

amend
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MODIFICATION OF RESTRICTIONS

STATE OF TEXAS §
§
COUNTY OF HARRIS §

WHEREAS, by instrument dated February 22, 1937, recorded in Volume 1041, Page 8, of the Deed Records of Harris County, Texas, (the "1937 Restrictions") certain restrictions, reservations and covenants were created and established on the following described property:

1. Cresmere Place, an addition in the City of Houston, Harris County, Texas, according to the map of said addition recorded in Volume 998, Page 193, of the Deed Records of Harris County, Texas; and
2. West Ormond Place, an addition in the City of Houston, Harris County, Texas, according to the map of said addition recorded in Volume 855, page 725 of the Deed records of Harris County, Texas, SAVE AND EXCEPT the lots in said West Ormond Place fronting on North Boulevard.

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The above described property being referred to herein as the "Restricted Lots."

WHEREAS, by instrument filed in the Real Property Records of Harris County, Texas on January 30, 1987 under Film Code Reference No. 071741598 (the "1987 Extension and Modification") the 1937 Restrictions were extended and modified (the 1937 Restrictions , as extended and modified by the 1987 Extension and Modification, being collectively referred to herein as the "Covenants");

WHEREAS the undersigned, representing at least fifty percent (50%) of the property "Owners" (as hereinafter defined), desire, pursuant to the terms of the Covenants to modify and supplement the Covenants in part;

NOW, THEREFORE, for and in consideration of the mutual benefits derived and to be derived from continuing to subject the Restricted Lots covered by the Covenants to a uniform set of Restrictions, the undersigned, representing at least fifty percent (50%) of the property owners now residing on the Restricted Lots agree as follows:

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The Covenants shall be amended, supplemented, and/or restated herein, thereafter to continue in effect until February 1, 2017, at which time all of such "Restrictions" shall be extended automatically for successive periods of ten (10) years each, unless prior to the expiration of any such period of ten years, at least fifty percent (50%) of the Lot Owners then residing thereon shall have executed and recorded an instrument changing in whole or in part the Restrictions as hereby, or from time to time in the future, amended and supplemented pursuant to this instrument as follows:

- a. The following definitions shall be applicable to all of these Covenants:
 - 1. "Association" – Cresmere Place – West Ormond Place Civic Association, a Texas nonprofit corporation, its successors and assigns.
 - 2. "Accessory Structure" – A Structure, the use of which is ancillary to, and used in connection with a House on the same Lot, including a storage building, greenhouse, carport and gazebo, but not including a garage.
 - 3. "Board" – the Board of Directors of the Association.
 - 4. "Effective Date" – The date these Covenants are recorded in the Real Property Records.
 - 5. "Family" – An individual, or two or more persons related by blood, marriage, adoption, guardianship or other duly authorized custodial relationship, or up to two [2] unrelated adult persons, living as a single housekeeping unit on a Lot.
 - 6. "Front Lot Line" – The boundary line of a Lot that is closest, and generally parallel, to the Street on which the House faces. For corner Lots, it is the Lot's boundary line that is generally parallel to the Street to which other Houses on the same Street face.
 - 7. "Side Lot Line" – The boundary line of a Lot that is adjacent to a Street which is not the Street on which the House faces and that is generally perpendicular to the Front Lot Line.
 - 8. "Interior Lot Line" – The boundary line of a Lot that connects the Front Lot Line and the Rear Lot Line, but does not abut a Street.

