

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR CLARKE ESTATES A SUBDIVISION, SHACKELFORD COUNTY, TEXAS

**ARTICLE I
DECLARATION OF PURPOSE**

1.1 **General Purposes:**

- (a) Declarant owns the real property hereinafter referred to as "Clarke Estates," and intends to develop said property as a residential community for persons residing in or lawfully visiting Albany, Texas.
- (b) By this Declaration, Declarant intends to establish a means to provide for and maintain the area within Clarke Estates as a pleasant and desirable environment for all persons residing at or lawfully visiting Clarke Estates.
- (c) Declarant retains the right not to sell individual-Lots or to sell any Lot at the discretion of Declarant.

- 1.2 **Declaration of Covenant Running with the Land:** To further the general purposes herein expressed, Declarant for itself, its successors and assigns, hereby declares that all real property hereinafter defined as Clarke Estates, including any property added to the same as hereinafter provided shall, at all times, be owned, held, used, occupied, sold and conveyed subject to and conditioned upon the provisions of this Declaration and to the covenants, conditions, restrictions, reservations, and easements herein contained, which shall run with the Property (as hereinafter defined) and benefit Declarant, and all other parties having any right, title and interest in Clarke Estates or any portion thereof, and their respective successors, assigns, heirs, devisees and other personal representatives.

**ARTICLE II
CURRENT DEFINITIONS**

- 2.1 **Agent:** Agent means Clarke Estates Development, LLC, a Texas limited liability company (the "Agent"). Declarant has nominated, appointed and delegated full authority to such Agent to act on Declarant's behalf pursuant to the terms and conditions of that certain Development Agreement by and between Declarant and Agent of even date herewith, and to perform all covenants and take all actions which Declarant is authorized to do pursuant to this Declaration and the law.

- 2.2 **Declarant**: Declarant means collectively, **2122 Kidwell, LLC and MCPL Albany East, LLC**, its successors, assigns, its Agent, and any party or any municipality that:
- (a) acquires all or substantially all of the property in Clarke Estates;
 - (b) prior to the time of such acquisition is designated by the Declarant in a written instrument as a successor or assignee of Declarant under this Declaration. Such instrument may specify the extent and portion of the rights or interests as a Declarant that are being assigned or otherwise transferred; and
- 2.3 **Declaration**: Declaration means this instrument and all amendments or supplements hereto and hereafter recorded in the Official Public Records of Shackelford County, Texas.
- 2.4 **Guest**: Guest means any family member, customer, agent, employee, independent contractor, guest, or invitee of any Owner, and any family member, customer, agent, employee, independent contractor, guest or invitee of such person or persons, entity or entities.
- 2.5 Guest House**: A Guest House is to support a Primary Residence and not exceed twelve-hundred (1,200) square feet and be no more than seventy-five (75) feet maximum from the Primary Residence.
- 2.6 **Lessee**: Lessee means the Person or Persons who is the lessee under a lease on any part or all of a Lot for which the Declarant or an Owner is the Lessor under such lease.
- 2.7 **Clarke Estates**: Means all of the real property located in Shackelford County, Texas, described in **Exhibit A**, attached hereto, as well as all real property that becomes part of Clarke Estates as provided in this Section. Any real property included in the definition of Clarke Estates pursuant to this Section which is hereafter incorporated as, or becomes a part of, a municipal corporation, may be excluded from and be deemed outside of Clarke Estates by the action of Declarant upon the recording in the Office of the Clerk of Shackelford County, Texas, of a written instrument signed by Declarant containing a legal description of the real property to be excluded and declaring that such real property shall be deemed to be outside Clarke Estates.
- 2.8 **Lot**: At present, there are twenty two (22) Lots, containing approximately 5.5 to 15.65 acres each, which are depicted on **Exhibit B**, attached hereto, for Clarke Estates. The term “Lot” shall include any improvements that may be constructed from time to time on the land. The number of Lots may increase or decrease from the above number based on exact acreage and Lot size adjustments or additions of property to this Declaration as permitted by Declarant pursuant to this Declaration.
- 2.9 **Owner**: Owner means the record holder of legal title to the fee simple interest in any Lot.

- 2.10 **Person**: Person means any natural person, corporation, partnership, limited liability company, association, trustee, or any other entity recognized as being capable of owning real property under the laws of the State of Texas.
- 2.11 **Property**: Property means any and all real property subject to this Declaration from time to time.
- 2.12 **Primary Residence or House**: Only one (1) single-family residence is allowed per individual Lot.

ARTICLE III CERTAIN RIGHTS OF DECLARANT AND OWNERS

3.1 **Declarant's and Others' Easements and Related Rights:**

- (a) All dedications, easements, rights-of-way, limitations, restrictions, and reservations shown on any plat and all grants and dedications of easements, rights-of-way, restrictions, and related rights, made prior to the Property becoming subject to this Declaration are incorporated herein by reference and made a part of this Declaration for all purposes as if fully set forth herein and shall be construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by or on behalf of Declarant conveying any part of the Property. Declarant reserves the right to make changes in, and additions to, the said easements and rights-of-way for the purpose of most efficiently and economically developing the Property. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other Person, to grant, delegate, reserve or otherwise create, at any time or from time to time, rights-of-way and easements for public utility purposes (including without limitation, gas, water, electricity, telephone and drainage) in favor of any Person along any front or side property line of any Lot, for future easements with a maximum width of seventy (70) feet, being 35 feet on either side of the centerline of the interior right-of-way along the front property line of the Lot, and seven and one-half (7.5) feet on either side of the side property lines and rear property lines of the Lot.
- (b) There is hereby created an easement upon, across, over, and under all of the Property for ingress and egress in connection with installing, replacing, repairing, and maintaining all utilities, including but not limited to, telephones, and electricity lines and appurtenances thereto. By virtue of a thirty-five (35) foot wide easement on either side of the centerline of the interior rights-of-way, it shall be expressly permissible for the utility companies, the City of Albany and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto, on, above, across and under the Property, within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any improvement. Notwithstanding any provision contained in this Section, no electrical lines, or other utilities or appurtenances thereto may be relocated on the

Property until approved by Declarant. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements, and to trim overhanging trees and shrubs located on portions of the Property abutting such easements.

