

# **Declaration of CC&R's**

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

## THE AVIARY ADDITION

STATE OF TEXAS §  
 COUNTY OF COLLIN §

KNOW ALL MEN BY THESE PRESENTS THAT:

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made effective as of the date hereinafter set forth by DUBLIN MURPHY ESTATES, LTD., a Texas limited partnership (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant owns the Property and desires to burden and benefit the Property with the provisions of this Declaration; and

WHEREAS, Declarant proposes to divide and subdivide the Property as THE AVIARY ADDITION (the "Subdivision"); and

WHEREAS, Declarant has filed a plat (the "Phase 1 Plat") of the Property described on Exhibit A recorded as County Clerk's Document No. 2000-0094107 of the Plat Records of Collin County, Texas, dividing the Property into Tracts and Common Area; and

WHEREAS, it is deemed to be in the best interests of Declarant and any other persons who may purchase a Tract in the Subdivision, that there be established and maintained a consistent, harmonious and uniform plan for the improvement and development of the Subdivision as a highly restricted and modern subdivision of the highest quality and for protecting the value of the Subdivision;

NOW, THEREFORE, Declarant, declares that the Property is to 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 Subdivision. This Declaration and the easements, covenants, restrictions, conditions and other provisions hereof run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in the Property or any part thereof, and their heirs, legal representatives, successors and assigns and shall inure to the benefit of each Owner thereof and their heirs, legal representatives, successors and assigns.

## ARTICLE I

## DEFINITIONS

1.01 "Architectural Committee" means and refers to the Architectural Committee described in Article VII hereof.

1.02 "Association" means and refers to The Aviary Homeowners Association, Inc., a Texas nonprofit corporation, and its successors and assigns.

1.03 "City" means and refers to the City of Murphy, Texas.

1.04 "Common Area" means and refers to the easements and easement rights reserved by the Declarant in accordance with Section 8.03 hereof for the benefit of Declarant and the Association and their successors and assigns over portions of the Subdivision, which shall include, but need not be limited to, fencing and a masonry wall and foundation along Betsy Lane, landscaping and irrigation between such fencing and wall and the curb, entry area landscaping, irrigation, walls and signage that are designated as Common Area on Exhibit A attached hereto and incorporated herein for all purposes. The Common Area shall also include Lot 2, Block X of the Subdivision as shown on the Phase 1 Plat, together with any improvements now or hereafter constructed thereon. Common Area shall also include any improvements constructed by Declarant or the Association within the Common Area. It shall be the responsibility of the Association to maintain the Common Area. Additional property may be added to the Common Area hereunder only upon the approval of the affirmative vote of a majority [greater than fifty percent (50%)] of the votes which may be cast, in person or by proxy, at a meeting of the Members of the Association duly called for that purpose; provided, however, without obtaining the consent of the Members of the Association, Declarant may add property to the Common Area, as well as improvements constructed or to be constructed thereon, if such additional property is depicted on any recorded plat of all or any part of the Property as Common Area, as well as any additional property intended or devoted to the common use, enjoyment or benefit of the Members of the Association or the Subdivision.

1.05 "Declarant" means and refers to Dublin Murphy Estates, Ltd. and its successors and assigns.

1.06 "Property" means and refers to those certain tracts, lots or parcels of land described on Exhibit A attached hereto and incorporated herein for all purposes, together with Lots 1 - 52, Block A, Lots 1 - 5, Block B, Lots 1 - 29, Block C, Lots 11 - 21, Block D, Lots 12 - 15, Block F, Lots 4 - 5, Block F, Lots 15 - 23, Block G and Lots 1 - 2, Block X of The Aviary Phase 1 Addition, an Addition to the City of Murphy, Collin County, Texas, according to the Map or Plat thereof recorded as County Clerk's Document No. 2000-0094107 of the Plat Records of Collin County, Texas. Upon the addition of any other land to the scheme of restrictions imposed hereby in accordance with Article XI hereof, such other land shall be deemed to be included in the term "Property" for purposes of this Declaration, subject, however, to any modifications or amendments set forth in any Supplemental Declaration of Protective Covenants contemplated by Article XI hereof.

1.07 "Living Unit" means and refers to any improvements on a Tract which are designated and intended for occupancy and use as a residence by one person, by a single family, or by persons living together as a single housekeeping unit.

1.08 "Member" means and refers to every person or entity who holds a membership in the Association.

1.09 "Mortgagee" means and refers to a person or entity which has loaned or advanced money to an Owner or to Declarant for the purchase or improvement of a Tract or other property in the Subdivision and has taken a recorded lien on such property to evidence the security for such loan.

1.10 "Owner" means and refers to the record owner, whether one or more persons or entities, of a fee or undivided fee interest in any Tract, but excluding those having such interest merely as security for the performance of an obligation.

1.11 "Purchaser" means and refers to an individual who purchases a Tract.

1.12 "Tract" means and refers to any lot or tract of land shown upon a map or plat of all or any portion of the Property recorded in the map, plat or official records of Collin County, Texas, which is designated as a tract or lot therein and which is or will be improved with a Living Unit; provided, however, some portions of the Common Area may be platted as a "lot" or "tract" on such recorded map or plat, but these lots shall be excluded from the concept and definition of "Tract" as used herein. "Corner Tract" means and refers to a Tract that abuts on more than one street. A Corner Tract is deemed to front on the street designated by the Architectural Committee.

## ARTICLE II

### MEMBERSHIP; VOTING RIGHTS; POWERS AND DUTIES

2.01 Membership. Every Owner of a fee or undivided fee interest in a Tract holds a membership in the Association. The foregoing is not intended to include persons or entities who hold an interest in a Tract merely as security for the performance of an obligation. Membership is appurtenant to and may not be separated from ownership of a Tract, except as to a lessee. Any Mortgagee who acquires title to any Tract through judicial or non-judicial foreclosure will be a Member of the Association, as a result of such Mortgagee's status as the Owner of such Tract.

2.02 Voting Rights. There are two classes of membership entitled to voting rights in the Association as follows:

(a) Class A. All Members in the Association, other than Declarant, are considered Class A Members, and for each Tract owned are entitled to one vote on each matter coming before the Members at any meeting or otherwise, unless their voting rights have been suspended by the Board of Directors as provided in Section 2.02(c) herein below. When a Tract is owned by more than one Class A Member, all the individuals or entities holding an ownership interest in that Tract are considered Class A Members; however, for such Tract they are entitled to a total of no more than one vote on each matter coming before the Members at any meeting or otherwise. The vote for such Tract is to be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to such Tract.