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9. **“Rear Lot Line”** – The boundary line at the rear of a Lot that is generally parallel to the Front Lot Line.
 10. **“House”** – A single-Family residential Structure that has the appearance of single Family residential Structure and is used for single-Family residential purposes.
 11. **“Inoperative Vehicle”** – A vehicle that (i) lacks either a current license plate or current motor vehicle inspection certificate or a current registration certificate, (ii) is stored, wrecked or dismantled to any degree (including but not limited to missing tires, having broken or missing windows, or sitting on one or more jacks or blocks) and, (iii) can be viewed from a Street for 30 days of any 60 day period.
 12. **“Lot”** – One or more parcel(s) of real property (shown on the Plat adjacent to Banks Street, Milford Street or North Boulevard) with common ownership and used as a common building site. With regard to two or more adjoining Lots with common ownership and used as a common building site, the setbacks required herein shall apply to the exterior boundaries of the common building site without regard to internal Lot lines.
 13. **“Lot Grade”** – The lowest point of elevation of the finished surface of the ground, paving or sidewalk within the area between the House and a line five (5) feet from the House.
 14. **“Owner(s)”** – The record title owner(s) of fee simple interest in a Lot. “Owners” includes non-resident owners.
 15. **“Plat”** – The plat of Cresmere Place recorded in Volume 998, Page 193, of the Deed Records of Harris County, Texas, as originally recorded, together with the plat of West Ormond Place recorded in Volume 855, Page 725, of the Deed Records of Harris County, Texas, as originally recorded.
 16. **“Restrictions”** – The Covenants, conditions and restrictions that are applicable to and govern the improvement, use and occupancy of the Restricted Lots as set forth in the Covenants, this instrument, and any amendments and supplements to such documents.
 17. **“Street”** – The publicly dedicated rights-of-way on the Plat.

18. **“Structure”** – Any improvement, building or House, including an Accessory Structure and fence.
19. **“Subdivision”** – Cresmere Place and West Ormond Place.
20. **“Vehicle”** – Any automobile, truck, van, trailer, tractor, recreational vehicle (RV), camper, boat, motorcycle, or other mode of motorized transportation.

- b. **Prohibited Usage.** There shall never be erected, permitted, maintained or carried on upon any Lot any saloon, or place for the sale or manufacture for sale of malt, vinous or spirituous liquors, any foundry, brick yard, cemetery, any establishment for the care or cure of persons afflicted with any disease or any institution for the cure or restraint of the mentally impaired or any detention home, reform school, asylum or any institution of like or kindred nature, nor shall there be conducted any animal husbandry, slaughter house, tannery or any noxious interest, trade or business.
- c. **Household Occupation.** Provision (b) of the 1937 Restrictions shall be deleted in its entirety and the 1987 Extension and Modification’s substitution therefor is hereby amended as follows: (b) that no part of any Lot or Structure shall ever be used for any type of business, business house, or store except customary household occupations at which only one or more of the residents of the House work, and provided that (1) no signage is displayed on the Lot and the existence of the customary household occupation is not apparent from the outside of the Structure, (2) no outside storage or display of commercial products is visible from the Street parallel to the Front Lot Line (and/or to the Side Lot Line of a corner house) is maintained, (3) no outdoor business activities are conducted on the Lot, (4) no material disruption, interference or increase in traffic or parking is created or allowed, (5) no outside-of-dwelling lights, sounds and/or smells are created, and (6) such business is conducted in compliance with all applicable laws and regulations. Any average of 10 vehicles per day stopping at the Lot over any five (5) day period (whether customers, business guests or deliveries) shall be deemed to be an unacceptable increase in traffic. The Board may issue regulations further determining and interpreting these conditions. Otherwise, the Lot shall be used for single family residential purposes only.
- d. **Prohibited Racial Restrictions.** Provision (c) of the 1937 Restrictions creating certain racial restrictions shall be deleted in its entirety to conform to the applicable law prohibiting such racial restrictions.
- e. **Mineral Resources Prohibitions.** Unless specifically permitted in writing by at least fifty percent (50%) of the Lot Owners, there shall be no prospecting,

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mining or drilling for or production of oil, gas or other hydrocarbons or mineral products or mineral substances in, on or upon any Lot.

- f. **Set Backs, Heights and Structures.** Provision (e) of the 1937 Restrictions shall be deleted in its entirety and the following substitution therefor made by the 1987 Extension and Modification is hereby amended and supplemented as follows:

