

**DECLARATION OF  
COVENANTS AND EASEMENTS**

THIS DECLARATION OF COVENANTS AND EASEMENTS is made this 11 day of AUGUST, 2004, by HOMES BY KIM BROOKS, INC., a New Mexico corporation ("Declarant").

WHEREAS, Declarant is the owner of the following described real property located in the County of Bernalillo, State of New Mexico, to-wit

Lots 1-pe through 6-pe, Alexandria Point Subdivision as the same is shown and designated on the plat thereof filed in the office of the County Clerk of Bernalillo County, New Mexico on April 7, 2004, in Book 2004C, Page 112 (individually referred to by lot number and collectively referred to as "Lots").

WHEREAS, Declarant has established a general plan for the improvement and development of the Lots by subjecting them to covenants and easements

NOW, THEREFORE:

1. Declarant hereby declares that the Lots shall be held, transferred, sold, conveyed and occupied subject to the following covenants and easements:

2. Land Use No Lot or any portion of a Lot, shall be used for any purpose other than single family residential purposes.

3. Setbacks No "Residence" on a Lot shall be located in contravention of the following setback requirements

- A. There shall be a front yard setback of not less than twenty (20) feet from the front Lot line.
- B. There shall be a rear yard setback of not less than fifteen (15) feet from the rear Lot line.
- C. There shall be no required side yard setback, except there shall be a side yard setback of not less than sixteen (16) feet on the south side of Lot 1-pe and there shall be a distance of not less than ten (10) feet between Residences, except the Residences located on Lot 4-pe and Lot 5-pe which are attached.

4. Nuisances No noxious or offensive activity shall be carried on, or permitted upon any Lot. Nothing shall be done, placed or stored on any Lot which may be or may become an annoyance or nuisance to the owners of other Lots, or which will occasion any noise or odor which will or might disturb the peace, comfort or serenity of the occupants of Residences on the other Lots. No trash or garbage shall be burned on any Lot. Garbage and other waste materials shall be placed in the covered containers provided by the City of Albuquerque and shall not be placed out for collection more than 24 hours prior to scheduled collection times. Garbage containers shall be concealed from the street on non-garbage collection days.

5. Temporary Buildings No Improvement of a temporary character, such as a shack, barn, basement, trailer, tent, garage or other outbuilding, mobile home, or motor home, shall be used on any Lot at any time as a Residence, either temporarily or permanently.

6. Equipment No exterior clotheslines shall be placed on any Lot.

7. Parking and Storage of Vehicles No camper, recreational vehicle, trailer, mobile home, boat, commercial type vehicle, dune buggy, bus, inoperable vehicle or tractor shall be stored or parked on any Lot continuously for a period of more than twenty-four (24) hours, unless within the garage on the Lot.

8. Party Walls Party walls include walls between Lots and "Special Exterior Walls" (as described below). The rights and duties of the owners of Residences with respect to party walls are as follows:

- A. If any party wall is damaged or destroyed through the act of an owner or any of his guests, tenants, licensees, agents or family members, such owner shall immediately proceed to rebuild and repair the wall to as good a condition as formerly existed without cost to the adjoining Lot owner.
- B. If any party wall which does not form a structural part of a Residence is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one of the adjoining Lot owners, that owner's guests, tenants, licensees, agents or family members, then both adjoining Lot owners shall proceed forthwith to rebuild or repair the wall to as good a condition as existed prior to the damage or destruction at their joint and equal expense.
- C. If any party wall which forms a structural part of a Residence is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time) other than the act of one of the adjoining Lot owners, that owner's guests, tenants, licensees, agents or family members, then the owner of the Residence of which such party wall forms a structural part shall proceed to rebuild or repair that part of the wall to as good a condition as existed prior to the damage or destruction.

- D. Any owner proposing to modify, make additions to, or rebuild a party wall in any manner, except in the event of an emergency, shall first obtain the written consent of the adjoining Lot owner, which consent shall not be unreasonably withheld or delayed.
- E. Any and all resurfacing or repainting of a party wall shall be done in a color and texture to match the original

9. Special Exterior Walls. Each Residence shall have a windowless exterior wall (the "Special Exterior Wall") constructed parallel to and on the Residence owner's Lot line. Except as to the Residences on Lots 4 and 5 which are attached, obscure glass block is allowed on the Special Exterior Wall of a Residence, provided that the glass block is at least seven (7) feet above the interior finished floor of the Residence, is totally obscure and objects cannot be identified by looking through the glass block.