Following dedication to the City of Albany, roads and spaces located inside the seventy (70) foot dedicated easement will be maintained by the City of Albany, which maintenance is to include grading and mowing of the rights-of-way. Following dedication to the City of Albany, the Declarant shall have no responsibility for repair or maintenance of any dedicated road or easement.

- (c) Replatting and Changes to Lot Lines. The Declarant expressly reserves the right to replat any Lot or Lots owned by the Declarant and to take such other action as may be reasonably appropriate, convenient or necessary to make such replatted Lot or Lots suitable for use as a building site, including, but not limited to, the relocation of easements, walkways, rights-of-way and other amenities to conform to the new boundaries of such replatted Lots.

3.2 **Rights and Obligations of Owners:**

- (a) All rights, easements and obligations of an Owner under this Declaration are hereby declared to be appurtenant to the Lot owned by such Owner and may not be transferred, conveyed, granted, devised, bequeathed, encumbered or otherwise disposed of separate or apart from the ownership of such Owner's Lot. Every transfer, conveyance, grant, devise, bequest, encumbrance, or other disposition of a Lot shall be deemed to constitute a conveyance, grant, devise, bequest, encumbrance, transfer or disposition of such rights and obligations. A transfer of ownership of a Lot may be made by deed and/or assignment of leasehold (as appropriate), intestate succession, testamentary disposition, foreclosure of a deed of trust or mortgage of record or such other legal process as is now effective or may hereafter become effective under the laws of the State of Texas.
- (b) Enforcement of these covenants and easements may be by the City of Albany and verification of setbacks and compliance to conditions herein may be required in advance of starting construction or hooking up to City of Albany water. Owners are advised that the City of Albany may, either presently, or at some point in the future, adopt zoning regulations or municipal ordinances permitting the enforcement of restrictions and covenants set forth in this Declaration.

3.3 **Other Easements:** Declarant hereby grants a non-exclusive perpetual easement across and over the Property for ingress and egress to all police, sheriff, fire protection, ambulance and similar emergency agencies or persona, now or hereafter serving the Property, to enter the Property in the performance of their duties.

3.4 **Assignment of Rights or Obligations to a Lessee:** An Owner may assign or delegate to a Lessee all (but not less than all) of its rights under this Declaration as an Owner and may

enter into an arrangement with such Lessee under which the Lessee shall agree to assume all of such Owner's obligations hereunder as an Owner, provided, however, that any such lease shall be for a term not less than twelve (12) months and the Lessee shall use the Property for residential purposes only. Notwithstanding the forgoing, no Owner shall be permitted to relieve itself of the ultimate responsibility for fulfillment of all obligations hereunder of an Owner arising during the period it is an Owner.

ARTICLE IV CONSTRUCTION OF IMPROVEMENTS AND USE OF LOTS

- 4.1 **Approval of Construction Activities:** Each Owner shall have the right to construct a building and other improvements on its Lot, provided that no building or other improvements, including without limitation, any fence, wall, driveway, paving, walk, deck, patio, canopy, awning, roof, signage or exterior lighting facility, shall be constructed, erected, placed or installed upon any Lot, and no change or alteration of the materials or appearance (including color) of the exterior of a building or other structure shall be made and no change in the final grade of any Lot shall be performed, and no other construction activity shall be initiated on any Lot, until the approval of the Declarant and any governmental entity having jurisdiction over the Property has been obtained by such Owner. In this regard, without limiting the generality of the foregoing, each Owner is hereby advised and acknowledges that, in connection with any construction on its Lot, it must comply with the following:
- (a) time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under such documents;
 - (b) minimum square and maximum foot areas of living space that may be developed on any Lot;
 - (c) instructions and/or rules, regulations and International building Codes for the construction, reconstruction, refinishing or alteration of any improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage, or any installation of utility lines or conduits on the Property, addressing matters such as grading, transformers, meters, fire protection, loading area, water storage, trash and debris removal, parking areas, outside storage, sanitary facilities, and conduct and behavior of builders, subcontractors and Owner's representatives on the Property at any time.
- 4.2 **Residential Use:** All Lots shall be used for single-family residential purposes only, except Guest Houses permitted under Section 4.11. No building or other structure shall be erected, altered, placed or permitted to remain on any Lot other than one (1) Primary Residence per Lot, up to two (2) Guest Houses per Lot and barns, storage buildings and other outbuildings, as provided below, which shall be constructed as otherwise approved in writing by the Declarant.

- (a) All Primary Residences shall be recognized standard “new” construction, built in a good and workmanlike manner with seventy percent (70%) of the exterior first floor walls composed of stone, rock, brick or cement based Hardi-board siding or a combination of each. Pre-engineered buildings to be used as occupied Primary Residences are not allowed unless exterior walls meet the minimum masonry requirements.
- (b) A Primary Residence shall be constructed to front on the road on which the Lot fronts, unless any Lot in question shall front on two (2) roads, in which case the Primary Residence constructed on such Lot shall front as the Declarant may approve.
- (c) Each residential structure shall be occupied by only one (1) family consisting of persons related by blood, adoption or marriage or no more than two (2) unrelated adult persons over the age of eighteen (18) living together as a single household unit.
- (d) Declarant encourages Owners to utilize “Texas”-style homes, which may include generous porches, overhangs, entrances, outdoor living areas and other similar architectural attributes using rock, stone, and cement based Hardi-board siding. **Exposed plywood, aluminum siding, vinyl siding, T-111, or metal panels are not permissible for exposed exterior walls.**

4.3 **Restrictions and Covenants:** Restrictions apply to all Lots and in all areas of each Lot.

