

**BILL OF ASSURANCES AND PROTECTIVE COVENANTS FOR
SALEM HEIGHTS SUBDIVISION
AN ADDITION TO THE CITY OF FAYETTEVILLE, ARKANSAS**

KNOW ALL MEN BY THESE PRESENTS:

That Palmco Properties, LLC, an Arkansas Limited Liability Company, being the owner and developer of the following described property located in the City of Fayetteville, Washington County, Arkansas, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART
HEREOF.

said property having been duly platted as Salem Heights Subdivision Phase I, an Addition to the City of Fayetteville, Washington County, Arkansas (the "Subdivision"), said plat being recorded in the office of the District Clerk and Ex-Officio recorder of Washington County, Arkansas, on _____, in Plat Book _____, for the purpose of keeping said Subdivision desirable, uniform and suitable in architectural design and use as herein specified, and to provide for the orderly development of the Subdivision, does hereby make the following limitations, restrictions and uses on LOTS 1 THROUGH 76 of the Subdivision (the "Covenants").

And the said Palmco Properties, LLC, an Arkansas Limited Liability Company, as owner and developer of said property, does hereby state that these declarations shall establish covenants running with the land for the period of time hereinafter set forth, as provided by law and shall be binding upon all purchasers and owners of LOTS 1 THROUGH 76 of the Subdivision and upon such owner's heirs, personal representatives, successors and assigns, and upon all persons claiming under them.

It shall be lawful for the Salem Heights Property Owners Association (hereinafter referred to as the "Association" and more particularly defined herein) or for any other person or persons owning real property situated in the Subdivision to initiate any proceedings at law or in equity against parties or persons violating or attempting to violate any of these Covenants and to recover damages for such violations. Any rights reserved hereunder to the Developer may also be exercised by any owner of lots situated in said Subdivision, either individually or collectively, or the Association. The invalidation of any one of these Covenants by a court order shall not invalidate any of the other provisions which shall remain in full force and effect.

1. Covenants and Definitions.

The following words, when used in these Covenants or any amendments or supplements thereto (unless the context shall otherwise clearly indicate or prohibit), shall have the respective concepts and meanings set forth below.

"Addition" or "Subdivision" shall mean and refer to the property described in Exhibit "A" and as reflected on the plat set out on Exhibit "B" and any additions thereto.

“Association” shall mean and refer to “Salem Heights Property Owners Association” established subsequent to the filing of the Protective Covenants and Bill of Assurances for Salem Heights Subdivision.

“Board” or “Board of Directors” shall mean and refer to the Board of Directors of the Association elected in accordance with the provisions of the articles of incorporation and by-laws of the Association.

“Builder” shall mean a residential builder licensed under Arkansas law.

“Common Properties” shall mean and refer to any and all areas of land together with all improvements located thereon within the Subdivision which are known, described or designated as such on any recorded subdivision plat of the Subdivision or intended for or devoted to the common use and enjoyment of the members of the Association including but not limited to all sidewalks, easements, drainage detention ponds and designated wet land areas. The Association shall hold such title to the Common Properties as shall be consistent with the objectives envisioned herein and subject to the easement rights herein of the members to use and enjoy the Common Properties. The Developer reserves the right to effect minor redesigns or reconfiguration of the Common Properties and execute any open space declarations applicable to the Common Properties. All common properties shall be conveyed to the Association by deed or plant dedication.

“Developer” shall mean and refer to Palmco Properties, LLC, an Arkansas Limited Liability Company, and its successor(s) and assign(s).

“Lot” or “Lots” shall mean and refer to any plot or tract of land which is designated as a lot on the Plat which is attached hereto and labeled Exhibit “B”. No lot as set forth on Exhibit “B” may be further subdivided or split; provided however minor adjustments to lot lines or boundaries may be made from time to time to cure title problems or to resolve procedures created by encroachments so long as such adjustments are first approved by the Board and Developer if any lots are unsold and closed.

“Member(s)” or “member(s)” shall mean and refer to each owner of a lot.

“Owner(s)” or “owner(s)” shall mean and refer to each and every person or business entity who or which is a record owner or subsequently becomes a record owner of a fee or undivided fee interest in any lot subject to these covenants.

“Plat” shall refer to the plat of survey set out in Exhibit “B” attached hereto.

2. Membership and Voting Rights in the Association.

A. Membership. Every owner of a Lot shall automatically be a member of the Association.

B. Voting Rights. The Association shall have one (1) class of membership for purposes of Voting. Owners shall be entitled to one (1) vote for each Lot owned by the owner. There shall be a total of seventy-six (76) votes.

C. Quorum, Notice and Voting Requirements. The quorum, notice, and voting requirements of and pertaining to the Association are set forth within the articles of incorporation and by-laws of the Association, as the same may be amended from time to time. Subject to the provisions of Section B above and any other provision to the contrary set out in these Covenants, any action by or on behalf of the Association may be taken with the assent given in writing and signed by members who collectively hold or control a majority of the outstanding votes of the Association.

3. Property Rights and in and Maintenance of the Common Properties.

A. Members' Easements of Enjoyment. Subject to the provisions of Section C of this paragraph, every owner and each individual within an owner's family shall have a non-exclusive right and easement of use, recreation, and enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of each respective Lot; PROVIDED, HOWEVER, such easement shall not give such person (excluding the Developer and the Association), the right to make alterations, additions or improvements to the Common Properties subject to applicable local, state and federal law.

B. Title to the Common Properties. The Association shall hold such title to the Common Properties for an identified period of time, subject to the easements set forth in Section 1 of this Article which is necessary to accomplish the purposes and effects of these Covenants. The Association shall have the right to design, redesign, reconfigure, alter, improve, landscape, and maintain the Common Properties.

C. Extent of Members' Easements. The rights and easements created hereby shall be subject to the following:

- (i) The right of the Board to prescribe reasonable regulations and policies governing, and to charge fees and/or deposits related to, the use, operation, and maintenance of the Common Properties and all Lots.
- (ii) The right of the Board on behalf of the Association to enter into and execute contracts with any party for the purpose of providing maintenance or such other materials or services consistent with the purpose of the Association and/or these Covenants.
- (iii) The right of the Board to suspend the voting rights of any member and to suspend the right of any member to use or enjoy any of the Common Properties for any period during which any assessment (including without limitation "fines") against a Lot resided upon by such member remains unpaid, and otherwise for any

period deemed reasonable by the Board for any infraction of the then existing rules and regulations.

(iv) The right of the Board on behalf of the Association to dedicate or transfer all or any part of the Common Properties to any municipal corporation, county government, political subdivision, public agency, governmental authority, or utility for such purposes and upon such conditions as may be agreed to by the Board.

4. **Maintenance of Common Properties.** The Association shall maintain all of the Common Properties and shall through the assessment of the Members provide for the necessary funds to provide such maintenance. Maintenance shall include but not be limited to the repair, maintenance, mowing and landscaping and rebuilding of improvements on the Common Properties.

5. **Covenants for Assessments.**

A. **Creation of the Lien and Personal Obligations of Assessments.** The Developer, for each Lot owned by it within the Subdivision, hereby covenants and agrees, and each Owner of any Lot, by acceptance of a deed therefore, whether from the Developer or some subsequent grantor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agreement (and such covenant and agreement shall be deemed to constitute a portion of the purchase money and consideration for acquisition of the Lot), to pay to the Association the following:

(i) Regular assessments or charges for maintenance, taxes and insurance on the Common Properties;

(ii) Special group assessments for capital improvements or unusual or emergency matters, such assessments to be fixed, established and collected from time to time as hereinafter provided;

(iii) Special individual assessments which might be levied against individual Lot owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual owner, his family, guests, or invitees, and not caused by ordinary wear and tear; and

(iv) Individual assessments and fines levied against individual Lot owners for violation of rules and regulations pertaining to the Association and/or the Common Properties.

The regular, special group, and special individual assessments, together with such late charges, interest and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made.

B. Purpose of Assessments. The assessments levied by the Board on behalf of the Association shall be used for the purpose of enhancing the natural environment, appearance and beauty of the Subdivision and promoting the health, recreation, safety, and general welfare of the residents of the Subdivision.

C. Basis and Amount of Regular Maintenance Assessments.

(i) The regular base assessments shall be determined by the Board. Assessments shall apply to all Lots.