- A. The owner of the Residence containing a Special Exterior Wall shall not attach anything to the exterior of such wall or alter it in any way other than repairing, resurfacing or painting the wall.
- B. The owner of the Lot adjacent to a Special Exterior Wall shall avoid any action which shall in any way restrict the use of the Special Exterior Wall by its owner including, but not limited to, attaching any object to the Special Exterior Wall, such as wires, trellises and plantings, defacing the Special Exterior Wall in any manner, placing graphics or other design work (whether painted or otherwise) on the Special Exterior Wall, or using the Special Exterior Wall as the playing surface for any sport.

10. Easements.

- A. Side Yard Easements. Private, non-exclusive, surface side yard easements three (3) feet in width ("Side Yard Easement(s)") are imposed as follows:
  - (1) The northern three (3) feet of Lot 5-pe.
  - (2) The southern three (3) feet of Lots 2-pe, 3-pe and 4-pe.
  - (3) "Dominant Owner" means the owner of the Lot benefited by and entitled to use the Side Yard Easements.
  - (4) "Servient Owner" means the owner of the Lot burdened by and subject to the Side Yard Easements

- (5) Each Side Yard Easement is a private, surface easement for the benefit of the Dominant Owner and not for the benefit of the general public or for any governmental body.
- (6) Each Side Yard Easement is a surface easement only and shall not prevent the Servient Owners from utilizing the space beneath the surface of the ground or from utilizing the air space above the Side Yard Easement which is the height of the eaves of the Residence of the Servient Owner.
- (7) The Side Yard Easements shall be kept clean and unobstructed by the Servient Owners to provide open access for the Dominant Owners as provided for in paragraph 9A(8).
- (8) Each Dominant Owner shall have the right to enter upon its Side Yard Easement on the adjacent Lot to the extent such entry is reasonably necessary to carry out the resurfacing, repainting or repair of a party wall or a Residence, including the projections from the Residence, if any. Such right of entry shall be exercised in such a manner as to interfere as little as is reasonably possible with the possession and enjoyment of the area by the Servient Owner and shall be preceded by reasonable notice whenever the circumstances permit. No notice shall be required in the case where an emergency requires immediate entry by the Dominant Owner.
- (9) The Dominant Owner shall be responsible to the Servient Owner for all damage caused to the Servient Owner or said Servient Owner's improvements resulting from the use of the Side Yard Easement by the Dominant Owner, his/her guests, tenants, licensees, agents or family members. The Servient Owner of the Side Yard Easement shall be responsible to the Dominant Owner for all damage caused to the Dominant Owner resulting from the use of the Side Yard Easement by the Servient Owner, his/her guests, tenants, licensees, agents or family members.
- (10) The Dominant Owner of the Side Yard Easement shall be protected, held harmless, and indemnified by the Servient Owner from any liability or damage arising from the acts or omissions on the part of the Servient Owner, his/her guests, tenants, licensees, agents or family members in his or her use of the Side Yard Easement. The Servient Owner of the Side Yard Easement shall be protected, held harmless, and indemnified by the Dominant Owner from any liability or damage arising from the acts or

omissions on the part of the Dominant Owner, his/her guests, tenants, licensees, agents or family members in his or her use of the Side Yard Easement

11 Casualty If any improvement on any Lot is destroyed, wholly or in part, by fire or other casualty, the improvement so damaged or destroyed shall be promptly and properly rebuilt or repaired in conformity with the provisions of this Declaration, or, in the alternative, all remaining portions of the improvement, including all foundations and all debris, shall be removed from the Lot. If the owner of the Lot elects to clear the Lot, the razing and clearing work shall be completed within one hundred twenty (120) days after the casualty

12 Animals and Pets No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that domestic dogs and cats or other household pets may be kept, provided that they are not kept, bred or maintained for any commercial breeding purpose.

