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VOL. PG.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

KENSINGTON PARK, PHASE TWO

AN ADDITION TO THE CITY OF MIDLOTHIAN, TEXAS

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THE STATE OF TEXAS	§	
	§	KNOW ALL MEN BY THESE PRESENTS
COUNTY OF ELLIS	§	

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration"), made on the date hereinafter set forth by KENSINGTON PHASE TWO, L.P., a Texas limited partnership ("Declarant"), for the purpose of evidencing the covenants, conditions and restrictions contained herein.

WITNESSETH:

WHEREAS, Declarant is the owner of that certain real property in the City of Midlothian, County of Ellis, State of Texas and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property").

WHEREAS, Declarant desires to create an exclusive residential community to be know as KENSINGTON PARK, PHASE TWO on the Property and such other property as may be added thereto pursuant to the terms and provisions of this Declaration;

NOW THEREFORE, Declarant hereby declares that all of the Property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These easements, covenants, restrictions and conditions shall run with the Property and be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall insure to the benefit of Declarant and each Owner (hereinafter defined) thereof.

ARTICLE I

DEFINITIONS

1.1 ASSOCIATION. "Association" shall mean and refer to the KENSINGTON PARK, PHASE TWO HOMEOWNERS ASSOCIATION, INC., a Texas not-for-profit corporation to be established for the purposes set forth herein, its successors and assigns, the vehicle and agency which will have the power, duty and responsibility of maintaining and administering the Areas of Common Responsibility, collecting the disbursements and charges hereinafter prescribed, and administering and enforcing this Declaration. The Association shall, commencing on the date of recordation of this Declaration and continuing for an indefinite period of time, exist as an unincorporated association; at a point in time deemed appropriate by the Declarant, consistent with the objectives herein and the circumstances then existing, the Declarant will cause the Association to be incorporated as a non-profit corporation under the name set forth above (or another name depending on availability).

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1.2 AREAS OF COMMON RESPONSIBILITY. "Areas of Common Responsibility" shall mean Lot 22, Block 3, Lot 1, Block 13, and Tract A and Tract B, Kensington Park, Phase Two, according to the plat thereof as recorded in Cabinet 4, Slide 350, of the Map Records of Ellis County, Texas, and the subdivision perimeter landscaping and screening fencing or walls, all as shown on the Subdivision Plat (hereinafter defined) of the Property, and such other improvements, areas or tracts, if any, including screening walls and fencing, entrance monuments and signs and landscaping, as may be designated by the Declarant or the Board of Directors (herein so called) of the Association.

1.3 CITY. "City" shall mean the City of Midlothian, Texas.

1.4 DECLARANT. "Declarant" shall mean and refer to KENSINGTON PHASE TWO, L.P., a Texas limited partnership, and its successors and assigns, or the Kensington Park, Phase Two Homeowners Association, Inc., where Declarant has expressly provided for the transfer and assignment of its rights as Declarant hereunder. No person or entity purchasing one or more Lots (hereinafter defined) in the ordinary course of business shall be considered as "Declarant."

1.5 HOME. "Home" shall mean a single-family residential unit constructed on a Lot being a part of the Property, including the parking garage utilized in connection therewith and the Lot upon which the Home is located.

1.6 LIENHOLDER OR MORTGAGEE. "Lienholder" or "Mortgagee" shall mean the holder of a first mortgage lien, either on any Home and/or any Lot.

1.7 LOT. "Lot" shall mean and refer to a portion of the Property designated as a Lot on the Subdivision Plat of the Property, excluding common areas, streets, alleys and any Areas of Common Responsibility. Where the context requires or indicates, the term Lot shall include the Home and all other improvements which are or will be constructed on the Lot.

1.8 MEMBER. "Member" shall mean and refer to every person or entity that holds membership in the Association. The Declarant and each Owner shall be a Member.

1.9 OPEN SPACE. "Open Space" shall mean the Areas of Common Responsibility as defined herein and any land which shall be owned by the Association and/or designated as such on any recorded Plat of the Property. Lot 22, Block 3, Lot 1, Block 13, and Tract A and Tract B, Kensington Park, Phase Two, are designated areas of Open Space.

1.10 OWNER. "Owner" shall mean and refer to the record Owner, other than Declarant, whether one (1) or more persons or entities, of a fee simple title to any Lot and shall include the fee owner and homebuilder, but shall exclude those having such interest merely as security for the performance of an obligation. However, the term "Owner" shall include any Lienholder or Mortgagee who acquires fee simple title to any Lot which is a part of the Property, through deed in lieu of foreclosure or through judicial or non-judicial foreclosure.

1.11 PROPERTY, PREMISES OR DEVELOPMENT. "Property," "Premises" or "Development" shall mean and refer to all of that certain real property known as KENSINGTON PARK, PHASE TWO, according to the plat thereof as recorded in Cabinet 4, Slide 350, of the Map Records of Ellis County, Texas, and more particularly described on Exhibit "A" hereto and made a part hereof for all purposes, and additions or deletions thereto as permitted by this Declaration.

1.12 SUBDIVISION PLAT. "Subdivision Plat" shall mean or refer to the map or plat of the Property which has been filed in the Map or Plat Records of Ellis County, Texas, in which the Property is located, and as same may be amended from time to time.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

2.1 PROPERTY. The Property is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration. Every Owner shall be responsible to the Association and to the other Owners for the conduct of his family, guests, employees, agents, contractors, tenants and its tenants' family, guests, employees, agents and contractors on the Property and their compliance with the provisions of this Declaration. Nothing contained in this Declaration shall be understood or construed to prohibit or interfere with any rights, reservations or easements expressly granted herein to Declarant.

