

BK 535 LCO 1024

DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, EASEMENTS AND LIENS
FOR NORTH PARK UNIT 2
AN ADDITION TO THE CITY OF ALAMOGORDO,
OTERO COUNTY, NEW MEXICO

PART A. Recitals and Preamble.

WHEREAS, SIVAGE-THOMAS HOMES, INC. (the "Declarant") is the Owner of North Park Unit 2, an addition to the City of Alamogordo, Otero County, New Mexico, as shown and designated on the plat thereof on file in the Office of the County Clerk of Otero County, New Mexico in Volume 36, Page 47 (the "Subdivision"); and

WHEREAS, the Declarant wishes to adopt this Declaration of Covenants, Conditions, Restrictions, Easements and Liens for the Subdivision in order to promote orderly development and insure the Subdivision will be a desirable residential neighborhood;

NOW, THEREFORE, Declarant does hereby adopt and establish these Covenants, Conditions, Restrictions, Easements and Liens for the Subdivision, which shall run with the land and be binding upon Declarant, their successors and assigns, as well as upon any and all subsequent owners and all parties having any right, title or interest in and to any Lot (as hereinafter defined), their respective heirs, legal representatives, successors and assigns:

PART B. Area of Application.

B-1 Single Family Detached Residential Area. The Single Family Detached Residential Area Covenants contained in Part E shall apply to Lots 4-6, 8-10, 14-20, 22 and 24-28, all inclusive, of the Subdivision.

PART C. Definitions.

C-1 Covenants - This Declaration of Covenants, Conditions, Restrictions, Easements and Liens.

C-2 Subdivision - Defined in the Recitals and Preamble.

C-3 Declarants - Defined in the Recitals and Preamble.

C-4 Lot - a Lot as laid down and shown on the plat of the Subdivision as it presently exists or may hereafter be amended or replatted. References to Lot shall include any improvements or buildings constructed thereon.

C-5 Owner - any individual, partnership, corporation or other entity owning all or an undivided interest in any Lot within the Subdivision.

C-6 Minimum Building Setback Line - The line demarking the closest point from the front, rear or side of any Lot that a building or improvement may be constructed or built.

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PART D. General Covenants and Restrictions. The following General Covenants and Restrictions shall apply to all Lots in the Subdivision.

D-1 Land Use and Building Type. All Lots covered by these Covenants shall be used for residential purposes only. No building or structure shall be erected, placed, altered or permitted to remain on any Lot except a single family detached dwelling unit. No Lot or any portion thereof shall be used for any trade or business of any nature whatsoever, provided however, the owning of any Lot as an investment and offering the same for rental shall not be a violation of these Covenants.

D-2 Architectural Control. No building or structure shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structures have been approved by the Architectural Control Committee as to quality of workmanship and materials, harmony of external design with existing structures, and as to location with respect to topography and finished grade elevation. After such location with respect to topography and finished grade elevation has been approved and the finished grade of the Lot has been completed, such finished grade shall not be altered, changed or disturbed without the approval of the Architectural Control Committee. Approval of the Architectural Committee shall be as provided in paragraph F.

D-3 Building Height. No building in the Subdivision shall exceed two stories in height.

D-4 Nuisance. No noxious or offensive activity shall be carried on or upon any Lot nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or other Owners. No Owner shall operate or allow to be operated on any Lot any electronic transmission or receiving device or equipment which interferes with normal radio, television, telephone or other electronic transmission or receiving devices or equipment of any other Owners or residents in the Subdivision. No Owner shall erect, construct, place or permit to remain on any Lot any tower, antenna or similar structure which is higher than 10 feet above the highest part of the roof of the dwelling unit on that Lot. Any satellite receiving dish or similar structure shall not be visible from any street.

D-5 Value. No Owner shall, by omission or commission, allow or permit any occurrence or condition which would tend to depreciate the value of his dwelling unit or any other dwelling units in the Subdivision.