(b) Class B. Class B Members are those individuals or entities who are herein defined as Declarant and the owners of any land added to the scheme of restrictions imposed hereby in accordance with Article XI hereof (including the original partners or joint venturers individually comprising Declarant or such owners), and for each Tract owned they are entitled to five (5) votes on each matter coming before the Members at any meeting or otherwise. When a Tract is owned by more than one Class B Member, all such individuals or entities holding an ownership interest in that Tract will be Class B Members; however, for such Tract they are entitled to a total of no more than five (5) votes on each matter coming before the Members at any meeting or otherwise. The five votes for such Tract are to be exercised as they among themselves determine, but in no event shall more than five (5) votes be cast with respect to such Tract. In the event a Tract owned by a Class B Member is sold to an Owner who would be classified as a Class A Member, the Class B membership ceases as to such Tract, and the Owner automatically is entitled to one vote for such Tract as a Class A Member. All Class B memberships cease and automatically convert into Class A membership on the happening of either of the following events, whichever occurs earlier:

(i) When the total number of votes entitled to be cast by the Class A Members equals the total number of votes entitled to be cast by the Class B Members; or

(ii) Ten (10) years from the date this Declaration is filed with the County Clerk of Collin County, Texas, for recordation in the Deed Records of Collin County, Texas.

In the event subsequent to the conversion of all Class B memberships to Class A memberships a portion of the Property is platted pursuant to a plat recorded in the map, plat or official records of Collin County, Texas, Declarant or the owners of additional land added to the scheme of restrictions imposed hereby in accordance with Article XI hereof, as the case may be, shall become a Class B Member with regard to the Tracts created by such map or plat and shall have the voting rights described above in this Section 2.02(b) with regard to such Tracts owned by Declarant or such owners of said additional land.

(c) **Suspension.** A Member's voting rights may be suspended by the Association for any period during which any assessment against such Member's Tract or any other sum due the Association by such Member remains unpaid; and for a period not to exceed thirty (30) days for any infraction of the Association's published rules and regulations.

**2.03 Quorum.** Except as otherwise provided in Section 3.05 of Article III or the Bylaws of the Association, the quorum required for any action referred to in this Article II shall be as follows:

(a) At any meeting of Members called by the Board of Directors of the Association, the presence at the meeting of Members, or of their proxies, entitled to cast fifty-one percent (51%) of all of the votes of the Association shall constitute a quorum. Any action taken at such meeting shall require approval by Members holding at least fifty-one percent (51%) of the votes represented at such meeting of the Members at which a quorum is present, in person or by proxy. Any partial number of membership votes shall be rounded down to the next full number.

(b) As an alternative to the procedure set forth immediately above, any action referred to in this Article II may be taken without a meeting if a consent in writing, approving the action to be taken, shall be signed by Members holding more than fifty-one percent (51%) of the outstanding votes of the Association.

**2.04 Powers and Duties.** The affairs of the Association shall be conducted by the Board of the Association which shall be selected in accordance with the Articles of Incorporation and Bylaws of the Association. The Board, for the benefit of the Common Area and the Owners, shall provide, and shall pay out of the assessments provided for in Article III below, the following:

(a) Care and preservation of the Common Area and the furnishing and upkeep of any desired personal property for use in the Common Area. Expenditures for the repair or installation of capital improvements, not included in the annual maintenance budget, may be paid from any reserve fund as specifically provided in Section 2.08 hereof.

(b) Care and maintenance of the landscaping, masonry screening walls and/or ornamental metal fence and entry features which may be constructed by the Association on the Common Area or on private property. Maintenance includes all repair or rebuilding required and cleaning as required to remove graffiti or obscenities.

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

- (d) Legal and accounting services.
- (e) Any other materials, supplies, furniture, labor, services, maintenance, repairs, alterations, taxes or assessments which the Board is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.
- (f) To execute all declarations of ownership for tax assessment purposes and to pay all taxes with regard to the Common Area.
- (g) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of mortgage liens on the individual Tracts with respect to: (i) taxes on the Common Area, and (ii) insurance coverage of the Common Area, as they relate to the assessment, collection and disbursement process envisioned by this Declaration.
- (h) To borrow funds to pay costs of operation secured by assignment or pledge of rights against delinquent Owners, if the Board sees fit.
- (i) To enter into contracts, maintain one or more bank accounts, and generally, to have all the powers necessary or incidental to the operation and management of the Association and the Common Area.
- (j) If, as and when the Board, in its sole discretion, deems necessary it may take action to protect or defend the Common Area from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for repairs and replacements.
- (k) To make reasonable rules and regulations for the operation and use of the Common Area and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by a majority of the Members, or, with respect to a rule applicable to less than all of the Property, by a majority of the Members in the portions affected.
- (l) To make available to each Owner, within one hundred twenty (120) days after the end of each year, an annual report.
- (m) To adjust the amount, collect and use any insurance proceeds to repair damage or replace lost property; and if proceeds are insufficient to repair damage or replace lost property, to assess the Members in proportionate amounts to cover the deficiency.
- (n) If, as and when the Board, in its sole discretion, deems necessary it may take action to enforce the provisions of this Declaration and any rules made hereunder and to enjoin and/or seek damages from any Owner for violation of such provisions or rules.

**2.05 Board Powers.** From and after the date on which the title to or any easement or other interest in the Common Area has been granted to the Association, the Board shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board, except as otherwise provided herein.

2.06 Maintenance Contracts. The Board, on behalf of the Association, shall have full power and authority to contract with any Owner for the performance by the Association of services which the Board is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board may deem proper, advisable and in the best interest of the Association.

2.07 Liability Limitations. Neither any Member nor the Board of the Association (or any of them) nor the officers (if any) of the Association shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether such other Member was acting on behalf of the Association or otherwise. Neither the Association, its directors, officers, agents nor employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. The Association or any other person, firm or corporation liable to make such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

2.08 Reserve Fund. The Board may establish reserve funds, for such purposes as may be determined by the Board, which may be maintained and accounted for separately from other funds maintained for annual operating expenses and may establish separate, irrevocable trust accounts in order to better demonstrate that the amounts deposited therein are capital contributions and are not net income to the Association. Expenditures from any such fund will be made at the direction of the Board. The reserve fund provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and occupants of the properties, and maintaining the Common Area and improvements therein, all as may be more specifically authorized from time to time by the Board of the Association. Capital expenditures from this fund may include by way of example, but not be limited to, repair of major damage to the Common Area not covered by insurance.

### ARTICLE III

#### COVENANT FOR ASSESSMENTS

3.01 Creation of the Lien and Personal Obligation for Assessments. The Declarant, for each Tract within the Subdivision which is or hereafter becomes subject to the assessments hereinafter provided for, hereby covenants, and each Owner of any Tract which is or hereafter becomes assessable, by acceptance of a deed thereto, whether or not it is expressed in the deed or other evidence or the conveyance, is deemed to covenant and agree to pay the Association the following:

- (a) Annual assessments or charges;
- (b) Special assessments for capital improvements; and
- (c) Any other sums to the extent they are specifically provided for elsewhere in this Declaration.

Such assessments or charges are to be fixed, established and collected as hereinafter provided. These charges, assessments and sums, together with such interest thereon and cost of collection thereof, as hereinafter provided, constitute a charge on the Tract and are secured by a continuing contractual lien upon the Tract against which such assessments or charges are made. Each such assessment or charge, together with such interest, costs and reasonable attorney's fees are and remain the personal obligation of the individual or individuals who owned the particular Tract at the time the assessment or charge fell due notwithstanding any subsequent transfer of title to such Tract.