No part of a House on a Lot shall be located nearer to the Front Lot Line than twenty-five (25') feet. A House shall not exceed three stories high, including an attic, but in no event shall a House exceed a height of thirty-five (35') feet measured from Lot Grade to the highest point of the roof line. A chimney may not exceed the height of the House by more than three (3') feet. No apartment complex or duplex shall be constructed or reconstructed on a Lot. A garage on a Lot shall be set back no less than eighty (80') feet from the Front Lot Line. An Accessory Structure on a Lot shall be set back no less than fifty (50') feet from the Front Lot Line. A House on a Lot shall be set back no less than seven (7') feet from either the Side Lot Line or the Interior Lot Line and no less than five (5') feet from whichever of those lines is on the opposite side of the House from the seven-foot side set back. A garage or Accessory Structure on a Lot shall be set back no less than three (3') feet from a Side Lot Line or Interior Lot Line and from the Rear Lot Line. A garage shall not exceed twenty-five (25') feet in height nor exceed two stories, and an Accessory Structure shall not exceed fifteen (15') feet in height nor exceed one story, all heights to be determined from the Lot Grade. A front fence or hedge paralleling the Front Lot Line on a Lot shall be set back no less than twenty-five (25') feet from said Front Lot Line. No fence on or paralleling a Side Lot Line or an Interior Lot Line of any Lot shall be nearer than twenty-five (25') feet from the Front Lot Line and no such fence shall exceed ten (10') feet in height above the natural ground in which it has been anchored. No fence on a Rear Lot Line or paralleling within six (6') feet of the centerline of the rear easement shall exceed ten (10') feet in height or the height of the Street-side fence, whichever is lower; however, the exceptions to that rear-fence restriction are that a fence along, or within six (6') feet of: (a) the Rear Lot Line of a House on the north side of Banks Street or (b) the Rear Lot Line of a House on the south side of Milford Street, may exceed ten (10') feet but shall not exceed fourteen (14') feet in height. A Front Lot Line shall measure not less than fifty (50') feet and each Lot shall extend completely through from the Street to the centerline of the rear easement, which is the dividing line between blocks in the subdivision.

- g. **House to Face Street.** A House on a Lot shall face the Front Lot Line.
- h. **Structure Limitations.** No Structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) House, one (1) garage with or without living quarters above the garage, and one (1) Accessory Structure. No one-story House shall be constructed or re-constructed on a Lot. No

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quarters/garage apartment or Accessory Structure may be owned, leased or subleased separately from the House; however, this does not prohibit the practice of providing free room and board to no more than two occupants as part of compensation to a household assistance or attendant. No town-houses, zero-lot-line residences, patio homes or homes with similar plans shall ever be erected on a Lot. No temporary dwelling shall ever be constructed on or placed on any part of a Lot.

- i. **No Lot Division.** No Lot shall be subdivided into lots with less than fifty (50') foot Front Lot Lines each, nor less than 5,750 square feet. Notwithstanding the foregoing, a Lot may be eliminated if it is divided between and added to the adjacent Lots, and multiple adjacent Lots may be used as a single Lot, except that no Lot may be subdivided either front-to-back (i.e., parallel to the Front Lot Line) or diagonally, for any reason .
- j. **Vehicle Restrictions.** No boat, RV, trailer, camper, Inoperative Vehicle, or other similar type of vehicle may be parked on any Lot unless parked inside of a garage or in such a way that it is not visible from any Street.

MANAGEMENT AND OPERATION OF THE SUBDIVISION

- k1. **Association.** The Association has been created to administer the affairs of the Subdivision. The Association has the power to administer and enforce the Restrictions, collect and spend all assessments, improve and maintain publicly owned property, adopt additional bylaws and regulations to implement the Restrictions, adopt reasonable standards and interpretations of the Restrictions, and, in general, to act on behalf of the Owners as a community association.
- k2. **Board of Directors.** Consistent with the powers and purposes set out in the Articles of Incorporation of the Association, said Association's Board shall be selected in accordance with its By-Laws, and the Association may act through the Board and exercise all powers enumerated in Section 204.010 of the Texas Property Code. The affairs of the Association shall be managed by the Board. The Board shall have five (5) directors. The Board shall receive no compensation but may be reimbursed for reasonable expenses.
- k3. **Enforcement.** The Association may enforce the Restrictions, but the failure to enforce any particular restrictive covenant on a particular violation shall not be deemed a waiver of that restrictive covenant. Enforcement may include an ex parte application for injunctive relief, with or without advance notice, to stop any violation of these Covenants.

