

91 4972

PROTECTIVE COVENANTS

9726

FOR

CARRIAGE ESTATES

MOCK HOMES ASSOCIATES, INC., a New Mexico Corporation, hereinafter "Developer" being the owner of property located in the City of Albuquerque, County of Bernalillo, State of New Mexico described as follows:

All lots numbered One (1) through Forty-Three (43) of Carriage Estates, a subdivision of the City of Albuquerque, Bernalillo County, New Mexico as the same are shown and designated on the plat thereof filed in the office of the County Clerk of Bernalillo County, New Mexico, on October 25, 1990, Book 90-C Page 264 as document #9082620.

DOES HEREBY CERTIFY AND DECLARE that it has established, and does hereby establish a general plan for the improvement, development, ownership, use and sale of said property so owned by it, and does hereby establish the manner, provisions, conditions, restrictions and covenants upon and subject to which said property shall be used, improved, occupied, owned, sold and conveyed, and does hereby declare that henceforth said property shall be used, improved, occupied, sold and conveyed, subject to the provisions, conditions, restriction and covenants herein set forth, all of which shall be binding upon and insure to the benefit of the present and future owners of said lots and all portions thereof, and all of which provisions, conditions, restrictions and covenants are, and each of them is, impressed and imposed upon each and every parcel of the hereinbefore described property as a servitude in favor of each and every other parcel thereof, as the dominate tenements, as follows, to-wit:

1. Lot Use

A. No building, except a detached single-family residential dwelling (hereinafter sometimes called "dwelling") and a private garage for no less than two (2) nor more than three (3) cars for use in connection with such dwelling, shall be erected, maintained, or permitted on any lot or portion thereof. No dwelling shall be used except as a single-family dwelling. No lot or lots shall be further subdivided but any two or more lots may be combined to produce one building site. No building shall be built closer than twenty feet (20') to the front lot line, nor closer to the rear or side lot lines than allowed by City Ordinance or as designated on the plat heretofore referenced.

2. Dwelling Size.

A) No dwelling shall be erected upon any lot unless such dwelling contains a minimum of one thousand eight hundred (1,800) square feet of heated living area floor space. This provision may only be varied by the Architectural Control Committee by specific variance given in writing and signed by a majority of the Architectural Control Committee members. The term "living area floor space" is exclusive of floor space in porches, pergolas and garages.

B) All buildings shall be of brick, adobe or insulated frame stucco construction, and all roofs shall be of clay or concrete tile or wood shake or wood shingles. Built up or "flat" roofs will be allowed, so long as parapets obscure their view.

C) No more than one dwelling shall be built on any one lot, and no temporary or permanent building of any nature detached from the dwelling shall be built, erected, placed or maintained on said lot, with out the approval of the of the Architectural Control Committee. Provided, however, that a detached garage for no less than two (2) nor more than three (3) cars may be erected upon any lot. No garage shall be commenced or erected upon any lot until construction of the dwelling, complying with these restrictions, shall have been commenced by a responsible licensed contractor or pursuant to a bona fide building contract, and all buildings shall be of the same or similar style as that of the dwelling erected or being on the lot on which the said buildings are located.

D) No alteration of the drainage plans as originally implemented by Developer shall be made, and if anyone does so alter the drainage plan, he assumes absolute liability for damages caused to any other owner or to the Developer as a result of such alteration.

E) There is a drainage easement on lots 14, 15, 16, 17, 18, 24, 25, 31, 32, and 33. The easement will be a concrete swale along the property line constructed by the Developer, Builder and maintained by the Home owners of said lots.

### 3. Wall Requirements

A) Except as planned or erected by Developer or allowed by City Code no solid wall, fence, hedge or other improvements shall be erected or maintained nearer to the front property line than the walls, attached open porch or balcony of the dwelling erected on said lots. Any fence, hedge or wall in front of the residence may not be over (3') in height. Except as planned or erected by Developer, no side or rear wall, fence or hedge other than the wall of a building constructed on said lots, shall be less than four feet (4') in height and not more than six feet (6') measured from the developer-graded ground elevation to the highest point of the fence or the fence posts wall or wall posts or the hedge. The cement block walls and metal grill fences, if any, installed by the Developer shall be maintained in their original condition and color and shall not be allowed to deteriorate. Block walls constructed by an owner on the lot must be the color of existing walls.

B) Where there is a grade difference of more than 18 inches between two lots, a retaining wall will be required which will extend to a point where the grade difference becomes less than 12 inches.

