

SUPPLEMENTAL DECLARATION OF EASEMENTS, RESTRICTIONS, COVENANTS, CONDITIONS, CHARGES AND LIENS FOR DUPLEX LOTS 1-20, BLOCK A, SECTION 5, HERITAGE PARKS LOCATED IN ABILENE, TAYLOR COUNTY, TEXAS.

This Supplemental Declaration is made as of December 1, 2005 by MUSGRAVE AND MUSGRAVE, LLP, a Texas limited liability partnership.

**RECITALS**

- A. This instrument is a Supplemental Declaration created by Declarant pursuant to the Master Declaration for the purpose of creating building restrictions for duplex Lots 1-20, Block A, Section 5, Heritage Parks, a subdivision in the City of Abilene, Taylor County, Texas. This Supplemental Declaration is a Supplemental Neighborhood Declaration as defined in the Declaration. Duplex Lots 1-20, Block A, Section 5, Heritage Parks are created by the execution, delivery and recording of this Supplemental Declaration and by the execution, delivery and recording of a subdivision plat (the "Plat") of Heritage Parks which Plat is duly recorded in the Official Public Records of Real Property of Taylor County, Texas in Plat Cabinet 3, Slide 783, Plat Records of Taylor County, Texas. The Plat is incorporated into this Supplemental Declaration and made a part of this Supplemental Declaration, the same as if the Plat were fully set forth herein.
- B. Lots 1-20, Block A, Section 5, Heritage Parks (the duplex lots), all of which are created for, and restricted to use as duplex residences.
- C. Declarant owns the duplex lots and from time to time will convey to Persons the duplex lots subject to the protective covenants, terms, conditions, restrictions, easements, liens and charges described in this Supplemental Declaration and the protective covenants, terms, conditions, restrictions, liens and charges described in the Declaration of Easements, Restrictions, Covenants, Conditions, Charges and Liens for Heritage Parks, a subdivision in the City of Abilene, Taylor County, Texas recorded in Volume 1335, Page 212, Volume 1448, Page 621 and Volume 2477, Page 82 of the Deed and Official Public Records of Real Property of Taylor County, Texas. In the event of conflict with the prior restrictions, these declarations shall control.
- D. Declarant desires to create and carry out a uniform plan for the improvements, development and sale of the duplex lots.
- E. The duplex lots shall be governed solely and exclusively by the Heritage Parks Homeowners Association. No other property owner's association will be formed in connection with the improvement, development and sale of the duplex lots.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, it is hereby declared (1) that all of the duplex lots shall be held, sold, conveyed and occupied subject to the following easements, restrictions, covenants, terms and conditions, all of which easements, restrictions, covenants, terms and conditions are for the purpose of protecting the value and desirability of, and (a) shall run with the title to the Neighborhood and shall be binding on all Persons owning or claiming any right, title or interest in or to the duplex lots or any part thereof, and their heirs, personal representatives, successors, and assigns, forever, and (b) shall inure to the benefit of each Owner thereof, and (2) that each contract or deed which may hereafter be executed by any Person with regard to the duplex lots or any portion thereof, shall conclusively be held to have been executed, delivered, and accepted subject to the easements, restrictions, covenants, terms and conditions of this Supplemental Declaration regardless of whether or not the same are set out, or referred to, in said contract or deed.

ARTICLE 1. - DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified:

1.1 “Improvement” and “Improvements” mean every structure and all appurtenances thereto of every type and kind located on the duplex lots including but not limited to, building, outbuildings, storage sheds, patios, basketball goals, swimming pools, garages, storage buildings, fences, trash enclosures, screening walls, retaining walls, decks, landscaping, poles, signs, mail boxes, exterior air conditioning, water softener fixtures or equipment, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

1.2 “Lot” or “Lots” means any parcel or parcels of land that is, or are, shown as a subdivision parcel, or parcels on the plat of the duplex lots together with all Improvements located thereon.

1.3 “Lot Owner” or “Lot Owners” means one (1) or more Persons who hold record title to a duplex lot(s) but excluding in all cases any Person holding an interest in a Lot merely as security for the performance of an obligation. If a Lot is sold under a recorded contract of sale, and the contract of sale specifically so provides, then the purchaser (rather than the fee owner) of the Lot described in the contract of sale will be the Lot Owner.

1.4 “Plans and Specifications” means any and all documents designed to guide or control the construction or creation of any Improvement to a duplex lot including but not limited to, those indicating location, size, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, landscaping and fencing plans, signage, lighting, elevation drawings, floor plans, specifications on all building products and construction techniques, plans for utility services, all other documentation or information relevant to improvement on the duplex lots.

1.5 “Plat” means the subdivision plat of the duplex lots which is filed of record in Plat Cabinet 3, Slide 783, Plat Records of Taylor County, Texas.

1.6 “Unit” means each dwelling on the duplex lot.

1.9 “Wall” means and refers to a six foot (6’) tall wooden fence being built by Declarant.

## ARTICLE II -GENERAL RESTRICTIONS

All of the duplex lots shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the limitations and restrictions established in the Supplemental Declaration and the following:

2.1 Duplex Family Residential Construction. Except as provided below, or otherwise allowed and approved by the Declarant, no Lot shall contain more than two dwellings and each dwelling shall be used only for Single Family occupancy or tenant occupancy.

2.2 Subdividing. No Lot shall be further divided or subdivided, combined with another Lot or land, nor may any easements or other interests therein less than the whole be conveyed or created by the Lot Owner thereof without the prior written consent of the Declarant.

2.3 Minimum Square Footage. The living area of the duplex structure located on any Lot, exclusive of open porches and parking facilities, shall not be less than 2600 square feet.

2.4 Construction of Improvements. No Improvement on a Lot shall be constructed without the prior written approval of the Plans and Specifications for such construction.

2.5 Alteration of Improvements. No Improvement on a Lot shall be altered or modified without the prior written approval of the Plans and Specifications for such alteration or modification by the Declarant.

2.6 Unfinished Work. The erection of any Improvement shall be completed within six (6) months from the commencement date.

2.7 Masonry. At least seventy-five percent (75%) of exterior walls, to a height of nine feet (9') shall be composed of masonry. In determining compliance with the forgoing requirements, doors (other than garage doors), windows, and other similar openings (other than breezeways or other covered walkways) shall be treated as if they were masonry. No more than eighteen inches (18") of the concrete slab, or other foundation material, underlying any Improvement on a Lot shall be exposed to view on the front elevation. Masonry or masonry veneer includes stucco, ceramic tile, clay, brick, rock and HardiPlank.

2.8. Siding and Exterior Paint and Stain. Subject to the limitations imposed by Section 2.7 above, wood siding may be used. Declarant must approve all siding materials other than wood and all siding colors. All exterior color schemes on any Improvement must be approved by the Declarant prior to use, and bright colors, or any color or combination of colors not aesthetically and/or architecturally compatible with the rest of the Neighborhood, shall not be used on the exterior of any Improvement and shall not be approved for use on the exterior of any Improvement by the Declarant.

2.9 Exterior Lighting. No exterior lighting shall be erected or maintained in such a manner as to unduly interfere with or affect the enjoyment of adjoining property.

2.10 Driveways and Front Yards. Each driveway must accommodate two vehicles in front of the garage for off street parking requirements. Driveways on all Lots must be constructed of finished concrete. Stamped concrete, brick pavers or other surfaces may not be used unless a specific variance is granted by the Declarant. The design and location of the driveway and front yard for each Lot must be approved by the Declarant. Driveways and sidewalks must be shown on the site plan submitted for approval by the Declarant.

2.11. Garage Requirements. Each Unit shall at all times maintain an enclosed garage large enough to accommodate under a roof a minimum of two (2) full size automobiles. Garage designs and materials will conform and harmonize with the main structure, and garage shall not be permanently enclosed for conversion to any other use.

2.12 Placement of Structures on Lots. Each garage, living unit, and other Improvements constructed on a Lot shall comply with the setback requirements set forth in the provision of the Plat and this Supplemental Declaration. In any event, the location of all structures shall comply with all applicable government codes. State setbacks may only be varied by the Declarant to resolve issues not contemplated in these covenants, conditions and restrictions. In no event may any structure be constructed or maintained upon any utility or other easement.