After notice and the opportunity to request a hearing, the Association may cure any violation of a restrictive covenant at the expense of the violating owner. The

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violating owner shall immediately reimburse the Association for such expense. Should the Association desire to exercise its right to cure any violation, the Association shall provide at least two (2) written notices to the violating owner at least seven (7) days apart. The first written notice shall notify the violating owner that the Association may or will cure the violation and the second notice shall state that the Association will cure the violation should the violating owner fail to do so within any time period stated in the notice. The Board, in its discretion, may accept testimony and evidence from knowledgeable third parties. The Board may take such action as it deems appropriate including, but not limited to, (i) recommending that the other Owners of property in the subdivision grant a variance upon the Owner's agreement to apply for a variance and to comply with the variance provisions of the Covenants), (ii) granting the violating owner specified time to cure the violation, (iii) retaining a third party to cure the violation at the sole expense of the violating Owner and/or (iv) determining that the violation has been cured in a material and substantial manner and that any remaining violation is technical and immaterial in nature, such that the purposes and intentions of the Restrictions have been satisfied.

Subject to the aforementioned notice provisions, each Owner agrees to permit the Association to enter onto his or her Lot(s) during daylight hours (or such other times as the Owner may permit) for the purpose of investigating and/or inspecting any violation, and/or initiating enforcement, of a Restriction, provided such authority does not extend to alteration or destruction of any building or to entering into a locked structure or fenced and locked yard without notice to the Owner and the Owner's permission, except in an emergency.

k4. **Liability of the Board.** To the maximum extent allowed by law, the Association shall indemnify the Board from liability relating to actions taken by the Board in good faith in their official capacity for the Association. The Owners intend that no director have personal liability for any action taken in good faith in their capacity as a member of the Board, except for willful misconduct. The Association may, if reasonably available, purchase Directors and Officers liability insurance for the benefit of the Board.

k5. **Membership.** All Owners shall be members of the Association. Membership in the Association shall be appurtenant to and shall automatically follow the ownership of each Lot and may not be separated from such ownership. Each Owner, up to a maximum of two per Lot, shall receive one (1) vote on all matters of the Association coming to a vote. The voting rights of an Owner who is delinquent in the payment of any assessment or other charge lawfully imposed by the Association shall automatically be suspended until all delinquent sums are paid. Votes may be cast by written proxy, the original of which shall be delivered to the Board. Proxies may not be effective for a period exceeding six (6) months and must be registered with the Board. Owners may be represented by an

attorney-in-fact pursuant to a Durable Power of Attorney satisfying the requirements of Texas law and a copy of the Durable Power of Attorney is provided to the Board, together with a written statement by the attorney-in-fact that the Durable Power of Attorney is valid and continuing without revocation and providing a current address, phone number, and contact person in order to contact the Owner. As a condition precedent to an Owner's right to vote, the Owner must provide the Board the following documents:

- (1) recorded deed; and
- (2) mailing information and phone number for the Owner.

- k6. **Powers of the Association.** The Association shall have all powers of a non-profit corporation chartered in the State of Texas and may enter into such contracts and agreements and hire professionals as the Board deems consistent with the Restrictions and in the best interest of the Subdivision.
- k7. **Bylaws.** The Association may adopt such bylaws as recommended by the Board to implement the powers of the Association and of the Board that have been granted by the Restrictions, to provide procedures for implementation of the Restrictions, to provide voting procedures for meetings of the Association, to establish officers for the Association including president, vice president, secretary, and treasurer and, in general, to address such matters as are typically addressed in the bylaws of a community association.
- k8. **Standards and Interpretations.** The Board, from time to time, may call meetings of the Association for the purposes of issuing regulations, standards and interpretations relating to particular restrictive covenants, consistent with the purposes and intent of the Covenants. Each Owner and Lot is bound by those regulations, standards and interpretations as are agreed by a simple majority of the Owners.
- k9. **Annual Assessment.** Each Lot's Owner is obligated to pay an annual assessment to the fund the Association.
- k10. **Amount of Annual Assessment.** The initial annual assessment is \$100 per Lot. The annual assessment may be changed by the Board from year to year, but the amount of the annual assessment shall not be increased more than 10% per year without an affirmative vote of a majority of the Owners in attendance in person or by written and signed proxy at a meeting of the Association called for the purpose of authorizing any greater-than-10%-per-annum increase in the annual assessment. The amount of any increase in the annual assessment shall be determined not later than December 1 of each year for the following calendar year; otherwise the dues shall remain the same as they were as of December 1 of that year. Annual assessments shall be uniform for all Lots.