C) No chainlink, barbed wire, welded wire, or welded pipe fence shall be permitted on any lot.

D) Walls for purposes of visual screening, privacy, protection of swimming pools, etc., may be constructed between the front and rear setback lines, if approved style, color and materials being compatible with those of the residence and other structures or improvements on the lot.

E) Walls which are constructed within the front yard setback area and the side yard setback area adjacent to street, must conform to all city plans.

F) In the event any set party wall is damaged or destroyed through the act of one adjoining owner, or any of his guests, tenants, licensees, agents, or members of his family (whether or not such act is negligent or otherwise culpable), so as to deprive the other adjoining owner of the full use and enjoyment of such wall, then such owner who caused or is responsible for such damage, shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the adjoining owner.

G) In the event any such party wall of a dwelling 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 owners, his agents, tenants, licensees, guests or family, then in such event both such adjoining owners shall proceed forthwith to rebuild or repair the same to as good as condition as before at their joint and equal expense.

H) Notwithstanding any other provision of this article, an owner who by his negligent or willful act causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

I) The right of any owner to contribution from any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors in title.

J) In addition to meeting the other requirements or these Restrictive Covenants and of any building code or similar regulations or ordinances, any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining owner.

K) In the event of a dispute between owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the costs thereof, the matter shall be submitted to three (3) arbitrators, one chosen by each of the owners and the third by the two so chosen. A determination of the matter signed by any two of the three arbitrators shall be binding upon the owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) day after receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

L) These Covenants shall be binding upon the heirs, assigns and successors in interest of any owners.

M) There shall be constructed and maintained a perimeter wall on the easterly right-of-way line of Ventura St. NE and the westerly property line of lots twenty five (25) through twenty nine (29) inclusive and lots one (1) through three (3) inclusive, and on the southerly right-of-way line of San Francisco Rd. NE and the northerly property line of lots three (3) through eleven (11) inclusive.

Such wall once constructed shall not be defaced or removed and shall be subject to the following.

- 1) The wall shall be a minimum of five (5) feet in height from the finished grade at the foot of the wall.
- 2) The color of the wall shall not be changed from the original color.
- 3) The wall shall have no penetrations or access through said wall in the way of gates, etc.
- 4) The wall shall be maintained in an attractive and safe manner.

The owners of lots upon which a perimeter wall may be located shall not remove or alter this wall, and shall be responsible for maintaining the wall in an attractive and safe manner for that portion of the wall located on the lot owner's property. Walls that have been constructed around electrical switch cabinets, or have been located to comply with sight distance requirements, shall not be removed or relocated.

All fences and walls or alterations thereto must be approved by the Architectural Control Committee.

#### 4. Parking

A) No vehicle which is not in operating condition shall be parked or left anywhere on any lot other than inside a garage, except for emergency repairs. The parking, placing or maintaining of boats, trailers, horse trailers, mobile homes campers, motorhomes or other such vehicles on any part of the lot, or on any street adjacent to such lot, other than in a garage for such temporary periods, not to exceed forty-eight hours, as may occasionally arise when preparation for use or maintenance after use. A garage shall be used for vehicle parking and storage purposes only and shall not be converted for use as a living area or for recreational activities. Parking of any vehicle on a lot is prohibited except in the garage or on the driveway appurtenant to the residence.

#### 5. Business

A) No store, office or other place of business of any kind, and no hospital, sanitarium or other place for the care or treatment of physically or mentally ill, nor any saloon, or other place of entertainment, shall be erected or permitted upon any lot, and no trade or offensive activity of any kind or character whatsoever except as permitted by City Ordinance shall be conducted in or from the building located on any lot or from any lot.

#### 6. Animals

A) No swine, horses, cows, or other livestock, and no pigeons, chickens ducks, turkeys, or other poultry, shall ever be kept upon said lots or tracts. Dogs cats, or other household pets may be kept, provided they are confined to their owner's lot or on a leash held by a person capable of controlling the animal and not permitted to run free, and further provided they are not kept, bred or maintained for any commercial purpose, or in unreasonable numbers.

## 7. Accessory Buildings

A) Any Prefabricated building of any nature whatsoever permanent or temporary, attached or detached from a dwelling must have prior approval from the Architectural Control Committee before being placed upon or assembled or otherwise maintained on any lot. A temporary office, tool shed, saw shed, lumber shed and sales office may be maintained upon any lot or lots by any building Contractor or Developer for the purpose of creating and selling dwellings on lot or lots, but such temporary structures shall be removed upon completion of construction or of dwellings, whichever later occurs.