4.4 **Garage:** Each Primary Residence may have a detached garage or carport that conforms in design and materials with the Primary Residence, the outer walls of which shall be of the same material as the Primary Residence.

4.5 **Side Line, Front Line and Rear Setback Restrictions:** No building structure shall be within certain building setback lines, including seventy five (75) feet from the edge of the interior rights-of-way for the front Lot line, fifty (50) feet from the 7.5 foot easement adjacent to the side Lot lines, and fifty (50) feet from the 7.5 foot easement adjacent to the rear Lot line, unless otherwise approved by the Declarant and the City of Albany. The setback distances shall be inclusive of the easement widths set forth herein. Mesquite trees and other existing, as well as other landscaping, trees are to remain within these setbacks for buffers and to maintain the existing rural character of the Lots.

All permanent structures shall be erected or placed outside of any easement on any Lot. In the event any structure is placed on any easement or within setback, the Owner shall promptly remove such structure at the Owners sole cost and expense, upon written notification by the Declarant. The Declarant may grant variances with respect to such setback requirements in its sole discretion. Declarant may, from time to time and until seventy-five (75%) of the Lots are sold, by appropriate instrument in writing and filed for record in Shackelford County, Texas, amend and alter the restrictions set out in this

paragraph relative to the locations of improvements to be erected on the Lots and other criteria and regulations.

- 4.6 **Fences:** Fences, walls, or other barriers not to exceed six (6) feet in height shall be permitted for the purpose of enclosing or demarcating any property boundaries but only with metal T-posts and barbed wire, steel piping or tubing, cedar stays on metal piping or rock or stone. No prefabricated wood fencing or prefabricated metal panel fencing is allowed.
- 4.7 **Outbuildings:** Outbuildings used for the purpose of housing domestic pets, storage, home shops, barns and other related personal use shall be constructed in a similar or compatible manner to compliment the Primary Residence and no prefabricated wood fencing is allowed. All Outbuildings shall be constructed in accordance with the setback requirements provided herein. No Outbuilding (including barns, workshops, home shops or other similar buildings) shall exceed two-thousand (2,000) square feet. Outbuildings shall be constructed either simultaneously or after construction of a Primary Residence and in no event shall the use of an Outbuilding be permitted prior to occupancy of a Primary Residence.
- 4.8 **Gas Tanks:** When butane or propane tanks are installed on a Lot, they must be buried or totally and permanently screened from public view, by rock or stone, from the street and all adjoining properties.
- 4.9 **Water:** Each Lot with a structure designed for occupancy will, prior to commencement of construction on the Lot, contain, at the Owner's sole cost and expense, a deposit for water service, the water meter and a water line from the water meter to the Primary Residence. The Declarant expressly disclaims any representation or warranty regarding water quality from the City of Albany or its availability on or to any Lot. Each Owner shall be responsible for determining water availability and quality with respect to its Lot.
- 4.10 **Building Height:** No improvement greater than thirty-five feet (35) in height may be constructed on any Lot. For purposes of this paragraph, height shall be measured from the foundation slab of the proposed improvement to the ridgeline of the roof of the proposed improvement.
- 4.11 **Building Materials; Primary Residence Size:** All Primary Residences shall be of at least recognized standard construction quality and shall be newly constructed of permanent materials. All Primary Residences shall be constructed of stone, rock, brick or cement based Hardi-board siding and shall contain not less than twenty two hundred (2,200) square feet of finished heated and air-conditioned living space, exclusive of porches (open or covered), decks, garages, and carports. Up to two (2) separate Guest Houses may be constructed provided that such separate Guest Houses are not more than twelve-hundred (1,200) square feet each and each must be located within seventy-five (75) feet of the Primary Residence. No home in excess of eight-thousand (8,000) square feet in size is permitted.

- 4.12 **Foundations:** All footings, piers and foundations of the Primary Residence unit on any Lot in said subdivision shall be of concrete construction. Not more than thirty (30) inches of vertical surface of concrete slab of any structure shall be exposed to view from any street or adjacent Lot. Any slab in excess of thirty (30) inches in height above finished grade shall have at least that excess in height covered with similar material as used in constructing the structure.
- 4.13 **Alteration or Removal of Improvements:** Any construction, other than normal maintenance, which in any way alters the exterior appearance of any improvement, or the removal of any improvement, shall be performed only with the prior written approval of the Declarant or the City of Albany.
- 4.14 **Manufactured, Prefabricated and Relocated Homes:** No manufactured home, prefabricated home, modular house, prefabricated building of any type or relocated home or building may be placed on any Lot or other property within the Property. A manufactured or prefabricated home or prefabricated building shall mean a home or building that is constructed on a remote location and moved, in whole or in major parts, to the Property. A relocated home is any structure constructed on a remote site and moved in whole or in major parts to the Property and shall include older or previously occupied homes.
- 4.15 **Roofing Materials:** Twenty-five (25) year rated composition shingles, standing seam metal, 5 V Crimp or prefabricated metal panels shall be permitted, provided, however, that the roofing material does not directly reflect sunlight to another Lot or neighbor.
- 4.16 **Driveway:** Driveways are to be of concrete, compacted gravel or both, but must have an all-weather material and be maintained.
- 4.17 **Start of Construction and Completion:** Lot Owners have up to two (2) years to begin construction. Any Primary Residence, other structure, fences or other improvement commenced on the subject property shall be completed with due diligence and in all events shall be completed as to its exterior within one (1) year from the commencement of construction. No building material of any kind shall be placed or stored on the Lot until the Owner is ready to commence
- 4.18 **Garbage Containers:** No garbage containers shall be visible from an adjoining Lot or street and such containers shall be screened from view or kept within an enclosed structure except on designated days for garbage collection.
- 4.19 **Drainage:** Each Owner, by acquisition of a Lot, acknowledges that the Property, while annexed to the City of Albany, is rural land with existing watershed and drainage patterns. Declarant (a) is not using any piping to remove or relocate water from natural conditions; and (b) is not professionally engineering the Lots to mitigate against large rain events. Each Owner is solely responsible for assuring that construction on such Owner's Lot addresses flood conditions and is advised to seek the services of a professional engineer in that regard. There shall be no interference with the established drainage patterns over any

of the Property unless adequate provision is made for proper drainage and approved by the Declarant, and in no way can alterations on one Lot create new or adverse conditions on another Lot or any adjoining property.