**3.02 Purpose of Assessments.** The assessments levied by the Association are to be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Subdivision. Without limiting the foregoing, the total assessments accumulated by the Association, insofar as the same may be sufficient, will be applied toward the payment of all taxes, insurance premiums, repair, maintenance and acquisition expenses incurred by the Association, and at the option of the Board of Directors of the Association, for any or all of the following purposes: lighting, improving and maintaining paths, parkways and esplanades in the Subdivision; collecting and disposing of garbage, ashes, rubbish and materials of a similar nature; payment of legal and all other expenses incurred in connection with the collection, enforcement and administration of all assessments and charges and in connection with enforcement of this Declaration; employing policemen or watchmen and/or a security service; fogging and furnishing other general insecticide services; acquiring and maintaining any amenities or recreational facilities that may be operated in whole or in part for the benefit of the Owners; repayment of debt (principal and interest) incurred by the Association to acquire, repair, maintain or improve the Common Area or facilities situated thereon; and doing any other thing necessary or desirable in the opinion of the Board of Directors of the Association to keep and maintain the property in the Subdivision in neat and good order, or which it considers of general benefit to the Owners or occupants of the Subdivision, including the establishment and maintenance of a reserve for repair, maintenance, taxes, insurance and other charges as specified herein. Such funds may also be used to repair, maintain and restore abandoned or neglected residences, ancillary appurtenances, and Tracts as hereinafter provided. It is understood that the judgment of the Board of Directors of the Association in establishing annual assessments, special assessments and other charges and in the expenditure of said funds is final and conclusive so long as said judgment is reasonable and exercised in good faith.

**3.03 Annual Assessments.** Annual assessments are due and payable in advance on January 1 of each year as provided herein. The initial annual assessment is \$400.00. Annual assessments for subsequent years will be set by the Board of Directors on or before November 30 of each year (beginning in 2001). Unpaid assessments will become delinquent on March 1 of the year for which assessed. The annual assessment with respect to each Tract commences upon the first sale of that Tract by Declarant. If the sale occurs effective other than December 31, the purchaser of the Tract must pay to the Association at closing the pro rata assessment from the date of purchase to January 1 of the following year.

**3.04 Special Assessments for Capital Improvements.** In addition to the annual assessment authorized above, the Association may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction or unexpected repair or replacement of a particular capital improvement located upon Common Area, including the necessary fixtures and personal property related thereto. The Board of Directors of the Association must call a meeting of the Members for the purpose of voting on such special assessment. The amount and time and manner of payment of such assessment shall be established by a vote of the Members entitled to cast at least sixty-six and two-thirds percent (66 2/3%) of the votes represented at a meeting of the Members at which a quorum is present, in person or by proxy. Notice of the special assessment must be mailed to each Owner at the address shown in the records of the Association.

**3.05 Notice of Quorum for any Action Authorized Under Section 3.03 and 3.04.** Written notice of any meeting of the Members of the Association called for the purpose of taking any action authorized under Section 3.03 or 3.04 of this Article III must be sent to all Members not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members, in person or by proxy, holding twenty percent (20%) of all membership votes entitled to be cast constitutes a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting will be one-half (1/2) of the



required quorum at the preceding meeting. In lieu of such a meeting and notice action under Section 3.03 and 3.04 hereof may be taken without a meeting if a consent in writing, approving the action to be taken, shall be signed by Members holding more than sixty-six and two-thirds percent (66 2/3%) of the outstanding votes of the Association.

3.06 Rates of Assessment. Both annual and special assessments (including those contemplated by Article IV) apply to all Tracts, except those owned by the Declarant.

3.07 Certification as to Payment of Assessments. The Association, upon demand from an Owner, and for a reasonable charge, must furnish a certificate concerning the status of payment of annual or special assessments by such Owner. A properly executed certificate issued by the Association is binding upon the Association as of the date of issuance with respect to the matters set out therein.

3.08 Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments or charges which are not paid when due are delinquent. If an annual assessment is not paid by March 1 of the year in which it is due or if any other assessment or charge is not paid within thirty (30) days after the due date, such assessment shall bear interest from the due date at the rate of eighteen percent (18%) per annum or the maximum non-usurious rate, whichever is less, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien herein retained against the Tract. Interest, court costs and reasonable attorneys' fees incurred in any such action may be added to the amount of such assessment or charge. Each Owner, by his acceptance of a deed to a Tract, hereby expressly vests in the Association or its agents, the right and power to bring all actions against such Owner personally for the collection of such assessments and charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a non-judicial foreclosure on real property covered by the then current State Bar of Texas deed of trust promulgated form, and such Owner expressly grants to the Association a power of sale and non-judicial foreclosure in connection with said lien, with any one of the then officers of the Association serving as the trustee empowered to conduct the sale. Alternatively, the Association may resort to other legal and equitable relief with respect to enforcement of the liens securing the payment of assessments as may be provided by applicable law, including suit for judicial foreclosure. No Owner may waive or otherwise avoid liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Tract.

3.09 Subordination of Lien to Mortgages. As hereinabove provided, the title to each Tract is subject to the lien securing the payment of all assessments and charges due the Association, but this lien is subordinate to any bona fide purchase money lien or mortgage created for improvements covering a Tract. Sale or transfer of any Tract does not affect this lien. Provided, however, a sale pursuant to a foreclosure of a valid purchase money or improvement mortgage extinguishes the liens securing any unpaid assessments to the date of such sale, and the purchaser at such sale is thereafter the Owner liable for all assessments from and after the date of such foreclosure sale. No extinguishment of the assessment liens relieves the defaulting Owner from personal liability for payment of such assessments.

In addition to the automatic subordination provided hereinabove, the Association, in the discretion of its Board of Directors, may subordinate the lien securing any assessment provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as such Board may determine, in its absolute discretion.

3.10 Exempt Property. Notwithstanding the foregoing provisions of this Article III, all Tracts dedicated to and accepted by a local public authority or the City, and all Tracts owned by Declarant, the owner of land added to the scheme of restrictions imposed hereby in accordance with Article XI hereof, or the Association are exempt from the assessments and charges created or contemplated hereby. Tracts owned by any individual venturers of Declarant are subject to the same assessments and charges as Tracts owned by other Owners.

#### ARTICLE IV

#### INSURANCE

The Association, through the Board of Directors, or its duly authorized agents, has the authority (but not the obligation) to obtain the following types of insurance policies:

(a) Property insurance covering the Common Area and all improvements thereon in an amount equal to the full replacement value of the improvements and facilities located upon the Common Area and owned by the Association (including all building service equipment and the like) with an "agreed amount endorsement" or its equivalent, a "demolition endorsement" or its equivalent, and, if necessary, an "increased cost of construction endorsement" or "contingent liability from operation of building laws endorsement" or the equivalent, affording protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsement in Texas, and by sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, windstorm, and water damage and any such other risk as is customarily covered with respect to projects similar in construction, location and use;

(b) A comprehensive policy of public liability insurance covering all of the Common Area and insuring the Association, within such limits as it may consider acceptable (but with coverage of not less than \$1,000,000 for all claims for personal injury and/or property damage arising out of a single occurrence); such coverage to include protection against water damage liability, liability for property of others and any other coverage the Association deems prudent and which is customarily carried with respect to projects similar in construction, location and use; and

(c) A policy of fidelity coverage to protect against dishonest acts on the part of officers, directors, trustees and employees of the Association and all others who handle, or are responsible for handling funds of the Association; such fidelity bonds to be of the kind and in an amount the Association deems necessary for the protection of the Owners.

