

Courtesy

WESTERN TITLE



DECLAR 2015009610

45 PGS

**THIRD AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR**

KELSEY PARK SUBDIVISION

(Lubbock, Texas)

February 1, 2015

**THIRD AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR**

KELSEY PARK

THIS THIRD AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR KELSEY PARK (this "Declaration") is made and entered by Kelsey Park, LTD., a Texas limited partnership (the "Declarant").

WHEREAS, Declarant was or is the owner of certain real property situated in the City of Lubbock, Lubbock County, Texas as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference for all purposes (the "Property");

WHEREAS, the Property is subject to and encumbered by that certain Declaration of Covenants, Restrictions, Conditions and Easements recorded as Instrument No. 2012032280 in the Real Estate Records of Lubbock County, Texas (the "Original Declaration");

WHEREAS, Declarant has platted the Property as Kelsey Park Subdivision, as recorded in the official public records of Lubbock County, Texas at County Clerk file number 2012011471;

WHEREAS, Declarant intends that the Property be developed as a high-quality, custom residential community and that the Property be subject to the covenants, conditions, restrictions and easements set forth in this Declaration in order to establish a plan for the development, improvement and use of the Property with architectural, landscaping and maintenance controls;

WHEREAS, Declarant has created the Association (as hereinafter defined) to have and to exercise the rights and duties, and to perform on behalf of, and as agent for, the Owners (as hereinafter defined), the functions set forth in this Declaration including, but not limited to, the maintenance of certain portions of the Property, the reviewing of Plans (as hereinafter defined) for improvements to be constructed on the Property and the assessing, collecting and disbursing of Assessments (as hereinafter defined) as provided for herein;

WHEREAS, on February 28, 2013, the Declarant caused that certain First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements to be filed and Recorded as Instrument No. 2013008009 in the Real Estate Records of Lubbock County, Texas (the "Amended Declaration");

WHEREAS, on April 8, 2013, pursuant to and in accordance with the terms of the Amended Declaration, the Declarant caused that certain Supplemental Declaration

Providing For Annexation of Additional Property into Kelsey Park Homeowners Association, Inc. (the "First Supplement") to be filed and recorded as Instrument No. 2013014642 in the Real Estate Records of Lubbock County, Texas;

WHEREAS, on February 28, 2014, the Amendment 1 to First Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Kelsey Park amended the Amended Declaration;

WHEREAS, the Original Declaration has been supplemented and amended including, without limited to, the Second Amended and Restated Declaration of Covenants, Restrictions and Easements recorded as Instrument No. 2015001904 in the Real Estate Records of Lubbock County, Texas (the original Declaration as supplemented and amended is referred to herein as the "Declaration");

WHEREAS, these Declarations amend and replace the Second Amended Declarations; and

NOW, THEREFORE, Declarant adopts, establishes and imposes the following covenants, conditions, restrictions, easements, liens and charges upon the Property and declares that the Property and all portions thereof are and shall be held, transferred, assigned, sold, conveyed and occupied subject to all such covenants, conditions, restrictions, easements, liens and charges.

ARTICLE I DEFINITIONS

Unless otherwise defined in this Declaration, the following words when used in this Declaration (unless the context shall otherwise clearly indicate or prohibit) shall have the following meanings:

(a) "Architectural Control Committee" shall have the meaning set forth in Section 7.01 hereof.

(b) "Assessment" or "Assessments" shall have the meaning set forth in Section 3.01 hereof.

(c) "Assessment Lien" shall have the meaning set forth in Section 3.08 hereof.

(d) "Association" shall mean the non-profit corporation to be created under the laws of the State of Texas under the name, "Kelsey Park Homeowners Association, Inc.", or such other name as is selected by Declarant or Declarant's successors.

(e) "Association Documents" shall mean this Declaration, the Articles of Incorporation (herein so called) and the Bylaws (herein so called) of the Association, as amended and modified from time to time, and the resolutions and certifications adopted by the Association from time to time.

(f) "Board" shall mean the board of directors of the Association as elected from time to time in accordance with the Association Documents.

(g) "City" shall mean the City of Lubbock, Texas.

(h) "Class A Members" shall have the meaning set forth in Section 2.03 (a) hereof.

(i) "Class B Member" shall have the meaning set forth in Section 2.03 (b) hereof.

(j) "Common Expenses" shall have the meaning set forth in Section 3.02 hereof.

(k) "Common Properties" shall mean the following:

- (i) The entrance off of FM 1585 at Norfolk Avenue, including all entry features, monumentation, landscaping, lighting, signage, irrigation and other improvements included therein;
- (ii) The entrance off of Quaker Avenue at 135th Street, including all entry features, monumentation, landscaping, lighting, signage, irrigation and other improvements included therein;
- (iii) The streetscape along 135th Street and adjacent to Lots 19 and 20, including all fencing, screening, landscaping, lighting, signage, irrigation and other improvements included therein;
- (iv) The streetscape along Orlando Avenue and at the rear of Lots 20-23, including all fencing, screening, landscaping, lighting, signage, irrigation and other improvements included therein;
- (v) The proposed park to be installed inside the Kelsey Park Project, including all monumentation, landscaping, walkways, lighting, signage, irrigation and other improvements included therein;
- (vi) Any other improvements installed by Declarant or the Association on any Common Properties, and all equipment, accessories or utilities used in the operation or maintenance of any of the Common Properties; and
- (vii) Any other structures or improvements installed by Declarant or the Association on any Lots within the Subdivision which are not expressly made the responsibility of the Lot Owner pursuant to the provisions of this Declaration.

(l) "Common Service" or "Common Services" shall mean such services provided from time to time by Declarant or the Association, or obtained by the Association on

behalf of, and for the common benefit of, the Owners, that have been approved by the Board and/or by the Members (as hereinafter defined) at a meeting at which a Special Quorum (as hereinafter defined) was present as provided in Section 2.04(b) hereof.

(m) "Completed Apartment Unit" or "Completed Apartment Units" shall mean a residential dwelling unit within a multi-family residential structure that is completed and ready for occupancy.

(n) "Completed Residence" or "Completed Residences" shall mean a Lot with a completed residential dwelling, whether single family or duplex. Any such Lot may also be referred to herein as an "Improved Lot."

(o) "Declarant" shall mean Kelsey Park, Ltd., a Texas limited partnership, and its successors and any assignee of Declarant to whom Declarant, by instrument filed for record expressly assigns all of Declarant's rights and obligations as Declarant under this Declaration. No Person (as hereinafter defined) purchasing one (1) or more Lots shall be considered as "Declarant", unless Declarant makes the express and specific assignment referenced in the immediately preceding sentence.

(p) "Declarant's Affiliates" shall mean any Person which owns (directly or indirectly) at least a twenty-five percent (25%) interest in the profits of Declarant.

(q) "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Kelsey Park, and all amendments and modifications hereto filed for record with the County Clerk for Lubbock County, Texas.

(r) "Default Rate of Interest" shall mean the lesser of (i) eighteen percent (18%) per annum, or (ii) the maximum allowable contract rate of interest under applicable Texas law.

(s) "Developed Lot" or "Developed Lots" shall mean any Lot adjacent to a completed street and with utilities in place to service such Lot.

(t) "Development Period" shall mean the period ending on December 31, 2024.

(u) "Duplex" or "Duplexes" shall mean Lots 65-88, inclusive of the subdivision as shown and as more particularly described on Exhibit "B".

(v) "Enclave" shall mean those Lots included within the portion of the Property as shown and as more particularly described on Exhibit "C".

(w) "Estates" shall mean those Lots included within the portion of the Property as shown and as more particularly described on Exhibit "D".

(x) "Improved Lot" shall mean any Developed Lot upon which a residential dwelling has been completed.

(y) "Kelsey Park Project" shall mean the approximately 400 acres of land as shown on the attached Exhibit "A."

(z) "Lot" or "Lots" shall mean all such residential lots as are shown on the Plat (whether developed or undeveloped), as amended from time to time, and designated as a "Lot" thereon.

(aa) "Member" or "Members" shall mean each Owner of a Lot.

(bb) "Mortgagee" shall have the meaning set forth in Section 9.09 hereof.

(cc) "Notice of Unpaid Assessments" shall have the meaning set forth in Section 3.08 hereof.

(dd) "Owner" or "Owners" shall mean each and every Person who is a record owner of a fee or undivided fee interest in any Lot (or the land on which a Lot is proposed to be developed); provided, however, "Owner" shall not include Persons who hold an interest in a Lot as security for the performance of an obligation.

(ee) "Plans" shall have the meaning set forth in Section 7.03(c) hereof.

(ff) "Plat" shall mean any plat, whether preliminary, final or otherwise, prepared by and designated by Declarant as the current plat for the Kelsey Park Subdivision, provided that such plat so designated by Declarant shall have identified residential Lots. It is further provided that Declarant may, from time to time, amend or modify the plat by filing of record a supplement to the Declarations identifying such amended plat.

(gg) "Per-Lot Regular Assessment Amount" shall have the meaning set forth in Section 3.02 hereof.

(hh) "Person" or "Persons" shall mean any natural person, limited liability company, corporation, partnership, trust or other legal entity.

(ii) "Phase 1" shall mean Lots 1 - 23, inclusive, of the Subdivision, as shown on Exhibit A.

(jj) "Phase 2" shall mean Lots 24 – 64, inclusive, of the Subdivision, as shown on Exhibit A.

(kk) "Phase 3A" shall mean Lots 89-112, inclusive of the Subdivision; "Phase 3B" shall mean Lots 113-137, inclusive, of the Subdivision; "Phase 3C" shall mean Lots 200-235, inclusive, of the Subdivision; all as shown on Exhibit A. (Phase 3A, 3B and 3C are sometimes referred to collectively as "Phase 3").

(ll) "Phase 4" shall mean Lots 138-199, inclusive, of the Subdivision, as shown on Exhibit A;

(mm) "Property" shall mean the real property situated in the City of Lubbock, Lubbock County, Texas, more particularly described on Exhibit "A" attached hereto.

(nn) "Regular Assessments" shall have the meaning set forth in Section 3.02 hereof.

(oo) "Regular Quorum" shall have the meaning set forth in Section 2.04(c) hereof.

(pp) "Special Member Assessments" shall have the meaning set forth in Section 3.04 hereof.

(qq) "Special Purpose Assessments" shall have the meaning set forth in Section 3.03 hereof.

(rr) "Special Quorum" shall have the meaning set forth in Section 2.04(b) hereof.

(ss) "Street" shall mean the public streets within or adjacent to the Subdivision as shown on the Plat including, but not limited to, 133rd Street, 134th Street, 135th Street, Orlando Avenue, Norfolk Avenue and Memphis Avenue, together with all pavement, curbs, street lights, signs and related facilities installed thereon within the Subdivision.

(tt) "Subdivision" shall mean the Property as shown on the Plat, to be commonly known as "Kelsey Park" and "Kelsey Park Subdivision."

(uu) "Undeveloped Lot" or "Undeveloped Lots" shall mean any Lot without streets and utilities in place to service such Lot.

(vv) "Violation Fine" shall have the meaning set forth in Section 9.11 hereof.

ARTICLE II

PURPOSE, MEMBERSHIP AND VOTING

RIGHTS IN THE ASSOCIATION

2.01 Purpose of the Association. The Association shall have and exercise the rights, and shall perform the functions of, the Association for the benefit of, and as agent for, the Owners as set forth in this Declaration.