- 4.20 **Maintenance of Improvements:** The exterior surfaces on all improvements, involving, but not limited to, all Primary Residences, garages, carports, barns and other outbuildings and fences, including any painted and/or stained wood surfaces, shall be maintained in good condition and appearance and repaired or repainted as needed. Lawns and yards will be subject to complying with City of Albany ordinances, both present and future.
- 4.21 **Construction Activities:** This Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of improvements by an Owner upon any Lot within Clarke Estates. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Declarant in its sole good faith judgment, the Declarant shall have the authority to seek an injunction to stop such construction (all associated costs to be borne by the Owner of the Lot involved). In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Property, then the Declarant may contract for or cause such debris to be removed, and the Owner of the Lot shall be liable for all expenses incurred in connection therewith.
- 4.22 **Soils and Subsoil Conditions:** The Declarant makes no warranty or claim as to the condition of the soils within the Lots or the suitability to construct on said soils. The condition and bearing capacity and suitability of the soils are the sole responsibility of individual Owners and testing required for analysis or information is to be borne by Owners. It is advisable and the duty of each Owner to have soils professionally evaluated for the structures they intend to build. Clarke Estates has been subject to previous, significant oil and gas exploration and production operations—and it is the Lot Owner's responsibility to examine the area where a structure of any kind is to be built to determine what debris, metal, concrete or other imported materials including, but not limited to, hydrocarbons and other petroleum substances, may exist. It is the sole responsibility of individual Owners to assess their sites for sub-surface conditions, suitability for bearing capacity or all other conditions.
- 4.23 **Parking:** Lot Owners are not to park cars, trucks, vehicles, equipment or trailers on the common main roads. Guests can use roads sides for temporary parking not to exceed eight (8) hours in duration. The roads are not intended for parking, permanent parking, storage or laying down of any equipment, vehicles or materials.

- 4.24 **Surface Water Tanks or Ponds:** Stock tanks dug for capturing surface water only are allowed up to one-half (1/2) acre in size or up to two (2) tanks totaling one-half (1/2) acre (21,780 square feet). No more than two (2) stock tanks are permitted on any Lot.
- 4.25 **Reconstruction after Fire or Other Casualty Loss.** If a Primary Residence, Outbuilding or other structure is partially or completely destroyed by fire or other casualty, the Owner of such improvements shall promptly clear the Lot or restore or reconstruct such improvements.
- 4.26 **Vacant Lot Maintenance.** Each Owner shall be responsible for the property maintenance of any Lot which is vacant or undeveloped. If fill is placed on the Lot and the construction of the improvements is not promptly commenced and completed, the Owner will be required to maintain such Lot. Any Owner who fails to maintain his Lot shall be liable for all costs or expenses incurred in maintaining the Lot.

ARTICLE V RESTRICTIONS APPLICABLE TO PROPERTY

- 5.1 **Land Use Restrictions:** In addition to the restrictions found in this Article V and in Article IV, all or any portion of the Property shall be further restricted in its use, density, or design according to any supplemental declarations of land use restrictions for Clarke Estates recorded with the Clerk and Recorder of Shackelford County, Texas.
- 5.2 **Division of Lots:** No Lot shall be subdivided into smaller Lots by any Owner. This restriction shall not prevent a correction deed or other documents to resolve boundary disputes. In the event of multiple contiguous Lot ownership, the Owner(s) may apply to the Declarant for a combination of Lots as one Lot. Any such combination shall be deemed effective upon approval of the combination and upon receiving any applicable governmental approval.
- 5.3 **Home Business:** A gainful home occupation, profession, trade or other nonresidential use will be a permissible use of a Lot, so long as:
- (a) such use is permitted by law;
 - (b) such use is carried on entirely within a Lot and is secondary and incidental to its use as a residence;
 - (c) there is no external evidence of any such activity being conducted, including no external signage;
 - (d) no pedestrian or vehicular traffic is created or increased due to such use; and
 - (e) no Primary Residence or Guest House is to be a point of sale. This is strictly prohibited.

- 5.4 **Maintenance of Property:** All Property, except for any portion of the Property then undergoing major construction, including all improvements on such Property, shall be kept and maintained by the Owner thereof in a clean, safe, attractive and sightly condition and in good repair and no trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon a Lot so that they are visible from, or are a nuisance in any way to, any neighboring Lot or any road.
- 5.5 **Connecting Streets, Roads and Easements:** No connecting roads, streets or easements may be created, constructed or established without the prior written approval of the Declarant or the City of Albany. No Lot may be used as access to any property that is not subject to this Declaration unless authorized in writing by Declarant and the City of Albany.
- 5.6 **No Noxious or Offensive Use or Activity:** No noxious or offensive activity shall be carried on upon any Property nor shall anything be done or placed on any Property that is or may become a nuisance or cause any significant embarrassment, disturbance, or annoyance to others. No activity is permissible that would cause insurance rates or premiums to rise or increase as a direct result.
- (a) Motorcycle or moto cross, carts or buggy racing or riding is not permitted in Clarke Estates.
 - (b) Except as permitted in Section 5.7, the discharge of firearms within Clarke Estates is specifically prohibited.
 - (c) Lighted rodeo areas are prohibited.
- 5.7 **No Hunting:** Hunting is strictly prohibited in Clarke Estates and Owners accepting a deed for a Lot will be accepting this condition with the others herein. The hunting restriction shall extend to all species of birds and all regulated game and non-regulated non-game animals recognized by the State of Texas.
- Lot Owners experiencing damage from varmints and hogs may shoot varmints and/or hogs with .22 caliber rifles or shotguns only if causing a nuisance only and only to the extent permitted under Texas laws or local ordinances. In no case are feeders to be used to attract any animals for purposes of hunting or shooting.
- No harassment of wildlife shall be permitted.
- 5.8 **No Hazardous Activities:** No hazardous activities shall be conducted on any Property and no improvements constructed on any Property that are or might be unsafe or hazardous to any person or property. No open fires shall be lighted or permitted on any Property; there shall be no burning of trash before, during or after construction;