Premiums for all such insurance policies carried by the Association are a common expense payable by assessments on Tracts. Liability and property insurance for Tracts and the contents of residences are the responsibility of each individual Owner. All proceeds from policies held by the Association will be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn by an agent duly authorized by the Board of Directors. In no event will the insurance company or the bank or other financial institution holding proceeds on a policy issued in the name of the Association be authorized to distribute any proceeds therefrom to the Declarant. Proceeds from such policies may be used by the Association only for the benefit of its Members and where such proceeds arise out of an occurrence in which a building or improvement owned by the Association is damaged or destroyed, they shall be used to repair, restore and rebuild such building or improvements. In the event the insurance proceeds are determined to be insufficient to pay all costs of repairing and/or rebuilding said improvements

to their original condition, the Association may levy a special assessment for capital improvements against all Tracts to make up the deficiency. This may be done only after compliance with all the requirements for imposition of special assessments.

Any balance from the proceeds of insurance paid to the Association remaining after satisfactory repair and/or rebuilding of said improvements shall be retained by the Association as part of a general reserve fund for repair and replacement. In the event of destruction (total or partial) to the improvements on any individual Tract due to fire or any other cause, the Owner of such Tract covenants and agrees to complete all necessary repairs or reconstruction of the damaged improvements within one (1) year after the date on which the damage occurs.

## ARTICLE V

### USE OF COMMON AREA

The Common Area, and any improvements now or hereafter located thereon, may be occupied and used as follows:

(a) **Restrictive Actions by Owners.** No Owner shall permit anything to be done on or in the Common Area which would violate any applicable public law or zoning ordinance or which will result in the cancellation of or increase of any insurance carried by the Association or which would be in violation of any law. No waste shall be permitted in the Common Area.

(b) **Damage to Common Area.** Each Owner shall be liable to the Association for any damage to the Common Area caused by the negligence or willful misconduct of the Owner or such Owner's family, guests, invitees or pets.

(c) **Rules of the Board.** All Owners and occupants shall abide by any rules and regulations adopted by the Board of Directors of the Association that are consistent with and reasonably necessary to effect the purposes of this Declaration. The Board of Directors of the Association shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorneys' fees.

## ARTICLE VI

### PERMITTED USES AND RESTRICTIONS

The Property and each Tract shall be constructed, developed, occupied and used as hereinafter provided in this Article VI. No use shall be permitted on the Property which is not allowed under applicable public codes, ordinances and other laws either already adopted or as may be adopted by the City or other controlling public authorities. Each Owner, occupant or other user of any portion of the Property, shall at all times comply with this Declaration and with any and all laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdictional control over the Property, specifically including, but not limited to, applicable zoning restrictions placed upon the Property as they exist from time to time. **IN SOME INSTANCES GOVERNMENTAL REQUIREMENTS MAY BE MORE OR LESS RESTRICTIVE THAN THE PROVISIONS OF THIS**

DECLARATION. IN THE EVENT A CONFLICT EXISTS BETWEEN ANY SUCH GOVERNMENTAL REQUIREMENT AND ANY REQUIREMENTS OF THIS DECLARATION, THE MOST RESTRICTIVE REQUIREMENT SHALL PREVAIL, EXCEPT IN CIRCUMSTANCES WHERE COMPLIANCE WITH A MORE RESTRICTIVE MANDATORY APPLICABLE GOVERNMENTAL REQUIREMENTS, IN WHICH EVENT THOSE GOVERNMENTAL REQUIREMENTS SHALL APPLY. COMPLIANCE WITH MANDATORY GOVERNMENTAL REQUIREMENTS WILL NOT RESULT IN THE BREACH OF THIS DECLARATION EVEN THOUGH SUCH COMPLIANCE MAY RESULT IN NON-COMPLIANCE WITH PROVISIONS OF THIS DECLARATION. WHERE A GOVERNMENTAL REQUIREMENT DOES NOT CLEARLY CONFLICT WITH THE PROVISIONS OF THIS DECLARATION, BUT PERMITS ACTION THAT IS DIFFERENT FROM THAT REQUIRED BY THIS DECLARATION, THE PROVISIONS OF THIS DECLARATION SHALL PREVAIL AND CONTROL.

6.01 Residential Use. The Tracts shall be used for those uses allowed in "SF" zoning category pursuant to the zoning ordinance of the City. No building shall be erected, altered, placed or permitted to remain on any Tract other than one (1) detached or attached single-family residence per Tract, which residence may not exceed two and one-half (2 ½) stories in height, and a private garage as provided below, and which residence shall be constructed to minimum Federal Housing Authority (hereinafter called "FHA") and Veterans Administration (hereinafter called "VA") standards.

6.02 Single-Family Use. Each residence may be occupied by only one (1) family consisting of persons related by blood, adoption or marriage or no more than two (2) unrelated persons living and cooking together as a single housekeeping unit, together with any household servants.

6.03 Garage Required. Each residence shall have an attached garage suitable for parking not less than two (2) nor more than four (4) standard size automobiles, which garage shall conform in design and materials with the main structure.

6.04 Restrictions on Resubdivision. None of the Tracts shall be subdivided into smaller tracts.

6.05 Driveways. All driveways shall be surfaced with concrete, brick, concrete edged asphalt, pavers or a similar substance that is approved by the Architectural Committee.

6.06 Uses Specifically Prohibited.

(a) No temporary dwelling, shop, trailer or mobile home of any kind or any improvement of a temporary character (except children's playhouses, dog houses, greenhouses, gazebos and buildings for storage of lawn maintenance equipment, which may be placed on a Tract only in places which are not visible from any street on which the Tract fronts) shall be permitted on any Tract except that the builder or contractor may have temporary improvements (such as a sales office and/or construction trailer) on a given Tract during construction of the residence on the Tract. No building material of any kind or character shall be placed or stored upon the Tracts until the Owner thereof is ready to commence construction of improvements, and then such material shall be placed within the property lines of the Tract upon which the improvements are to be erected.

(b) No boat, marine craft, hovercraft, aircraft, recreational vehicle, pickup camper, travel trailer, motor home, camper body or similar vehicle or equipment may be parked for storage in the driveway or front yard of any dwelling or parked on any public street on the Tracts, nor shall any such vehicle or equipment be parked for storage in the side or rear yard of any residence unless completely concealed from public view.