D-6 Temporary Structures. No structure of a temporary character (including but not limited to trailer, basement, tent, shack, garage, barn or other outbuilding) shall be used on any Lot at any time as a residence, either temporarily or permanently. During the period of construction within the Subdivision and until all dwelling units constructed thereon have been sold, temporary construction trailers, completed homes or model homes may be used as sales offices and construction and/or administrative offices for builders, and upon completion and sale of all dwelling units in the Subdivision, all such uses will terminate and any temporary construction trailers or buildings will be removed from the subdivision. All boats, camping trailers, recreational vehicles, motor homes, dune buggies or inoperable motor vehicles of any kind shall be placed in the rear yard. Such vehicles shall not be parked in any public alley or street in the Subdivision.

D-7 Fences. All exterior fences shall be of rock masonry construction. No fence shall be erected, placed or altered on any Lot nearer to the street than the Minimum Building Setback Line, except that on corner Lots a fence may be placed or erected along the rear lot line to the side street lot line and forward along the side street lot line not farther than within 10 feet of the front of the dwelling. This provision shall not preclude or prohibit any masonry retaining walls located on or within a Lot or between Lots which are necessary due to the elevation or slope of the natural terrain, provided that the top of said retaining wall or walls shall not project more than one foot above the highest grade if the wall is located in the front of any Lot.

D-8 Maintenance. The exterior of all structures, walks, driveways, walls, retaining walls and lawns and landscaping shall be maintained and kept clear and free of weeds and debris, in good order, repair and condition by the respective Owners thereof.

D-9 Sidewalks. A sidewalk shall be constructed across the front of each Lot or along the side yards of corner Lots in the Subdivision.

D-10 Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

D-11 Lot Division. No Lot shall be split or further subdivided so as to reduce the area thereof, except as necessitated by correction of encroachments or other boundary deficiencies caused by errors in surveying and/or construction.

D-12 Miscellaneous. Except as required by ordinance during construction, no privy shall be placed upon any Lot in said Subdivision. No signboard or other visible advertisement larger than one square foot may be placed on any Lot other than signs pertaining to the sale of or the construction of improvements in the Subdivision. No drilling or excavation shall be made on any Lot for the purpose of obtaining sand, rock, clay, dirt, coal, gravel, oil, natural gas or any other material or product, whether for profit or otherwise. No animals, livestock, poultry or fowl of any kind shall be raised, bred or kept on any portion of the Subdivision except that a maximum of two customary household pets, such as dogs or cats may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purpose whatsoever.

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CAMERA OPERATOR

PART E. SINGLE FAMILY DETACHED RESIDENTIAL AREA COVENANTS. The following Covenants shall apply only to the Single Family Detached Residential Area.

E-1 Building Location. No building shall be located on any lot nearer than 20 feet from the front or rear lot line, nor nearer than 5 feet from the side lot line, nor nearer than 15 feet from the side street lines. For purposes of this Covenant, eaves, steps, projections of fireplaces, and open porches shall not be considered a part of the building, provided however, this shall not be construed to permit any portion of a building on a lot to encroach upon any other lot.

E-2 Building Size. The ground floor living area for any one-story single-family detached dwelling unit shall contain not less than 500 square feet exclusive of open porches, carports and garages. The ground floor living area for a two-story single family detached dwelling unit shall contain not less than 600 square feet exclusive of open porches, carports and garages and a minimum of 800 square feet of living area.

E-3 Lot Area. No dwelling unit shall be erected or placed on any lot having an area of less than 5300 square feet.

PART F. Architectural Control Committee.

F-1 Membership. The Architectural Control Committee is composed of HILA J. SIVAGE of Albuquerque, New Mexico, DAVID SIVAGE of Albuquerque, New Mexico, and MIKE SIVAGE of Albuquerque, New Mexico. A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, the remaining members of the Committee shall have full authority to designate a successor. At any time the then record owners of a majority of the Lots shall have the power through a duly written recorded instrument to change the membership of the Committee or to restore to it any of its powers and duties.

F-2 Procedure. The Committee's approval or disapproval as required in these Covenants shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove within 30 days after such plans and specifications have been submitted to it, or in the event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related Covenant shall be deemed to have been fully complied with.