- (a) in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior wood or gas burning device;
- (b) chimneys;
- (c) fire pits or outdoor fireplaces as approved in writing by the Declarant or the City of Albany; and
- (d) outdoor open fire pits (open fires) are strictly prohibited.

5.9 **No Unsightliness**: No unsightliness shall be permitted on any Property. Without limiting the generality of the foregoing:

- (a) All unsightly structures, facilities, equipment, objects and conditions shall be kept within-a Garage or Outbuilding at all times. These structures must be built with new materials (not reclaimed) and either be painted metal panels or wood siding. For purposes of this provision, a Garage and/or Outbuilding must contain, at a minimum, four (4) walls, a roof and a door which shall be kept closed at all times;
- (b) Motorcycles, mopeds or other motorized recreational vehicles and garden or maintenance equipment and tractors or skid steers shall be kept in a Garage or Outbuilding at all times, except when in actual use;
- (c) Refuse, garbage and trash shall be kept in a covered container at all times or in a container provided by the City of Albany;
- (d) Service areas and facilities for hanging, drying or airing clothing or fabrics shall be kept within a Garage or Outbuilding;
- (e) Pipes for water, gas, sewer, drainage or other purposes, wires, cables, poles, antennas and other facilities for the transmission or reception of audio or visual signals or electricity, utility meters or other utility facilities, gas, oil, water or other tanks, and sewage disposal systems or devices shall be kept and maintained within a Garage or Outbuilding or below the surface of the ground (except electric service lines may be above ground). No antenna shall be permitted to be used, erected, placed or maintained on any Lot except an antenna designed to receive direct broadcast satellite service or broadband internet service one (1) meter or less in diameter, an antenna designed to receive video programming service via multipoint distribution service one (1) meter or less in diameter or diagonal measurement, or an antenna designed to receive television broadcast signals. Any permitted antenna shall be installed so as not to be visible from any roadway, except as expressly approved by the Declarant;

- (f) No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap, refuse or trash or unused items of any kind shall be kept, stored or allowed to accumulate on any Lot; and
- (g) No tanks, materials, piping, used or new equipment or anything mobile or portable shall be stored outside or uncovered.

5.10 **Lights, Sounds and Odors**: No light shall be emitted from any Lot which is unreasonably bright or causes unreasonable glare or shines directly onto an adjacent Lot or road; no sound shall be emitted from any Lot which is unreasonably loud or annoying; and no odor shall be emitted from any Lot which is noxious or offensive to others. All exterior lighting shall comply with the International Dark-Sky Association Guidelines for Lighting Regulations for Small Communities, Urban Neighborhoods and Subdivisions (these guidelines may be found at www.darksky.org).

5.11 **Restrictions on Animals**: No animals of any kind, including but not limited to cows, horses, donkeys, goats, sheep, hogs, pigs, swine, or exotic or non-native animals, shall be raised, bred commercially or kept on any Lot. Only domestic cats, dogs, or other household pets shall be permitted. The total combined number of domestic poultry that may be kept on any Lot shall be twenty (20).

No person shall allow any dog owned or controlled by such Owner to roam within Clarke Estates unattended. Dogs shall either be contained indoors or enclosed in a fenced yard or in a dog run or kennel constructed for the purpose of confinement in a manner that abates sounds. No more than three (3) dogs will be allowed by an Owner and no kennel should exceed three (3) dogs. At all other times, dogs shall be on a leash and under the direct control and supervision of their Owners.

5.12 **Restriction on Signs and Towers**: No signs, billboards or advertising devices of any nature shall be erected or maintained on any Lot except signs approved by the Declarant and the City of Albany, signs required by applicable law or legal proceedings, signs showing the name of the Owners of the Lot (as approved by the Declarant), political signs, temporary signs to caution or warn of danger. Notwithstanding the forgoing limitation, “for sale” signs shall be permitted advertising the availability of the Lot for sale provided that such signs shall not exceed four (4) square feet in size. Cell towers, communication towers or tower structures are prohibited on individual Lots.

5.13 **Landscape**: Vegetation on all Lots must be maintained to minimize erosion and fire dangers and to encourage growth of ground cover. All Owners are encouraged to preserve trees on their respective Lots. No Lot shall be cleared beyond fifty percent (50%) of any existing native mesquite.

5.14 **No Mining and Drilling**: No Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals, gravel, stone, sand, clay, caliche or earth.

- 5.15 **Mobile Homes, Travel Trailers and Recreational Vehicles:** No mobile nor manufactured homes or modular homes shall be parked or placed on any Lot or used as a Primary Residence or Guest House, either temporary or permanent, during construction or at any time. No motor homes, travel trailers, boats, all-terrain vehicles nor recreational vehicles shall be parked on or near any Lot so as to be visible from the road at any time.
- 5.16 **No Fireworks.** No fireworks shall be permitted on any portion of the Property; except during the Fourth of July and New Year's Eve; provided, however, in no event shall fireworks ever be permitted during any "burn ban" established by Shackelford County or if banned by the City of Albany, Texas.
- 5.17 **Compliance with Law:** In addition to the compliance requirements set forth elsewhere herein, no Property shall be used, occupied, altered, changed, improved or repaired except in compliance with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of the United States of America, State of Texas, County of Shackelford, City of Albany and or other governmental or lawful authority whatsoever, affecting the Property or the improvements thereon or any part thereof, and of all their departments, bureaus and officials. Furthermore, no Owner shall release, discharge or emit from the Property or dispose of, or allow any Person under such Owner's control or direction to release, discharge or emit from the Property or dispose of, any material on, above or under the Property, that is designated as a pollutant or containment under any federal, state or local law, regulation or ordinance.

Clarke Estates requires the use of a conventional septic system and each Lot Owner is responsible for complying with all Texas Conservation and Environmental Quality (TCEQ) status standards or requirements for the design, installation and completion of the septic system. No Alternative Septic Systems, including grinder systems, are allowed.

- 5.18 **No Warranty of Enforceability:** While Declarant has no reason to believe that any of the restrictive covenants or other terms and provisions contained in this Article or elsewhere in the Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representations as to the present or future validity or enforceability of any such restrictive covenants, terms, or provisions. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom. Nothing herein contained shall be deemed to prevent any Owner from enforcing any covenants or restrictions in his own name.

ARTICLE VI DESIGN REVIEW

- 6.1 **Purpose:** In order to preserve the natural beauty of Clarke Estates and its setting to maintain Clarke Estates as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, and to protect and promote the value of Property, all exterior design, and use of all new development and additions, changes, or alterations to

existing use, and exterior design and development of any Lot shall be subject to review and approval by the Declarant (or the City of Albany) before construction may commence.

6.2 **Objectives:** Consistent with Section 4.2(d), the design review process shall be conducted with the following objectives in mind for Clarke Estates:

- (a) Preventing excessive or unsightly grading, indiscriminate earthmoving or clearing of property, removal of trees and vegetation that could cause disruption of natural watercourse or scar natural land forms;
- (b) Ensuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the land and with surrounding Lots, structures and open spaces;
- (c) Ensuring that the architectural design of structures and their materials and colors are visually harmonious with Clarke Estates overall appearance, history and cultural heritage, with surrounding development, with natural land forms and native vegetation, and adheres to or complies with development plans, zoning requirements, and other restrictions approved by Declarant, or any government or public authority, if any, for the sites in which the structures are proposed to be located;
- (d) Ensuring that plans for the landscaping of open spaces provide visually pleasing settings for structures on such Lots and on adjoining and nearby Lots and blend harmoniously with the natural landscape;
- (e) Ensuring that any development, structure, building or landscaping complies with the provisions of this Declaration;
- (f) Ensuring that building design and construction techniques respond to energy consumption and environmental quality considerations, such as pollution, environmental sustainability, heat loss, air emissions, and run-off water quality; and
- (g) Ensuring that placement of structures provides visually pleasing and ample space between such structures and structures on other Lots.

The foregoing is collectively referred to as the “Design Guidelines:”

For a period of five (5) years following the date of this Declaration, the Declarant reserves the right (without the necessity of the joinder of any Owner) to make changes in or additions to the Design Guidelines, which changes in or additions to such guidelines shall not affect (i) existing approvals of construction upon a Lot under the then-existing Design Guidelines, (ii) a Primary Residence already under construction, or (iii) a completed Primary Residence. Beginning with year six (6) following the date of this Declaration, all changes or additions to the Design Guidelines must be approved by the Architectural

Review Committee (as hereinafter defined), if such Architectural Review Committee has been established by Declarant. Neither the Declarant nor the Architectural Review Committee shall have the authority to make any changes or additions which would materially alter the design philosophy of Clarke Estates as originally established under the initial Design Guidelines. The term “Design Guidelines” shall be inclusive of the initial Design Guidelines and all changes and/or additions hereafter incorporated therein as a part of such guidelines.

6.3 **Declarant Approval and Control:**

- (a) In addition to the requirements set forth in Section 5.3 above and except as otherwise provided herein, no Owner, Lessee or Guest shall engage, use, or contract for the activities described herein on any Property, Lot or building or structure thereon, or change the use of any Property or building or structure thereon, unless the Declarant (and the City of Albany, if applicable) has approved the plans and specifications for the project, showing the nature, kind, shape, height, color, materials and location of same, and the construction procedures to be used to ensure compliance with Article IV, including compliance with land use restrictions made applicable to the Property by Article V. Preliminary plans are to be submitted to Clarke Estates Development, LLC for preliminary review and then a final complete set of plans for a final review. The Declarant will require no more than two (2) weeks for this review. Alterations or remodeling which are completely within a building or the structure may be undertaken without Declarant approval, provided such alterations or remodeling do not change the use of the building or structure. The approval or consent of the Declarant on matters properly coming before it shall not be unreasonably withheld, actions taken shall not be arbitrary or capricious and decisions shall be conclusive and binding on all interested parties; and such approval or consent shall not prohibit enforcement of the provisions of this Declaration under this Article VI. The Declarant or its designated representative shall monitor any approved project to the extent required to ensure that the construction or work on such project complies with any and all approved plans and the International Building Code and all City of Albany ordinances or requirements. The Declarant or its designated representative may enter upon any Lot at any reasonable time or times to inspect the progress, work status, or completion of any project. In addition to the remedies described in this Article VI, the Declarant may withdraw approval of any project thereby stopping all activity of such project, if deviations from the approved plan or approved construction practices are not corrected or reconciled within twenty-four (24) hours after written notification to the Owner specifying such deviations.
- (b) Any material to be submitted or notice to be given to the Declarant shall be submitted at the offices of the Declarant or at such other location as the Declarant may designate from time to time.
- (c) All actions requiring approval shall be deemed approved if such approval is obtained in writing from the Declarant.