13 Oil and Mining Operations No oil drilling, oil development operations, oil refining, quarrying, or mining operations or exploration of any kind shall be permitted upon any Lot. No oil wells, tanks, tunnels, minerals excavation shafts or other such equipment or activities shall be permitted upon any Lot.

14. Billboards, Poster-Boards, and Advertising The construction and/or maintenance of billboards, poster-boards, and advertising structures of any kind on any part of any Lot is prohibited, except that real estate agents and/or the owner of a Lot may display one (1) temporary "For Sale" sign or one (1) "Open House" sign on any Lot. The sum of the length and width of such signs shall not exceed sixty inches (60") Declarant and the initial builder of the Residences on each Lot shall be exempt from the requirements of this Paragraph 13

15 No Business or Commercial Enterprise Permitted No business, whether or not for profit, and no commercial enterprise of whatever kind, except from time to time as may be permitted by the City of Albuquerque Comprehensive Zoning Ordinance for the Subdivision, shall be undertaken or carried on, upon, or from any Lot, except only the original sales and subsequent sales of the Lots and the Residences constructed and to be constructed thereon. No stores, shops, businesses, commercial, or industrial buildings, or other such structures of whatever type shall be erected, placed, altered, or permitted to remain upon any Lot, except only in connection with the original development and sales of the Lots and construction and sales of the Residences, such as model homes or a show home, or a sales office

Home offices shall be allowed in occupied Residences under the following guidelines

A There shall be no signs and/or advertising of the home office,

- B. The garage shall remain a garage and shall not be converted to an office, and
- C. There shall be a maximum of one customer and the owner of the Lot conducting business at any one time from the home office.

16. Enforcement of Covenants. The violation or breach of any provision, condition, restriction or covenant in this Declaration, after notice of such violation or breach has been presented to an owner, shall give each other owner and Declarant the right to prosecute at law or in equity, the person or persons who have violated or are attempting to violate any provision, condition, restriction or covenant in this Declaration, to enjoin or prevent them from doing so, to cause the violations to be remedied or to recover damages for the violation. Any one of the above-listed persons or entities may so enforce this Declaration and the cooperation of any other person or entity is not required.

The result of every action or omission whereby any provision, condition, restriction or covenant in this Declaration is violated in whole or in part, is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an owner, either public or private, shall be applicable against every such action or omission.

The failure of Declarant or any owner to enforce any provision, condition, restriction or covenant in this Declaration shall not be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision, condition, restriction or covenant in this Declaration.

The prevailing party or parties in any judicial proceedings to enforce this Declaration shall be entitled to reasonable attorney's fees and court costs from the non-prevailing party.

17. Severability If any one or more of the provisions, conditions, covenants and restrictions in this Declaration are held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions, covenants and restrictions shall continue unimpaired and in full force and effect.

18. Duration of These Covenants. The provisions, conditions, covenants and restrictions in this Declaration shall run with the land and continue in full force and effect for a period of thirty (30) years from the date of the filing of this Declaration in the office of the County Clerk of Bernalillo County, New Mexico, at which time they shall be automatically extended for a period of ten (10) years and thereafter for successive ten year periods, unless before the commencement of any extension period the then owners of the fee simple estate of eighty-three and one-third percent (83.33%) or more of the Lots by written instrument, duly executed and recorded, shall declare a termination of this Declaration. Any such termination shall become effective upon the date upon which otherwise the automatic extension would take effect.



19. Amendment. At any time after the date of the filing this Declaration, the owners of not less than eighty-three and one-third percent (83 33%) of the Lots may release one or more of the Lots from, or may modify, change or amend all or any portion of the provisions, conditions, covenants or restrictions contained in this Declaration by executing and acknowledging an appropriate agreement or agreements in writing for such purposes and filing the same for record in the office of the County Clerk of Bernalillo County, New Mexico.

DECLARANT:

HOMES BY KIM BROOKS, INC., a New Mexico corporation

By: \_\_\_\_\_

Its President

Dated: 8/1, 2004

ACKNOWLEDGMENT

STATE OF NEW MEXICO )  
  )  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on \_\_\_\_\_, 2004, by \_\_\_\_\_  
\_\_\_\_\_ of Homes By Kim Brooks, Inc., a New Mexico corporation

MY COMMISSION EXPIRES: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC