all signs and lighting fixtures; the mowing, watering, fertilizing, weeding, replanting and replacing of all approved landscaping; and, during construction, the cleaning of dirt, construction debris and other construction related refuse from Streets and storm drains and inlets.

If any improvement is damaged or destroyed, the Owner shall diligently proceed to restore such improvement to the condition existing prior to such damage or destruction or, in the alternative,

raze and remove such improvement and landscape the property pursuant to a landscaping plan approved by the Architectural Control Committee.

Section 11. Mineral Production. No oil drilling, oil development operations, refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be permitted upon any Lot.

Section 12. Drainage. Each Owner by his purchase of a Lot agrees for himself, his heirs, successors or assigns that he will not in any way interfere with the established drainage pattern over his Lot from adjoining or other Lots; and he will make adequate provisions for proper drainage of his Lot. For the purposes hereof, "established drainage" is defined as the drainage which occurred at the time the overall grading of the Subdivision, including landscaping of Lots, by the Declarant or his assigns.

Section 13. Use of Common Areas. There shall be no obstruction of any part of the Common Areas, which are intended to remain unobstructed for the reasonable use and enjoyment thereof. No Owner shall appropriate any part of the Common Areas to his exclusive use, nor shall any Owner do anything which would violate the easement, rights and privileges of any Member in regard to any portion of the Common Areas which is intended for the common use and benefit of all Members.

Except as may be herein permitted, no Member shall plant, place, fix, install or construct any vegetation, hedge, tree, shrub, fence, wall, structure, or improvements or store any of his personal property on the Common Areas or any part thereof without the written consent of the Association first obtained.

The Association or its agent shall have the right to remove anything placed on the Common Areas in violation of the provisions of this Section and in so doing shall be entitled to recover the cost of such removal from the Owner responsible in accordance with the provisions set forth in Section 15 of this Article. In addition, the Association, or its agents, shall not be liable and is expressly relieved of any liability for trespass or other tort in connection therewith, or arising from such removal.

Section 14. Exempt Property. Notwithstanding any provisions herein to the contrary, the Common Areas shall not be subject to or burdened by the building and use restrictions set forth in this Article, except as to the extent same are made specifically applicable to the Common Areas.

Section 15. Default. In the event of default on the part of the Owner or occupant of any Lot in observing the requirements of this Article, or any of them, such default continuing after ten (10) days written notice thereof, the Association or the Declarant, its successors and assigns, may, at its option, without liability to the Owner or occupant in trespass or otherwise, enter upon said Lot and cause such maintenance to be performed or do any other thing necessary to secure compliance with this Declaration in order to place said Lot in a neat, attractive, healthful and sanitary condition, and



may charge the Owner or occupant of such Lot for the cost of such work by submitting to such Owner or occupant a statement setting forth the nature and cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or occupancy of such Lot to pay such statement immediately upon receipt thereof. Each such charge, together with interest thereon at the rate of ten percent (10%) per annum and reasonable costs of collection, including but not limited to attorney's fees, shall be a charge and continuing personal obligation of the Owner of such Lots at the time of such charge. Such charge, if not immediately paid in full by the Owner of such Lots, shall constitute and be secured by a separate, valid lien upon the Lot and all improvements thereon, for the benefit of the Association and all Members. The lien securing such charge shall be second, subordinate and inferior to all liens, present and future, given, granted and created by or at the instance or request of the Owner of any such Lot to secure the payment of monies advanced or to be advanced on account of the purchase price and/or improvement of any such Lot.

In addition to the foregoing right to enter upon a Lot, the Association has the right to take such other actions as it believes may remedy, correct or terminate any violation of these restrictions, including but not limited to filing a lawsuit. Neither the Association nor the Declarant shall have any liability or responsibility for exercising any of the rights or remedies granted herein, and any expenses thereof shall be borne by the Owner of the Lot upon which the violation occurred, and shall be reimbursed to the Association or Declarant upon request, and if not immediately paid shall become part of the Assessment for such Lot and shall be secured by the same lien granted herein for such Assessment.

## ARTICLE IX.

### General Provisions

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the Subdivision, and shall inure to the benefit of and be enforceable by Declarant, the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for an initial term commencing on the effective date hereof and ending December 31, 2023 (the "Initial Term").