(ii) The Board shall give notice to all members at least thirty (30) days in advance of the date all regular or special assessments are due. The Board may prescribe from time to time that the regular base assessments are to be collected on an annual, semi-annual, quarterly, or monthly basis, and the Board shall prescribe the appropriate due dates. All regular base assessments shall be collected in advance. The due date or dates (if it is to be paid in installments) of any other assessments or special assessment shall be fixed in the respective resolution authorizing such assessment.

D. Special Group Assessments. In addition to the regular assessments authorized by Section 3, the Board may levy in any fiscal year a special assessment, applicable to that year only, 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 Properties.

E. Rate of Assessments. Except as noted herein, regular and special group assessments shall be fixed at a uniform rate for all Lots owned by members, unless otherwise approved by the Board. The failure to pay the assessment by the owner of a Lot shall constitute a lien against the Lot and the Association may pursue any remedy available to it at law or in equity to collect such lien including initiation of a foreclosure suit in a court of competent jurisdiction.

F. Effect of Non-Payment of Assessment; the Personal Obligation of the Owner: the Lien: and Remedies of Association.

(i) If any assessment or fine or any part thereof is not paid on the date(s) when due, then the unpaid amount of such assessment shall be considered delinquent and shall, together with any late charge and interest thereon at the maximum rate allowed under applicable law and costs of collection thereof, thereupon become a continuing debt secured by a self-executing lien on the Lot of the non-paying owner which shall bind such Lot in the hands of the owner and owner's heirs, executors, administrators, devisees, personal representatives, successors, and assigns. The Board shall have the right to reject partial payments of an unpaid assessment and demand the full payment thereof. The lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No owner may waive or otherwise escape liability for any assessment provided herein by non-use of the Common Properties or abandonment of the Lot;

(ii) The Board may also give written notification to the holder(s) of a mortgage on a Lot of

a non-paying Owner of such owner's default in paying any assessment when such default has not been cured within thirty (30) days of the original date due, provided that the Board has, theretofore, been furnished in writing with the correct name and address of the holder(s) of such mortgage and a request to receive such notification; and

(iii) The Board may, at its election, retain the services of an attorney to review, monitor, collect, and file suit to foreclose on a lien for unpaid assessments and delinquent accounts, and there shall also be added to the amount of any unpaid assessment or to any delinquent account any and all attorneys' fees and other costs of collection incurred by the Association.

G. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate and inferior to the lien of any bonafide first mortgage or deed of trust now or hereafter placed upon any Lot subject to assessment.

6. General Powers and Duties of the Board of Directors of the Association.

A. Powers and Duties. The affairs of the Association shall be conducted by its Board of Directors (sometimes referred to as the "Board").

(i) The Board, for the benefit of the Association, the Subdivision, and the owners, may provide and may pay for, out of the assessment fund(s) provided for in Article IV above, any or all of the following:

(a) Care, preservation and maintenance of the Common Properties and the furnishing and upkeep of any desked personal property and fixtures for use in or on the Common Properties;

(b) Private trash and garbage collection service, if determined necessary by the Board;

(c) Taxes, insurance, and utilities (including, without limitation, electricity, gas, water, and sewer charges), if any, which pertain to the Common Properties only;

(d) The services of any person or firm (including the Developer and any affiliates of the Developer) to manage the Association or any separate portion thereof, to the extent deemed advisable by the Board, and the services of such other personnel as the Board shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board or by a manager hired by the Board;

(e) Legal and accounting services; and

(f) Any other materials, supplies, equipment, labor, services, maintenance, repairs, structural alterations, taxes, or assessments which the Board is required to obtain or pay for pursuant to the terms of these Covenants or which in its opinion shall be necessary or proper for the operation or protection of the Association and the Subdivision or for the enforcement of these Covenants.

(ii) The Board shall have the following additional rights, powers and duties:

(a) To execute all declarations of ownership for tax assessment purposes with regard to any of the Common Properties owned by the Association;

(b) To enter into contracts, maintain one or more bank accounts and, generally, to have all the powers necessary or incidental to the operation and management of the Association; and

(c) To make reasonable rules and regulations for the operation of the Common Properties and to amend these Covenants from time to time; provided, however, no portion of paragraph 6 (Use and Division of Lots) of these Covenants may be amended unless not less than two-thirds (2/3) of all Owners who occupy dwellings in the Subdivision approve the proposed amendment(s).

