

PROTECTIVE COVENANTS  
For  
PARKHILL ESTATES UNIT #1

WHEREAS, BPS, LLC. is the owner of the property to be known as PARKHILL ESTATES UNIT #1, Subdivision situated in Dona Ana County, Las Cruces, New Mexico, hereinafter called the "property", and generally as depicted on the legal descriptions herein as:

PARKHILL ESTSTES UNIT #1, Plat No. 4375, Reception no. 17138 on the 18th day of May, 2006, in book 21, pages 623 & 624 in the records of the Dona Ana Clerk, Las Cruces, New Mexico.

WHEREAS, BPS, LLC. has established a general plan for the improvement and development of the property and desires to impose certain Protective Covenants and restrictions on the property in accordance with that plan.

NOW, THEREFORE, the property is hereby made subject to the following Protective Covenants, Conditions, Reservations and Restrictions which shall run with the land and shall be binding upon all persons owning lots affected by these Covenants or claiming under them until January 1, 2035, after which time said Protective 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 has been recorded, agreeing to change, alter, amend or remove said Protective Covenants in whole or in part. If the owners of such lots or any of them or their heirs or assigns shall violate any of the Covenants hereinafter set out, it shall be lawful for any other person or entity owning an interest in the property to prosecute any proceeding at law or in equity against the person or persons violating any of the Covenants and either to prevent him from doing so or to recover damages for such violation, or both, or require removal of the offending structure or injunction to prevent such determined violation. It is the intent of this paragraph to give all fee simple owners, contract sellers or purchasers and mortgagees standing to enforce these Covenants.

I

1. Term. All of the protections, restrictions, conditions, covenants, reservations, liens and charges set forth in the declaration shall be covenants running with the land and shall continue and remain in full force and effect at all times until January 1, 2035, and shall thereafter be automatically continued without further notice from that time for successive periods of ten years each without limitation, unless there shall be recorded a written instrument executed by the then-record owners of 75% of the lots in the property modifying or extinguishing this declaration in whole or in part.

2. Enforcement. All persons, firms, associations or corporations who now own, or who may in the future own, property subject of these covenants are

specifically given the right to enforce these covenants through any proceeding, at law or in equity, against any person or persons, firms or corporations violating or threatening to violate such covenants, and to recover any damages suffered by them from any violation thereof.

3. Severability. Invalidation of any one of these covenants by judgment or court order shall not affect any other provisions, which at all times shall remain in full force and effect.

4. Architectural Review Committee. The Architectural Review Committee(ARC) shall initially be composed of three persons to be chosen by the Developer of the SANDHILL CENTER HEIGHTS properties. In the event of death or resignation of any member of the committee, the above mentioned Developer shall have full authority to designate a successor or successors. The ARC may take action upon the approval of any two of the three members. The members of the ARC shall not be entitled to any compensation for services performed pursuant to this covenant. The ARC shall consist of the above members until such time as the Developer states in writing to all individual owners of lots in subject property that control shall pass to three persons elected by a majority of those lot owners present at a meeting called by the Developers. At this meeting, a majority of the lot owners present shall determine the means of continuation and succession of members of the ARC. In addition to other powers and authority vested in the ARC, it shall also rule upon any questions arising with respect to the interpretation of the Protective Covenants, grant variances from these covenants in its discretion, and, if necessary, may, but shall not be required to, take any action necessary to enforce the same on behalf of all parties having an interest. Such action or inaction shall not preclude any other person authorized by law from either enforcing or enjoining the enforcement of these Protective Covenants.

5. Architectural Review. No building, wall or fence shall be erected, placed or altered on any lot until the construction plans and specifications, and a plan showing the location of the structure have been approved by the ARC as to quality of workmanship and materials, compliance with these Covenants and location with respect to topography and site selection. Approval shall be as provided in Paragraph 1-6.

6. Procedure. Owners shall submit plans and specifications to the ARC. The ARC approval or disapproval as required in these covenants shall be in writing, and given within ten(10) days of the submission of all required information. If no action is taken on the part of the ARC within said ten(10) day period, the plans submitted are deemed to be approved.

7. Nonliability. Neither the Developer nor the ARC shall incur liability to anyone submitting plans for approval, or to any owner or owners of land subject to these covenants by reason of mistake in judgment, negligence or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval, or failure to approve such plans. Anyone submitting plans for approval, by the submitting of such plans, and by acquiring title to any of the property covered hereby, waives his claim for any such damages.