Upon the expiration of the Initial Term, all of the covenants and restrictions of this Declaration (as changed, if changed), shall be automatically extended for successive periods of ten (10) year extension periods ("Renewal Terms"); provided, however, that not less than ninety (90) days prior to the first day of any Renewal Term the covenants and restrictions contained herein may be changed or terminated by an instrument signed by the then owners of not less the sixty-six and two thirds percent (66 2/3%) of all the Lots in the Subdivision and properly recorded in the appropriate records of Harris County, Texas.

Section 2. Enforcement. The Declarant or the Association, as a common expense to be paid out of the Regular Maintenance Fund, or any Owner at his expense, shall have the right to enforce, by proceedings at law or in equity, all restrictions, covenants, conditions, reservation, liens, charges,

assessments, and all other provisions set out in this Declaration. Failure of the Association or of any Owner to take any action upon any breach or default of or in respect to any of the foregoing shall not be deemed a waiver of their right to take enforcement action upon any subsequent breach or default.

Section 3. Attorney's Fees. In the event Declarant or the Association shall retain an attorney to enforce any provision of this Declaration, then the Owner of the Lot as to which enforcement is sought shall pay, in addition to all other relief, all reasonable attorney's fees, court costs and other expenses incurred by Declarant, the Association or their agents or representatives, in the enforcement of this Declaration.

Section 4. Amendments. This Declaration may be amended in whole or in part by the Owners only with the written agreement of two-thirds of the Owners of all the Lots in the Subdivision as evidenced in a document in writing bearing each of their signatures and with such document to be effective when recorded in the offices of the County Clerk of Harris County, Texas or other places as required by law at the time such document is recorded. However, as long as there is a Class B member, such member shall have the unilateral right to amend this Declaration.

Section 5. Interpretation. If this Declaration or any word, clause, sentence, paragraph, or other part hereof shall be susceptible of more than one or conflicting interpretations, then the interpretations which is most nearly in accordance with the general purposes and objectives of this Declaration shall govern.

Section 6. Titles. The titles of this Declaration and of Articles and Sections contained herein are for convenience only and shall not be used to construe, interpret, or limit the meaning of any term or provision contained in this Declaration.

Section 7. Successors in Title. The terms and provisions of this Declaration shall apply to, be binding upon, and inure to the benefit of Declarant and the Association and all Owners and occupants of any Lot and their respective heirs, devisees, successors, legal representatives and assigns.

Section 8. Omissions. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Declaration shall be omitted herefrom, then it is hereby declared that such omission was unintentional and the omitted punctuation, word, clause, sentence or provision shall be supplied by inference.

Section 9. 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 of the records of the Association at the time of such mailing. It shall be the duty of the Owner to notify the

Association of all changes of address. In the absence of such notification, the address of the Lot shall be deemed to be the address of its Owner.

Section 10. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, males or females, shall in all cases be assumed as though in each case fully expressed.

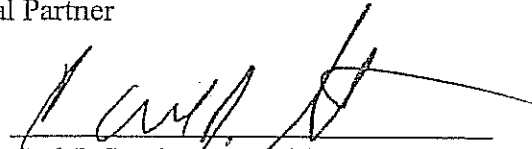
Section 11. Severability. Invalidation of any one or more of the covenants, restrictions, conditions, or provisions contained in this Declaration, or any part thereof, shall in no manner affect any of the other covenants, restrictions, conditions, or provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration to be effective this the 10<sup>th</sup> day of November, 2003.

S.S.M., L.P., a Texas Limited Partnership  
By: Stephens/Tingley & Associates, Inc.,  
General Partner

(4) 20

By:

  
\_\_\_\_\_  
Carl J. Stephens, President

578-43-2085

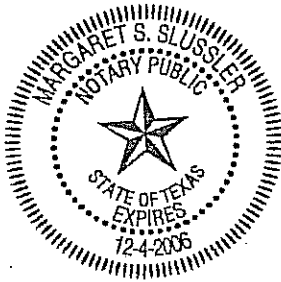
THE STATE OF TEXAS

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COUNTY OF Harris

BEFORE ME, the undersigned authority, on this day personally appeared Carl J. Stephens, President of Stephens/Tingley & Associates, Inc., General Partner of S.S.M., L.P., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL this the 10<sup>th</sup> day of November 2003.



Margaret S. Slussler  
NOTARY PUBLIC, STATE OF TEXAS

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name of Notary Public)

Approved and Agreed to by the undersigned lienholder:

Sterling Bank, a Texas banking corporation *for*

By: \_\_\_\_\_ *[Signature]*

Printed Name: Richard E. Zoster

Title: CEO

Gateway Homes, Inc. *for*

By: \_\_\_\_\_ *[Signature]*

Tom Walker, President