2.2 ADDITIONS TO THE PROPERTY. Additional land(s) may become subject to this Declaration in any of the following manners:

(a) The Declarant may add or annex additional real property, whether residential property, Areas of Common Responsibility or otherwise, to the scheme of this Declaration, without the consent of the Members, by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions (a "Supplementary Declaration") which shall extend the scheme of this Declaration to such property.

(b) In the event any person or entity other than the Declarant desires to add or annex additional real property to the scheme of this Declaration, such annexation proposal must have the prior written consent and approval of the majority of the outstanding votes of the Association, regardless of class.

(c) The annexations authorized by this Declaration shall be accomplished by executing and filing of record in the office of the County Clerk of Ellis County, Texas, in which the Property is located, a Supplementary Declaration or similar instrument with respect to the additional real property which shall extend the plan of this Declaration to such real property. Any Supplementary Declaration may contain such additions, deletions and/or modifications with respect to the additional property to the provisions of this Declaration as are not substantially inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration modify or add to the provisions of this Declaration as same relate to and affect the Property previously subject to this Declaration. Further, the rate of Assessment for and method of determining the assessed valuation of the annexed property shall not result in an Assessment substantially less than that affecting the Property previously subject to this Declaration, unless such annexed property and the owners thereof do not enjoy substantially all of the benefits of the Owners of the Property previously subject to this Declaration. Any additions made pursuant to subsections (a) and (b) of this Section 2.2, when made, shall automatically extend the jurisdiction, functions, duties and memberships of the Association to the properties added.

ARTICLE III

KENSINGTON PARK, PHASE TWO HOMEOWNERS ASSOCIATION, INC.

3.1 ESTABLISHMENT OF THE ASSOCIATION. The formal establishment of the Association will be accomplished by the filing of the Articles of Incorporation of the Association with the Secretary of State for the State of Texas and the subsequent issuance by the Secretary of State of the Certificate of Incorporation of the Association.

3.2 BOARD OF DIRECTORS. The affairs of the Association shall be administered by a Board of Directors which shall consist of a minimum of two (2) members. The initial Board of Directors shall be appointed by Declarant, and as long as Declarant owns any Lot subject to this Declaration, Declarant shall be entitled to remove existing members from and appoint replacement members to the Board of Directors. After the Declarant no longer owns any Lot subject to this Declaration, the removal and appointment of the members of the Board of Directors shall be governed by the By-Laws for the Association.

3.3 ADOPTION OF BY-LAWS. By-Laws for the Association will be established and adopted by the Board of Directors of the Association.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

4.1 MEMBERSHIP. Declarant, during the time it owns any Lot, and each person or entity who is a record Owner of a fee or undivided fee interest in any Lot shall automatically be a Member of the Association when created and each Owner must remain a member of the Association. The foregoing is not intended to include persons or entities whom or who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one (1) membership per Lot owned. Membership shall be appurtenant to and may not be separated from any ownership of any Lot which is subject to assessment by the Association. Transfer of ownership, either voluntary or by operation of law, shall terminate such Owner's membership in the Association, and membership shall then be vested in the transferee; provided, however, that no such transfer shall relieve or release such Owner from any personal obligation with respect to Assessments which have accrued and remain unpaid prior to such transfer.

4.2 VOTING RIGHTS. The Association shall have two (2) classes of voting membership:

(a) Class "A". The Class "A" Members shall be all Owners. The Class "A" Members shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class "B". The Class "B" Member shall be Declarant or its successors or assigns. The Declarant shall be entitled to ten (10) votes for each Lot it owns. Declarant shall cease to be a Class "B" Member and become a Class "A" Member entitled to one (1) vote for each Lot owned by Declarant when the total Class "A" votes outstanding exceeds the total Class "B" votes of Declarant.

4.3 NO CUMULATIVE VOTING. At all meetings of the Association, there shall be no cumulative voting. Prior to all meetings, the Board of Directors of the Association shall determine the total number of votes outstanding and entitled to vote by the Members.

4.4 CONDUCT OF AFFAIRS PRIOR TO INCORPORATION. During the period of time that the Association is unincorporated, the Declarant shall have the sole right and option to prescribe reasonable procedures for the meetings (if any) of the Members, provided, however, that prior to incorporation, without the approval of the Declarant, no Member (other than Declarant) shall have a right to vote on any matter, or to call any meetings of the Members of the Association. Except as specifically set forth in this Declaration, notice, voting and quorum requirements for all action to be taken by the Association (as an incorporated entity) shall be consistent with its Articles of Incorporation and By-Laws, as the same may be amended from time to time.

ARTICLE V

COVENANT FOR ASSESSMENTS

5.1 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be expressed in any such deed or other conveyance, covenants and agrees to pay to the Association: (i) annual assessments or charges for maintenance, taxes and insurance, (ii) special assessments for capital improvements, (iii) individual special assessments levied against individual Owners to reimburse the Association for extra cost for maintenance and repairs caused by the willful or negligent acts of the individual Owner and not caused by ordinary wear and tear, and (iv) a Transfer Fee (hereinafter defined) upon the closing of the sale of such Lot to such Owner (other than Declarant and the initial home builder). Such assessments (collectively, the "Assessments") are to be fixed, established and collected as provided herein. Assessments, together with such interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Lot and shall be secured by a continuing lien which is hereby created and impressed for the benefit of the Association upon the Lot against which each such Assessment is made. Each such Assessment, together with such interest costs and reasonable attorney's fees shall also constitute a personal obligation of the person or entity that was the record Owner of such Lot at the time of such Assessment. The personal obligation for delinquent Assessments shall not pass to successors in title unless expressly assumed by such successors; however, the lien upon the Lot shall continue until paid.