**Residential Land Use and Building Type**

1. General Restrictions. The following restrictions shall apply to all individual lots within subject property.

A. Only one single family dwelling on each lot is permitted. No geodesic dome, cubical, or A-frame structures are permitted as residences or for any other purposes. Two story homes are allowed ONLY with the express, written permission of the ARC. No mobile home, single-wide or double-wide, manufactured housing or modular homes are permitted, whether or not they are permanently attached to the land and whether or not improvements are added to such mobile homes or manufactured housing or modular homes. Homes which are not built as a minimum of 75% on site will be prohibited.

B. No residence shall be erected, altered, placed or permitted to remain on any lot with fully enclosed living area of less than 1000 square feet of heated area for Lots 1-6, Block C; Lots 1-6 & 30-36, Block D; and Lots 1-7, Block E and no less than 1350 square feet of heated area for Lots 1-62, Block A; and Lots 1-12, Block B, exclusive of garages and open porches. Homes consisting of single car garages are allowed ONLY on those lots with frontage widths of less than 45 feet, but the number shall be minimized for the benefit of home values otherwise throughout the subdivision. All other lots require a two car garage with the home.

C. No building or any part thereof, including garages, shall be erected on any lot closer to the respective property line as follows for the respective designated lot:

FRONT YARD SETBACK	20 FEET*
SIDE STREET SETBACK	15 FEET
SIDE YARD SETBACK	7 FEET*
REAR YARD SETBACK	25 FEET*

HOWEVER, the City of Las Cruces by Zoning Code effective September 4, 2001 altered setbacks allowed for front, rear and side yards. Upon submittal to the ARC, the ARC may allow one or more of the variances to the setback distances noted above as long as they are in conformance with those imposed by the revised 2001 Zoning Code. Should any residence be constructed on more than one lot, the lines of lot ownership shall be used for determining the front, rear and side lot setbacks.

D. All buildings constructed on the subject property shall be of brick, frame and stucco, adobe or other such materials as may be authorized by the ARC. Garages, carports and permitted accessory buildings shall conform in material and design to the dwelling to which they pertain. No metal storage buildings shall be allowed under any circumstance. Only exterior surface materials in desert tone colors, including white and tones of brown, tan and rose shall be used for any residence, accessory structure, wall or fence. The El Rey color chart shall control as to colors allowed. The construction of each building must comply with provisions of the New Mexico Uniform Building Code or its comparable.

- E. A grading plan showing finished elevations of areas to be graded, paved areas, building sites, retention or detention areas, retaining walls and other structures has been approved by the City of Las Cruces. No grading, land filling, excavating or other alteration will be done except pursuant to the approved plan or revision approved by the City of Las Cruces and by the ARC.
- F. No manufacturing or commercial enterprise of any kind for profit shall be maintained on, in front of, or in connection with lots in the property; except, home occupations may be permitted which would be in accordance with the codes of the City of Las Cruces. There shall be no fair, exhibition, festival, show or other activity which attracts or is intended to attract, divert or collect a large number of persons. Such restrictions shall not prevent what is commonly known as "garage Sales" or backyard parties conducted by residents or their children living on the property, provided such are only occasional.
- G. No commercial kennel for pets is permitted. No animals, livestock, including horses, donkeys, mules, poultry or swine of any kind shall be raised, bred or kept on any property. Pets are permitted, but each owner is responsible for the cleaning and removal of excrement on the owner's property and any other caused by pets of the owner. Owner shall comply with the City of Las Cruces "Pet Ordinance" and with City of Las Cruces nuisance and noise Ordinances regarding barking dogs.
- H. Any fence, wall, building or structure placed on the property shall be in compliance with the setback and zoning requirements of the City of Las Cruces and shall not impair the drainage function of the on-lot ponding areas as shown on the plat. All perimeter walls and fences shall be placed on the property lines between lots, except as provided in paragraph J. herein below. Retaining walls shall be party walls if placed on the common property line between two lots and shall not be removed by either property owner without the written consent of the other party and the Architectural Review Committee. All lots are required to have perimeter walls or fences constructed, except as provided in paragraph K. Such required walls must extend along the side lot lines from the rear most point of the dwelling to the rear lot line and along the rear lot line in its entirety. Other walls and fences are optional. The party walls shall be a minimum of forty-eight(48) inches in height, except where otherwise physically limited to a lower height. The party walls shall be no more than six(6) feet in height measured above the highest grade. All party walls, perimeter walls and retaining walls in view from at least one side shall be constructed of rock or stone in conformance with what is known as "Las Cruces rock wall" standards, materials and styles and shall be of a yellow, reddish, or tan color rather than gray in color. Those walls not on the property line forming the "return" from the residence or courtyard and patio walls tied to the residence may be of the same material used in the residence construction, however, being subject to ARC. Party walls shall be paid for pro rata by the respective abutting property owner(s). Except for the required retaining walls, the following requirements shall be applied to fences or walls.