- A. Front setback shall be twenty-five feet (25') from the front property line.
- B. No structure shall be built on a Lot nearer than ten feet (10') to an existing structure on an adjacent Lot.
- C. Rear setbacks shall be a minimum of twenty-five (25') from the rear property line of each Lot for all structures.

2.15 Repair of Buildings. All Improvements upon any Lot shall at all times be kept in good condition and repair and adequately painted or otherwise maintained by the Lot Owner thereof.

2.16 Windows and Glass. Windows shall be wood, vinyl or factory job finished painted metal windows. The design of windows may be double or single hung, casement or projecting. Reflective glass is not permitted.

2.17 Roofing and Gutters. The roofing materials for all units shall be of the same coloration and architectural design and shall be a composition shingle. The Declarant shall have the authority and sole discretion to approve other roof treatments and materials (so long as the discharge of water is directed onto the Lot on which the Improvement is built) if the form and materials utilized will be harmonious with the surrounding homes and Neighborhood as a whole.

2.18 Underground Utility Lines. No utility lines including, but not limited to, wires, or other devices for the communication or transmission of telephone or electric current or power, cable television, or any other type of line or wire shall be erected, placed or maintained anywhere in or upon any portion of the duplex lots unless the same shall be contained in conduit or cables installed and maintained underground or concealed in, under or on the Improvements in a manner approved in writing by the Declarant; provided, however, that no provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of Improvements which have been previously approved in writing by the Declarant.

2.19 Drainage. There shall be no interference with the established drainage patterns over any of the duplex lots except by Declarant, unless adequate provision is made for proper drainage that is approved by the Declarant.

2.20 Temporary Structures. No tent, shack, garage, barn, basement, trailer, motor home or other temporary building, improvement or structure shall be placed upon a duplex lot without the prior written approval of the Declarant.

2.21 Fences. The construction of fences on the duplex lots shall be subject to the prior written consent of the Declarant. The Declarant may, in its discretion, prohibit the construction of any proposed fence that does not comply with the requirements of the Declaration, or may require that any proposed fence be partially screened by vegetation.

- A. No fence shall exceed a maximum height of six feet (6') above the ground and shall be constructed using material, design, height, color and style approved by Declarant.
- B. The Declarant may approve alternate gate and fencing materials that are in keeping with the design standards for the Neighborhood.

2.22 Fence Maintenance. Fence maintenance on each duplex lot shall be the responsibility of the Lot Owner, and all damage shall be repaired within thirty (30) days after written notification by the Association. It shall be a violation of this Declaration to maintain a fence in such a manner as to allow (1) any portion of a fence to lean so that the fence is more than five (5) degrees out of perpendicular alignment with its base, (2) missing, loose, or damaged rails in fence and (3) symbols, writing, and other graffiti on the fence.

2.23 Maintenance of Lawns and Planting. Each Lot Owner shall keep all shrubs, trees, grass and plantings of every kind on such Lot cultivated, pruned, mowed and free of trash and other unsightly material.

2.24 Construction Activities. Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements on a Lot. 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, posting of signs or similar activities, provided such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area.

2.25 Compliance with Provisions of the Declaration. Each Lot Owner shall comply strictly with the provisions of this Declaration as the same may be amended from time to time. Failure to comply with any provisions of this Declaration shall constitute a violation of this Declaration, and shall give

rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant on behalf of the Association or by an aggrieved Lot Owner, but only in accordance with the provisions for enforcement established in this Supplemental Declaration.

2.26 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 II or elsewhere in this Supplemental Declaration, including (without limitation) the following Article III, are or may be invalid or unenforceable for any reason or to any extent, Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, terms or provisions. Any Lot 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.

2.27 Model Homes. Not Applicable.

2.28 Variances. The Declarant may authorize variances from compliance with any of its own guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules, regulations and procedures. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless granted in writing or (b) be contrary to the restrictions set forth in the body of this Declaration.

2.29 No Liability. Review and approval of any application pursuant to the Article is made on the basis of aesthetic considerations only and the Declarant shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant nor the Association, nor any officer, director, employee nor member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

2.30 Door and Windows. No “burglar bars”, steel or wrought iron bars, or similar fixtures, whether designed for decorative, security or other purposes, shall be installed on the exterior or any windows or doors of any Improvement. No signs, numerals or other writing shall be written on or placed in the doors, windows or exterior walls of an Improvement, either temporarily or permanently.

### ARTICLE III -USE RESTRICTIONS

General. The duplex lots shall be improved and used solely for duplex family, residential occupancy. Common Areas may, subject to the approval of Declarant, be improved and used for active and passive recreational purposes for the primary benefit of Lot Owner.

3.1 Minimum Yards. The location of all Improvements on a Lot shall be subject to approval by the Declarant.

3.2 Common Areas. No land with any Common Areas shall be improved, used or occupied, except in such a manner as is described in the Plat or as approved by Declarant (in Declarant’s sole and absolute discretion).

3.3 Approval of Plans and Specifications. No Improvements shall be commenced, erected, constructed, placed or maintained upon any Lot nor shall any exterior addition to or change or alteration therein be made until the Plans and Specifications therefore shall have been submitted to the Declarant in accordance herewith.

3.4 Variations. Declarant may grant variations from compliance with any of the provisions of this Declaration or any Supplemental Declaration, when, in the opinion of the Declarant, in its sole and absolute discretion, such variance will not impair or detract from the high quality development of the neighborhood, and such variance is justified due to unusual or aesthetic considerations or unusual circumstances. All variations must be evidenced by a written instrument in recordable form and must be signed by Declarant.

#### ARTICLE IV -EASEMENTS

4.1 Reserved Easements. All dedications, limitations, restrictions and reservations shown on a Plat and all grants and dedications of easements, rights of way, restrictions and related rights, made by Declarant prior to becoming subject to this Declaration, including (without limitation) all easements created (either specifically or generally) in the Master 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 duplex lots. 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 duplex lots.

4.2 Neighborhood Maintenance Easement. Declarant hereby reserves unto itself and its assignees (in writing), an easement, the "Neighborhood Maintenance Easement," (a) for the maintenance, replanting, replacement, and restoration of landscaping within the Neighborhood Maintenance Area and (b) for the construction, repair, maintenance and replacement of the Wall or fence on the South Boundary Line. Declarant, pursuant to the rights herein retained, shall license the Approved Builder's use of the Neighborhood Maintenance Easement for initial landscape planting and thereafter shall transfer and convey to the Association the Neighborhood Maintenance Easement, the Wall and all landscaping within the Neighborhood Maintenance Area. Thereafter, the Association will maintain the Wall and all landscaping in the Neighborhood Maintenance Area in original condition, subject to such landscaping changes as the Association deems reasonably appropriate in light of the amount of Neighborhood Maintenance Area and the Association's specific budget for landscaping in the Neighborhood Maintenance Area. In repairs and replacements of the Wall, the Association shall use materials matching original construction of the Wall. If the Association fails to promptly make any needed repair, maintenance or cleaning of the Wall, or fails to properly and neatly maintain the vegetation and landscaping in the Neighborhood Maintenance Area, the Declarant or the Approved Builder, and their successors and assigns, shall have the right (but not the duty) of entry onto the Neighborhood Maintenance Easement to perform such functions at the expense of the Association. Upon receipt of demand for reimbursement of such costs and expenses, the Association shall assess against all Lots in the Neighborhood, and shall hold in a separate account in trust for Declarant or the Approved Builder, as applicable, an amount sufficient to reimburse Declarant or Approved Builder for such costs and expenses incurred in connection with its or their performance of the Association's responsibilities for maintenance and repair of the Wall and maintenance and restoration of the landscaping within the Neighborhood Maintenance Area. Such regular or special assessments against the Lots shall be secured by a lien on the Lot(s).

4.3 Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the easement area affecting the duplex lots for ingress and egress in connection with installing, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, cable television, telephones, electricity and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies 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 duplex lots 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.