2.02 Membership. Every Owner (including Declarant) shall automatically be and must remain a Member of the Association so long as such Person is an Owner. The membership of a Person in the Association shall terminate automatically whenever such Person ceases to be an Owner, except that such termination shall not release or relieve

such Person from any liability or obligation arising under this Declaration during such Person's period of ownership. Any transfer of title to a Lot shall operate automatically to transfer membership in the Association appurtenant to such Lot to the new Owner of such Lot.

2.03 Voting Rights. The Association shall have the following two (2) classes of voting memberships:

(a) **CLASS A:** "Class A Members" (herein so called) shall be all Members other than Declarant [except as provided in Section 2.03(b) hereof]. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership. If any Lot is owned by more than one (1) Owner, the number of votes attributable to such Lot still shall be one (1), and such one (1) vote may be cast only if all of the Owners owning such Lot, prior to the time of the vote in question, have delivered to the Association a written agreement as to how such vote is to be cast or a written designation of one (1) of such Owners to cast the vote attributable to such Lot. Any Owner who is not an individual must designate, upon request of the Board, a representative to act for such Owner in Association matters and to cast the vote of such Owner, such designation to be made in writing to the Board.

(b) **CLASS B:** The sole "Class B Member" (herein so called) shall be Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot which it owns. The Class B membership shall cease at such time as Declarant and Declarant's Affiliates no longer own any Lots.

2.04 Quorum, Notice and Voting Requirements.

(a) Except as otherwise specifically provided in this Declaration, any action requiring the vote or approval of the Members or the Owners shall require the majority vote of the Members (both classes voting together), represented at a duly called meeting of the Members in person or by a legitimate proxy in form provided in the Association Documents or otherwise approved by the Board, at which a "Regular Quorum" or a "Special Quorum" is present. Written notice of a meeting must be given to all Members not less than ten (10) days nor more than fifty (50) days in advance of any such meeting and shall set forth the purpose(s) of such meeting. No action may be taken at a meeting on any matter that is not described in the applicable meeting notice as being on the agenda for such meeting. Notwithstanding anything herein to the contrary, to the extent permitted by applicable law and in the Association Documents from time to time, any action may be taken by written consent of the Members in lieu of formal meetings.

(b) The quorum (a "Special Quorum") required for any action referred to in Section 3.05 (b) (maximum increase in Regular Assessments) hereof or Section 3.05(d) (Special Purpose Assessments) hereof or for the approval of any Common Services shall be as follows:

Members represented at a duly called meeting of the Members in person or by a legitimate proxy in form provided in the Association Documents or otherwise approved by the Board, entitled to cast at least sixty percent (60%) of all of the votes of Members (both classes of Members taken together) shall constitute a Special Quorum. If the required Special Quorum is not present at such meeting, that meeting may be adjourned, and an additional meeting may be called, subject to the notice requirement set forth herein, with the required Special Quorum at such second meeting being reduced to one-half (1/2) of the required Special Quorum at the preceding meeting; provided, however, that such second meeting must be held not later than thirty (30) days after the first meeting. Further, if the reduced required Special Quorum is not present at such second called meeting, the adjournment of the meeting shall be continued, and one (1) additional meeting may be called, subject to the notice requirement set forth herein, with Declarant alone constituting the required Special Quorum at such third (3rd) meeting; provided that such third meeting must be held not later than forty-five (45) days after the first meeting.

(c) The quorum (a "Regular Quorum") required for any action other than the action referred to in Section 2.05(b) hereof shall be as follows:

Members, represented at a duly called meeting of the Members in person or by a legitimate proxy in form provided in the Association Documents or otherwise approved by the Board, entitled to cast at least thirty percent (30%) of all of the votes of Members (both classes of Members taken together) shall constitute a Regular Quorum. If the required Regular Quorum is not present at such meeting, that meeting may be adjourned, and an additional meeting may be called, subject to the notice requirement set forth herein, with the required Regular Quorum at such second meeting being reduced to one-half (1/2) of the required Regular Quorum at the preceding meeting; provided, however, that such second meeting must be held not later than thirty (30) days after the first meeting. Further, if the reduced required Regular Quorum is not present at such second called meeting, the adjournment of the meeting may be called, subject to the notice requirement set forth herein, with Declarant alone constituting the required Regular Quorum at such third meeting; provided that such third meeting must be held not later than forty-five (45) days after the first meeting.

(d) As an alternative to the procedure set forth in this Section, any action may be taken without a meeting upon obtaining the assent given in writing and signed by Members who hold at least (i) sixty percent (60%) of the outstanding votes eligible to be cast by Members (both classes of Members taken together) for actions referred to and requiring a Special Quorum as provided in Section 2.05(b) hereof, or (ii) at least thirty percent (30%) of the outstanding votes eligible to be cast by Members (both classes of Members taken together) for actions referred to and requiring a Regular Quorum as provided in Section 2.05(c) hereof.

(e) Except as set forth in this Section, the notice, voting and quorum requirements for all action to be taken by the Association shall be as set forth in the Association Documents.

ARTICLE III ASSESSMENTS

3.01 Covenants for Assessments. Each Owner, by acceptance of a deed or other conveyance or transfer of legal title to a Lot, whether or not it shall be so expressed in any such deed or other conveyance or transfer, shall be deemed to have covenanted and agreed to pay to the Association, or to an independent entity or agency which may be designated by the Association to receive such monies, the following assessments (collectively, the "Assessments"):

- (a) Regular Assessments as provided in Section 3.02 hereof;
- (b) Special Purpose Assessments as provided in Section 3.03 hereof; and
- (c) Special Member Assessments as provided in Section 3.04 hereof.

All Assessments shall remain the property of the Owner making payment of such Assessments but shall be controlled and expended by the Association on behalf of the Owners only for the specified purposes provided or approved pursuant to this Declaration. No profit, gain or other benefit is to be derived by the Association from the Assessments, but, instead, such funds shall be expended only as agent for the Owners. All services contemplated to be paid from Assessments shall be obtained by the Association on behalf of the Owners. Upon termination of the Association (and not before), all Assessments held at that time by the Association shall be allocated and returned to the Owners that paid such Assessments. No Assessments shall be levied against the Common Properties. Assessments shall be rendered according to each class of Lots, whether a Undeveloped Lot, Developed Lot, Completed Residence, or Completed Apartment Unit.

3.02 Regular Assessments. "Regular Assessments" (herein so called) shall be determined, assessed and expended on a calendar year basis, which shall be the fiscal year of the Association. Regular Assessments shall be used exclusively for the following purposes (collectively, the "Common Expenses"): (a) improving and maintaining the Common Properties subject to the limitations set forth in Section 5.01 hereof; (b) the payment of taxes and insurance (if any) in connection with the Common Properties and the Common Services; (c) developing and maintaining replacement and working capital reserves for the Association (including, without limitation, the maintenance reserve fund as provided for in Section 8.04 hereof); (d) providing the Common Services; (e) the payment of insurance premiums and costs as provided in Section 5.02 hereof, including, without limitation, the premiums for officers', directors' and Architectural Control Committee Members' liability insurance, and the payment of any indemnity costs or costs of other functions of the Board or the Association pursuant to this Declaration; (f) meeting and carrying out all contractual obligations of the Association, including, without limitation, the Common Services obligation; and (g) carrying out the duties of the Board and the Association as set forth in this Declaration. Each year while this Declaration is in force, the Board shall set the amount of the

Regular Assessments to be levied for the next calendar year, taking into consideration (i) the Common Expenses for the then current year, and anticipated increases in such expenses during such next calendar year, (ii) a contingency amount [not exceeding ten percent (10%) of the anticipated expenditures for such next year], (iii) amounts needed for any reserve fund as determined by the Board, (iv) the number of Lots subject to Assessments and (v) the amount of Assessment paid by each classification of Lot. The Regular Assessments for each calendar year shall be set by the Board on or about the 1st day of December of the preceding year or as soon thereafter as such determination reasonably can be made by the Board. The "Per-Lot Regular Assessment Amount" (herein so called) shall then be determined by the Board such that the sum of the Per-Lot Regular Assessment Amounts payable for all of the Lots subject to Assessments equals the aggregate Regular Assessments required as set by the Board. The Per-Lot Regular Assessment Amount (as adjusted for each classification of Lot) shall be payable for each Lot owned by Declarant as well as each Lot which has been conveyed by Declarant to any third party, including, but not limited to, any Owner, builder or contractor. Regular Assessments for Owners other than Declarant shall commence, and the Per-Lot Regular Assessment (pro-rated for the remaining portion of the fiscal year of the Association) shall become payable immediately upon, the conveyance (or reconveyance in the case of any Lot which is reacquired by Declarant) of any Lot by Declarant. Should any excess surplus (exclusive of amounts in any reserve fund) exist at the end of any calendar year, the Board may, but shall not be obligated to, reduce the amount required for the next year's Regular Assessments by an amount equal to such surplus. In determining the amount of the Regular Assessments and allocating such assessment for determining the Per Lot Regular Assessment Amount, the Board is specifically authorized to allocate the Regular Assessment Amount disproportionately between a Lot on which a residence or related improvements have been completed (an "Improved Lot") and an unimproved Lot. For purposes of this section, a Lot for which a certificate of occupancy has been issued by the appropriate authority shall be deemed to be an Improved Lot.

3.03 Special Purpose Assessments. Subject to the provisions of Section 3.05(d) hereof, the Board may, from time to time, levy "Special Purpose Assessments" (herein so called) for the purpose of paying any capital improvements and other unanticipated expenses that normally would have been paid out of Regular Assessments but which were not included in that year's budget for Regular Assessments. Such Special Purpose Assessments shall be assessed on a per Lot basis in the same manner as the Regular Assessments are assessed as set forth in Section 3.02 hereof.

3.04 Special Member Assessments. The Board may levy a "Special Member Assessment" (herein so called) on any Member, to the extent any directly related insurance proceeds (if any) paid to the Association are not sufficient to pay all such costs, for the purpose of:

(a) Paying the cost of any damage or loss requiring maintenance, repairs or replacement of Common Properties, which damage or loss has been determined by the

Board to have been caused, either directly or indirectly, by the act(s) of such Member, or such Member's agent, employee, occupant or visitor; and/or

(b) Paying the maintenance costs, construction delay damages and Violation Fines referenced in Section 6.18, Section 6.19, and Section 9.11 hereof or as otherwise set forth herein, respectively.

3.05 Special Provisions Regarding Assessments.

(a) Until and unless otherwise determined by the Board, the maximum annual Per-Lot Regular Assessment Amount per year shall be as follows:

- i. Undeveloped Lots: \$50 per Lot;
- ii. Developed Lots: \$100 per Lot;
- iii. Improved Lots: \$300 per Lot; and
- iv. Completed Apartment Units: \$75 per unit.

(b) The Board may establish the maximum annual Regular Assessment and the maximum Per-Lot Regular Assessment Amount for each Lot, provided that the maximum annual Regular Assessment and the maximum Per-Lot Regular Assessment Amount may not be increased more than twenty-five percent (25%) above the maximum annual Regular Assessment and the maximum Per-Lot Regular Assessment Amount for the previous year unless approved by a Special Quorum of the Members of the Association as provided in Section 2.04(b) hereof. Notwithstanding the foregoing, in the event that the Board determines that due to unusual circumstances the maximum annual Regular Assessment and the maximum Per-Lot Regular Assessment Amount even as increased by twenty-five percent (25%) will be insufficient to enable the Association to pay the Common Expenses, then in such event, the Board shall have the right to increase the maximum annual Regular Assessment and the maximum Per-Lot Regular Assessment Amount by the amount necessary to provide sufficient funds to cover the Common Expenses without the approval of the Members as provided herein; provided, however, the Board shall only be allowed to make one (1) such increase per calendar year without obtaining approval of a Special Quorum of the Members as provided in Section 2.04(b) hereof.

