

**PROTECTIVE COVENANTS
IMPOSED UPON
NORTH PARK UNIT 3
ALAMOGORDO, NEW MEXICO**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, SHELBY F. MILLER and CLARE D. MILLER, his wife, being the owners of a tract of land located in the City of Alamogordo, Otero County, New Mexico, more particularly described as follows:

Lots numbered 1-36 all of NORTH PARK UNIT 3 SUBDIVISION, an addition to the City of Alamogordo, Otero County, New Mexico, as the same is shown and designated on the plat of said addition filed in the Office of the County Clerk of Otero County, New Mexico on January 6, 1995, Book 46, pages 63 and 64.

hereby make the following declarations as to the limitations and restrictions placed upon the above-described lots and uses to which the above-described lots may be put; hereby specifying that said declarations shall constitute covenants to run with said land, and shall be binding upon all parties and all persons claiming under them and for the benefit of and limitations upon all future owners of said lots. Nothing herein contained shall limit the right of the undersigned to use other portions of said subdivision or other lands contiguous to or near the above-described land for purposes other than residences, or to impose restrictive covenants thereon which are less stringent than those stated herein.

1. **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.

2. **LAND USE AND BUILDING TYPE:** No lot or any portion thereof shall be used except for single-family residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one (1) single-family detached dwelling. Each dwelling unit shall have an attached private garage for no fewer than one (1) car. No building shall exceed the height limitation of the City of Alamogordo Zoning Code. For purposes of this

paragraph, a garage shall be considered to be part of the dwelling to which it is attached. These standards are to be in effect unless modified by the Architectural Control Committee.

3. TEMPORARY USES: Any lot or portion thereof may be used as a sales office (including parking), model home complex, or storage and construction yard during the construction and sales period. All temporary uses as defined herein must have the prior written approval of the Architectural Control Committee, which shall establish written requirements therefore.

4. BUILDING LOCATION: No building shall be located on any lot in such a manner as to violate the City of Alamogordo Zoning Ordinance(s), Subdivision Regulations, or any other public ordinance adopted by any governmental authority having jurisdiction over the lots which might pertain to building construction and/or location, or as permitted by Special Exceptions or variances to the Comprehensive City Zoning Code. Any lot owner proposing to build improvements on his lot must obtain approval from the City of Alamogordo for the proposed plan for compliance with all applicable ordinances in effect at that time regarding building height and front and side yard setbacks. For the purpose of this paragraph, eaves, fireplace chases, boxed-out areas not requiring a foundation, steps, patios, walkways and open porches shall not be considered as part of a building. In no case shall eaves, steps, patios, walkways or open porches encroach upon another lot.

5. DWELLING SIZE: The ground floor living area for any one story single family detached dwelling unit shall contain not less than 900 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.

6. ARCHITECTURAL STANDARDS: No building, garage, fence, wall, basement, shed, outbuilding or other structure of any kind, whether permanent or temporary, shall be erected, placed or altered on any lot until construction plans and specifications, and a plan showing the location of the structure, have been approved by the Architectural Control Committee as to quality of materials, harmony of external design with existing structures, and as to the location of the building with respect to topography, setback requirements and finish

grade elevations. All construction, whether new construction, alterations, additions or remodeling, shall be completed within six (6) months from the date of commencement. No lot shall be used for the storage of materials for a period greater than thirty (30) days prior to the start of construction and during the construction period except as noted in Section 3. All lots shall be maintained in a neat, orderly condition at all times. No existing building shall be altered, remodeled or changed until the plans for such change, alteration or remodeling have been approved by the Architectural Control Committee. No garage may be used as a residential area, and may not be used or altered to a size smaller than is necessary to accommodate one (1) full-sized automobile.

7. ANTENNAE: No antennae (amateur radio, citizen's band radio, satellite dish, or television antennae), shall be erected upon any lot or dwelling exterior without the prior written approval of the Architectural Control Committee.

8. NUISANCES: No noxious or offensive activity or use contrary to the laws of the United States of America or the State of New Mexico, or the ordinances of the City of Alamogordo or any other governmental authority having jurisdiction shall be carried on upon any lot; nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

9. TEMPORARY STRUCTURES: No structure of a temporary character (motor home, camper, trailer, boat, recreational vehicle, tent, shack, garage, barn, storage shed or other outbuilding) shall be stored, used, erected or constructed on any lot without the prior written approval of the Architectural Control Committee. In no case shall any of the above-mentioned structures be used as a residence, either temporarily or permanently. No camper, house trailer, motor homes, recreational vehicles, or trucks over 3/4 ton shall be stored or parked permanently on any lot except while parked in an enclosed garage; nor shall such vehicle be parked permanently on any street within NORTH PARK SUBDIVISION. No vehicle of any type may be repaired (for more than three (3) consecutive days) on any lot except while parked in an enclosed garage.

10. DRAINAGE AND UTILITY EASEMENTS: Easements and rights-of-way for installation and maintenance of utilities and drainage facilities are reserved as indicated on the plat, or as subsequently granted and recorded by document.

11. FENCES AND WALLS: Fences and walls shall be in conformance with all applicable zoning and building ordinances, and any other public ordinances pertaining thereto. 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 ten (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 (1) foot above the highest grade if the wall is located in the front of any lot.

12. RETAINING WALLS: Retaining walls, if placed on the common property line of two lots, shall not be removed by either property owner, nor the color altered by either property owner without the consent of the other property owner and the Architectural Control Committee.