No such vehicle or equipment shall be used as a residence or office, either temporarily or permanently. This restriction shall not apply to any vehicle, machinery or equipment temporarily parked and in use solely for the construction, maintenance or repair of a residence in the immediate vicinity.

(c) Trucks, buses, trailers or any other vehicles with tonnage in excess of three (3) quarters of a ton and any vehicle containing printing of any type, whether for advertisement purposes or otherwise, shall not be permitted to park overnight in the Subdivision, except those used by a builder during the construction of improvements.

(d) No vehicle of any size which transports inflammatory explosive cargo may be kept in the Subdivision or on the Tracts at any time.

(e) No recreational vehicles, boats or similar equipment shall be parked or stored within the Subdivision in an area visible from any street except passenger automobiles, passenger vans, motorcycles, pickup trucks and pickup trucks with attached bed campers that are in operating condition and have current license plates and inspection stickers and are in daily use as motor vehicles on the streets and highways of the State of Texas. No inoperable cars or vehicles of any type or nature may be kept or situated in the Subdivision or on the Tracts.

(f) No structure of a temporary character, such as a trailer, basement, tent, shack, barn or other out-building shall be used on the Tracts at any time as a dwelling house; provided, however, that any builder may maintain and occupy model houses, sales offices and construction trailers during the construction period.

(g) No oil or gas drilling, oil development operation, oil refining, quarrying or mining operation of any kind shall be permitted in the Subdivision, nor shall oil or gas wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any part of the Subdivision. No derrick or other structure designed for using in quarrying or boring for oil, natural gas or other minerals shall be erected, maintained or permitted on the Subdivision.

(h) No animals, livestock or poultry of any kind shall be raised, bred or kept in the Subdivision except that dogs, cats or other household pets may be kept for the purpose of providing companionship for the private family. Animals are not to be raised, bred or kept for commercial purposes or for food. It is the explicit purpose and intent of these provisions to restrict the use of the Subdivision so that no person shall quarter on the premises cows, horses, bees, hogs, sheep, goats, guinea fowls, ducks, chickens, turkeys, skunks or any other animals that may interfere with the quietude, health or safety of the Subdivision. No more than four (4) pets will be permitted on each Tract. Pets must be restrained or confined in the back of each Tract inside a fenced area or within the residence. It is the pet owner's responsibility to keep the Tract clean and free of pet debris. All animals must be properly tagged for identification and evidence that all inoculation requirements have been met.

(i) No Tract or other area on the Tracts shall be used as a dumping ground for rubbish or a site for the accumulation of unsightly materials of any kind, including, without limitation, broken or rusty equipment, disassembled or inoperative cars and discarded appliances and appropriate locations and such containers shall be situated, enclosed, screened or otherwise secured in a manner so as not to be accessible to stray animals or visible from any residential street, private drive or adjacent Tract. All incinerators or other equipment for the storage or other disposal of such material shall be kept in a clean and sanitary condition. Materials incidental to construction of improvements may be stored on Tracts during construction so long as construction progresses without undue delay.

- (j) No individual water supply system shall be permitted in the Subdivision or on any Tract.
- (k) No garage, garage house or other out-building (except for sales offices and construction trailers during the construction period) shall be occupied by any Owner, tenant or other person prior to the erection of a residence.
- (l) No air-conditioning apparatus shall be installed on the ground in front of a residence. No air-conditioning apparatus shall be attached to any front wall or window of a residence. No evaporative cooler shall be installed on the front wall or window of a residence. All utility meters, equipment, air-conditioning compressors, air-conditioning and heating units and similar items (including any propane tanks) placed on any Tracts must (to the extent reasonably practicable) be visually screened from the street and adjoining Tracts.
- (m) Unless permitted by the Architectural Committee in the manner described in Article VII below, all antennas, discs or any other electronic or satellite communication equipment, including, any type of parabolic reflector or other high gain antenna system(s) or structures, must be located within the attic of the residence on any Tract. No Owner may erect or maintain solar collector panels or equipment upon any Tract. Satellite communication dishes having a diameter not greater than twenty-four inches (24") are specifically allowed on individual Tracts so long as the dish is not visible from any street frontage of the individual Tract.
- (n) No Tract or improvement shall be used for business, professional, commercial or manufacturing purposes of any kind. No activity, whether for profit or not, shall be conducted which is not related to single-family residential purposes. No noxious or offensive activity shall be undertaken within the Subdivision, nor shall anything be done which is or may become an annoyance or nuisance to the neighborhood. Nothing in this subparagraph shall prohibit a builder's temporary use of a residence as a sales office until such builder's last residence in the Subdivision is sold. Nothing in this subparagraph shall prohibit an Owner's use of a residence for quiet inoffensive activities such as tutoring or giving art lessons so long as such activities are in compliance with all applicable governmental and zoning requirements and do not materially increase the number of cars parked on the street or interfere with adjoining homeowners' use and enjoyment of their residences and yards.
- (o) No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and six feet (6') above the roadway shall be placed or permitted to remain on any Corner Tract within the triangular area formed by the street right-of-way lines and a line connecting them at points ten feet (10') from the intersection of the street right-of-way lines as extended. The same sight line limitations shall apply on any Tract within ten feet (10') from the intersection of a street right-of-way line with the edge of a private driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.
- (p) Except for children's playhouses, dog houses, greenhouses and gazebos, no building previously constructed elsewhere shall be moved onto any Tract, it being the intention that only new construction shall be placed and erected thereon.
- (q) Within easements on each of the Tracts, no structures, planting or materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, which may change the direction of flow within drainage channels or which may obstruct or retard the flow of water through drainage channels.

(r) The general grading, slope and drainage plan of a Tract may not be altered without the approval of the City and all other appropriate agencies having authority to grant such approval.

(s) No sign of any kind (including any signs in the nature of a "protest" or complaint by any Owner against a homebuilder or any other party) shall be displayed to the public view on any Tract except one (1) professional sign of not more than six square feet (6 sq. ft.) of advertising the property for rent or sale, or signs used by the Declarant or a builder to advertise the property during the construction and sales period. The Declarant, any home builder or their agents and the Declarant's agents shall have the right to remove any sign, billboard or other advertising structure that does not comply with the above and, in so doing, shall not be subject to any liability for trespass or any other liability in connection with such removal.

(t) The drying of clothes in full public view is prohibited. The Owners and occupants of Tracts at the intersections of streets or adjacent to parks, playgrounds or other facilities where the rear yard is visible to full public view shall construct a drying yard or other suitable enclosure to screen from public view the equipment which is incident to normal residences, such as clothes drying equipment, yard equipment and storage piles.

(u) Except within fireplaces in the main residential dwelling and except for outdoor cooking, no burning of anything shall be permitted anywhere in the Subdivision.

(v) No carport shall be permitted on a Tract.

(w) No abandoned, derelict or inoperative vehicles may be stored or located on any Tract unless visually screened from other Tracts and from any residential street.

(x) The provisions of all zoning ordinances and building codes affecting all or any part of the Subdivision and/or Tract(s) and in effect as of the date of this document shall be complied with, whether or not they are specifically addressed in the foregoing.