- (1.) No fence or wall may be erected, placed or altered, relocated or removed without the express written consent of the ARC.
- (2.) In the event any such party wall which does not form a structural part of a dwelling or garage 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 all such adjoining owners shall proceed forthwith to rebuild or repair the wall to as good a condition as existed formerly at their joint and pro rata expense.
- (3.) In addition to meeting the other requirements of these Protective Covenants and of any building code or similar regulation or Ordinance, any owner proposing to modify, make additions to or rebuild a party wall in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining owner.
- (4.) 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 costs thereof, the matter shall be submitted to three 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 that one party fails to choose an arbitrator within ten(10) days after receipt of a request in writing for arbitration from the other party, then said party shall have the right and power to choose three arbitrators.

I. Perimeter lots, being those lots having side lot lines and/or rear lot lines, which are not dividing lines between lots, but form, in part, the perimeter lines of the respective subdivision, along drainage ways, city streets, etc., shall have walls or fences constructed along said perimeter lines completely within the perimeter lot lines and said perimeter walls shall not be party walls. All the remaining provisions of paragraph II-A through I regarding setback requirements, requirements of walls to be constructed, height, materials, color and repair of walls shall apply to perimeter walls.

J. Lot owners who are not licensed general contractors and who do not construct dwellings on a lot owned by them, are not exempt from the requirements of these covenants regarding construction of perimeter and party walls and fences and joint and pro rata obligations concerning party walls. Such walls, as well as sidewalks, shall be constructed at the time each adjacent lot is developed or built upon by the adjacent lot owner. Lot owners who are licensed general contractors and who do not construct dwellings on a lot owned by them, must construct required perimeter and party walls within sixty(60) days of the completion of construction of the dwelling on an adjacent lot.

- K. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any residential lot or on any building erected thereon, other than one(1) nameplate of the occupant of any residence upon which his or her professional or occupational title may be added, and provided no such sign shall be lighted. Provided that permission is granted for the erection and maintenance of not more than one signboard to each building site during the course of construction of a new single family dwelling and upon its completion, during the course of its initial sale, or resale, which signboard shall not exceed six(6) square feet. Notwithstanding anything herein contained to the contrary, nothing herein shall be construed to prevent the Developer or home builder from erecting, placing or maintaining sign structures and offices as may be determined necessary by the Developer to promote sale and development of lots within the property.
- L. No owner may alter the exterior design of building, fences or walls on the property unless the plans have been reviewed and approved by the ARC. Alteration of exterior design shall include a change in color, texture and decoration or appearance of the exterior structures and walls.
- M. No transmission towers or microwave equipment shall be erected or placed on the property. Television or radio receiving antennae, satellite dishes, solar equipment or other devices must be located in the owner's rear yard or on the roof of the residence and in either location must be substantially shielded from view from the street and other properties in the vicinity and must not interfere with the reception or signal of the neighboring properties.
- N. No noxious or offensive activity 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. No burning of trash or refuse shall be permitted on any lot or at any site within the property.
- O. No structure of a temporary character, mobile home, trailer, automobiles not in use, semi tractor, basement, tent, shack, garage, barn or other outbuilding shall be placed or used on any lot or upon streets within the property at any time as a residence or place of business, either temporarily or permanently. Boats, campers, other trailers, recreational and similar vehicles or equipment shall be located to the rear of the closest front wall of the residence dwelling, must be screened from view from other property owners and must comply with City of Las Cruces Ordinances.
- P. Construction of a home must be started within twelve(12) months after the date of closing on the lot. All construction, once started, must be completed within twelve(12) months.
- Q. No lot or portion thereof shall be used in whole or in part for the storage or dumping of rubbish of any character whatsoever, nor for the storage of any other property or thing that will cause such lot to appear in an unclean or untidy condition or that will be obnoxious to the eye. Nor shall any substance, thing or material be kept upon any lot that will emit foul or obnoxious odors or that will cause any noise

that will or might unreasonably disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.