## 8. Storage; Clotheslines; Rubbish

A) All Clotheslines, equipment, service yards, wood piles or storage piles shall be kept screened by a solid wall, a solid fence or a hedge so as to conceal them from view of neighboring lots, streets or park areas. All rubbish, trash or garbage shall be regularly removed at least once a week from each lot and shall not be allowed to accumulate thereon, and shall not be burned. All trash receptacles shall be kept in enclosed areas and not exposed to public view.

## 9. Landscaping

A) The owner must landscape the front yard prior to closing and occupancy of the residence, weather permitting.

B) Sixty percent (60%) of all front yards and sixty (60%) of the sideyards adjacent to the street on corner lots must be grass. To determine the size of the yard, front yards and sideyards shall be defined as that area between the back of curb and the front and/or side facade of the dwelling excluding the sidewalk adjacent to the curb (street walk).

C) The remaining forty percent (40%) shall include the leadwalks to the main entry of the dwelling unit and balance may be grass or other landscaping material as approved by the Architectural Control Committee, used as an accent material.

## 10. Antennas

A) No antennas or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors, whether attached to a building or structure or otherwise, except that a simple color television and radio antenna may be used provided it does not extend higher than the roof line of the house. A dish antenna may be used if it is maintained at ground level in the back yard and concealed from view of other residences.

## 11. Signs

A) No advertising (except one of not more than five (5) square feet "For Rent or "For Sale" sign per lot), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health, safety or welfare of the owner or any residents thereof. These restriction shall not apply to the business activities, signs, billboards, or the construction or maintenance of buildings, if any, of Developer, its agents or designees, during the construction and sale period.

## 12. Offensive Activity

A) No noxious or offensive activity shall be carried out upon any lot, nor shall anything be done, placed or stored thereon which may be or become an annoyance or nuisance to the neighborhood, or occasion any noise or odor which will or might disturb the peace, comfort, or serenity of the occupants of neighboring properties. No unshaded flood lights may be maintained which cause light to shine directly into the home of any other resident in Carriage Estates.

## 13. Additions

A) Any addition to the dwelling unit must be of like material, color and craftsmanship as the dwelling originally constructed.

## 14. Solar Units

A) No solar units for heating or cooling or other purpose shall be erected, constructed, installed or maintained on any lot without the prior approval of the Architectural Control Committee.

## 15. Exterior

A) The stucco color, trim color, or exterior tile of each residence must be approved by the Architectural Control Committee in writing in order to change color.

## 16. Architectural Control Committee

A) The Architectural Control Committee is initially composed of three (3) members but may be expanded in number by the Developer. The Committee may designate a representative to act for it. In the event of death or resignation of any member of the Committee, the remaining members shall have full authority to designate a successor. Neither the members of the Committee nor its designated representative shall be entitled to any compensation for services performed pursuant to this covenant. The members of this Committee shall serve until December 31, 1993, or until they resign, whichever sooner occurs. Thereafter the then record owners of a majority of the lots shall have the power to elect the members of the Committee and, through a duly recorded written instrument, to change the membership of the Committee or to withdraw from the Committee or restore to it any of its powers and duties. Until such change in memberships effected as stated herein, the original committee may continue to serve. The Committee may appoint a Review Board consisting of three (3) members who will serve at the pleasure of the Committee and will conduct the review of plans as provided in subparagraph (b) of the Paragraph. A majority vote of the Committee will serve to override any decision by the Board.

(b) No building shall be erected, placed or altered on any lot until a \$100.00 submission fee is paid to the Architectural Control Committee. The construction plans and specifications and a plan showing the location of the structure must be approved by the Architectural Control Committee or its designee as to quality of workmanship and material, harmony of external design with existing structures, and as to location with respect to topography and finish grade elevation. Furthermore, no existing building shall be altered, remodeled or changed until plans for such change, alterations or remodeling have been approved by the Architectural Control Committee or its designee. Action shall be taken on said plans and specifications by the Architectural Control Committee, its designee, or its successors in interest within thirty (30) day after submittal thereof.

(c) The work on constructing any building on any part of said property shall be completed within six (6) Months from the commencement thereof.

17. Duration

A) These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until the year 2020 A.D., at which time said covenants shall be automatically extended for successive periods of ten (10) years unless amended as hereinafter provided.

18. Amendments

A) These covenants may be amended at any time by the affirmative vote of the then record owners of three-fourths (75%) of the residential lots in Carriage Estates.