13. SIGHT TRIANGLE AT INTERSECTIONS: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between a height of three (3) feet and a height of eight (8) feet above the roadways in NORTH PARK SUBDIVISION shall be placed or permitted to remain on any corner lot within the triangular area formed by the street right-of-way lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines or, as in the case of rounded property corners, from the intersection for the street right-of-way lines extended. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at least eight (8) feet above said street level.

14. SIGNS: No sign of any kind shall be displayed to the public view on any lot except one non-illuminated sign of not more than five (5) square feet, advertising the property for sale or rent. Additional signs may be used by a builder or realty office to advertise the property during the construction and sales period, subject to the prior written approval of the Architectural Control Committee as provided in Paragraph 19 hereof. Signs reasonably necessary for subdivision identification and direction may be constructed by SHELBY F. MILLER and CLARE D. MILLER, or their successors in interest.

15. LIVESTOCK, POULTRY AND PETS: No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any lot, except dogs, cats, or other non-exotic household pets. No animal, fowl, fish or reptile of any kind may be kept, bred or maintained for any commercial purpose.

16. GRADING: No lot may be landscaped or regraded in such manner as to cause the drainage characteristics of the lot to differ materially from the approved grading plan; and in no case shall the drainage characteristics be modified in such a way as to cause damage to adjacent properties. Any modification shall require the prior written approval of the Architectural Control Committee.

17. MAINTENANCE: The exterior of all structures, walks, driveways, walls, retaining walls and lawns and landscaping shall be maintained and kept clean and free of weeds and debris, in good order, repair and condition by the respective Owners thereof.

18. SIDEWALKS. A sidewalk shall be constructed across the front of each lot or along the side yards of corner lots in the Subdivision.

19. MAINTENANCE OF LOTS: Owners of vacant lots and owners of residences will be responsible for keeping the lots cleared and free of all weeds, trash and other detracting conditions.

20. ARCHITECTURAL CONTROL COMMITTEE: The Architectural Control Committee is composed of SHELBY F. MILLER and CLARE D. MILLER. Upon death, resignation or removal of any member of the Committee, the remaining members shall have full authority to designate a successor(s). Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services rendered pursuant to this covenant, nor shall they be held personally liable for the Architectural Control Committee's actions or failure to act. Any members of the Committee may be removed at any time by a majority of the Committee, with or without cause. The Architectural Control Committee shall be authorized to designate an individual or individuals to take any action which could be taken by the Committee as a whole.

All requests for approval required or allowed hereunder shall be submitted to the Committee in writing, together with all documentation reasonably necessary

for the Committee to act on the request. The Committee may request additional information should the same be deemed necessary.

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 ten (10) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction of projects previously submitted to the Architectural Control Committee has been commenced prior to the completion of "dry-in" thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

In the event no member remains on the Architectural Control Committee, new members to the Committee can be chosen in the following manner; upon written request of ten (10) percent of the owners of lots within the subdivision, a meeting shall be held for the purpose of selecting one or more members to the Committee. Reasonable diligence shall be used to notify the persons owning lots within said subdivision of the time and place of the meeting, and the purpose thereof.

At such meeting, up to three (3) persons may be selected as members of the Committee. Each lot owner shall have one (1) vote, and the three (3) persons receiving the most votes shall be selected as members of the Committee. If a lot is owned by more than one (1) person, such owners shall be entitled to only one (1) vote per lot.

21. DURATION OF COVENANTS: These protective covenants and reservations are to run with the land and shall be binding on all parties and all persons claiming under them for a period of thirty (30) years from the date these covenants are recorded; after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of the lots have been recorded, agreeing to terminate said covenants.

22. 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. 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.

23. SEVERABILITY: Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

24. AMENDMENTS AND EXCEPTIONS: Until the Architectural Control Committee is deemed to have resigned pursuant to Paragraph 19 hereof, SHELBY F. MILLER and CLARE D. MILLER, shall have the authority to change, amend or modify these covenants; provided such change, modification or amendment does not materially change the character or quality of the lots subject to these covenants and does not materially increase the number of lots within the described area. In addition, after the Architectural Control Committee has been deemed to resign, amendments and/or exceptions to these restrictions, covenants and reservations may be made upon written approval of eighty (80) percent of the owners of lots in said subdivision, with the owner(s) of each lot being entitled to one (1) vote.

SHELBY F. MILLER and CLARE D. MILLER, hereby reserve and are granted the right and power to record a Special Amendment to these Protective Covenants to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities to make, purchase, sell, insure or guarantee first mortgages on any lot covered by these covenants.

In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to SHELBY F. MILLER and CLARE D. MILLER to make or covenant to a Special Amendment on behalf of each owner. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a lot and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of the power of SHELBY F. MILLER and CLARE D. MILLER to make, execute and record Special Amendments. No Special Amendment made by SHELBY F. MILLER and CLARE D. MILLER shall affect or impair the lien of any first mortgage in order to induce any of the above agencies or entities to make, purchase, insure or guarantee the first mortgage on such owner's lot.

25. EFFECTIVE DATE: These restrictions, covenants and reservations, and any amendments or exceptions thereto shall be effective as of the date of their filing with the County Clerk of Otero County, New Mexico.

DATED at Alamogordo, New Mexico this 10th day of April,
1995.

Shelby F. Miller
SHELBY F. MILLER

Clare D. Miller
CLARE D. MILLER