(c) If any Assessment remains unpaid at the expiration of thirty (30) calendar days from and after the due date established by the Board, a late charge, in an amount determined by the Board to offset administrative costs of the Association resulting from such delinquency, shall be assessed against the non-paying Owner for each month, or portion thereof, that any portion of an Assessment remains unpaid. A service charge of Twenty-five and No/100 Dollars (\$25.00) or such other amount established by the Board (but in no event exceeding the maximum lawful amount) shall be charged for each check that is returned because of insufficient funds. The amounts of late charges and

service charges may be adjusted, from time to time, by the Board, and shall in no event exceed the amounts permitted by applicable law.

(d) Any Special Purpose Assessments for the purpose of paying the cost of the construction of a capital improvement or for the provision of Common Services shall require the affirmative approval of a Special Quorum of the Members as provided in Section 2.04(b) hereof.

3.06 Due Date of Assessments. The Regular Assessments provided for herein shall be payable annually within thirty (30) days after an invoice is delivered by the Association to an Owner; provided, however, the Board shall have the right to require payment of Regular Assessments at other intervals if the Board deems appropriate in the Board's sole and exclusive discretion [but with payment thereof not required any earlier than thirty (30) days after delivery of any such invoice therefor]. The due date of any Special Purpose Assessment or Special Member Assessment shall be fixed in the notice to the Owner or Owners providing for any such Assessment, but will not be sooner than thirty (30) days after such notice is delivered to the Owner or the Owners thereof. The initial Per-Lot Regular Assessment Amount as established by the Board shall be payable, in whole or in part (as applicable), simultaneously with the sale and conveyance of each Lot by Declarant, and such applicable amount shall be prorated over the remainder of the calendar year from the date of such conveyance.

3.07 Personal Obligation for Payment of Assessments. The Assessments provided for herein shall be the personal obligation of the Owner or Owners of the Lot with respect to which such Assessment is made. The covenants for the payment of Assessments as provided in this Declaration touch and concern each Lot, are covenants running with the land and specifically bind the Owners and their heirs, successors, devisees, personal representatives and assigns. In the event that any Assessment (or any part thereof) is not paid when due, the Owner or Owners of such Lot shall be obligated to pay interest on any such unpaid Assessment from such date at the Default Rate of Interest together with the charges made as authorized in Section 3.05(c) hereof and all costs and expenses of collection thereof, including, but not limited to, reasonable attorneys' fees. The Board shall have the right to reject any partial payment of any Assessment and demand full payment thereof, or the Board may, in the Board's sole and exclusive discretion, elect to accept any such partial payment on account only, without in so doing waiving any rights established hereunder with respect to any remaining balance due. The obligation of any Owner to pay an Assessment with respect to a Lot made for any period of time that an Owner owns the Lot shall remain such Owner's personal obligation (notwithstanding any future sale or conveyance of such Owner's Lot) and shall also pass to the purchaser(s) of such Lot. However, any lien against a Lot for any unpaid Assessments shall be unaffected by any sale of such Lot and shall continue in full force and effect. In the event of a sale of a Lot, it shall be the obligation of the then Owner of such Lot to disclose to any buyer, assignee, title company designated to handle such transaction, financing entity or any other party to such sale any unpaid Assessments, such notice to be given in writing to all parties to the intended transaction at least fifteen (15) days before the date at which such

transaction is to be consummated. A copy of any such notice shall be sent to the Association at the same time. A former Owner shall not be liable for Assessments due with respect to a Lot for periods after such Person no longer is the Owner of such Lot.

3.08 Assessment Lien and Foreclosure. THE OBLIGATION TO PAY ASSESSMENTS IN THE MANNER PROVIDED FOR IN THIS ARTICLE, TOGETHER WITH INTEREST FROM SUCH DUE DATE AT THE DEFAULT RATE OF INTEREST, THE CHARGES MADE AS AUTHORIZED IN SECTION 3.05(c) HEREOF, ALL VIOLATION FINES AND THE COSTS OF COLLECTION, INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, IS SECURED BY A CONTINUING CONTRACTUAL LIEN (THE "ASSESSMENT LIEN") AND CHARGE ON THE LOT COVERED BY SUCH ASSESSMENT, WHICH SHALL BIND SUCH LOT AND THE OWNERS THEREOF AND THEIR HEIRS, SUCCESSORS, DEVISEES, PERSONAL REPRESENTATIVES AND ASSIGNEES. The aforesaid continuing contractual Assessment Lien shall attach to the Lots as of the date of the filing of this Declaration with the County Clerk of Lubbock County, Texas, and such Assessment Lien shall be superior to all other liens except as provided in Section 3.10 hereof. Such Assessment Lien shall not encumber or attach to the Common Properties. The Association shall have the right to subordinate the aforesaid Assessment Lien to any other lien. The exercise of such right shall be entirely discretionary with the Board. Except for a conveyance to a purchaser at a foreclosure sale pursuant to a lien to which the Assessment Lien is subordinate as provided herein or in Section 3.10 hereof, all Lots are conveyed to, and accepted and held by, the Owner thereof subject to the Assessment Lien provided for in this Section. To evidence any unpaid Assessments, the Association may prepare a written notice of unpaid Assessments (the "Notice of Unpaid Assessments") setting forth the amount of the unpaid indebtedness, the name of the Owner of and describing the affected Lot. Such notice shall be signed by one (1) of the officers of the Association and may, at the Board's sole and exclusive discretion, be filed with the County Clerk of Lubbock County, Texas. The Association shall record an appropriate release of any recorded Notice of Unpaid Assessments when the amounts referenced therein have been paid. THE ASSESSMENT LIEN MAY BE ENFORCED BY FORECLOSURE OF THE ASSESSMENT LIEN UPON THE DEFAULTING OWNER'S LOT BY THE ASSOCIATION SUBSEQUENT TO THE RECORDING OF THE NOTICE OF UNPAID ASSESSMENTS BY JUDICIAL FORECLOSURE, AS SUPPLEMENTED OR REPLACED FROM TIME TO TIME. In addition, the Association may institute suit against the Owner personally to obtain a judgment for unpaid Assessments. Furthermore, the Association shall have such other rights and remedies as permitted or allowed by applicable law. In any foreclosure proceeding, whether judicial or non-judicial, or in any suit or other action against, or pertaining to, the Owner, the Owner shall be required to pay all costs, expenses and reasonable attorneys' fees incurred by the Association. The Association shall have the right and power to buy the Lot at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same.

3.09 Certificate. Upon request by an Owner, the Association shall furnish a certificate setting forth the unpaid Assessments owed by an Owner. Upon the written

request of any Mortgagee holding a lien on a Lot, the Association shall report to any said Mortgagee any Assessments which are delinquent and unpaid at the time of the report.

3.10 Subordination of the Assessment Lien. The Assessment Lien provided for herein on a Lot shall be subordinate and inferior to (1) the lien or liens granted by the Owner of such Lot to secure the repayment of a loan made for the purpose of providing purchase money funds for such Lot, funds used at any time to install or construct improvements on such Lot or funds used to pay ad valorem taxes on such Lot and (2) the lien for ad valorem taxes due to Lubbock County and the City of Lubbock, provided, however, that such subordination shall apply only to Assessment Liens which have become due and payable prior to the foreclosure sale, whether public or private, of such Lot pursuant to the terms and conditions of any such mortgage or deed of trust lien. Such foreclosure sale shall not relieve such Lots from any Assessment Lien for Assessments thereafter becoming due.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

4.01 Title to the Common Properties. Upon conveyance by Declarant (which timing shall be at Declarant's sole discretion), the Association will hold record fee simple title to all Common Properties, and all portions of the Property which are not within any of the Lots as shown on the Plat, all of which have been or will be dedicated to the Association as shown on, and pursuant to, the Plat, subject to the easements set forth in this Article, and in Article VIII hereof. Declarant or the Association shall have the right to execute any open space declarations applicable to the Common Properties owned by, or dedicated to, the Association which may be permitted by law. Declarant shall have no obligation to transfer to the Association any water wells (or the associated water rights) completed by Declarant for the irrigation of the Common Properties.

4.02 Other Easements. Declarant, the Association and any other assignees or grantees of said party shall have the right and easement to use the surface (and below the surface) of Common Properties for the purposes set forth on the Plat. In addition, the Association shall have an easement on each Lot for the purpose of erecting signs (such as neighborhood crime watch or similar signs), as well as for access to, and ingress and egress from, all Common Properties for maintenance and other necessary or appropriate purposes. Any such entry by Declarant or the Association upon a Lot shall be made with as minimum inconvenience to the affected Owner as practical.

4.03 Obligation of Declarant. Declarant has installed and constructed, or caused to be installed and constructed, or will install and construct, various landscaping, fencing, irrigation equipment, entrance monuments and signage and related facilities as determined by Declarant in Declarant's sole discretion (but in keeping with a high-quality, custom, residential community). Declarant shall have no further obligation whatsoever to construct any additional improvements on the Property or maintain any of

the Common Properties, or otherwise fund or be liable for any matters concerning such improvements or the Common Properties or otherwise related to the Subdivision.

ARTICLE V
GENERAL POWERS AND DUTIES OF THE BOARD OF DIRECTORS

5.01 Powers and Duties. The affairs of the Association shall be conducted by the Board. The Board shall be selected in accordance with the Association Documents. The Board, for the benefit of the Common Properties and the Owners, shall provide, and shall pay for (if applicable), from Assessments, the following if and to the extent such have been or are hereafter provided by or contracted for by the Association or the Board as the Board determines in the Board's sole and exclusive discretion:

(a) Care, maintenance, repair and preservation of the Common Properties and the furnishing and upkeep of any desired personal property for use in the Common Properties;

(b) The Common Services;

(c) Any private trash and garbage collection service and security arrangements;

(d) Taxes, insurance and utilities which pertain to the Common Properties;

(e) The services of a Person or Persons 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 Association or by a manager designated by the Board;

(f) Legal, accounting and other professional services;

(g) Any other materials, supplies, labor, services, maintenance, repairs, structural alteration, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or which in the Board's sole and exclusive opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration; and

(h) The collection (as a part of the Regular Assessments) and payment of any assessments owed by an Owner or the Association under any other recorded deed restrictions, if any.

The Board shall have the following additional exclusive rights, powers and duties:

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

(j) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit;

(k) To perform any of the Board's duties under this Declaration by contracting with third parties, to enter into other contracts, to maintain one (1) or more bank accounts and, generally, to have all the powers necessary or incidental to the operation, functions and management of the Association;

(l) To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements;

(m) To make reasonable rules and regulations for the operation and use of the Common Properties and the Common Services and to amend them from time to time;

(n) To make available to each Owner within ninety (90) days after the end of the year an annual report of the Association commencing for the year 2013;

(o) To adjust the amount, collection and use of any insurance proceeds;

(p) To enforce the provisions of this Declaration and any rules made hereunder and, in the sole and exclusive discretion of the Board, to enjoin and seek damages from any Owner for violation of any such provisions or rules;

(q) To appoint members of the Architectural Control Committee as described in, and subject to the provisions of, Article VII hereof;

(r) To own fee simple title to, or an easement interest in, the Common Properties; and

(s) To perform such other duties and functions as are necessary to carry out the rights and obligations of the Board and the Association under this Declaration.

5.02 Insurance. The Association shall have the right and option to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, any improvements thereon or appurtenances thereto and the Common Services for the interest of the Association and of all Members thereof, in such amounts and with such endorsements and coverage as shall be considered good sound insurance coverage for properties similar in construction, location and use to the Common Properties and for services similar to the Common Services. Such insurance may include, but need not be limited to, the following:

(a) Insurance against loss or damage by fire and hazards (including flood insurance if required by law) covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier;

(b) Public liability and property damage insurance on a broad form basis;

(c) Fidelity bond for all officers and employees of the Association having control over the receipt and disbursement of funds; and

(d) Officers', directors' and Architectural Control Committee members' liability insurance.

The Association and the Members shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association remaining (after satisfactory completion of repair and replacement) shall be retained by the Association as part of a general reserve fund for repair and replacement of the Common Properties. If the insurance proceeds are insufficient to repair or replace any such loss or damage, the Association may levy Special Purpose Assessment(s) or Special Member Assessment(s) (if applicable) to cover any such deficiency.

5.03 Affiliated Contracts. The Board, acting on behalf of the Association, shall have the full power and authority to contract with any Owner, including, without limitation, Declarant, for the performance of services which the Association is obligated or authorized to obtain, such contracts to be at competitive rates then prevailing for such services and upon such other terms and conditions, and for such consideration as the Board may deem advisable in the Board's sole and exclusive discretion and in the best interest of the Association provided that the level of service received is consistent with that available from third parties.

5.04 Liability Limitations. Neither Declarant nor any Member, director, officer or representative of the Association or the Board or the Architectural Control Committee shall be personally liable for the debts, obligations or liabilities of the Association. The directors and officers of the Association shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, misconduct, bad faith, intentional wrongful acts or as otherwise expressly provided in the Association Documents. Declarant and such directors, officers and Architectural Control Committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association, as a Common Expense of the Association, shall indemnify and hold Declarant, such directors, officers and members of the Architectural Control Committee harmless from any and all expenses, loss or liability to others on account of any such contract or commitment (to the extent not covered by insurance proceeds). In addition, each director and each officer of the Association and each member of the Architectural Control Committee shall be indemnified and held harmless by the Association, as a Common Expense of the Association, from any expense, loss or liability to others (to the extent not covered by insurance proceeds) by reasons of having served as such director, officer or Architectural Control Committee member and against all expenses, losses and liabilities, including, but not limited to, court costs and

reasonable attorneys' fees, incurred by or imposed upon such director, officer or Architectural Control Committee member in connection with any proceeding to which such Person may be a party or have become involved by reason of being such director, officer or Architectural Control Committee member at the time any such expenses, losses or liabilities are incurred subject to any provisions regarding indemnity contained in the Association Documents, except in cases wherein the expenses, losses and liabilities arise from a proceeding in which such director, officer or Architectural Control Committee member is adjudicated guilty of willful misfeasance or malfeasance, misconduct or bad faith in the performance of such Person's duties or intentional wrongful acts or any act expressly specified in the Association Documents as an act for which any limitation of liability set forth in the Association Documents is not applicable; provided, however, this indemnity does cover liabilities resulting from such director's, officer's or Architectural Control Committee member's negligence. Any right to indemnification provided herein shall not be exclusive of any other rights to which a director, officer or Architectural Control Committee member, or former director, officer or Architectural Control Committee member, may be entitled. The Association shall have the right to purchase and maintain, as a Common Expense, directors', officers', and Architectural Control Committee members' insurance on behalf of any Person who is or was a director or officer of the Association or an Architectural Control Committee member against any liability asserted against any such Person and incurred by any such Person in such capacity, or arising out of such Person's status as such.

ARTICLE VI

USE OF THE PROPERTY - PROTECTIVE COVENANTS

6.01 General. No use shall be permitted on the Property which is not allowed under applicable public codes, ordinances and other laws either already adopted or as may be adopted by the City or other controlling public authorities. Each Owner, occupant or other user of any portion of the Property, shall at all times comply with this Declaration and with any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdictional control over the Property, specifically including, but not limited to, applicable zoning restrictions placed upon the Property as they exist from time to time. IN SOME INSTANCES GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENT OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE PROVISION OF THE DECLARATION WOULD RESULT IN A VIOLATION OF MANDATORY APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NON-COMPLIANCE WITH PROVISIONS OF THIS DECLARATION. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE

PROVISIONS OF THIS DECLARATION BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL. All Lots shall be developed in accordance with this Declaration as this Declaration may be amended or modified from time to time as herein provided. The provisions of this Article set forth certain requirements which, in addition to the other provisions of this Declaration, shall apply with respect to the development and use of the Property.

6.02 Residential Use. All Lots shall be used and occupied for residential purposes only. No building or structure shall be erected, altered, placed or permitted to remain on any Lot other than a private residence unless approved in writing by the Architectural Control Committee. No building or structure on any Lot shall exceed two (2) stories in height.

6.03 Common Properties. The Common Properties shall be used only for the purposes set forth herein, including the purposes set forth in Article IV hereof.

6.04 Combining Lots. Any Person owning two (2) or more adjoining Lots, after first obtaining Declarant's prior written consent, which consent may be withheld in Declarant's sole discretion, may consolidate such Lots into a single building location for the purpose of constructing one (1) residential structure thereon and such other improvements as are permitted herein; provided, however, any such consolidation must comply with the rules, ordinances and regulations of the City. In the event of any such consolidation, the consolidated building lot shall continue to be treated as two (2) or more Lots for purposes of applying the provisions of this Declaration. Combining of portions of Lots into a single building lot is prohibited.

6.05 Minimum Floor Space.

(a) Each dwelling constructed on any Lot in Phase 1 shall contain a minimum of one thousand, seven hundred (1700) square feet of air-conditioned floor area, exclusive of all porches, garages or breezeways.

(b) Each dwelling constructed on any Lot in Phase 2 shall contain a minimum of one thousand, eight hundred (1800) square feet of air-conditioned floor area, exclusive of all porches, garages or breezeways.

(c) Each dwelling constructed on any other Lot north of 135th Street (other than Duplexes) shall contain a minimum of one thousand, eight hundred (1,800) square feet of air conditioned floor space, exclusive of all porches, garages or breezeways.

(d) Those Lots designated for Duplexes shall contain a minimum of one thousand, four hundred (1400) square feet of air-conditioned floor area (per side or per unit), exclusive of all porches, garages or breezeways per unit.

(e) Each dwelling constructed on any Lot in the Enclave shall contain a minimum of two thousand, three hundred (2300) square feet of air-conditioned floor area, exclusive of all porches, garages or breezeways.

(f) Each dwelling constructed on any Lot in the Estates shall contain a minimum of two thousand, five hundred (2500) square feet of air-conditioned floor area, exclusive of all porches, garages or breezeways.

6.06 Building Materials. The exterior walls of each building constructed or placed on a Lot shall be entirely of brick, brick veneer, stone, stone veneer, wood or other material that is approved by the City and approved in writing by the Architectural Control Committee. Stucco may be used on the exterior walls in combination with an approved material but shall not be used to cover an entire wall. All soffits and fascia must be constructed from wood or hardy plank (no vinyl soffits or fascia will be permitted). No pressboard, metal siding, corrugated or galvanized siding (or any imitation material thereof) shall be allowed. No brick, stone or other material used on the exterior of any building, outside wall, fence, walkway or other improvement or structure on any Lot shall be stained or painted without the prior written approval of the Architectural Control Committee. All chimneys shall be constructed of brick, stone, wood, hardy plank or other material approved in writing by the Architectural Control Committee (in no event will a box with metal siding be allowed).

6.07 Driveways/Sidewalks. Each Lot must be accessible to an adjoining Street or alley by a concrete driveway unless other materials are approved in writing by the Architectural Control Committee. Concrete sidewalks must be installed on each Lot conforming with the requirements of the City.

6.08 Garages.

(a) Each single-family residential dwelling and each Duplex unit erected on any Lot shall provide garage space for a minimum of two (2) automobiles. Each garage shall open only to the alley side of the Lot so as not to directly face a Street unless otherwise approved in writing by the Architectural Control Committee.

(b) For any Lot in the Estates, no garages may directly face a street unless otherwise approved in writing by the Architectural Control Committee.

6.09 Drainage.

(a) All Lots shall be graded so that no storm water drainage shall flow onto other Lots except as may be shown on the Plat.

(b) To the extent Declarant installs special storm water drainage, to the extent possible, drainage from roof downspouts and swimming pools shall be directed towards and shall tie into those special drainage facilities in a manner approved in writing by the Architectural Control Committee.

(c) Neither Declarant nor Declarant's successors or assigns shall be liable for any loss of, or damage done to, any shrubbery, grass, flowers, improvements, fences, sidewalks, driveways or buildings of any type or the contents thereof on any Lot or the Common Properties caused by any water levels, rising waters or drainage waters.

6.10 Roofs. The use of various roofing materials within the Property shall be permitted including composition roofs rated for a minimum twenty-five (25) year life; provided, however, no roofing material (including roof flashing) shall be installed without first obtaining the Architectural Control Committee's prior written approval thereof. The roof pitch of any structure shall be a minimum of six feet (6') by twelve feet (12'), unless otherwise approved in writing by the Architectural Control Committee.

6.11 Exterior Surfaces. All exterior surfaces which are painted or stained must be painted or stained in a compatible color approved by the Architectural Control Committee.

6.12 Building Lines/Setbacks; Retaining Walls.

(a) All residences erected on any Lot shall face the Street adjacent to the Lot as shown on the Plat or, with respect to corner Lots, as required in writing by the Architectural Control Committee. No portion of any such dwelling or residence shall be nearer to the front property line of said Lot than as designated on the Plat unless otherwise allowed by both the City and the Architectural Control Committee.

(b) Subject to the further restrictions set forth in Section 6.13(c) hereof, no structure or improvement of any kind (except for fences, as provided in Section 6.13 hereof) shall be nearer to the side property line or the rear property line of any Lot than as specified by the City for side and rear yard setbacks applicable to the Property unless otherwise allowed by both the City and the Architectural Control Committee. No structure or improvements of any kind whatsoever shall be located within any easement as shown on the Plat unless otherwise allowed by both the City and the Architectural Control Committee.

(c) To the extent Declarant has installed any retaining walls on any Lot or along any Lot line, such retaining walls shall not be part of the Common Properties, and each Owner of an affected Lot shall be responsible for the maintenance and repair of the portion of any retaining wall adjacent to, or located on, such Owner's Lot. No additional retaining walls shall be installed on any Lot unless approved in writing by the Architectural Control Committee.

(d) All residences erected on any Lot in Phase 1, Phase 2, Phase 3, Phase 4 or the Enclave shall have no structure or improvement of any kind (except for fences as provided herein) nearer to the side property line than 5 feet, provided further that any of such Lots that side to Memphis Avenue or Quaker Avenue shall have no structure or improvement nearer than ten (10) feet from such side lot line. No portion of any such

dwelling or residence shall be nearer to the front property line than twenty (20) feet, nor no nearer to the back property line than fifteen (15) feet, provided however, a one-story wing or extension of the house may extend to within five (5) feet of the rear property line, and a third-car garage that does not face the alley may extend to the property line.

(e) All residences erected on any Lot in the Estates shall include no structure or improvement of any kind (except for fences as provided herein) nearer to the side property line than five (5) feet, provided however, any Lot that sides to a street shall have no structure or improvement nearer than ten (10) feet from the side lot line. No portion of any dwelling or residence shall be nearer to the front property line than twenty-five (25) feet or nearer to the back property line than fifteen (15) feet.

6.13 Fences.

(a) The back or rear yard of each Lot shall be fenced within thirty (30) days of substantial completion of the construction of any improvements on the Lot. No fence, wall or hedge shall be erected, placed or altered on any Lot nearer to any Street than the minimum building setback line indicated on the applicable Plat, unless allowed by the City and approved in writing by the Architectural Control Committee. No fence, wall or hedge shall exceed eight feet (8') in height unless otherwise specifically required by the City and approved in writing by the Architectural Control Committee.

(b) No chain link fences or other wire type fences shall be erected on any Lot so as to be visible from any Street or the ground level on any adjoining Lot.

(c) Except as provided in Section 6.14(e) hereof, unless otherwise approved in writing by the Architectural Control Committee, all fencing shall: (i) be of wood material and present a solid, board to board, facing (i.e., picket type fencing or other staggered spacing type fencing is not permitted); provided, however, that all fences must have steel poles or posts; (ii) have a minimum height of six (6) feet; (iii) have slats measuring between four (4) inches and six (6) inches wide which are installed vertically only (not horizontally or diagonally); (iv) have an even flat top; and (v) not be painted or stained on any surface which is visible from the ground level of any Street or adjoining Lot; provided, however, a clear stain that does not add a color to the wood may be used. Notwithstanding the above, wrought iron of a design and color approved in writing by the Architectural Control Committee shall be allowed in lieu of the above required wood fencing.

(d) All fences for Lots 10, 11, 16 and 19-23 in Phase 1 and any Lot beyond Phase 1 which sides to Norfolk Avenue, Memphis Avenue, Louisville Avenue, Knoxville Avenue or Joliet Avenue (or any other north-south street as determined by Declarant in its sole discretion) must be approved in writing by the Architectural Control Committee and be built with brick or stone (which must match the brick or stone used in construction of the residence), wrought iron, or wood [which must have brick or stone pillars separating the wood sections and which such brick or stone pillars must be

constructed of brick or stone identical to that used on the residence and must be a minimum of nine feet (9') apart and a maximum of fifteen feet (15') apart].

(e) Where the fence or wall is an integral part of the architectural style or design of the home, and upon submission of a written request for same, the Architectural Control Committee may permit the construction of fences or walls which are in variance with the provisions of this Section from time to time and at its sole and exclusive discretion, taking into account the impact of the view from any Street, the adjacent Lot or any other Lot directly affected thereby.

(f) To the extent Declarant has installed any fencing along the back of Lots 20-23, inclusive, or the side of Lots 19 and 20, such fencing shall not be part of the Common Properties, and each Owner of an affected Lot shall be responsible for the maintenance and repair thereof.

(g) For Lots that side to a Street that generally runs north-south and where the side or backyard fence is closer to said street than the driveway off of the alley, said fencing shall have brick or stone pillars separating the wood sections and which such brick or stone pillars must be constructed with brick or stone identical to that used on the residence and must be a minimum of nine feet (9') apart and a maximum of fifteen feet (15') apart.

(h) With respect to any Lot within the Enclave, any fencing that sides to Memphis Avenue, Miami Avenue, Norfolk Avenue or any other street that generally runs north-south shall have brick or stone pillars separating the wood or other sections of the fencing and which such brick or stone pillars must be constructed with brick or stone identical to that used on the residence and must be a minimum of nine feet (9') apart and a maximum of fifteen feet (15') apart.

(i) Any fencing that sides to Memphis Avenue, Miami Avenue, Nashville Avenue or any other street that generally runs north-south shall have brick or stone pillars separating the wood or other sections of the fencing and which such brick or stone pillars must be constructed with brick or stone identical to that used on the residence and must be a minimum of nine feet (9') apart and a maximum of fifteen feet (15') apart.

6.14 Signs. No sign or signs shall be displayed to the Streets or otherwise to the public view on any Lot, except that:

(a) any builder, during the applicable initial construction and sales period, may utilize one (1) professional sign [of not more than nine (9) square feet in size] per Lot for advertising and sales purposes, provided that such sign first shall have been approved in writing by the Architectural Control Committee;

(b) a "for sale" or "for rent" sign [of not more than nine (9) square feet in size] may be utilized by the Owner of a Lot for the applicable sale or rent situation, provided

that such sign first shall have been approved in writing by the Architectural Control Committee;

(c) development related signs owned or erected by Declarant shall be permitted; and

(d) signs displaying the name of a security company shall be permitted, provided that such signs are (i) ground mounted, (ii) limited to two (2) in number per Lot [one (1) in the front yard and one (1) in the back yard] , and (iii) of a size not in excess of two (2) square feet in size.

6.15 Utilities.

(a) Each residence situated on a Lot shall be connected to the public water and sanitary sewer lines. No privy, cesspool or septic tank shall be placed or maintained upon or in any Lot. However, portable toilets will be allowed during building construction. Except as to street lighting (if any) installed by Declarant, all utility service facilities (including, but not limited to, water, sewer, gas, electricity and telephone) shall be buried underground (except meters, transformers, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities). All utility meters, equipment, air-conditioning compressors and similar items must be visually screened from view from any Street by solid masonry of the type used on the dwelling, wood fencing in compliance with Section 6.13 hereof or landscape shrubbery. Electric utility transformers may be installed only in locations designated on the Plat for such purpose or otherwise approved in writing by the Architectural Control Committee, and all improvements on a Lot on which an electric transformer pad easement is located as shown on the Plat must be installed in compliance with all electric company guidelines for separations from pad-mounted transformers. Notwithstanding the above, septic tanks shall be allowed on any Lot in the Estates other than those Lots which share a common alley with Lots in the Enclave.

(b) For any Lot in the Estates, other than the Lots on 139th Street which share a common alley with Lots in the Enclave, each residence shall utilize a private septic system for its sanitary sewer.

6.16 Temporary Structures. Subject to Section 6.30 hereof, no temporary structures of any kind shall be erected or placed upon any Lot without the prior written consent of the Architectural Control Committee.

6.17 Vehicles/Parking. All passenger vehicles belonging to Owners (or tenants occupying the dwelling upon any Lot in the Subdivision) must be parked in either the garage or the driveway. Said vehicles shall include operating automobiles, pickup trucks and vans. Any motorcycle, boat, trailer, motor home, camper or similar vehicle shall be stored or placed in such a manner that the vehicle is not visible from any Street or from ground level view from an adjoining Lot. Trucks with tonnage in excess of three quarters (3/4) ton shall not be permitted to park overnight on the Streets,

driveways or otherwise within the Property. No vehicle of any size which transports inflammatory or explosive cargo may be parked or stored within the Property at any time. On-Street parking is restricted to deliveries, pick-up or short-time guests and invitees and shall be subject to such reasonable rules and regulations as shall be adopted from time to time by the Board.

6.18 Garbage/Weeds. No Lot shall be used or maintained as a dumping ground for rubbish, trash or garbage. All garbage shall be kept in City-approved containers. All garbage containers shall be placed where designated by the City on the day of collection. If, at any time, and from time to time, an Owner shall fail to control weeds, grass or unsightly growth exceeding eight inches (8") in height, Declarant or the Board shall have the authority and right to go onto such Lot, or direct a third party service to go onto such Lot, for the purpose of mowing and cleaning such Lot and shall have the authority and right to assess and collect from the Owner of such Lot a sum not to exceed One Thousand and No/100 Dollars (\$1,000.00) for any such mowing or cleaning. Any such Assessments shall be Special Member Assessments.

6.19 Construction Completion Time. If a residence is not completed on any Lot on or before twelve (12) months from the start of construction, the Board shall have the authority and the right to assess and collect from the Owner of such Lot, as liquidated damages, the sum of One Hundred and No/100 Dollars (\$100.00) per day commencing the first (1st) day thereafter (such being a reasonable estimate of the Association's actual damages resulting from any such delays, which actual damages would be difficult to ascertain). Any such Assessments shall be Special Member Assessments.

6.20 Offensive Activities; Pets. No noxious or offensive activity shall be conducted on any Lot nor shall anything be done thereon which is or may become an annoyance or nuisance within the Property or any portion thereof. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that (a) dogs (excluding pit bulls and Rottweilers), cats or other household pets are permitted, provided that they are not kept, bred or maintained for commercial purposes.

6.21 Antennas and Aerials. No exterior antennas, aerials, satellite dishes, or other apparatus for the reception of television, radio, satellite or other signals of any kind shall be affixed or attached to any Lot, or any improvement thereon, without prior written approval by the Architectural Control Committee on transmissions. The Association, by promulgating this Rule, is not attempting to violate the Telecommunications Act of 1996 ("the 1996 Act"), as same may be amended from time to time. This provision shall be interpreted to be as restrictive as possible while not violating the 1996 Act, as amended from time to time.

6.22 Landscaping and Retaining Walls.

(a) Weather permitting, landscaping of a Lot must be completed within thirty (30) days after the date on which the residence thereto is ninety-five percent (95%) complete. In no event may a house constructed on a Lot be transferred from a home builder to an Owner unless and until all landscaping (including irrigation) has been

completed. The landscaping plan must be approved in writing by the Architectural Control Committee prior to any planting. Unless otherwise approved by the Architectural Control Committee, each Lot shall include (i) a sodded front yard, (ii) an underground sprinkler system for the front yard, (iii) 2 trees in the front yard, each with a minimum caliper width of 3 inches, (iv) a concrete landscape border between the house and the grassed area and (v) shrubbery and/or flowers planted in the area between the house and the grassed area.

(b) Xeriscaped yards or landscaping shall be subject to the written approval of the Architectural Control Committee.

(c) Retaining walls may be installed to achieve even grades for pools, driveways or house foundations or to prevent storm water drainage to flow onto other Lots as required by Section 6.10(a) hereof. Such retaining walls must be constructed of such materials and height, and in a manner and location, approved in writing by the Architectural Control Committee. No railroad ties or landscape timbers shall be approved.

(d) All Lots in the Estates (i) shall include at least 3 trees in the front yard, each with a minimum caliper width of 3 inches; (ii) shall be required to have a private water well for irrigation of its landscaping; (iii) fescue grass shall not be allowed on any part of the Lot; and (iv) a minimum of twenty percent (20%) of the total landscaped area of a Lot must be done with Xeriscape or some other type of landscaping that requires substantially less water than standard landscaping.

6.23 Exterior Lighting. Upon being given notice by the Architectural Control Committee that any exterior lighting is objectionable, as determined by the Architectural Control Committee in its sole and exclusive discretion, the Owner of the Lot on which same is located shall immediately remove any such lighting or shield the same in such a way that it is no longer objectionable to the Architectural Control Committee.

6.24 Tennis/Sport Courts. Tennis/Sport courts shall not be permitted upon any Lot without the prior written approval of the Architectural Control Committee.

6.25 Gazebos, Greenhouses and Storage Sheds.

(a) Gazebos, pool pavilions, trellises, greenhouses, children's playhouses, tree houses, storage sheds, any other detached accessory building or similar structures may not be erected or placed on a Lot without the prior written approval of the Architectural Control Committee.

(b) For any Lot in the Estates, any detached buildings (as described in subparagraph 6.25 (a) above) shall have the same brick or stone as the residence. Steel roofs shall be permitted on 2/12 pitch roofs; otherwise, the roof must be the same pitch and shingle as the residence.

6.26 Pools and Pool Equipment. No above-ground pools are permitted. All pool service equipment shall be either screened with shrubbery or fenced and located in either (a) a side yard between the front and rear boundaries of the dwelling or (b) in the rear yard.

6.27 Mail Boxes. Curb-side mail boxes are required and shall be constructed of a design and with materials compatible with the residence constructed on the Lot. No plastic or metal mail boxes will be allowed. Declarant may require each lot Owner to utilize a standard mail box (e.g. black cast iron) selected by Declarant for the entire Subdivision (or on a phase by phase basis).

6.28 Exterior Maintenance. Each Owner shall maintain the exterior appearance of the improvements on such Owner's Lot, shall keep all landscaping and sprinkler systems on such Owner's Lot in a neat, orderly and well-maintained condition and shall keep the sidewalk on such Owner's Lot in good condition and repair. The Board shall have no duty to police the Property for violations of this Section. However, if the Board, in the exercise of the Board's reasonable judgment, determines that such exterior maintenance does not meet such standards, then the Owner of such Lot shall be subject to the imposition of a Violation Fine in accordance with Section 9.11 of this Declaration.

6.29 Certain Declarant Uses. Notwithstanding anything herein to the contrary, Declarant may conduct Declarant's sales and marketing program for the Property from any permanent or temporary sales buildings or trailers and Declarant may conduct improvement work and activities on portions of the Property owned by Declarant or the Association and do all things reasonably necessary or convenient as required to expeditiously commence, continue and complete such improvement work including, but not limited to, the provision of temporary buildings (including, without limitation, trailers), temporary storage of construction materials and equipment and the installation of temporary signage of such types, in such sizes and at such locations on portions of the Property owned by Declarant or the Association as Declarant deems appropriate.

6.30 Construction Standards. All builders in the Subdivision must be licensed as such with the State of Texas. Any builder constructing improvements on any Lot may conduct such builder's construction operations and activities and do all things reasonably necessary as required to expeditiously commence, continue and diligently complete construction of any such improvements. All construction activities, temporary structures, storage of materials and equipment, construction-related parking and temporary security fences shall be confined entirely on such Lot. Each Owner is responsible for, and shall cause, through appropriate contractual provisions, all costs of cleaning up any debris or waste improperly disposed of anywhere on the Property. Each Owner and such Owner's contractors must maintain an attractive, clean, nuisance-free environment during the period of construction. Each Owner of a Lot on which improvements are being constructed shall keep all Streets reasonably cleared of mud and dirt left by construction vehicles for each Lot. Once commenced, all

construction on a Lot shall be continued with due diligence and good faith until completion.

6.31 Repairs, Replacements and Modifications. The provisions of this Article shall apply to any and all repairs, replacements or modifications of any improvements placed upon any Lot and shall not be deemed or construed as being limited to initial or new construction.

6.32 Basketball Goals. No basketball goal may be erected (either permanently or temporarily) so as to allow the playing of basketball in any of the Streets.

ARTICLE VII

ARCHITECTURAL CONTROL COMMITTEE

7.01 The Architectural Control Committee. Declarant shall appoint an initial Architectural Control Committee (herein so called) to consist of not fewer than three (3) persons. Declarant shall have the sole and exclusive right to appoint, remove and replace all members of the Architectural Control Committee for so long as Declarant or Declarant's Affiliates own at least one (1) Lot. Thereafter, the Architectural Control Committee members shall be appointed, removed and replaced by the Board.

7.02 Purpose of the Architectural Control Committee. A function of the Architectural Control Committee is to review and approve or disapprove Plans for improvements proposed to be constructed or modified on Lots and otherwise perform the duties set forth in this Declaration. NO IMPROVEMENTS (INCLUDING FENCING AND LANDSCAPING) SHALL BE ERECTED, CONSTRUCTED, PLACED, ALTERED, REMODELED, DEMOLISHED OR PERMITTED TO REMAIN ON A LOT UNTIL PLANS, IN SUCH FORM AND DETAIL AS THE ARCHITECTURAL CONTROL COMMITTEE MAY DEEM NECESSARY, SHALL HAVE BEEN SUBMITTED TO THE ARCHITECTURAL CONTROL COMMITTEE AND APPROVED BY IT IN WRITING. The vote of a majority of the members of the Architectural Control Committee shall be considered as the act of the Architectural Control Committee. The process of reviewing and approving Plans and specifications is one which of necessity requires that the Architectural Control Committee is called upon from time to time to make subjective judgments on items for which specific standards or guidelines are not expressly set forth in this Declaration. The Architectural Control Committee is given full power and authority to make any such subjective judgments and to interpret the intent and provisions of this Declaration in such manner and with such results as the Architectural Control Committee, in its sole and exclusive discretion, may deem appropriate, and in the absence of final adjudication by a court of competent jurisdiction that the Architectural Control Committee has abused its discretion, such action by the Architectural Control Committee shall be final and conclusive. Unless expressly stated otherwise herein, the Architectural Control Committee shall have the right to grant variances from the requirements of this Declaration as it, in its sole and exclusive judgment, deems appropriate. The Architectural Control Committee shall have the sole and exclusive discretion to determine whether Plans submitted to it for approval are

acceptable, and the Architectural Control Committee, Declarant or the Association shall be entitled and empowered to enjoin or remove any construction undertaken pursuant to Plans or other plans that have not been approved in writing by the Architectural Control Committee. The Subdivision is intended for residences with a traditional design. As such, the Architectural Control Committee shall have the right to disapprove designs of a contemporary nature.

7.03 Plans.

(a) The Architectural Control Committee shall have the right to disapprove any submitted Plans that are not in compliance with this Declaration, if they are incomplete or if the Architectural Control Committee determines that such Plans are deficient for any reason. The Architectural Control Committee may base its approval or disapproval on, among other things:

- (i) architectural character of all proposed improvements, taking into consideration the aesthetic quality of any structures with respect to height, form, exterior materials and roofing materials (with regard to type, scale, texture, color and durability);
- (ii) harmony of external design with improvements on other Lots;
- (iii) relation of topography, grade and finish ground elevations to that of adjoining Lots and drainage functions;
- (iv) screening of mechanical and other installations;
- (v) extent and quality of landscaped areas; and
- (vi) compliance with the purpose and general plan, intent and provisions of this Declaration.

(b) The Architectural Control Committee shall be available on a reasonable basis to meet with an Owner or such Owner's representatives to discuss and answer questions concerning proposed improvements and their compliance with this Declaration.

(c) An Owner desiring to construct or install any improvements on such Owner's Lot must submit to the Architectural Control Committee Plans, in duplicate, for such improvements that contain sufficient detail and information to show the following (the "Plans"):

- (i) general plan for the residence showing exterior shape, elevations, height, exterior materials, window locations, roofing, chimneys and colors of all exterior surfaces;

- (ii) Lot grading for drainage and retaining wall purposes;
- (iii) fencing, sidewalks and driveways;
- (iv) swimming pool(s);
- (v) landscaping;
- (vi) how matters specifically requiring Architectural Control Committee approval as provided in this Declaration are being addressed; and
- (vii) such other information as may be required by the Architectural Control Committee.

(d) The Plans submitted to the Architectural Control Committee must be the same plans submitted to the City for purposes of obtaining a building permit for the proposed improvements.

(e) Approval of the Plans shall be based upon a determination by the Architectural Control Committee as to whether or not in its judgment, such Plans adequately meet objectives established for the Subdivision with regard to design and aesthetic quality as well as meeting the requirements created by this Declaration. Approval of any Plans with regard to certain improvements shall not be deemed a waiver of the Architectural Control Committee's right, in its sole and exclusive discretion, to disapprove similar Plans, or any of the features or elements included therein, for any other improvements or to refrain from granting similar variances.

(f) If any submission of Plans is not complete or does not include all data required by this Declaration, the Architectural Control Committee, within twenty-five (25) days after such submission, shall notify the Owner of such deficiencies, and such Plans shall not be considered to have been submitted until such deficiencies have been corrected. At such time as the Plans meet the approval of the Architectural Control Committee, one (1) set of Plans will be retained by the Architectural Control Committee and the other set of Plans will be marked "Approved" and returned to the Owner or such Owner's designated representative, accompanied by a statement of complete approval or approval based on certain conditions. If the Plans are found not to be in compliance with this Declaration, one (1) set of such Plans shall be returned marked "Disapproved", accompanied by a statement of the items found not to comply with this Declaration or not to be acceptable to the Architectural Control Committee. Any modification or change to the approved Plans must again be submitted to the Architectural Control Committee for its inspection, review and approval. Should the Architectural Control Committee fail to approve or disapprove any Plans, properly presented by an Owner as provided above, within forty-five (45) days after submittal thereof to the Architectural Control Committee in a form and fully complete as required by the Architectural Control Committee, it shall be presumed that the Architectural Control Committee has approved such properly submitted Plans, unless prior to the end of the forty-five (45) day period,

the Architectural Control Committee shall have notified the Owner submitting such Plans in writing that an additional time period, not to exceed fifteen (15) days, is needed for further inspection and review, after which such additional period it shall be presumed that approval has been given absent specific disapproval in writing having been given by the Architectural Control Committee during such additional review period.

(g) An Owner may prepare detailed plans and specifications that do not vary from or modify the Plans that have been approved by the Architectural Control Committee. Improvements may be constructed or installed on a Lot only in conformance with such approved Plans. If work is not commenced within six (6) months from the date of Architectural Control Committee approval of the Plans, then the approval given by the Architectural Control Committee pursuant to this Article shall be deemed revoked by the Architectural Control Committee, unless the Architectural Control Committee extends in writing the time for commencing such work.

(h) Upon submission of a written narrative request for same, the Architectural Control Committee may, from time to time, in its sole and exclusive discretion, permit Owners to construct, erect or install improvements which are in variance from this Declaration. In any case, however, such variances shall be in basic conformity with and shall blend effectively with, the general architectural style and design of the Subdivision. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests. The grant of a variance to any Owner shall not constitute a waiver of the Architectural Control Committee's right to strictly enforce this Declaration against any other Owner or against the same Owner for any other matter. Each such written request must identify and set forth in narrative detail the specific restriction or standard from which a variance is sought and describe in complete detail the exact nature of the variance sought. Any grant of a variance by the Architectural Control Committee must be in writing and must identify in narrative detail both the standard from which a variance is being sought and the specific variance being granted. The failure of the Architectural Control Committee to act on a variance request within any particular period of time shall not constitute the granting or approval of any such variance request.

(i) If, in connection with Declarant's or the Architectural Control Committee's review of the Plans submitted by an Owner, Declarant or the Architectural Control Committee utilizes the services of a third-party architect, Declarant or the Architectural Control Committee may charge Owner a fee (up to a maximum of One Thousand Dollars (\$1,000.00)) to cover the cost of said services.

(j) The Architectural Control Committee may from time to time publish, promulgate and amend architectural standards' bulletins.

7.04 Inspections. The Architectural Control Committee, or its designees, shall have the right during reasonable business hours to enter upon and inspect any Lot or improvements then under construction to determine whether or not the Plans therefor have been approved by the Architectural Control Committee. If the Architectural Control

Committee shall determine that such Plans have not been approved or that the Plans which have been so approved are not being substantially complied with, the Architectural Control Committee may, in its sole and exclusive discretion, give the Owner of such Lot and improvements written notice to such effect, and, thereafter, the Board, Declarant or the Architectural Control Committee, on behalf of the Association, shall be entitled to enjoin further construction and to require the removal or correction of any work in place that does not comply with the approved Plans. If any improvements shall be altered or replaced on any Lot otherwise than in substantial conformity with the approved Plans therefor, such action shall be deemed to have been undertaken without requisite approval of the Architectural Control Committee and to be in violation of this Declaration; and the Board, Declarant or the Architectural Control Committee, on behalf of the Association, shall be entitled to take action as permitted under this Declaration with respect thereto.