F-3 Members Compensation and Liability. None of the members of the Committee or its designated representative shall be entitled to any compensation for service performed pursuant to this Covenant. Architectural control of construction, as provided in paragraph D-2 and other duties of the Committee, being largely subjective in nature, the action or nonaction by the members of the Committee shall not subject any member of the Committee to personal liability nor shall the members of the Committee be charged with the responsibility of enforcement of the provisions hereof. The enforcement of architectural control provisions by any aggrieved party shall be as provided in paragraph G-1, and shall be pursued solely against the person or persons allegedly violated or attempting to violate the provisions and standards specified in these Covenants. The members of the Architectural Control Committee shall not be proper parties to such action.

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F-4 Termination of Initial Membership. Any member of the Architectural Control Committee may resign by filing written notice thereof in the public records of Otero County, New Mexico. After dwelling units have been built upon 100% of the Lots in the Subdivision, the membership of any of those persons named in F-1 hereof who are still members of the Committee shall automatically terminate without action or resignation by such initial members. The resulting vacancy or vacancies thereafter occurring shall be filled by a vote of a majority of the Owners in the Subdivision. Successors to membership in the Architectural Control Committee shall be named in an instrument executed and acknowledged by the then chairman of the Committee, who shall be elected by a majority of its then members. Such instrument shall be recorded in the public records of Otero County, New Mexico.

F-5 Powers. The Architectural Control Committee shall have the following powers:

- a. All of the power and authority herein designated for the Architectural Control Committee.
- b. The power to grant variances, waivers and exceptions to the restrictions and other provisions contained in this Declaration.
- c. To enforce, in such manner as the Committee deems appropriate, all of the provisions of this Declaration, and
- d. To enforce, in such manner as the Committee deems appropriate, subdivision and zoning ordinances of the City of Alamogordo.

PART G. Miscellaneous Provisions.

G-1 Term. These Covenants shall run with the land and shall be binding on all parties and all persons claiming under them for a period of 40 years from the date these Covenants are recorded, unless amended as hereinafter provided in paragraph G-2, after which time said Covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the Owners of the Lots at that time has been recorded to change said Covenants in whole or in part.

G-2 Amendment. This Declaration may be amended at any time by the then current Owners of not less than 75% of the total ownership votes. Such amendment shall bein writing and shall be filed in the County Clerk's records of Otero County, New Mexico.

G-3 Voting. For purposes of voting hereunder, the Owner(s) of each Lot, including the Declarant, shall have one vote for each such Lot owned.

G-4 Enforcement. These Covenants shall run with the land in favor of and enforceable by any Owner of any Lot within the Subdivision or the holder of any first lien mortgage on any Lot or by the Architectural Control Committee. Enforcement shall be by any proceeding at law or in equity, against any person or persons violating or attempting to violate any Covenant herein, either to restrain any violation or attempted violation or to recover monetary damages.

G-4 Enforcement. (Continued)

If any suit for injunction is brought for the enforcement (either to prevent a violation or threatened violation) of any of the terms of this Declaration, no bond or other security shall be required of the party bringing such action in order to secure the issuance of a temporary restraining order, temporary injunction or final injunction. If the party bringing any action seeking enforcement of these Covenants or monetary damages prevails, the party against whom such action is brought shall pay all costs of court and reasonable attorney's fees incurred in the enforcement of these Covenants.

G-5 Severability. Invalidation of any one of these Covenants by judgement or court order shall not affect any of the other provisions which shall remain in full force and effect.

G-6 Subordination of Liens. All liens recreated in these Covenants shall be subordinate to the lien of any purchase money mortgage.

EXECUTED this 2nd day of April, 1990.

DECLARANT
SIVAGE-THOMAS HOMES, INC.

BY: David Sivage
President

STATE OF NEW MEXICO)
)SS
COUNTY OF OTERO)

This instrument was acknowledged before me on the 2nd day of April, 1990, by David Sivage, President, of SIVAGE-THOMAS HOMES, INC., a New Mexico Corporation, on behalf of said corporation.

[Signature]
Notary Public
State of New Mexico

My commission expires: 10-10-1993

STATE OF NEW MEXICO } S.S.
OTERO COUNTY }
FILED FOR RECORD IN MY OFFICE
This 4 day of April 1990
At 9:10 o'clock A.M. and duly recorded
in Book No. 685 Page 984-989
the records of Otero County, New Mexico
Dianna J. Duran
County Clerk, Otero County, New Mexico
By Kenneth D. Douglas Deputy

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[Signature] OPERATOR
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