- 6.4 **Review Fee:** The Declarant in its sole discretion may set a review fee schedule sufficient to cover all or part of the cost of Declarant’s time, consultant’s fees, and incidental expenses. Applicants for design review may be required to deposit, with the Declarant, a fee which the Declarant deems sufficient to cover the cost of design review from which the actual costs shall be deducted when determined and the balance returned to the applicant following the completion of the design review procedure.
- 6.5 **Lapse of Design Review Approval:** Approval of the design of a project shall lapse and become void one (1) year following the date of final approval of the project, unless prior to the expiration of one (1) year any required building permit is issued and construction is commenced and diligently pursued toward completion.
- 6.6 **Architectural Review Committee.** The Declarant may create the Clarke Estates Architectural Review Committee (referred to herein as the “Architectural Review Committee”) to implement the design philosophy of Clarke Estates as set forth in the Design Guidelines. The Architectural Review Committee shall be composed of no fewer than three (3) and no more than five (5) individuals. For a period of five (5) years following the date of this Declaration, the Architectural Review Committee, if so created, shall be appointed by the Declarant. Thereafter, the Architectural Review Committee shall be elected by the Architectural Review Committee. Individuals appointed to serve as members of the Architectural Review Committee by Declarant shall serve at the pleasure of the Declarant. Individuals elected by the Architectural Review Committee may be replaced by a vote of a majority of the Architectural Review Committee. Members of the Architectural Review Committee must be Owners in Clarke Estates. It shall be the general responsibility of the Architectural Review Committee to (i) provide each Owner of a Lot with the current version of the Design Guidelines, (ii) conduct on a fair and impartial basis the review process as required under the Design Guidelines and this Declaration, (iii) approve reasonable and necessary additions and/or changes to the Design Guidelines, (iv) conduct periodic site inspections, and (v) enforce the Design Guidelines.
- (a) **Decisions and Actions by Architectural Review Committee.** The affirmative vote of a majority of the members of the Architectural Review Committee shall be required to make any finding, determination, ruling or order or to issue any permit, consent, approval or disapproval hereunder. If during construction the Architectural Review Committee determines that any action by an Owner or builder is or would be contrary to or in violation of the approvals previously granted by the Architectural Review Committee and/or the City of Albany, the Architectural Review Committee shall have the authority to order the Owner or builder to cease, modify or correct such action so as to comply with the approvals previously granted by the Architectural Review Committee.
- (b) **General Requirements.** Except for the proper maintenance and repair of a Primary Residence, no improvement, including, but not limited to, buildings, fences, walls or other structures, and no exterior addition, change or alteration to any improvement, including any change or alteration of color, shall be commenced,

erected, constructed, placed, altered, moved, maintained or permitted to remain on any Lot, unless first approved by the Architectural Review Committee pursuant to the Design Guidelines.

- (c) Review Process. The Architectural Review Committee shall establish rules and guidelines for the review process. Such rules and guidelines may include, but not be limited to, requirements concerning:
- (i) changes, amendments, or revisions of such information previously submitted;
 - (ii) time periods for review by the Architectural Review Committee;
 - (iii) procedures for approval or disapproval by the Architectural Review Committee, and any appeals or resubmissions based thereon; and
 - (iv) all other matters which are pertinent, desirable, reasonable, or necessary to the operation of the Architectural Review Committee, which are not specifically set forth herein and which are not inconsistent with this Declaration.

The Architectural Review Committee shall publish and disseminate its current rules and guidelines for the review process to each Owner of a Lot.

- (d) Expenses. Any Person submitting plans as part of the review process shall be responsible for the payment of reasonable charges established by the Architectural Review Committee for review of the plans, including amendments, modifications and/or changes thereto.
- (e) Disclaimer. NO APPROVAL OF PLANS OR OF A BUILDER, AND NO PUBLICATION OF ARCHITECTURAL STANDARDS OR BULLETINS SHALL BE CONSTRUED EITHER TO REPRESENT, GUARANTEE OR IMPLY THAT SUCH PLANS, BUILDER OR ARCHITECTURAL STANDARDS WILL RESULT IN A PROPERLY DESIGNED PRIMARY RESIDENCE OR OTHER IMPROVEMENT, OR TO REPRESENT, GUARANTEE OR IMPLY THAT ANY PRIMARY RESIDENCE OR OTHER STRUCTURE OR IMPROVEMENT WILL BE BUILT OR CONSTRUCTED IN A GOOD AND WORKMANLIKE MANNER. APPROVAL OF ANY PARTICULAR PLANS SHALL NOT BE CONSTRUED AS A WAIVER OF THE RIGHT OF THE ARCHITECTURAL REVIEW COMMITTEE TO DISAPPROVE ALL OR ANY PORTION OF THE PLANS IF SUCH PLANS ARE SUBSEQUENTLY SUBMITTED FOR USE IN ANY OTHER INSTANCE.

**ARTICLE VII
ENFORCEMENT AND REMEDIES**

- 7.1 **Enforcement:** Each provision of this Declaration enforceable against an Owner or Lot shall be enforceable by Declarant, an Owner or the City of Albany, if the City of Albany adopts zoning regulations and ordinances authorizing such enforcement, by a proceeding for a prohibitive or mandatory injunction or by suit or action to recover damages for so long as any Owner fails to comply with any such provisions.
- 7.2 **Remedies:** In addition, if an Owner fails to perform or observe any covenant or condition on such Owner's part to be performed or observed under this Declaration, the Declarant and/or another Owner or the City of Albany shall have all other rights and remedies available to it, at law or in equity. All rights and remedies shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy.