19. Violations

A) If the parties hereto, or any of them, or their grantees, successors-in-interest or assigns, shall violate or attempt to violate any of the covenants herein provided, Grantor or any person or persons owning any real property in Carriage Estates shall have the right to prosecute any action in the proper court to enjoin such party from violating such covenant, or to recover damages for such violation, or both.

20. Validity

A) Invalidation of any of these covenants shall in no way affect the validity of the other provisions, which shall remain in full force and effect.

21. No delay or omission on the part of the undersigned, its successors or assigns, or of the owners of other lots in said subdivision having the right hereunder to exercise the same, in exercising any right, power or remedy herein provided for in the event of any breach of the restrictions, covenants or reservations herein contained shall be construed as a waiver thereof or acquiescence therein; and no right of action shall accrue, nor shall any action be brought or maintained by anyone whatsoever against the undersigned, its successors or assigns, for or on account of failure or neglect to exercise any right, power or remedy herein provided for in the event of breach of said covenants, restrictions or reservations.

NOTICE OF APPOINTMENT OF  
ARCHITECTURAL CONTROL COMMITTEE  
FOR  
CARRIAGE ESTATES

MOCK HOMES ASSOCIATES, INC., a New Mexico Corporation, hereinafter "Developer" being the owner of property located in the City of Albuquerque, County of Bernalillo, State of New Mexico, described as follows:

All lots numbered One (1) through Forty-Three(43) of Carriage Estates, a subdivision of the City of Albuquerque, Bernalillo County, New Mexico, as shown and designated on the plat thereof filed in the office of the County Clerk of Bernalillo County, New Mexico, on October 25, 1990, Book 90-C Page 264 as document #9082620.

DOES HEREBY name and appoint the following members of the Architectural Control Committee, to-wit: Donald L. Mock  
Melvin J. Ottley  
Carolyn J. Garcia

to serve from January 1st, 1991, until their successors are appointed or elected.

IN WITNESS WHEREOF, the undersigned has executed this Notice this 22<sup>nd</sup> day of January, 1991

MOCK HOMES ASSOCIATES INC.,

By [Signature]  
Joe Mock, President

STATE OF NEW MEXICO        )  
  ) ss.  
COUNTY OF BERNALILLO    )

The foregoing instrument was acknowledged before me this 22nd day of January, 1991, by Joe Mock

[Signature]  
Notary Public

My Commission Expires:  
1/1/93



9734

IN WITNESS WHEREOF, the undersigned have executed this Declaration this  
22nd day of JANUARY, 1991

MOCK HOMES ASSOCIATES INC.,

By [Signature]  
Joe Mock, President

STATE OF NEW MEXICO            )  
  )    ss.  
COUNTY OF BERNALILLO        )

The foregoing instrument was acknowledged before me this 22nd day of  
January, 1991 by Joe Mock

My commission  
expires 1/6/93

[Signature]  
NOTARY PUBLIC

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
FILED FOR RECORD  
1991 JAN 22 PM 3:25  
BK BCR. 91-1 PG 9726-9734  
GLADYS M. DAVIS  
CO CLERK & RECORDER  
[Signature]

# Amendment

to the

## Protective Covenants for Carriage Estates

In reference to the Protective Covenants for Carriage Estates, filed on January 22, 1991, record #91-4972, County of Bernalillo. The following amendment has been approved by 75% of the residents. In accordance to section 18, the following change shall be recorded to the above mentioned Covenants:

Section 2. B) Shall now read,

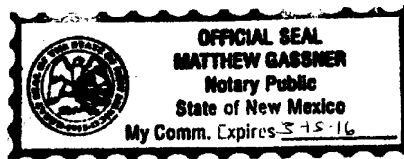
B) All buildings shall be of brick, adobe, or insulated frame stucco construction, and all roofs shall be of clay or concrete tile or wood shake or wood shingles, or asphalt shingles. Built up or "flat" roofs will be allowed, so long as the parapets obscure their view.

Resident Barbara C. Phinney of 9115 Hackney Road NE, has executed this amendment in compliance with the Carriage Estates Protective Covenants.

Barbara C Phinney Date Oct. 31, 2013

This amendment was acknowledged before me this 31<sup>st</sup> day of OCTOBER, 2013 by [Signature]

Stamp and Signed Notary Public



Doc# 2013119695

10/31/2013 11:31 AM Page: 1 of 7  
AMND R:\$25.00 M. Toulouse Oliver, Bernalillo County