5.2 PURPOSE OF ASSESSMENTS. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners of the Lots, the improvement and maintenance of the Areas of Common Responsibility, to pay fifty percent (50%) of the expenses associated with operating and maintenance of the Park located at Lot 20, Block 3, Kensington Park, Phase One, and any other property designated by the Association, and for the performance and/or exercise of the rights and obligations of the Association arising hereunder. Assessments shall include, but not be limited to, funds to cover actual Association costs for all taxes, insurance, repair, replacement, maintenance and other activities as may from time to time be authorized by the Board of Directors; legal and accounting fees, and any fees for management services; expenses incurred in complying with any laws, ordinances or governmental requirements applicable to the Association or the Property; reasonable replacement of reserves and the cost of maintaining other facilities, including, but not limited to, mowing grass, grounds and pond care, sprinkler system, landscaping, and other charges required or contemplated by this Declaration and/or that which the Board of Directors of the Association shall determine to be necessary to meet the primary purpose of the Association, including the establishment of a reserve for repair, maintenance, and other charges as specified herein.

5.3 BASIS AND MAXIMUM OF ANNUAL ASSESSMENTS.

(a) Until and unless otherwise determined by the Association, the maximum regular monthly Assessment shall be $10.00 per Lot, payable annually on January 1st of each year.

(b) The maximum regular annual Assessment may be increased by an amount up to fifteen percent (15%) over the preceding year's maximum regular annual Assessment solely by the Board of Directors. Any increase over and above fifteen percent (15%) of the previous year's maximum regular annual Assessment shall be done only by the prior written approval of sixty-six and two-thirds percent (66-2/3%) of the outstanding votes (determined pursuant to Section 4.2 hereof) held by the Members at a meeting at which a quorum is present.

5.4 SPECIAL ASSESSMENTS. In addition to the regular annual Assessment authorized above, the Association may levy, in any assessment year, a special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the costs incurred by the Association pursuant to the provisions of this Declaration, provided that any such special Assessment shall have the prior written approval of sixty-six and two-thirds percent (66-2/3%) of the outstanding votes (determined pursuant to Section 4.2 hereof) held by the Members at a meeting at which a quorum is present. Any special Assessment shall be prorated based on the period of time the Owner owns the Lot during such year.

5.5 NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 5.3 AND 5.4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.3 and 5.4 hereunder shall be given to all Members not less than ten (10) days or more than twenty (20) days in advance of such meeting. At such meeting, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes entitled to be cast by the Members of the Association shall constitute a quorum. If the required quorum is not present, up to two (2) subsequent meetings may be called subject to the same notice requirements, however, the required quorum at the each subsequent meeting shall be sixty percent (60%) of the required quorum at the preceding meeting.

5.6 UNIFORM RATE OF ASSESSMENT. Both the regular annual and any special assessments shall be assessed at a uniform rate for all Lots, and shall commence and be due in accordance with the provisions of Section 5.7 hereof. Each Owner shall pay one hundred percent (100%) of the established Assessment for each Lot owned. Declarant shall pay twenty-five percent (25%) of the established Assessment for each Lot it owns.

5.7 DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES.

(a) The obligation to pay regular annual Assessments provided for herein shall commence on the first day of January of the first year next following conveyance of a Lot to an Owner. The Assessments shall be due on such payment dates as may be established by the Association. Assessments shall be due and payable on an annual basis unless otherwise designated by the Association.

(b) As long as Declarant is a Class "B" Member pursuant to Section 4.2 hereof, Declarant shall pay any deficiency arising as a result of the costs incurred by the Association in fulfilling its obligations hereunder exceeding the amount of Assessments payable by the Owners; provided, however, in such event, Declarant shall not otherwise be required to pay Assessments as per Section 5.6 above with respect to Lots owned by Declarant; and further provided, however, in no event shall Declarant be required to pay an amount which is in excess of one hundred percent (100%) of the established regular annual Assessment for each Lot it owns.

Notwithstanding any provision contained herein to the contrary, the amount of the deficiency which Declarant is responsible for pursuant to the preceding sentence shall not include any deficiency or deficit resulting from or attributable to the amount of delinquent Assessments which are due and owing by any Member to the Association (a "Member Delinquency"); however, the Declarant, may, at the Declarant's option, advance to the Association such amounts as may be necessary to fund any Member Delinquency and the amount thereof, together with interest thereon at the rate of twelve percent (12%) per annum, shall be a demand obligation owing by the Association to the Declarant, and may be deducted by the Declarant from any of the Association's funds in the possession of Declarant, or may be offset against Declarant's future obligations with respect to Assessments. When Declarant becomes a Class "A" Member, (i) Declarant shall not be responsible for payment of any deficiency outlined above, and (ii) upon the next occurring regular or special Assessment, Declarant shall at that time commence making such regular annual and/or special Assessments pursuant to Sections 4.3 and 5.4 hereof calculated on the number of Lots Declarant then owns.

(c) The regular annual Assessment for the first Assessment year shall be fixed by the Association prior to the sale of the first Lot to an Owner. Except for the first Assessment year, the Association shall fix the amount of the annual Assessment at least thirty (30) days in advance of each Assessment year, which shall be on a calendar year basis; provided, however, that the Association shall have the right to adjust the regular annual Assessment upon thirty (30) days written notice given to each Owner, as long as any such adjustment does not exceed the maximum permitted pursuant to Section 5.3 hereof. Written notice of the regular annual Assessment shall be given as soon as is practicable to every Owner subject thereto. The Association shall, upon demand at any time, furnish a certificate in writing signed either by the President, Vice President or the Treasurer of the Association setting forth whether the annual and special Assessments on a specified Lot have been paid and/or the amount of any delinquency. A reasonable charge may be made by the Association for the issuance of these certificates. Such certificates shall be conclusive evidence of payment or delinquency of any Assessment therein stated.

(d) No Owner may exempt himself from liability for Assessments by waiver of the use or enjoyment of any portion of the Development or Open Space or by abandonment of such Owner's Home.

5.8 EFFECT OF NON-PAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION.

(a) All payment of Assessments shall be made to the Association at its principal place of business as the Association may direct or permit. Payment shall be made in full regardless of whether any Owner has any dispute with Declarant, the Association, any other Owner or any other person or entity regarding any matter to which this Declaration relates or pertains. Payment of the Assessments shall be both a continuing affirmative covenant personal to the Owner and a continuing covenant running with the Property. All Assessments together with late charges, service charges and interest thereon, shall be a continuing debt secured by and thereby is hereby impressed a lien against each of the Lots to secure repayment of the Assessments and such other sums.

(b) Any Assessment provided for in this Declaration, which is not paid when due, shall be delinquent. If any such Assessment is not paid within fifteen (15) days after the due date of such Assessment, the Assessment shall bear interest from the date of delinquency, until paid, at the maximum rate per annum allowed by law or eighteen percent (18%) per annum, whichever is

less, and in addition thereof, a late charge may be assessed by the Board of Directors against the non-paying Owner for each month that any portion of any Assessment remains unpaid. The initial late charge shall be $25.00. Such amount may be adjusted from time to time by the Board of Directors. The Board of Directors may also assess a service charge in the amount of $35.00 for each check that is returned because of insufficient funds, which amount shall also be subject to adjustment from time to time by the Board of Directors. The Association may, at its option, bring an action at law against the Owner personally obligated to pay the same; or, upon compliance with the notice provisions hereof, foreclose the lien against the Lot as provided in Subsection 5.8(d) hereof. There shall be added to the amount of such Assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include accrued interest and reasonable attorney's fees, together with the costs of such action. Each Owner vests in the Association or its assigns, the right and power to bring all actions at law or in equity foreclosing such lien against an Owner, and the expenses incurred in connection therewith, including interest, costs and reasonable attorney's fees shall be chargeable to the Owner in default. Under no circumstances, however, shall Declarant or the Association be liable to any Owner or to any other person or entity for failure or inability to enforce or attempt to enforce the collection of any Assessment.

(c) No action shall be brought to foreclose said Assessment lien or to proceed under the power of sale herein provided in less than thirty (30) days after the date a notice of claim of lien is deposited with the postal authority, certified or registered, postage prepaid, to the Owner of said Lot, and a copy thereof is recorded by the Association in the Office of the County Clerk of Ellis County in which such Lot is located. Said notice of claim must recite a good and sufficient legal description of the Lot, the record Owner or reputed Owner thereof, the amount claimed (which may, at the Association's option, include interest on the unpaid Assessment at the maximum legal rate, plus reasonable attorney's fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the Association.

(d) Any such sale provided for above is to be conducted in accordance with the provisions applicable or the exercise of powers of sale in mortgages and deeds of trust, as set forth in Section 51.002 of the Property Code of the State of Texas, or in any other manner permitted by law. Each Owner, by accepting a deed to a Lot, expressly grants to the Association a power of sale as set forth in said Section 51.002 of the Property Code, in connection with the Assessment lien. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale and, upon successful bid at such sale, acquire and hold, lease, mortgage and convey the same.

(e) Upon the timely curing of any default for which a notice of claim of lien was filed by the Association, the officers of the Association are hereby authorized to file or record, as the case may be, an appropriate release of such notice, upon payment by the defaulting Owner of a reasonable fee, to be determined by the Association for the preparation and recording the lien and the release.

(f) The Assessment lien and the right to foreclosure sale hereunder shall be in addition to and not in substitution of all other rights and remedies which the Association and its successors or assigns may have hereunder and by law, including the right of suit to recover a money judgment for unpaid Assessments, as above provided.

5.9 TRANSFER FEES. Each purchaser of a Lot (other than Declarant and the "initial" home builder) shall pay to the Association a Transfer Fee (herein so called) in the amount of Twenty-Five and No/100 Dollars ($25.00), or such other amount as may be established by the Association from time to

time, at the closing of the sale of such Lot to such Owner. Such Transfer Fee shall be due and payable to and shall be collected by the Association with respect to a Lot at the time of each and every transfer of title for such Lot, except the "initial" Lot sale to the first home builder.

5.10 SUBORDINATION OF THE LIEN TO FIRST MORTGAGES. The lien securing the Assessments and other charges provided for herein shall be subordinate to the lien of any first lien mortgage. The sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot, pursuant to a decree of foreclosure or a non-judicial foreclosure under such first lien mortgage or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such Assessments as to the payment thereof which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due, in accordance with the terms herein provided.

5.11 MANAGEMENT AGREEMENTS. The Association shall be authorized to enter into management agreements with third parties in connection with the operation and management of the Association and the performance of its obligations hereunder. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be cancelled with or without cause and without penalty by either party within thirty (30) days written notice. Any and all management agreements shall be for a term not to exceed one (1) year and shall be made with a professional and responsible party or parties with proven management skills and experience managing a project of this type. The Association may, at its discretion, assume self-management of the Property.

5.12 INSURANCE REQUIREMENTS. The Association through the Board of Directors, or its duly authorized agent, shall obtain insurance policies covering the Areas of Common Responsibility and covering all damage or injury caused by any negligence of the Association, any of its employees, officers, directors and/or agents, commercial general liability insurance, directors and officers liability insurance, and such other insurance as the Association may from time to time deem necessary or appropriate.

ARTICLE VI

OPEN SPACE

6.1 USE OF OPEN SPACE. The Declarant and/or Association shall be entitled to construct such improvements on the Open Space (Lot 22, Block 3, Lot 1, Block 13, and Tract A and Tract B, Kensington Park, Phase Two) as the Declarant and/or Association may deem appropriate, subject to any limitations set forth on the Subdivision Plat and to requirements of the City. The foregoing shall not imply any obligation on the part of the Declarant or the Association to provide any particular enhancement to the Open Space or render the Association in any way responsible for the actions of any Members or other parties on or in connection with the Open Space, unless such actions are undertaken at the written instructions of the Association. The Association shall have the following rights with regard to the Open Space:

(a) the right to dedicate or transfer all or any part of the Open Space to any public agency or authority subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless (i) an instrument of agreement to such dedication or transfer, signed by Members entitled to vote two-thirds (2/3) of the outstanding votes of the Association is property recorded in the Real Property Records of Ellis County in which such Open Space is located, and (ii) a written notice of proposed action under this Section is sent to

every Owner not less than thirty (30) days, nor more than sixty (60) days in advance of said action;

(b) the right to borrow money to be secured by a lien against the Open Space. However, the rights under such improvement mortgage shall be subordinate and inferior to the rights of the Owners hereunder; and

(c) the right to enter upon and make rules and regulations relating to the use of the Open Space.

6.2 TITLE TO THE OPEN SPACE. The Declarant shall dedicate and convey to the Association (at such time Declarant shall deem appropriate but in any event within one (1) year after the initial conveyance of a Lot to an Owner), without consideration, the fee simple title to any Open Space owned by Declarant free and clear of monetary liens and encumbrances other than those created in this Declaration.

ARTICLE VII

ARCHITECTURAL REVIEW COMMITTEE

7.1 CONSTRUCTION. No building or structure, fence, wall, parking area, swimming pool, spa, flag or antenna pole, mail box, driveway, fountain, pond, tennis court, sign, exterior illumination, change in exterior color or shape, new structure or modification of an existing structure shall be commenced, erected or maintained upon any Lot or patio or garage used in connection therewith, nor shall any exterior addition to or change or alteration thereof be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same are submitted to and approved in writing by the Architectural Review Committee (the "Committee" as hereinafter defined). The following shall be submitted for approval: a site plan showing the entire Lot with existing improvements, floor plan and elevations of all faces of the proposed structure; and a description of all exterior construction materials. NO CONSTRUCTION, ALTERATION, CHANGE OR MODIFICATION SHALL COMMENCE UNTIL APPROVAL OF THE COMMITTEE IS OBTAINED (EITHER THROUGH WRITTEN NOTICE OR WAIVER OF DISAPPROVAL, AS NOTED BELOW).

7.2 PLANS AND SPECIFICATIONS. Plans and specifications for all proposed improvements shall be submitted to the Committee at least thirty (30) days prior to the commencement of any construction or modification, a copy of which shall be retained by the Committee. The Committee shall review the plans and specifications and notify the Owner in writing of its approval or disapproval. If the Committee fails to approve or disapprove said plans and specifications within thirty (30) days after the same has been submitted to it, they will be deemed to have been approved by the Committee. Any disapproval shall set forth the elements disapproved and the reason or reasons thereof. The judgment of the Committee in this respect in the exercise of its sole and absolute discretion shall be final and conclusive and the Owner shall promptly correct the plans and specifications (if disapproved) and resubmit them for approval. The Committee may approve any waiver or deviation from the covenants, conditions and restrictions of this Declaration as the Committee, in its sole and absolute discretion, deems reasonable and consistent with the purpose hereof. No member of the Committee shall be personally liable to any Owner for any claims, causes of action or damages arising out of the denial of any submittal or grant of any deviation to an Owner. Future requests for deviations submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a deviation to any Owner shall not constitute a waiver of the Committee's rights to strictly enforce the Declaration and the architectural standards provided herein against any other Owner. Approval by the Committee of the plans and specifications or its determination that the completed construction or modification has been constructed in

accordance with the plans and specifications shall be deemed to be an acknowledgment by the Committee that such are in accordance with the covenants, conditions and restrictions of this Declaration and such acknowledgment shall be binding against the Owners of the Lots and the Property. Notwithstanding anything to the contrary contained herein, once a particular set of plans and specifications submitted by a homebuilder (which for purposes hereof shall be defined as any entity or person in the business of constructing single family residences for the purpose of sale to third parties) has been approved by the Committee, or deemed approved, such homebuilder may construct homes in the Development on any Lot in accordance with such plans and specifications without the necessity of obtaining subsequent approvals therefor, so long as there are no major material changes in such plans and specifications.

7.3 THE COMMITTEE. The Committee shall be composed of three (3) representatives appointed by Declarant (during such time Declarant owns any Lot) and thereafter by the Association. For so long as Declarant owns a Lot, as vacancies in the Committee occur by resignation or otherwise, successor members shall be appointed by Declarant. Thereafter, the members of the Committee shall be appointed by the Board of Directors of the Association on an annual basis. In the event that the Board of Directors fails to designate members of the Committee within thirty (30) days after any vacancy appears thereon, then the remaining members of the Committee shall be entitled to appoint a successor to fill any vacancy for the remainder of such annual term. Members of the Committee may at any time and without cause, be removed by Declarant, or in accordance with the parameters above, by the Board of Directors of the Association. Neither the Declarant, the Association, the Board, the Committee nor any employees, officers, directors or members thereof shall be personally liable for damages or otherwise to anyone submitting plans and specifications for approval or to any Owner affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specification. Any errors in or omissions from the plans or the site plan submitted to the Committee shall be the responsibility of the Owner of the Lot to which the improvements relate, and the Committee shall have no obligation to check for errors in or omissions from any such plans, or to check for such plans' compliance with the general provisions of this Declaration, City codes, state statues or the common law, whether the same relate to Lot lines, building lines, easements or any other issue.

ARTICLE VIII

CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

8.1 RESIDENTIAL USE. All of said property shall be occupied and used for single family residential purposes only.

8.2 BUILDING SIZE. Each residence on each Lot shall contain not less than sixteen hundred (1600) square feet of fully enclosed floor area devoted to living purposes. Said floor are shall be exclusive of roofed or unroofed porches, terraces, garages, and other outbuildings and shall be computed from faces of exterior walls.

8.3 BUILDING MATERIALS. No dwelling shall be erected on a Lot of material other than brick, tiles, cement, concrete, stone or similar materials unless the above-named materials constitute at least eighty percent (80%) of the outside wall areas below the first floor plate line, excluding window and door areas, below gables or roof areas.

8.4 OUTBUILDINGS. No trailer, mobile home, modular home, tent, camper vehicle or temporary house shall be placed or erected on any Lot for use as a dwelling. No temporary buildings or structures of any kind may be placed on any Lot, except that the Declarant may grant permission for temporary buildings or structures to be placed on Lots for storage of materials during construction by the

persons doing such work and for a temporary sales office for Declarant or any other person engaged in the sale of Lots within the Property. If permission is granted, the temporary buildings or structures shall be removed within thirty (30) days after written notice from the Declarant to remove the buildings or structures.

8.5 FENCES, BOUNDARY PLANTINGS. No fence, wall or hedge shall be placed on any Lot nearer to any front street than is permitted for the house on said Lot and no fence, wall or hedge shall be placed on any portion of the site with a greater height than eight feet (8'). Should a hedge, shrub, tree or other planting be placed, or afterwards grown, so as to encroach upon adjoining property, such encroachment shall be removed upon request of the Owner of the adjoining property.

8.6 LANDSCAPING, GROUNDS MAINTENANCE. No Lot shall be used or maintained as a dumping ground for rubbish; trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for storage or disposal of such materials shall be kept in a clean and sanitary condition.

8.7 ANIMALS. No person owning any Lot or Lots shall keep domestic animals of a kind ordinarily used for commercial purposes on his/her property, and no person owning any Lot or Lots shall keep any animals in numbers in excess of that which he/she may use for the purpose of companionship for the private family, it being the purpose and intention hereof to restrict the use of said property so that no persons shall quarter on the premises horses, cows, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys or any other animals that may interfere with the quietude, health or safety of the community.

8.8 VEHICLES. No trailer, camper, boat or inoperable automobile shall be left on the street or within the front yard.

8.9 ANTENNAS/AERIALS. No radio, television or other aerial shall appear on the roof of any building and no such aerial shall be maintained on any Lot not containing a dwelling.

8.10 SIGNS. No sign of any kind shall be displayed to the public view on any Lot except:

(a) One sign of not more than five (5) square feet, advertising the property for sale or rent;

(b) Signs used by a Builder to advertise the property during the construction and sales period;

(c) Signs of such shape, size and location as the Declarant deems necessary for security control and to advertise the project.

8.11 OFFENSIVE ACTIVITY. No noxious or offensive trade or activity shall be carried on or upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

ARTICLE IX

MAINTENANCE

9.1 OPEN SPACE AND AREAS OF COMMON RESPONSIBILITY. The Association shall operate, maintain, repair and replace as is deemed necessary by the Association all improvements

including any landscaping, irrigation systems, fencing and retaining walls within the Areas of Common Responsibility.

9.2 DUTY OF MAINTENANCE. The Owners of each Lot and their tenants shall, at their sole cost and expense, keep their respective Lots and the improvements constructed thereon in a well-mannered, safe, clean and attractive condition at all times. Such maintenance includes, but is not limited to, the following:

(a) Prompt removal of all litter, trash, refuse and waste, including the prompt removal of any pet waste or excrements deposited at any time on such Lot as needed to avoid the accumulation of waste or excrement and to maintain such Lot in an odor free and clean condition. The Association shall be entitled to promulgate rules and regulations as needed to implement the foregoing in the event the Association in its discretion deems it appropriate to do so;

(b) Tree and shrub pruning, to the extent not the responsibility of the Association pursuant to other provisions of this Declaration;

(c) Watering landscaped areas;

(d) Keeping lawn and garden areas alive and attractive, free of weeds and other foreign growth, to the extent that such maintenance is not the responsibility of the Association pursuant to other provisions of this Declaration;

(e) Complying with all government, health and police requirements;

(f) Prompt repair of exterior damages to improvements; and

(g) Painting and repainting of improvements as often as is reasonably necessary to ensure the attractiveness and aesthetic quality of such Lot or Improvements as determined by the Committee. The approval of the Committee otherwise required herein shall not be required for such repainting so long as neither the color scheme nor the arrangements of the colors of any Improvements, nor the color of paint thereon is altered.

9.3 DESTRUCTION OF IMPROVEMENTS ON INDIVIDUAL LOTS. In the event of damage or destruction (total or partial) of the improvements on any individual Lot due to fire or any other cause, each Owner covenants and agrees to commence all necessary repairs, reconstruction or removal of the damaged improvements within ninety (90) days of the date the damage occurs and to complete such repairs, reconstruction or removal within a reasonable time after the commencement of such work.

9.4 ENFORCEMENT. If, in the opinion of the Association, any such Owner or tenant has failed in any of the foregoing duties or responsibility, then the Association may give such person written notice of such failure and such person must within ten (10) days after receiving such notice, perform the care or make arrangements with the Association for making the repairs and maintenance required. Should any such Owner fail to fulfill this duty and responsibility within such period, then the Association, through its authorized agent or agents, shall have the right and power to enter onto the premises and perform such care and maintenance, including, in the case of damaged improvements, causing the improvements to be removed and the Lot cleared, without any liability for damages for wrongful entry, trespass or otherwise to any person. The Owners and tenants of any part of the Property on which such work is performed shall jointly and severally be liable for the cost of such work (such costs constituting a special individual Assessment) and, upon written notice therefor, shall promptly reimburse the Association for such cost. Each Owner and tenant agrees by the purchase or occupation of the Lot, to pay

such statement within fifteen (15) days following receipt thereof. The costs incurred by the Association pursuant to the provisions of this Section shall be secured by a lien which shall have the same attributes as the lien for Assessments set forth in this Declaration, and the Association shall have identical powers and rights in all respects, including but not limited to, the right of foreclosure.

ARTICLE X

GENERAL PROVISIONS

10.1 EASEMENTS. Easements for the installation and maintenance of public utilities and drainage facilities are reserved as shown on the Subdivision Plat and/or as otherwise recorded in the Real Property Records of Ellis County, Texas. Easements are also reserved for the installation, operation, maintenance and ownership of utility service lines from the Lot property lines to the residences located thereon. Declarant reserves the right to make changes in and additions to the easements for the purpose of the most efficient and economical installation of such improvements.

10.2 ENFORCEMENT. The Declarant or the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and the Association's By-Laws and Articles of Incorporation. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. With respect to any litigation hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees from the non-prevailing party.

10.3 SEVERABILITY. Invalidation of any one or more of these covenants or restrictions by passage of law, judgment or court order shall in no wise affect any other provision, all of which shall remain in full force and effect.

10.4 TERM. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by Declarant (during the time it owns any Lot subject hereto), the Association, or any Owner of a Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date of this Declaration, after which time said covenants shall be automatically extended for successive periods of ten (10) years, unless by vote, the then Owners of sixty-seven percent (67%) of the Lots agree in writing to terminate or change this Declaration in whole or in part and such document of termination or change is recorded in the Real Property Records of the county or counties in which the Property is located.

10.5 AMENDMENTS. This Declaration may be amended or modified upon the express written consent of at least sixty-six and two thirds percent (66-2/3%) of the outstanding votes (determined pursuant to Section 4.2 hereof) held by Members at a meeting at which a quorum is present or by written consent by Members entitled to vote such percentage in lieu of a meeting. If required, written approval of the City shall also be obtained for any such amendment to this Declaration. **NOTWITHSTANDING THE ABOVE PROVISION, FOR SO LONG AS DECLARANT OWNS A LOT IN THE DEVELOPMENT, THE WRITTEN CONSENT OF DECLARANT SHALL BE REQUIRED FOR ANY CHANGE, AMENDMENT OR ALTERATION OF THIS DECLARATION, WHICH CONSENT MAY BE WITHHELD BY DECLARANT IN ITS SOLE AND ABSOLUTE DISCRETION**. Notwithstanding the foregoing, Declarant shall have the right to execute and record amendments to this Declaration without the consent or approval of any other party if the sole purpose of the amendment is for the purpose of correcting technical or scrivener's errors or for purposes of clarification, or for the purpose of releasing from this Declaration any property which may have been

inadvertently added to or included within this Declaration. Any and all amendments hereto, if any, shall be recorded in the Real Property Records in the county or counties in which the Property is located.

10.6 GENDER AND GRAMMER. The singular wherever used herein shall be construed to mean the plural where applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, legal entities or individuals, men or women, in all cases shall be assumed as though fully expressed in each case.