**ARTICLE VIII
MISCELLANEOUS**

- 8.1 **Duration of Declaration:** The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens as set forth in this Declaration shall run with and bind for a period of twenty (20) years from the date of recordation of this Declaration, after which they shall be automatically extended for successive ten (10) year periods, unless at least one year prior to the expiration of any such ten-year period of extended duration, this Declaration is terminated by a recorded termination agreement that has been authorized and executed by seventy-five percent (75%) (or more) of the votes of the Owners then owning the Lots.
- 8.2 **Amendment:** Notwithstanding Section 8.1 above, until eighty percent (80%) of the Lots are sold by Declarant, Declarant may amend this Declaration as Declarant desires necessary and proper to ensure the quality and consistency of Clarke Estates. Following the sale of eighty percent (80%) of the Lots, any provision contained in this Declaration, may be amended or repealed only by the affirmative vote, consent or agreement of at least seventy-five percent (75%) of the votes of all Owners then owning Lots in Clarke Estates. Any such amendment or repeal shall be evidenced by a written instrument or instruments specifying the amendment or the repeal, and recorded in the Office of the County Clerk of Shackelford County, Texas.
- 8.3 **Effect of Provisions of Declaration:** Each provision of this Declaration, and any agreement, promise, covenant and undertaking to comply with each provision of this Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate any provision of this Declaration:
- (a) shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within Clarke Estates is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;

- (b) shall, by virtue of acceptance of any right, title or interest in any real property within Clarke Estates by an Owner or be deemed accepted, ratified, adopted and declared as a personal covenant of such Owner, as the case may be and, as a personal covenant, shall be binding on such Owner and such Owner's respective heirs, personal representatives, successors and assigns and as a personal covenant of an Owner, shall be deemed a personal covenant to, with and for the benefit of Declarant and to, with and for the benefit of any other Owner;
- (c) shall be deemed a real covenant by Declarant, for itself, its successors ,assigns and the City of Albany, and also an equitable servitude, running in each case, as a burden with and upon the title to each parcel of real property within Clarke Estates and, as a real covenant and also as an equitable servitude, shall be deemed a covenant and servitude for the benefit of any real property now or hereafter owned by Declarant within Clarke Estates and for the benefit of any and all other real property within Clarke Estates.
- 8.4 **Attorneys' Fees:** In the event of any dispute under or with respect to this Declaration, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses in connection therewith, including but not limited to, reasonable attorneys' fees and disbursements.
- 8.5 **Disclaimer of Representations:** Anything to the contrary in this Declaration notwithstanding, another Declarant makes no warranties or representations whatsoever that the plan presently envisioned for the complete development of Clarke Estates can or will be carried out or that any land now owned or hereafter acquired by Declarant is or will be subjected to this Declaration, or that any such land, whether or not it has been subjected to this Declaration, is or will be committed to or developed for a particular use, or that if such land is once used for a particular use, that such use will continue in effect.
- 8.6 **Venue and Jurisdiction:** Venue and jurisdiction for any dispute, controversy, or other claim related to or arising from the Declaration or in any way concerning the Property and/or Clarke Estates shall exclusively lie in the state district court with such exclusive venue being in Shackelford County, Texas. By accepting a deed to any portion of the Property, the grantee therein submits to the jurisdiction of said court and waives any contest to said jurisdiction and waives any and all rights to a jury trial.
- 8.7 **Successors and Assigns:** Except as otherwise provided herein, this Declaration shall be binding upon and shall inure to the benefit of Declarant, and each Owner and their respective heirs, personal representatives, successors and assigns.
- 8.8 **Severability:** Invalidity or unenforceability of any provision of this Declaration in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of this Declaration.
- 8.9 **Captions:** The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

- 8.10 **Construction:** When necessary for property construction, the masculine of any word used in this Declaration shall include the feminine or gender neutral, and the singular, the plural, and vice versa.
- 8.11 **No Waiver:** Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration.

[Signatures appear on next page.]

IN WITNESS WHEREOF, this Declaration is dated effective as of _____, 2018.

DECLARANT:

2122 Kidwell, LLC

By: _____
Justin Trail, Manager

MCPL Albany East, LLC

By: _____
Donald R. Fitzgibbons, Manager

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2018, by Justin Trail, Manager of 2122 Kidwell, LLC.

Notary Public, State of Texas

STATE OF TEXAS §
§
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2018, by Don R. Fitzgibbons, Manager of MCPL Albany East, LLC.

Notary Public, State of Texas

Exhibit A

202.47 acres of land out of the North 1/2 of Section 2, Blind Asylum Lands, Shackelford County, Texas.

BEGINNING at a 1/2" iron pin set in County Road 119 for the northeast corner of Section 2 and the southeast corner of Section 20 Blind Asylum Lands for the northeast corner of this tract;

THENCE S 00°37'21" E with the east line of Section 2 a distance of 2653.55' to a 1/2" iron pin set for the southeast corner of the Northeast 1/4 of Section 2 and being the southeast corner of this tract;

THENCE N 88°51'34" W with the south line of the Northeast 1/4 of Section 2 a distance of 2621.34' to a 1/2" iron pin set for the southwest corner of the Northeast 1/4 and the southeast corner of the Northwest corner of Section 2;

THENCE N 88°51'34" W with the south line of the Northwest 1/4 of Section 2 and the north line of Nixon Addition a distance of 1208.05' to a 1/2" iron pin set line the east line of State Highway 6 for the southwest corner of this tract;

THENCE N 48°07'33" W with the east line of the highway a distance of 1022.98' to a concrete highway monument found for the southwest corner of the tract described in Volume 514 Page 665;

THENCE N 55°46'46" E a distance of 870.64' to a 1/2" iron pin found for a corner of the tract described in Volume 514 Page 665;

THENCE S 89°30'19" E a distance of 1203.32' to a 1/2" iron pin found for the southeast corner of the tract described in Volume 514 Page 665;

THENCE N 00°37'21" W a distance of 1426.37' to a 1/2" iron pin set in County Road 119 for the northwest corner of the Northeast 1/4 of Section 2;

THENCE S 89°45'29" E with the county road and the north line of Section 2 a distance of 2653.86' to the place of beginning and containing 202.47 acres of land. (See attached plat SH-592L, bearings based on G.P.S. NAD 1983 coordinates).