B. Maintenance Contracts. The Board shall have full power and authority to contract with any Owner (including, without limitation, the Developer) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interests of the Association.

C. Liability Limitations. Neither any member or owner nor the directors and officers of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for any torts committed by or on behalf of the Association or otherwise. Neither the Developer, the Association, its directors, officers, agents, or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portion thereof, or for failure to repair or maintain the same.

D. Reserve Funds. The Board may establish reserve funds which may be maintained and accounted for separately from other funds maintained for annual operating expenses.

7. Use and Division of Lots.

A. The Developer does hereby dedicate for public use all of the streets as shown on the plat

of the Subdivision as described above. The Developer further dedicates to the public use the easements and rights of way common areas, sidewalks and all drainage detention ponds and wet land areas as designated on the plat of the Subdivision for the several purposes of constructing, maintaining, operating, repairing, replacing and servicing all public or quasi-public utilities, together with the right of ingress and egress for such purposes as aforesaid being reserved to the employees, agents and designees of any public or quasi-public utility providing service to the Lots within the Subdivision. Within said easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities except in the detention pond as required by the agreement with the Corp of Engineers which is incorporated herein by reference. The owner of a Lot within the Subdivision shall be responsible for maintaining all improvements within the boundaries of said Lot, except for those improvements for which a utility company is responsible or those areas for which the Association shall be responsible.

B. Supply lines for all public or quasi-public utilities shall be located underground in the easement ways reserved for general utility service as shown on the plat but the electrical lines running over the Subdivision prior to development shall remain above ground. Service lines to all residences located on a Lot shall be underground, and shall run from the nearest source of each utility within the easement to the point of use as determined by the location and construction of such residence as the same may be located upon the Lot. The supplier of each and every public or quasi-public utility shall hereafter be deemed to have a definite, permanent, effective and exclusive easement five feet in width, extending from the source of said utility within the easement to the point of use at each residence or other structure. The center line of said five foot strip being represented by the service line as installed. The supplier of each utility, through its proper agents and employees, shall at all times have the right to access to said easement or easements, as shown on said plat or as provided for in this Deed of Dedication. The easement is granted for the purpose of installing, maintaining, removing or replacing any portion of the above ground or below ground facilities. The owner of a Lot shall not allow any activity on said Lot, including construction or alternation of grade, which may interfere with the operation of any utility line and appurtenances thereto. Repairs or cost of relocation occurring as a result of such activities shall be paid for by the owner of the Lot. Shrubbery shall not be placed so as to interfere with the reading of, or the normal maintenance of, any utility meter.

C. The floor area of the main residential structure on a Lot within the Subdivision, not including open porches or garages, shall be not less than 1,300 square feet. All Lots in the Subdivision shall be used for one separate single-family detached residence and for no other purpose. No duplexes or multi-family units shall be constructed in the Subdivision. Residences shall be of conventional construction. All homes shall meet HUD code compliance.

D. Each residence shall be constructed on a permanent foundation made of either concrete or cinder block. The concrete or block foundation may not be exposed and shall be covered by brick and landscaping.

E. Each residence or other structure constructed on a Lot shall be covered by a roof of wood,

shake, or asphalt shingles with natural colors used to blend with scenery. All residences shall be covered on the outside by forty (40%) percent brick and the remainder shall be vinyl, masonite or wood siding. All residences constructed in the Subdivision shall have a private garage to accommodate at least two (2) automobiles. Any detached structure to be built on a Lot shall conform to the basic styling of the dwelling constructed on the Lot. Any garage or other allowed outbuilding i.e. storm shelter shall be constructed on a permanent foundation in a manner to be architecturally compatible with the residence on the Lot and shall not exceed twelve (12) feet in heights. All yards shall be sodded, landscaped, and shall be maintained in such a manner as to enhance the appearance of the Subdivision.

F. Each residence shall have a driveway and provide for off-street parking of vehicles. No off-street parking shall be allowed on a regular basis. All driveways servicing residential dwelling, garages and/or out buildings on a Lot shall be composed of concrete or exposed aggregate.