- R. No oil drilling, oil development operations, oil refining, quarrying or mining of thermal operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted in, under, or upon any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot or portion of the property.
- S. Tin or other sheet metal, chain link, wire or barbed wire fences are specifically prohibited, except chain link or wire fences may be constructed for dog runs or other purposes to the rear of the front wall of the main building when located within and enclosed by a permitted exterior fence. The fence for such runs shall be a minimum of one(1) foot lower in height than the exterior perimeter rock wall. All exterior clothes lines shall be placed within fenced and walled areas and screened from view.
- T. No elevated tanks of any kind shall be erected, placed or permitted. Any tanks for use in connection with any residence constructed on said property, including tanks for the storage of gas, fuel oil, gasoline or oil must be buried or walled in sufficiently to conceal them from view from neighboring lots, properties or streets. Vehicles under extensive repair, storage files and construction materials shall be stored only in the garage or within walls which will conceal them from the view from neighboring lots, properties or streets.
- U. Further subdividing of lots will be allowed as long as any resulting lot contains a minimum area of 7000 square feet. No other subdivision or splitting of lots shall be permitted.
- V. All new utility connections shall be placed underground.
- W. Unless a restrictive provision is imposed by this declaration of protective covenants, the restrictions of the City of Las Cruces shall limit the use and development of each lot or property.

## 2. Landscaping.

- A. The ARC shall review and approve all landscaping plans for all front yards and side yards facing streets on corner lots and same must be landscaped within ninety(90) days of completion of a residential building on the respective property or lot whether by the builder or the home owner.
- B. Typical desert environment and drought resistant landscaping is encouraged. However, a sufficiently visible amount of foliage must be present on each building lot to comply with the landscaping requirements herein established or subsequently amended. The ARC shall be the final authority as to the acceptability and the following criteria shall be used as a guideline for the required landscaping:
  - One(1) two inch(2") caliper broadleaf tree which when mature will reach a minimum height of twenty(20) feet. Two(2) trees are

required if the side yard abuts a street on a corner lot. Should a second tree be required by FHA or similar entity, such tree can be a one(1") inch caliper broadleaf, unless it is the side yard tree on an abutting street, then it must be as required above. Examples of typical trees are: Seedless locust, ash and similar varieties. Fruit bearing or fruitless mulberry trees are specifically excluded in this subdivision or on this property.

One(1) intermediate size shrub or bush planting which when mature will reach a minimum height and width of eight(8) feet. Two such shrubs are required if the side yard abuts a side street. Examples are: Photinia, Texas sage, oleander, indian hawthorne, pyracantha, forsythia, spirea, flowering quince, honeysuckle, sumac, pomegranate and similar varieties.

Six(6) lower foundation plantings which when mature will reach a height of 2 to 3 feet. Eight(8) are required if the side yard abuts a street. Examples are: Many of the above shrubs in a dwarf variety, Nandina, rosemary, mock orange, blue chip and tam junipers and similar varieties. However, no more than two(2) of the above required plantings shall be a juniper variety.

An assortment of other hardy drought resistant broadleaf plantings, cacti, yucca, cholla, agave, century plant, ocotilla and similar plantings are acceptable and encouraged in addition to the above required plantings.

Ground cover vegetation is encouraged on at least a portion of the front yard and side yard when it abuts a street on a corner lot. Examples are: Seedless bermuda, blue gramma, fescue and similar hardy grasses. If such organic ground covers less than 20% of the nondriveway area of the landscaped area, then the number of intermediate shrubs and foundation plantings must be increased by 100% each in number. Inorganic material shall be used to cover those areas not planted or covered otherwise. In no event is the natural sandy surface to be left exposed and not landscaped. Examples are: crushed rock, crusher fines, crushed brick, paving stone and similar materials. Any variation in use or placement of materials as prescribed above must first be approved by the Architectural Review Committee.