10.7 ENFORCEMENT. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity, including, without limitation, an action for injunctive relief, it being acknowledged and agreed that a violation of the Covenants, Conditions and Restrictions contained herein could cause irreparable injury to Declarant and/or the other Owners and that Declarant's and/or any other Owner's remedies at law for any breach of an Owner's obligations contained herein would be inadequate. Enforcement may be commenced by the Association, the Declarant, or any Owner against any person, persons or legal entity violating or attempting to violate them; and failure by the Association, the Declarant or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.8 NOTICES TO MEMBER/OWNER. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered as of the date deposited in the United States Mail, postage prepaid, certified or registered mail, and addressed to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. It shall be the obligation of any Member or Owner to maintain a current address for notification hereunder on file with the Association.

10.9 HEADINGS. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration. Words of any gender used herein shall be held and construed to include any other gender and words in the singular shall be held to include the plural and visa versa unless the context requires otherwise.

10.10 FORMATION OF ASSOCIATION; INSPECTION OF DOCUMENTS, BOOKS AND RECORDS. Declarant shall form the Association as a non-profit corporation in accordance with the laws of the State of Texas. Management and governance of the Association shall be implemented and/or undertaken in accordance with its Articles of Incorporation, in accordance with this Declaration, and in accordance with the By-Laws which shall be adopted by the Association following its formation. The Association shall make available at reasonable cost copies of the Declaration, By-Laws, Articles of Incorporation and any rules and regulations governing the Association. All minute books, meeting and other records and financial statements of the Association shall be held available for inspection by any Owner or any Mortgagee during normal business hours or at such other reasonable times as the Board may approve.

10.11 INDEMNITY. The Association shall indemnify, defend and hold harmless Declarant, the Board of Directors, the Committee and each director, officer, employee and agent of Declarant, the Board of Directors and the Committee from all judgments, penalties (including excise and similar taxes), fines, settlements and reasonable expenses (including attorney's fees) incurred by such indemnified person under or in connection with this Declaration or the operation of the Property to the fullest extent permitted by applicable law. The indemnification granted hereby shall include any and all matters arising as a result of sole or concurrent negligence of any indemnified party, to the extent permitted by applicable law.

10.12 FAILURE OF ASSOCIATION TO PERFORM DUTIES. Should the Association fail to carry out its duties as specified in this Declaration, the City or its lawful agents shall have the right and ability, after due notice to the Association, to remove any landscape systems, features or elements that are the responsibility of and cease to be maintained by the Association; to perform the duties of the Association if the Association fails to do so in compliance with any of the provisions of this Declaration or of any applicable City codes or regulations; to assess the Association for all costs incurred by the City in performing said duties if the Association fails to do so; and/or to avail itself of any other enforcement actions available to the City pursuant to state law, City codes or regulations. Should the City exercise the rights granted hereby as specified above, the Association shall indemnify and hold harmless the City, its employees, agents and/or designees from any and all costs, expenses, suits, demands, liabilities or damages, including attorney's fees and costs of suit, incurred or resulting from the City's removal of any landscape systems, features or elements that cease to be maintained by the Association or from the City's performance of the aforementioned operations, maintenance or supervision responsibilities of the Association due to the Association's failure to perform said duties. The obligations and duties described in this paragraph are defined as the sole obligations and duties of the Association, and no other party, including without limitation, Declarant or any Owner, shall have any liabilities or obligations in connection therewith.

10.13 DISPUTES. Matters of dispute or disagreement between Owners with respect to interpretation or application of the provisions of this Declaration or the By-Laws, shall be determined by the Board of Directors, whose reasonable determination shall be final and binding upon all Owners.

10.14 DISCLAIMER OF USURY. All provisions contained in this Declaration, whether now existing or hereafter arising, are hereby limited so that in no contingency or event whatsoever, shall the interest paid or agreed to be paid by any party to any other party exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable at a rate in excess of that permitted under applicable law, then, the interest so payable shall be reduced to the maximum amount permitted under applicable law, and if from any circumstance any party shall ever receive anything of value from any other party deemed interest by applicable law which would exceed interest at the highest lawful rate, an amount equal to any excessive interest shall be applied to the reduction of the principal amount of the debt and should such excessive interest exceed the unpaid balance of the principal, such excess shall be refunded to the party paying same. All interest paid or agreed to be paid by any party or to any party shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the principal so that the rate of interest is uniform throughout the term of such debt. This Section 10.14 shall control all provisions of this Declaration.

IN WITNESS WHEREOF, the undersigned, being the Declarant hereof, has hereto set its hand this 24 day of March, 2007.

KENSINGTON PHASE TWO, L.P.,
a Texas limited partnership

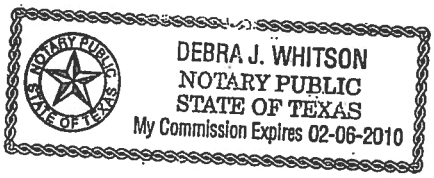
By: HILVIN, INC., GENERAL PARTNER

By: _____
Debra Cole, President

(ACKNOWLEDGMENT)

STATE OF TEXAS §
COUNTY OF HILL §

This instrument was acknowledged before me on the 26th day of March, 2007 by Debra Cole, President of Hilvin, Inc., General Partner of Kensington Phase Two, L.P., a Texas limited partnership, on behalf of said limited partnership.



Debra J. Whitson
Notary Public in and for the State of Texas

AFTER RECORDING, RETURN TO:

Ms. Debra Cole, President
Hilvin, Inc., General Partner
Kensington Phase Two, L.P.
P. O. Box 127
Itasca, Texas 76055