G. No fences shall be erected around the front yard of any residence. All fences constructed around the rear yard shall be constructed of wood or pvc materials. No chain link, split rail or other non-privacy type fence shall be erected on a Lot. The height of any fence shall not be greater than six (6) feet.

H. No outbuilding, tent, shack, garage, barn or any vehicle on a Lot may be used as living quarters, either permanently or temporarily. No trailer, mobile home, tent, construction shack, or other out buildings shall be erected or kept on a Lot in the Subdivision except for temporary use by construction contractors for a reasonable period of time. No recreational vehicles or vehicles used for recreation purposes shall be stored or parked on a Lot. No vehicle that has been inoperative for a period of more than three (3) days shall be stored on a Lot. Boats and other recreational equipment shall be maintained on a operative trailer and shall be stored at the rear of the residential structure so as to be obscured from public view and the view of adjacent Lots. The parking or storage of unused or unlicensed motor vehicles is prohibited in the Subdivision.

I. No obnoxious or offensive trade or activity shall be carried on or upon a Lot, nor shall anything be done thereon that may be or may become an annoyance or nuisance to the neighborhood. No future mineral development of any kind shall be permitted affecting the surface of the Lots covered by these restrictions. No animals, livestock, or poultry of any kind shall be raised, bred or kept on a Lot except that dogs, cats or other household pets may be kept provided they are not kept, bred or maintained for any commercial purpose and that the owners comply with all applicable city ordinances. All dogs, cats and other domestic animals permitted to be kept within the Subdivision by these restrictive covenants and any city code shall be kept and maintained in a fenced rear yard of a residence. No animal shall be chained, tied or otherwise restrained either in the rear or front yard of a Lot. All dog houses or other animal shelters shall be kept in the rear yard of a residence. Owners shall not be permitted to have "barn" or pasture animals regardless of the number of Lots owned by any one owner.

J. Each Lot shall be permitted one antenna, aerial satellite dish or similar devise for the

reception of television, radio or information services so long as the device is located within the building set back limits and to the rear of the main residential building and is used for non-commercial purposes only. Each antenna, aerial satellite dish or other device shall be of a minimum elevation to permit adequate reception, not higher than the primary residence located on the Lot, and the transmitting and receiving portion shall not be more than two (2) feet in diameter at its widest point and not visible from the front of the residential structure.

K. In the event that any Lots are sold and no structure is immediately erected, the owner or owners of such Lot or Lots shall keep said property mowed and in a neat sanitary condition.

L. No sign of any kind shall be displayed to the public view on a Lot, except one professional sign advertising the property for sale, resale or rent, or signs used by a builder or agent to advertise the property during the construction and sale of a dwelling thereon. In no event shall any such sign stand more than seven (7) feet above ground level nor be more than five (5) square feet in size nor be lighted at night. Builder has right to erect signage to market entire subdivision no larger than sixty-four (64) sq. ft. for a reasonable period of time during construction. The provision shall not apply to the Subdivision entrance sign.

M. No owner shall be allowed to conduct any business or commercial activity or enterprise upon any Lot. No commercial type buildings shall be constructed on any Lot. Provided, a person or entity owning multiple Lots which are held for sale may maintain a model home or sales office in the Subdivision, using no more than two (2) Lots for such purpose. Any such sales office shall be designed to be compatible with a residential structure.

N. No Lot nor any portion thereof shall be split to create an additional or larger building sites in this subdivision, it being the intent of these covenants that there be no more or less than 76 residential building sites in the Subdivision for Phase I.

O. These covenants shall run with the land, and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date this instrument is recorded, (except as amended in accordance with the covenants). after which time said covenants shall be automatically extended for successive period(s) of ten (10) years unless an instrument signed by a majority of the then owners of the Lots has been recorded, agreeing to change said covenants in whole or in part.

P. If any provision of these Bill of Assurance and Restrictive Covenants or any section, clause, phrase, word or the application thereof in any circumstances is held to be invalid, the validity of the remainder of these Bill of Assurances and Restrictive Covenants and of the application of the remaining provision shall not be affected thereby.

IN WITNESS WHEREOF, Palmco Properties, LLC, an Arkansas Limited Liability Company, has caused these Bill of Assurances and Protective Covenants for Salem Heights Subdivision Phase I, an Addition to the City of Fayetteville, Arkansas, to be duly executed by the