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- k11. **Special Assessments.** The Association may levy additional assessments, from time to time, for purposes determined to be in the best interest of the Subdivision by the Board, including, without limitation, providing watchmen, trash pick-up, caring for vacant Lots and trees thereon, fogging or spraying for the control of mosquitoes and other insects, and doing such other things are deemed necessary or desirable by the Association. A special assessment must be approved by a majority of the Owners in attendance in person or by written and signed proxy at a meeting of the Association called for the purpose of authorizing the special assessment. The amount, purpose, and due date of the special assessment shall be set forth in the notice of the Association meeting.

No special assessment shall exceed four times the annual assessment in any one year unless it is approved by the Owners of seventy-five percent (75%) of the Lots by written ballot or petition. The written ballot or petition shall be hand delivered or mailed to all Owners with an explanation of the amount, purpose and due date(s) of the special assessment.

- k12. **Due Date.** Annual assessments are due by February 1 of each year. Special assessments shall be due as determined by the Board or as set forth in the Resolution of the Owners approving the special assessment.

- k13. **Personal Liability for Assessments.** All annual and special assessments are the personal obligation of the Owner of the Lot (jointly and severally, if more than one) at the time the assessment is due. Each assessment shall bear interest at the rate of the lesser of 18% per annum or the maximum rate allowed by applicable law from the date due until paid. The Association intends to comply with applicable usury laws. In the event the interest contracted for, charged or received, exceeds the maximum legal rate, the excess interest shall be refunded, spread and/or applied to principal to the maximum extent allowed by applicable law in order to avoid usury. The Owner is also personally liable for all costs, including attorney's fees, in collecting past due assessments. An Owner's personal liability for annual and special assessments, including all costs, including attorney's fees, in collecting past due assessments (the "Amount"), shall constitute and be secured by a lien to the extent of the Amount against the Owner's real property in the Subdivision to the full extent allowed by the Texas Property Code. Said lien is hereby expressly created and imposed upon each and every Lot in the Subdivision, and every conveyance of all or any of the Lots hereafter made shall be made subject to such express lien. All said assessments and other sums imposed herein, together with the express liens securing same, are hereby transferred and assigned to the Association, its successors and assigns. The Association shall have the power and authority to enforce collection of, collect, hold, administer and expend any and all moneys, paid or to be paid pursuant hereto, and to carry out the purposes hereof. The express liens created

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and imposed herein as security for the payment of said annual maintenance charges shall be enforceable by the Association, its successors and assigns, through appropriate legal proceedings, in the manner prescribed by law. Purchase money liens and mechanics' and materialmen's liens placed upon any Lot for the purpose of constructing a residence or their buildings or improvements thereon or thereto and recorded in accordance with the laws of the State of Texas, shall be, from the date of the recordation of the instruments evidencing such liens, superior to any and all express liens for which are herein provided as security for the payment of the annual maintenance charges herein imposed. The Association may, if requested, execute instruments to evidence the subordination thereof provided for herein to such purchase money liens or mechanics' and materialmen's liens. The Association, at its option, by appropriate written instrument recorded in accordance with the laws of the State of Texas, may subordinate any and all express liens for which are herein provided as security for the payment of said annual maintenance charges to any other mortgage or deed of trust liens and/or other encumbrances.

The restrictions, covenants and liens set out and imposed in this instrument shall be binding and inure to the benefit of each and every owner of one or more lots or portion thereof in the Subdivision and also to the Association, its successors and assigns, and any one of said beneficiaries shall have the right to enforce such restrictions, covenants and liens, using whatever legal methods deemed advisable, including, without limitation, injunctive relief. Further, all subsequent purchases and grantees of each Lot or portion thereof, by acceptance of a deed or other conveyance conveying title thereto, shall accept such title upon and subject to each and all the restrictions, covenants and liens herein set forth, as well as the rights and powers of the Association, and by such acceptance shall, for themselves, their respective heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the Association and to and with the Owners and subsequent grantees of each and every other Lot in the Subdivision to keep, observe, comply with and perform said restrictions and covenants and be subject to the liens, all as set forth herein.