(y) No building shall be erected or constructed of exterior materials other than brick, brick veneer, stone, stone veneer or stucco on the first level, or unless otherwise approved by the Architectural Committee, and all dwellings shall be so placed on the interior lots as to face the street on which the Tracts face. The placement of improvements on the Tracts shall be subject to the approval of the Architectural Committee.

(z) No obnoxious or offensive trade shall be carried on upon any Tract, nor shall anything be done thereon which may be or become a nuisance or annoyance to the neighborhood. No commercial farming shall be permitted. Residential gardens are permitted at the rear of the main dwellings.

(aa) Any barn or outbuildings permitted in accordance with these covenants shall be erected in accordance with the zoning ordinances governing the Subdivision.

(bb) No used houses may be moved into the Subdivision.

(cc) Driveways shall be completed at the time of construction for the primary dwelling and shall be concrete, brick, pavers or concreted-edged asphalt.

6.07 Commencement of Construction. Each residence constructed on each Tract and other improvements thereto shall be commenced and completed with due diligence.

6.08 Utilities. Except as to special street lighting or other aerial facilities which may be required by the City or which may be required by the franchise of any utility company or which may be installed by the Declarant pursuant to its development plan, no aerial utility facilities of any type (except meters, risers, service pedestals, transformers and other surface installations necessary to maintain or operate appropriate underground facilities) shall be erected or installed in the Subdivision whether upon individual Tracts, easements, streets or rights-of-way of any type, either by the utility company or any other person or entity, including, but not limited to, any person owning or acquiring any part of the Subdivision, and all utility service facilities (including, but not limited to, water, sewer, gas, electricity, cable television and telephone) shall be buried underground unless otherwise required by a public utility.

6.09 Minimum Floor Area. The total air-conditioned living area to the main residential structure, as measured to the outside of exterior walls, but exclusive of open porches, garages, patios and detached accessory buildings, shall be not less than two thousand five hundred square feet (2,500 sq. ft.).

6.10 Building Materials. The total exterior wall area (excluding windows, doors and gables) of each building constructed or placed on a Tract shall be not less than eighty percent (80%) (or such higher percentage as may be required by the City) masonry (including brick veneer, brick stone, stone veneer and stucco, but specifically excluding "Hardi Plank") or other material that is approved by the Declarant or the Architectural Committee. Windows, doors and openings are excluded from the calculation of the total exterior wall area.

6.11 Sideline and Front Line Setback Restrictions. No dwelling shall be located on any Tract nearer to the front Tract line than twenty-five feet (25') or nearer to the side Tract line than the minimum setback lines shown on the Plat of the Tracts or as required by the City.

6.12 Mailboxes. Mailboxes shall be constructed of a material and design compatible with the main residence and placed at the driveway entrance and approved by the Declarant or the Architectural Committee.

6.13 Window Treatments. No aluminum foil, reflective film or similar treatment shall be placed on windows or glass doors.

6.14 Chimneys. All fireplace flues, smoke stacks and spark arrestors shall be completely enclosed and concealed from public view in finished chimneys of materials architecturally compatible with the exterior of the main dwelling.

6.15 Fences and Walls.

(a) In all cases, fences must have specific approval from the Architectural Committee prior to construction. No fencing shall be permitted in front yard areas or side yard areas extending beyond the building facade by more than two feet (2'). Perimeter chain link fences are strictly prohibited. Chain link fences for dog runs are permitted so long as they are placed at the rear of a Tract in a manner not to be offensive to neighbors and providing the Owner agrees to plant climbing roses, hedges or other evergreen shrubbery along the outside of the fence so that the fence is totally and permanently screened throughout the year from public view and adjacent property. Fences along the western property line of Lots 7, 8, 21, 22, 23, 42, 43 and 44, Block A of Phase 1, adjacent to the Dublin Park Addition, as well as along the property



line of a Tract which property line is adjacent to the city limits of the City of Parker, shall not exceed six feet (6') in height and shall be of "open construction" and not solid. Solid wood fences are strictly prohibited as perimeter fencing along the western property line of Lots 7, 8, 21, 22, 23, 42, 43 and 44, Block A of Phase 1 which have a common property line with the adjacent Dublin Park Addition, as well as along the property line of a Tract which property line is adjacent to the city limits of the City of Parker.

(b) Declarant and/or the Association shall have the right, but not the obligation, to erect and install, fences, walls and/or screening landscaping (i) within that portion of any Tract situated along the perimeter of the Subdivision, or (ii) on any portion of the Subdivision not comprising any portion of a Tract or dedicated street or alley. The Association shall have the obligation to maintain, repair and/or replace fences, walls and/or screening landscaping (i) within that portion of any Tract situated along the perimeter of the Subdivision, or (ii) on any portion of the Subdivision not comprising any portion of a Tract or dedicated street or alley. Any fence, wall or sprinkler system shall be the property of the Owner of the Tract on which such fence, wall or sprinkler system is erected or installed, subject to the easements and rights of Declarant and the Association set forth herein.

6.16 Windows and Skylights. Windows, jambs and mullions shall be composed of anodized aluminum or wood unless otherwise approved in writing by the Architectural Committee.

6.17 No Duplication. No house can be duplicated within three (3) houses of the house being duplicated with a substantially similar exterior, *i.e.* facade and brick color.

6.18 Roofs. All homes must have wood shingle roofs, simulated wood shingle roofs, tile roofs, simulated tile roofs or composition shingles (of a random tab style and having at least 300 weight), unless express approval to use other material is obtained from the Architectural Committee. Wood shingle roofs must be fireproofed. In the case wood shingles are utilized, a certificate from the manufacturer and/or supplier of the material stating the warranty of the fireproofing, shall be presented to the Architectural Committee, the Association or any neighbor upon request. The minimum roof pitch shall be eight (8) to twelve (12).

## ARTICLE VII

### ARCHITECTURAL COMMITTEE

7.01 Architectural Committee. There is herewith created an Architectural Committee (herein so called) composed of no more than three (3) members. The initial members of the Architectural Committee shall be **Stephen L. Sallman** and **Steve Parsons** (the "Initial Members"). The Initial Members shall serve as members of the Architectural Committee until December 31, 2002. A majority of the Architectural Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Architectural Committee, the remaining members shall have full authority to designate a successor by majority vote. At any time after January 1, 2003, the Members holding fifty-one percent (51%) of the membership votes represented at a meeting of the Members at which a quorum is present, in person or by proxy, may change the membership of the Architectural Committee or withdraw from or restore to the Architectural Committee any powers and duties. No Member of the Architectural Committee shall be entitled to any compensation for services performed hereunder.