C. ALL FRONT YARDS MUST follow specific rules regarding placement of Landscaping. Three options or combinations of options may be implemented. A minimum of 50% of the front yard must be planted to grass. OR, a weed barrier, pervious mesh must be placed under rock that will allow a minimum quantity of storm water to pass through equal to or greater than the native compacted soil would allow during the same period of time. OR, a front yard pond of sufficient capacity can be used to retain storm water on site achieving the minimum 50% on site retention of storm water. Various combinations of the above methods should be used in order to maximize on lot retention of storm water. Owners shall obtain specific approval from the Developer to landscaping plans prior to installation of front yard landscaping.

D. Any time a substantial change, alteration or modification is made to the front yard or side yard of a lot relative to landscaping, the ARC must approve such change, modification or alteration. Excluded shall be the instance where plants, trees, shrubs or other landscaping may die, be destroyed, removed or similarly

caused to be reduced in quantity and as such require replanting or replacement according to the same rules as applied to the initial planting requirements above set forth.

- E. In no instance shall the owner or builder of a purchased lot be permitted to throw or deposit unused construction materials, landscaping materials, rocks and/or any other debris onto another lot.

If determined to have happened, the ARC will give such owner or builder 24 hours to remove the debris. After this time, the cleanup will be performed by the Developer or Developer's agent and the cost will be charged to the offending owner at the rate of \$100 @ hour labor charges plus any other expenses associated with the cleanup.

### III

#### Easements, Storm Drainage and Support Structures

Easements for installation and maintenance of utilities, drainage and streets are reserved as shown on the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or streets. Within each drainage easement, no temporary or permanent structure shall be placed and no structure or planting or movement of material shall be permitted which may interfere with the direction of flow in the drainage channels in the easements unless approval is first obtained from the City of Las Cruces.

### IV

#### Miscellaneous Provisions

- A. Each Grantee of a lot within the property by the acceptance of a deed or conveyance or by signing this declaration, accepts the same subject to all restrictions, conditions, covenants, reservations and the jurisdiction, rights and powers created or reserved by this declaration, and all rights and benefits hereby granted, created, reserved or declared, and all obligations hereby imposed shall be covenants running with the land and shall bind any person having at any time any interest or estate in the land and shall inure to the benefit of such owner in like manner as though the provisions of this declaration were recited and stipulated at length in each and every deed of conveyance.
- B. It is further stipulated that breach of any of the foregoing conditions and covenants shall not affect any mortgage or other lien which in good faith may be existing at the time upon said property or any improvements thereon.
- C. No covenants, restrictions, conditions, obligations or provisions contained in this declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.
- D. Any provision hereof may be changed, amended or rescinded by written

instrument setting forth such amendment which has been approved by the Developer or by owners of seventy-five(75%) percent of the lots and executed by the members of a majority of the ARC.

E. The agent for service of process upon the Developer is Arlon L. Parish, Managing Member at 1161 Cave Springs Trail, Las Cruces, New Mexico 88011.

F. Any amendment, change, modification or rescission of this declaration shall be effective only when filed for record in the office of the County Clerk of Dona Ana County, New Mexico. No amendment, change, modification or rescission of any provision of this declaration shall be valid or effective if such amendment, change, modification or rescission violates or conflicts with any applicable Statute of New Mexico.

G. One owner of BPS, LLC. is a licensed New Mexico Real Estate Broker. One owner of BPS, LLC. is a licensed New Mexico Real Estate Agent. Both are dealing in their own property as regards BPS, LLC.

IN WITNESS WHEREOF, the undersigned parties have caused this instrument to be executed on this 18th day of May, 2006.

ATTEST: \_\_\_\_\_

BY: Arlon L. Parish  
ARLON L. PARISH  
as: Managing Member  
BPS, LLC.

County of Dona Ana )  
State of New Mexico )

The foregoing instrument was acknowledged before me this \_\_\_th day of May 2006, by Arlon L. Parish as Managing Member of BPS, LLC., on Behalf of said entity.



OFFICIAL SEAL  
KEVIN L. DAVIS  
NOTARY PUBLIC - STATE OF NEW MEXICO

My Commission Expires

my commission expires 02/01/07

Phepcl

[Signature]  
Notary Public



State of New Mexico  
County of Dona Ana, ss 17547  
RECEPTION NO. 17547  
I hereby certify that this  
instrument was filed for  
recording and duly recorded on  
MAY 19 2006  
at 10:51 o'clock A M  
Book 712 Page 413-422  
of the Records of said County.  
Rita Torres, County Clerk  
BY: [Signature]