7.05 Interior Alterations. An Owner may make improvements and alterations within the interior of such Owner's residence without first obtaining Architectural Control Committee approval, provided such interior improvements and interior alterations do not change the exterior appearance of any improvements, including, without limitation, changes in window locations, window design or window materials.

7.06 Changes. No construction or installation of improvements on a Lot that is inconsistent with, in addition to, or materially different from, any previously approved Plans shall be commenced or permitted until the Plans reflecting any and all such changes or additions have been submitted to, and approved by, the Architectural Control Committee in accordance with this Article; provided, however, no such approval is required for changes within the interior of any building that do not in any way change the exterior appearance.

7.07 Limitation on Liability. Declarant, the Association, the Board (or any of its members) and the Architectural Control Committee (or any of its members), shall not, individually or in combination, be liable in damages (or otherwise) to any Person submitting plans or specifications for approval or to any Owner of any portion of the Property, by reason of subjective decisions, mistake in judgment, negligence or nonfeasance arising out of, or in connection with, the approval or disapproval or failure to approve or to disapprove any plans submitted; provided, however, this provision does not apply to acts of willful misfeasance or malfeasance, misconduct, bad faith, intentional wrongful acts or to any act expressly specified in the Association Documents as an act for which any limitation of liability set forth in the Association Documents is not applicable. Declarant, the Association, the Board (or any of its members) and the Architectural Control Committee (or any of its members) shall not, individually or in combination, be liable in damages (or otherwise) in connection with any construction, design, engineering or defect associated with any improvement (or otherwise) constructed on the Property. APPROVAL OF PLANS BY THE ARCHITECTURAL CONTROL COMMITTEE DOES NOT CONSTITUTE ANY WARRANTY OR REPRESENTATION OF ANY KIND OR CHARACTER THAT SUCH PLANS COMPLY WITH GOVERNMENTAL REQUIREMENTS OR GOOD AND PRUDENT DESIGN,

ENGINEERING AND CONSTRUCTION PRACTICES. IT IS THE SOLE AND EXCLUSIVE RESPONSIBILITY OF THE OWNER TO DETERMINE AND SEE THAT SUCH OWNER'S PLANS AND SPECIFICATIONS COMPLY WITH ALL SUCH REQUIREMENTS AND PRACTICES.

ARTICLE VIII

EASEMENTS AND MAINTENANCE OF COMMON PROPERTIES

8.01 Utility Easements. Declarant, the Association and providers of utility services to the Subdivision shall have, and are hereby granted easements for installation, maintenance, repair, removal and operation of utilities and drainage facilities on, under and across the Easement Areas and for the removal of any obstruction that may be placed in such Easement Areas that would constitute interference with the use of any such easement, or with the use, maintenance, operation or installation of any such utility. The City or the utility company exercising such easement rights shall promptly repair any damage to landscaping, sprinkler systems or other improvements resulting therefrom; provided, however, neither the City nor any utility company shall have any obligation to repair any improvements installed in any Easement Areas that are prohibited by the Plat.

8.02 Responsibilities of the Association for Maintenance of the Common Properties. The Association shall have the sole responsibility to maintain the Common Properties. The Association's costs of maintaining the Common Properties will be collected from the Owners through Assessments as provided in Article III hereof. The Association shall not seek, by either act or omission, to abandon the Association's obligations as established by this Declaration to maintain the Common Properties. The Association shall have a maintenance easement for the purpose of maintaining the Common Properties as set forth herein.

8.03 Other Easements. Declarant and the Association shall have an easement and full right of ingress and egress at all times over and upon the Property for the exercise of any and all rights, functions, duties and obligations set out in this Declaration. Any such entry by Declarant or the Association upon a Lot shall be made with as minimum inconvenience to the affected Owner as practical.

8.04 Maintenance Reserve Fund. In order to provide for the maintenance obligations contained herein, Declarant shall establish a maintenance reserve fund in an amount equal to three (3) months dues based on full membership in the Association for the maintenance of the Common Properties. Thereafter, the Association shall maintain such fund in an amount the Board shall, in its sole and absolute discretion, determine to be sufficient.

ARTICLE IX

GENERAL PROVISIONS

9.01 Binding Effect and Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, shall be binding on all Owners and shall inure to the benefit of and be enforceable by Declarant, the Association, legal representatives thereof, and successors and assigns, and shall be and remain in effect for a period of twenty-five (25) years from and after the date of the filing of this Declaration, after which time this Declaration shall automatically be extended for three (3) successive periods of ten (10) years each, unless, prior to any renewal date, an instrument executed and duly acknowledged by Owners owning, in the aggregate, at least ninety percent (90%) of all Lots has been filed for record with the County Clerk of Lubbock County, Texas, thereby abolishing this Declaration.

9.02 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the sole and exclusive opinion of the Board, will best effect the intent of Declarant's general plan of development as reflected in this Declaration. The Board shall have the right power and authority to determine all questions arising under or in connection with this Declaration and to construe and interpret the provisions thereof, and any determination, construction or interpretation made by the Board, in the absence of an adjudication by a court of competent jurisdiction that any such action was an abuse of discretion, shall be binding on the Owners. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the office of the County Clerk of Lubbock County, Texas. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer. The singular wherever used herein shall be construed to mean the plural when applicable and vice versa, and the use herein of any gender shall mean any other gender when applicable. Any and all exhibits referred to herein and attached hereto are made a part hereof by reference. This Declaration shall be construed under, and in accordance with, the laws of the State of Texas.

9.03 Amendments. Except as otherwise provided in this Section, this Declaration, or any provisions hereof, may be terminated or amended as to any portion of the Property only by a document duly executed and acknowledged by Owners holding, in the aggregate, at least seventy-five percent (75%) of the votes of all Members (both classes of Members) present at a duly called meeting at which a Regular Quorum is present. No such termination or amendment shall be effective until a written instrument setting forth the terms thereof has been executed by the Secretary (herein so called) of the Association confirming the vote of the Members adopting such termination or amendment as required above and filed for record with the County Clerk of Lubbock County, Texas. Notwithstanding the above, Declarant, without the joinder of

any other party, shall have the sole and absolute right to make minor changes or amendments to this Declaration, as determined by Declarant from time to time, to correct or clarify errors, omissions, mistakes or ambiguities contained herein. Further, notwithstanding the above, no amendments shall be made to the following provisions of this Declaration unless such have been first approved by Owners owning at least twenty (20) Lots plus Declarant [for so long as Declarant owns at least one (1) Lot] evidenced by the execution of any such amendment by such Owners and Declarant (if applicable):

(a) changing the provisions requiring membership in the Association as provided in Section 2.02 hereof,

(b) changing the allocation of voting rights as provided in Section 2.03 hereof;

(c) changing the definitions of a Regular Quorum and Special Quorum as provided in Section 2.05 hereof;

(d) changing the type of, and basis for, allocation of Assessments as provided in Article III hereof;

(e) changing the provisions regarding the subordination of the Assessment Lien as provided in Section 3.10 hereof;

(f) changing the provisions regarding affiliated contracts as provided in Section 5.03 hereof; or

(g) changing this Section.

9.04 Enforcement. Declarant, the Association and the Owners shall have the right, but not the obligation, to enforce the covenants and restrictions set out in this Declaration. Enforcement may be made by any proceedings at law or in equity against any Person violating or attempting to violate any part of this Declaration, as such may be amended or modified, to restrain or enjoin violations thereof, to recover damages or to seek such other relief available pursuant to applicable law. Damages shall not be deemed adequate compensation for any breach or violation of any provision of this Declaration, and Declarant, the Association and each Owner (and any lessees, tenants or other occupants of any Owner's Lot) shall be entitled to relief by way of injunction, as well as any other remedy either at law or in equity. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs from the non-prevailing party. The rights, powers and remedies provided in this Declaration shall be cumulative and not restrictive of any other remedies at law or in equity, and the exercise by a Person of any particular right, power or remedy shall not be deemed an election of remedies or to preclude such Person's resort to other rights, powers or remedies available to any such Person.

9.05 No Waiver or Obligation to Enforce. No delay or failure on the part of Declarant, the Association or any Owner to invoke any available right, power or remedy with respect to a breach of this Declaration shall be held to be a waiver by that party (or estop that party from asserting) any right, power or remedy available to such party upon the recurrence or continuance of said breach or the occurrence of a different breach. Declarant and the Association, or its officers or Board, shall not be under any obligation to take any action to enforce the terms of this Declaration.

9.06 Liens/Validity and Severability. Violation of or failure to comply with this Declaration shall not affect the validity of any mortgage, lien or other similar security instrument which may then be existing on any Lot. Invalidation of any one (1) or more of the provisions of this Declaration, or any portions thereof, by a judgment or court order shall not affect any of the other provisions or covenants herein contained, which such other provisions and covenants shall remain in full force and effect.

9.07 Owner/Occupant Records. Except for those Owners who purchase Lots from Declarant, any Person, on becoming an Owner of a Lot, shall immediately furnish the Board a true and correct copy of the recorded instrument of conveyance vesting such ownership in said Owner. It shall be the responsibility of the Owner (and a non-Owner occupant of a Lot, if any) to keep such information current and to advise the Association of any changes.

9.08 Notices. Any notice required to be given to Declarant, the Association or any Owner under the provisions of this Declaration shall be deemed to have been properly delivered when actually delivered by hand-delivery or three (3) days after any such notice has been deposited in the United States Mail, postage prepaid, certified or registered mail, return receipt requested, addressed (a) for notice to an Owner to the address of the Owner as shown on the records of the Association at the time of such mailing, and (b) for notice to Declarant or the Association to 17103 Preston Road, Suite 225, Dallas, Texas 75248; Attn: Mr. Rex F. Robertson, or at such other address specified by Declarant or the Association from time to time.

9.09 Mortgagees. The holder of a mortgage of any interest in a Lot (herein referred to as a "Mortgagee") shall be furnished with written notification from the Association of any default by the respective Owner of that Lot in the performance of obligations set forth in this Declaration provided that the Association has theretofore been furnished, in writing, with the correct name and correct address of such Mortgagee and a request to receive such notifications. No default by an Owner of a Lot under any provision of this Declaration shall affect any existing lien or mortgage on that Lot. A Mortgagee shall not be liable for Assessments made with respect to a Lot during any period in which its only interest in the Lot is that of a Mortgagee.

9.10 Approvals. No approval by Declarant, the Board or the Architectural Control Committee pursuant to the provisions hereof shall be effective unless in writing, except as otherwise expressly provided herein.

9.11 Imposition of Violation Fines. In the event that any Person fails to cure (or fails to commence and proceed with diligence to complete the work necessary to cure) any violation of this Declaration within ten (10) days after receipt of written notice from the Board designating the particular violation, the Board shall have the power and authority to impose upon that Person a fine for any such violation (herein referred to as a "Violation Fine") not to exceed One Thousand and No/100 Dollars (\$1,000.00). There shall be no limit to the number or the aggregate amount of Violation Fines which may be levied against a Person for the same violation. The Violation Fines, together with interest at the Default Rate of Interest and any costs of collection, including, but not limited to, reasonable attorneys' fees, shall be part of any such Violation Fine. Violation Fines shall be Special Member Assessments.

9.12 Approval by Lenders. By the execution of separate joinder documents Commercial State Bank, Security State Bank and First Capital Bank as the current owners and holders of Deeds of Trust on the Property, shall consent to the execution and recordation of this Declaration, and shall expressly subordinate said liens to this Declaration.