1. **Architectural Review Committee (ARC)**. There shall be an architectural review committee consisting of three Owners in good standing with the Association appointed initially by the Board, each for a term of four years, and each of whom shall be replaced after his or her term or as necessary by reason of resignation, removal or incapacity. The discretionary authority of the ARC shall be limited to reviewing building plans and specifications and making recommendations to the Board with respect to the enforcement of the Restrictions and always subject to review by the Board, which shall have the final authority. All plans and specifications for construction, additions, modifications or improvements to Structures, Houses and Lots shall be submitted to the ARC for review to determine if there is any proposed violation of a Restriction. The ARC or Board

may retain, or delegate review of plans to, a designated architect for his or her opinion. The ARC shall notify the Owner(s) of the proposed plans and specifications of its finding as soon as possible and, in any event, not later than sixty (60) days after the plans and specifications have been delivered to the ARC. In the event the ARC concludes that implementation of some part or parts of the plans and/or specifications would be in violation of the Restrictions, the ARC shall immediately notify the Board and the Owner(s) of the plans and specifications. Pending a final determination by the Board that there would be no violation, or pending the granting of a variance according to the procedure hereinafter described, the Owner(s) of the plans and specifications shall refrain from and/or cease allowance of any construction or other work that the ARC has advised said Owner(s) to be a violation of the Restrictions.

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- m. **Grandfathering/Non-Conformity.** To the extent any of the Covenants contained in the 1937 Restrictions and/or the 1987 Extension and Modification are no longer valid by reason of non-enforcement, it is hereby agreed that they are reinstated. Any Lot, Structure, or use of a Lot in violation of the Restrictions or any applicable laws, ordinances or regulations as of the Effective Date of the Restrictions is considered nonconforming. However, nonconformities of Houses, Structures and Lots completed prior to February 29, 2004 are grandfathered and may continue in legal existence. A House under construction on a Lot shall comply with Restrictive Covenants in effect when such construction commenced.
 - n. **Variations.** Variations to any use Restrictions (e.g., single family and residential) and to Management and Operation of the Association shall not be allowed. Variations to the other Restrictions (e.g., setbacks and heights) may be permitted only with the express written and notarized consent of fifty (50%) percent of the Lot Owners. Any non-conforming matters that currently exist (not including those under construction that do not conform to the 1937 Restrictions and/or the 1987 Extension or Modification) on the effective date of this instrument may remain, but all new construction and alterations underway on February 29, 2004 or commenced thereafter shall be subject to the Restrictions as hereby re-stated, supplemented and/or modified. No waiver, express or implied, of any violation of the Restrictions shall preclude the subsequent enforcement of the Restrictions as to that or similar violations. No member of the Board has the authority to waive, modify, or terminate any provision of the Restrictions.
 - o. **Changes to the Covenants.** Notwithstanding the provisions of the 1937 Restrictions and/or the 1987 Restrictions and Modification, the Restrictions, as amended, supplemented and/or restated hereby, can be further amended, extended, or modified at any time, in whole or in part, by written consent of fifty percent (50%) of the Owners. A restriction may be terminated by written consent of seventy-five percent (75%) of the Owners.

To the extent any of the provisions contained in these Modifications conflict with the provisions of the 1937 Restrictions and/or the 1987 Restriction and Modification, the provisions herein control.

If, for any reason, any of the provisions herein or in any of the Restrictions are held invalid, then it is the intention of the undersigned that all other valid provisions are hereby extended and modified as above set out.

This instrument shall be binding upon and inure to the benefit of all of the Owners of the Lots and their respective heirs, legal representatives, successors and assigns.

The recorded map of West Ormond Place, the recorded map of Cresmere Place, and the Covenants are incorporated by reference herein for all purposes as though fully set out herein.

This instrument may be executed in multiple counterparts, not all of which will necessarily be executed by all parties hereto, but the signature and acknowledgement pages from which may be combined to form one or more complete counterparts, each of which shall have the force and effect of an original.

**SIGNATURES AND ACKNOWLEDGEMENTS ARE
ON THE FOLLOWING PAGE**

After recording,
please return to
J. Palmer Hutcheson ✓✓

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