7.02 Approval of Plans. No building may be erected, placed or altered on any Tract until the construction plans and specifications, plat showing the location of the structure and the landscaping plan, have been approved by the Architectural Committee as to harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. The Architectural Committee's approval or disapproval required in these covenants must be in writing. A final inspection upon completion of construction may be required insuring compliance with plans and specifications as submitted to the Architectural Committee. In the event the Architectural Committee or its designated representative fails to approve or disapprove the plans and specifications in writing within ten (10) days after working drawings and written detailed specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will be deemed to have been given and there is deemed to have been compliance with these restrictions. It is the general purpose of the Architectural Committee to provide for the maintenance of high standards of architecture and construction in such a manner as to enhance the aesthetic purposes of the improvements to the Subdivision. The Architectural Committee is guided by and controlled by this Declaration except when in their sole discretion good planning would dictate to the contrary.

7.03 Non-Liability of Architectural Committee Members. Neither the Architectural Committee, nor any member thereof, nor the Board nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the Architectural Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its members thereof shall be liable to any Owner due to the construction of any Improvement within the Property or the creation thereby of an obstruction to the view from such Owner's Tract or Tracts. The Architectural Committee does not warrant that any improvements conform to the submitted plans and specifications therefor or that the improvements are safe or habitable. No Owner may rely on Architectural Committee inspections with respect to the quality or condition of any improvements constructed within the Subdivision.

## ARTICLE VIII

### EASEMENTS

8.01 Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on any recorded plat of any part of the Subdivision. No structure may be erected within such easements and no fence shall be constructed across any such utility easement without the permission of the affected utility providers; provided that when an Owner owns adjoining Tracts, improvements may be constructed on the reserved utility easements on the abutting property lines, with the approval of the Architectural Committee and no replat consolidating the adjoining Tracts should be required. Full rights of ingress and egress shall be had by the Association over and upon each Tract for the maintenance of the Common Area in accordance with the provisions hereof and for the carrying out by the Association of its functions, duties and obligation hereunder; provided, that any such entry by the Association upon any Tract shall be made with as little inconvenience to the Owner as practical and any damage caused by the Association's entry, other than damage caused by the Owner, shall be repaired by the Association at the expense of the Association. An easement is hereby granted to all police, fire protection, ambulance and other emergency vehicles and other service vehicles to enter upon the Common Area, including, but not limited to, private drives, in the performance of their duties; and further, an easement is hereby granted to the Association, its officers, agents, employees and management personnel to enter the Common Area and private drives to render any service.

8.02 Additional Easements. Easements are also reserved for the installation, operation, maintenance and ownership of utility service lines from the Tract lines to the residences. Declarant reserves easements for the purpose of erecting and maintaining permanent fencing along adjacent roadways, landscaping along the same and entry features (landscaping, features and the like) about the entrances to the Subdivision. Declarant and the Association reserve the right to make minor changes in and additions to the above easements for the purpose of most efficiently and economically installing improvements. By acceptance of a deed to any Tract, the Owner thereof covenants and agrees to mow weeds and grass and to keep and maintain in a neat and clean condition any easement which may traverse a portion of the Tract, including those easements constituting Common Area.

8.03 Common Area Easements. Declarant for the benefit of Declarant and the Association and their successors and assigns hereby reserves landscape/common area easements depicted on Exhibit A attached hereto and incorporated herein for all purposes and being (i) a five feet (5') wide easement along the northern property line of the Property described in the Phase I Plat, (ii) a thirty feet (30') by thirty feet (30') easement at the southwest corner of Betsy Lane and Oriole Drive, and (iii) a thirty feet (30') by thirty feet (30') easement at the southeast corner of Betsy Lane and Oriole Drive, which shall be used for the benefit of the Subdivision, including, fencing and a masonry wall along Betsy Lane, landscaping and irrigation between such fencing and wall and the curb, entry area landscaping, irrigation, walls and signage, and such other uses and purposes which the Association determines in its sole discretion will benefit the Subdivision.

## ARTICLE IX

### GENERAL PROVISIONS

9.01 Violation of Restrictions and Covenants. If any person or persons violate or attempt to violate any of the restrictions or covenants herein or the other provisions of this Declaration, it is lawful for any other person or persons owning any real property situated in the Subdivision or the Association to prosecute proceedings at law or in equity against the person violating or attempting to violate any such restriction and covenant and either prevent him or them from doing so, or to correct such violation, or to recover damages or other dues for such violation. Failure to enforce any covenant or restriction herein contained in no event is deemed a waiver of the right to do so thereafter against any person who has violated a covenant or expressed an intent to violate a covenant or is in the process of violating a covenant. Invalidation of any one or any part of these restrictions by judgment or Court order in no way affects any of the other provisions or part of provisions which remain in full force and effect.

9.02 Right to Enforce. Enforcement of the covenants and restrictions herein is by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants, either to restrain or to recover damages.

9.03 Termination. The covenants, conditions, restrictions and other provisions of this Declaration shall run with the land and are binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date this Declaration is recorded in the Real Property Records of Collin County, Texas, after which time said covenants, conditions, restrictions and other provisions of this Declaration shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Owners of fifty-one percent (51%) of the Tracts and recorded in the Real Property Records of Collin County, Texas, which instrument terminates this Declaration; provided, however, that no such agreement to terminate this Declaration shall be effective unless made and recorded at least one (1) year in advance of the effective date of such termination; and provided further, however, that so long as Declarant

and/or the owner of any land added to the scheme of the restrictions imposed hereby in accordance with Article XI hereof own at least five percent (5%) of the Tracts within the Subdivision, no such termination shall be effective without the prior written approval of Declarant. This Declaration or any provision hereof or any covenant, condition or restriction contained herein may be modified or amended with the written consent of the Owners of fifty-one percent (51%) of the Tracts; provided, however, that so long as the Declarant and/or the owner of any land added to the scheme of restrictions imposed hereby in accordance with Article XI hereof own at least five percent (5%) of the Tracts within the Subdivision, no such amendment or modification is effective without the prior written approval of Declarant. No such modification or amendment is effective until a proper instrument in writing has been executed and acknowledged and filed for record in the Real Property Records of Collin County, Texas.

9.04 Severability. Invalidation of any one or more of the covenants, restrictions, conditions or charges contained herein by judgment or Court order will not affect the validity of any other covenant, restriction, condition or charge set forth herein, which remain in full force and effect for all purposes.

9.05 Waiver. Notwithstanding any of the above provisions, the Architectural Committee is hereby given the authority to waive in writing, any restriction or covenant herein contained, when in the reasonable opinion of the Architectural Committee, the proposed waiver will add to the appearance and value of the subject property and to the Subdivision as a whole and will not detract from the appearance or value of other properties in the Subdivision.

9.06 Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way effect the meaning or interpretation of this Declaration.

9.07 Notices. 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 when deposited in the United States mail, postage prepaid, 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.

9.08 Disputes. Disputes or disagreements between Owner with respect to the interpretation or application of the provisions of this Declaration or the Bylaws of the Association shall be determined by the Board of Directors of the Association whose reasonable determination shall be final and binding upon Owner.

## ARTICLE X

### SPECIAL PROVISIONS REGARDING THE RIGHTS OF THE CITY

10.01 Obligation of the Association. The Association has and shall have the sole responsibility to maintain the Common Area as provided herein in a condition not less than the minimum standards required by the City. The Association's costs of maintaining the Common Area will be collected from the Owners through assessments as provided in Article III hereof.