9.13 Option to Submit Additional Property or Withdraw Property.

(a) Declarant hereby reserves unto itself the option, which may be exercised in its sole discretion at any time and from time to time, to submit, or cause to be submitted the Additional Property (herein so called), to the covenants and restrictions of the Declaration and hereby cause the Additional Property to become a part of the Kelsey Park Project. This option may be exercised by Declarant at any time and from time to time until such time as Declarant's status as a Class B Member terminates as provided herein.

(b) The Additional Property submitted to this Declaration from time to time in the manner prescribed herein, shall be submitted and subjected to this Declaration by filing for record by Declarant and any such owner of the Additional Property submitted and subjected to this Declaration, a supplementary declaration of covenants and restrictions with respect to the Additional Property, which supplementary declaration shall extend the covenants and restrictions of this Declaration to the Additional Property, or the portion or portions thereof so submitted. Such supplementary Declaration may contain such complementary modifications of the covenants and restrictions contained in this Declaration and such other complementary additional provisions as may be necessary to reflect the different character, if any, of the Additional Property. In no event, however, shall such supplementary Declaration revoke, modify or add to the covenants and restrictions hereby made applicable to the Property unless specifically set forth therein and otherwise permitted elsewhere in this Declaration. Upon filing such supplementary declaration, the owner or owners of the Additional Property, or such portion or portions thereof

affected thereby, shall become members of the Association and such owners, and their successors in title, shall thereby acquire the rights and privileges granted herein to Members of the Association.

(c) Declarant hereby reserves unto itself the option, which may be exercised in its sole discretion at any time and from time to time, to withdraw, or cause to be withdrawn any property ("the Withdrawn Property") that was previously subject to the covenants and restrictions of the Declaration. This option may be exercised by Declarant at any time, and from time to time, until such time as Declarant's status as a Class B Member terminates as provided herein.

(d) The Withdrawn Property shall be identified and withdrawn from the covenants and restrictions of this Declaration by filing for record, by Declarant and any such owner of the Withdrawn Property, a Supplemental Designation of Withdrawn Property (herein so called). Upon the filing of such Supplemental Designation of Withdrawn Property, the owner or owners of the Withdrawn Property or such portion or portions thereof affected, shall cease to be members of the Association with respect to the Withdrawn Property and the Declarations will be of no further force and effect with respect to the Withdrawn Property.

[Signature Page Follows]

EXECUTED as of the 24 day of March 2015.

DECLARANT:

KELSEY PARK, LTD.,
a Texas limited partnership

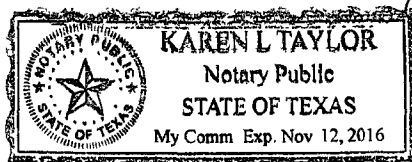
By: Ford Development Partners, LLC
a Texas limited liability company
Its: General Partner

By: [Signature]
Rex F. Robertson
Its: Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, in and for said State and County, on this day personally appeared **Rex F. Robertson**, who is the Manager of Ford Development Partners, LLC, a Texas limited liability company, which is the General Partner of Kelsey Park, Ltd., a Texas limited partnership, whose name is subscribed to the foregoing instrument and acknowledged to me that he signed, executed and delivered the above and foregoing instrument for said limited liability company and limited partnership, having been first duly authorized so do so.

March GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this 24th day of March 2015.



[Signature]
Notary Public, State of Texas

Notary's name printed _____
My Commission expires: _____

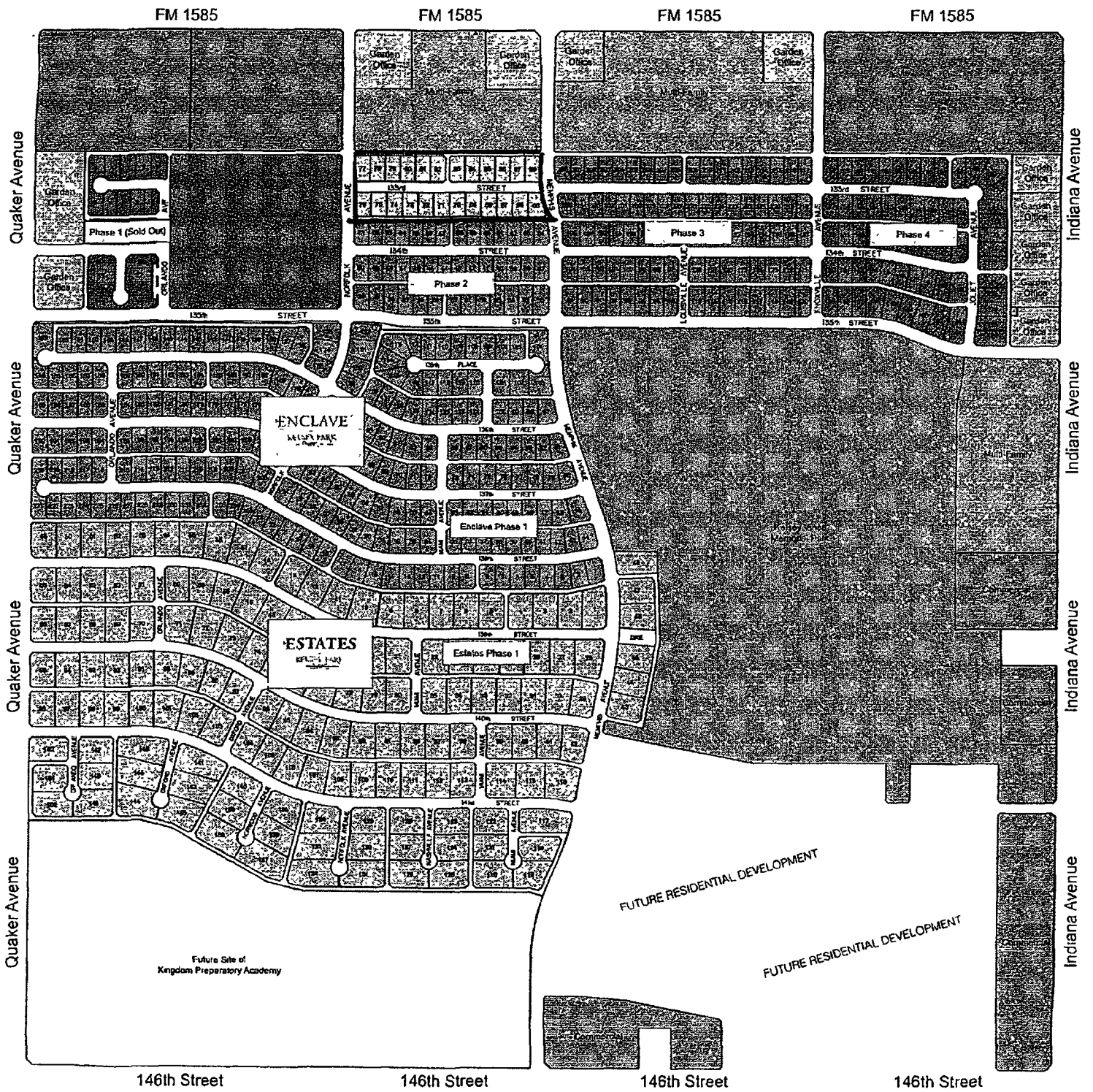


Exhibit B

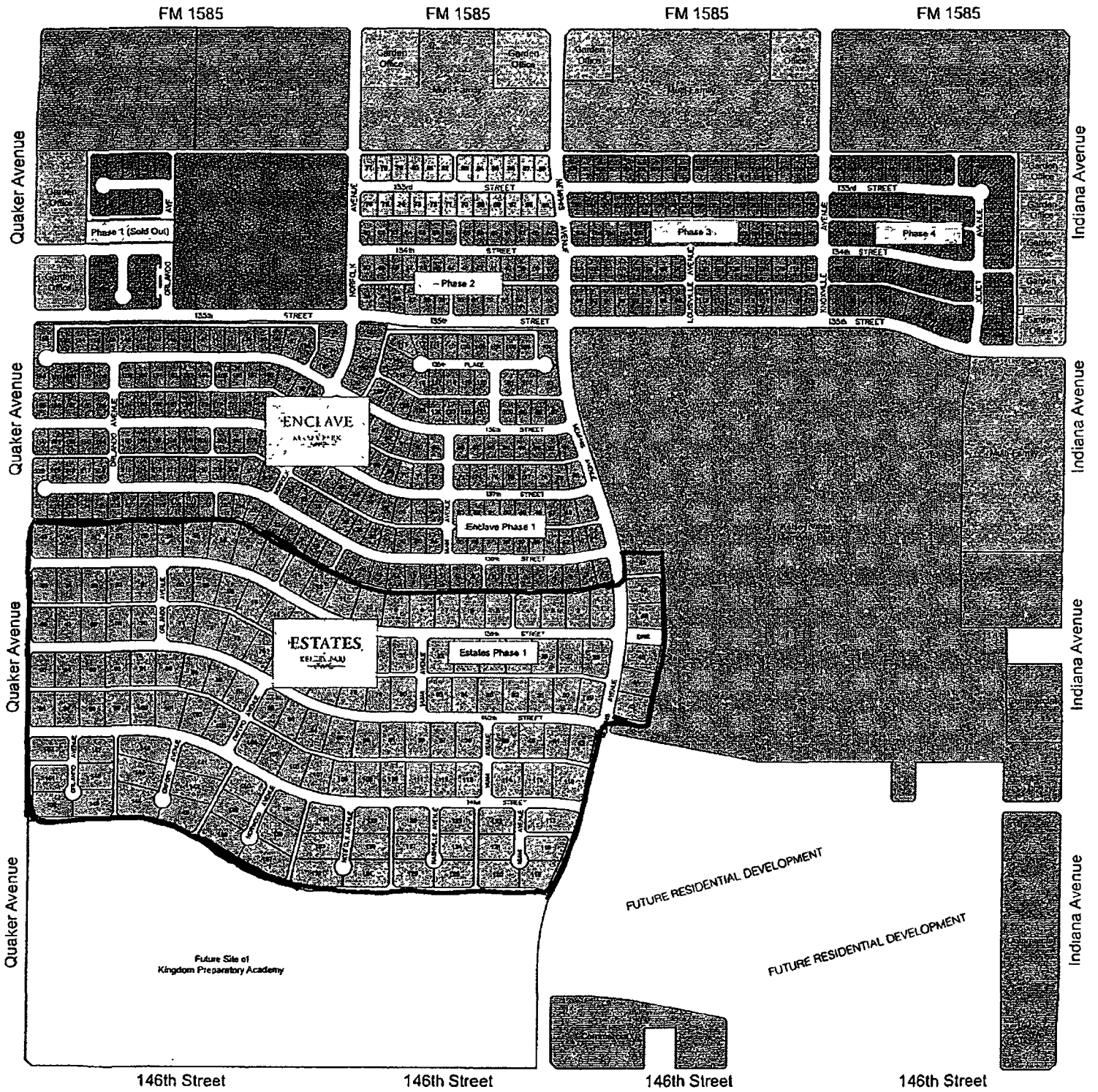


Exhibit D

After recording, return to:

D. Woodard Glenn, Esq.
D. Woodard Glenn, P.C.
2626 Cole Avenue, Suite 510
Dallas, TX 75204
(214) 871-9333

FILED AND RECORDED



OFFICIAL PUBLIC RECORDS

Kelly Pinion

Kelly Pinion, County Clerk

Lubbock County TEXAS

March 25, 2015 11:52:44 AM

FEE \$202.00

2015009610