4.4 Surface Areas. Each Lot Owner shall maintain the surface area of all easements located within his Lot and all improvements located therein except for such improvements for which a public authority or utility company is responsible. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Lot Owner or to the Association for any damage done by them or either of them or their respective agents, employees, servants or assigns, to any of the aforesaid vegetation as a result of any activity relating to the construction, maintenance, operation or repair of any facility in any such easement area.

#### ARTICLE V -GENERAL PROVISIONS AND MISCELLANEOUS

7.1 Term. The covenants and restrictions of this Supplemental Declaration shall run with and shall be binding encumbrances on the title to all Lots in the Neighborhood and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Lot subject to this Supplemental Declaration, their respective legal representatives, heirs, successors, and assigns, through December 31, 2030, after which time this Supplemental Declaration shall be automatically extended for successive periods of ten (10) years, each, unless an instrument in writing, signed by Owners representing a majority of the total Owners, has been recorded within the year preceding the beginning of a successive period of ten (10) years agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Supplemental Declaration shall be modified or terminated as specified herein.

7.2 Amendment. Prior to the conveyance of the first Lot, Declarant may unilaterally amend this Supplemental Declaration. After such conveyance, the Declarant may unilaterally amend this Supplemental Declaration at any time and from time to time until seventy-five (75%) of the Lots have been sold and conveyed. Except as otherwise specifically provided above and elsewhere in this Supplemental Declaration, this Supplemental Declaration may be amended only after the transfer from the Declarant to the Association and by the affirmative vote or written consent, or any combination thereof, of the majority of the Lot Owners.

7.3 Compliance. Every Owner and occupant of any Lot shall comply with all lawful provisions of this Supplemental Declaration and the rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Lot Owner or Owners. In addition, the Association may avail itself of any and all remedies provided in this Supplemental Declaration or the rules and regulations of the Association.

7.4 Non-liability of Declarant. The Declarant shall not be liable to the Association or to any Lot Owner or to any other Person for any loss, damage or injury arising out of their being in any connected to the construction of any Improvement upon the duplex lots.

7.5 Notices. Any notice permitted or required to be given this Declaration shall be in writing and delivered by mail.

7.6 Interpretation. The provisions of this Supplemental Declaration shall be liberally construed to effectuate the purposes of creating a uniform plan for the development and operation of the duplex lots and of promoting and effectuating the fundamental concepts of the duplex lots set forth in this Declaration. This Declaration shall be construed and governed under the laws of the State of Texas.

7.7. Assignment by Declarant. Notwithstanding any provision in the Supplemental Declaration to the contrary, Declarant may assign, in whole or in Part, any of its privileges, exemptions, rights and duties under this Supplemental Declaration to any other person or entity and may permit the participation, in whole or in part, by any other person or entity in any of its privileges, exemptions, rights and duties hereunder.

7.8 Enforcement and Non-Waiver.

- A. Right of Enforcement. Except at otherwise provided herein, any Lot Owner at such Lot Owner's own expense, Declarant and/or the Association shall have the right to enforce all of the provisions of this Supplemental Declaration. The failure to enforce the Supplemental Declaration, at any time, shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of this Supplemental Declaration.
- B. Liens. The Association shall have the right, when appropriate in its judgment, to claim or impose a lien upon any Lot or Improvement constructed thereon in order to enforce any right or effect compliance with this Supplemental Declaration. Said liens to be subordinate to mortgages placed on the property by Owner(s).

7.9 Construction.

- A. Restrictions Severable. The provisions of duplex lot restrictions shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision or portion thereof.
- B. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
- C. Captions. All captions and titles used in this Supplemental Declaration are intended solely for convenience of reference and shall not enlarge, limit, or otherwise effect that which is set forth in any of the paragraphs, sections or articles hereof.

7.10 Successor and Predecessor Releases. Each and every successor to Declarant's interest as Declarant shall not be liable for obligations incurred (whether by act, omission, agreement or otherwise) by one or more of their predecessor or successor Declarants, and the original Declarant shall not be liable for any obligations incurred (whether by act, omission, agreement or otherwise) by one or more of its successor Declarants.

IN WITNESS WHEREOF, Declarant has executed this Supplemental Declaration as of December , 2005, together with Exhibit A, which exhibit is attached hereto and made a part hereof for all purposes.

Signatures on file.