10.02 Rights of the City. The Association shall not seek, by either act or omission, to abandon the Association's obligations as established by this Declaration to maintain the Common Area. However, in the event that:

(a) The Association dissolves and the Common Area shall not be either (i) dedicated to and accepted by an appropriate municipal corporation, public agency, authority or utility to be devoted to the purposes as nearly as practicable to the same as those to which such Common Area was required to be devoted by the Association, or (ii) conveyed to another organization or entity which assumes all obligations imposed hereunder upon the Association to maintain said Common Area; or

(b) The Association, its successors or assigns, shall fail or refuse to adequately maintain the appearance and condition of the Common Area which the Association is obligated to maintain hereunder; then, in either such event, the City shall have the right, but not the obligation, thereafter to assume the duty of performing the Association's maintenance obligations of all such Common Area at any time after such dissolution, upon giving written notice to the Owners, or at any time after the expiration of sixty (60) days after receipt by the Association, or the Association's successors or assigns, of written notice specifying in detail the nature and extent of the failure to maintain without such failure being remedied. Upon assuming such maintenance obligations, the City may collect, when the same become due, the assessments levied by the Association pursuant to the provisions hereof for the purposes of repairing, replacing, maintaining or caring for the Common Area; and, if necessary, the City may enforce the payment of delinquent assessments in the manner set forth herein. In the alternative, upon assuming such maintenance obligations, the City may levy an assessment upon each Tract on a pro rata basis for the cost of such maintenance to be provided by the Association as set forth in this Declaration, which assessment shall constitute an assessment lien upon the Tract against which each assessment is made. During any period that the City assumes the obligation to maintain and care for the Common Area, the Association shall have no obligation or authority with respect to such maintenance and care. The right and authority of the City to maintain the Common Area shall cease and terminate when the Association, its successors or assigns, shall present to the City reasonable evidence of the Association's willingness and ability to resume maintenance of the Common Area. Under no circumstances shall the City be liable to the Association or any Owner or their respective heirs, devisees, personal representatives, successors and assigns for negligent acts or omissions relating in any manner to maintaining, improving and preserving the Common Area.

**10.03 Easement.** In the event the City assumes the duty of performing the maintenance obligations of the Association as provided herein, then the City, its agents, representatives and employees, shall have the right of access, ingress and egress to and over the Common Area for the purposes of maintaining, improving and preserving the same.

**10.04 Amendment.** Notwithstanding anything herein to the contrary, the provisions of this Article X shall not be amended or deleted from this Declaration without the written consent of the City. Other provisions of this Declaration may be amended or deleted without the necessity of the consent of the City.

**10.05 Approval by the City.** By execution hereof, the City confirms the City's approval of this Article X hereof, the establishment of the Association and the requirements that all Owners be Members of the Association. This Declaration satisfies all requirements for declarations of all applicable City ordinances pertaining to the Property and the Subdivision, including, without limitation, those pertaining to the maintenance of the Common Area.

ARTICLE XI

ADDITIONAL PROPERTY

Declarant or the then current owner of any such additional property shall have the right to bring within the Property any additional property now or hereafter owned by either which is adjacent or in reasonable proximity to the Property or any property subject to a Supplemental Declaration of Protective Covenants (hereinafter defined) upon the approval of the Declarant, in its sole discretion. Any additions of property authorized under this Article XI shall be made by filing of record a Supplemental Declaration of Protective Covenants (herein so called) executed by the Declarant and, if applicable, the then current owner of such additional property, with respect to the additional property, which shall extend this Declaration (except as modified or amended in such Supplemental Declaration of Protective Covenants) to such additional property. Each such Supplemental Declaration of Protective Covenants shall impose an annual maintenance charge assessment on the property covered thereby, on a uniform basis, which fairly relates to the maintenance charge and assessment imposed by this Declaration, and may contain such additions to or modifications of this Declaration (applying to the specific property covered thereby only) as may be designated in such Supplemental Declaration of Protective Covenants. The services provided by the Association which relate to the Property and to all or portions of such additional lands may vary in value or in kind. Each Supplemental Declaration of Protective Covenants may provide for maintenance charges and assessments on such additional lands which differ in amount, basis or method of computation from those provided for in this Declaration. Each Supplemental Declaration of Protective Covenants may contain such terms and provisions as are acceptable to Declarant and the owner of such additional property which is the subject of such Supplemental Declaration of Protective Covenants in their sole discretion. In the event of a conflict between the terms and provisions of this Declaration and the terms and provisions of a Supplemental Declaration of Protective Covenants, the terms and provisions of such Supplemental Declaration of Protective Covenants shall control with regard to the property added to this Declaration pursuant to such Supplemental Declaration of Protective Covenants.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed effective as of, although not necessarily on, March 1<sup>st</sup>, 2001.

DECLARANT:

Dublin Murphy Estates, Ltd.,  
a Texas limited partnership

By: Dublin Murphy, L.L.C.,  
a Texas limited liability company,  
General Partner

By: Stephen L. Sallman  
Stephen L. Sallman,  
Manager

By: Steve Parsons  
Steve Parsons,  
Manager

CITY:

City of Murphy,  
a municipality organized and existing  
under the laws of the State of Texas

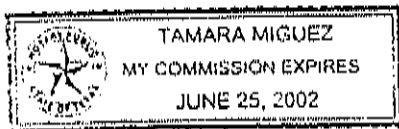
By: *Roy W Bentle*  
Name: ROY W. BENTLE  
Title: MAYOR

STATE OF TEXAS §

COUNTY OF ~~COLLIN~~ §  
DALLAS §

This instrument was acknowledged before me on March 7, 2001, by Stephen L. Sallman, Manager of Dublin Murphy, L.L.C., a Texas limited liability company, the General Partner of Dublin Murphy Estates, Ltd., a Texas limited partnership, on behalf thereof and in the capacity herein stated.

(seal)



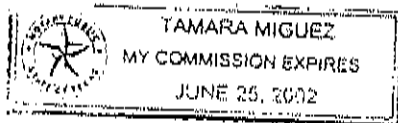
*Tamara Miguez*  
Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF ~~COLLIN~~ §  
DALLAS §

This instrument was acknowledged before me on March 13, 2001, by Steve Parsons, Manager of Dublin Murphy, L.L.C., a Texas limited liability company, the General Partner of Dublin Murphy Estates, Ltd., a Texas limited partnership, on behalf thereof and in the capacity herein stated.

(seal)



*Tamara Miguez*  
Notary Public, State of Texas





4916 3342

EXHIBIT A

Depiction of Common Area

Phase 1 Plat





ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW  
(THE STATE OF TEXAS) (COUNTY OF COLLIN)  
I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped herein by me; and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on

MAY 11 2001

*Heleen Starnes*



Filed for Record in:  
Collin County, McKinney TX  
Honorable Heleen Starnes  
Collin County Clerk

MAY 11 2001  
HT 01:00PM

Doc/Num : 2001- 0055208

Recording/Type:FD 63.00  
Receipt #: 15024