

The Bluffs Filing No. 3 Covenants 802421

802421

DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS AFFECTING ALL REAL PROPERTY IN "THE BLUFFS FILING NO. 3" IN THE CITY OF COLORADO SPRINGS, EL PASO COUNTY, COLORADO

WHEREAS, the undersigned The Shepard Companies, Inc., a Colorado corporation, has heretofore caused to be filed for record a plat of THE BLUFFS FILING NO. 3 in the City of Colorado Springs, El Paso County, Colorado, with the Clerk and Recorder of the County of El Paso and State of Colorado, and

WHEREAS, the said The Shepard Companies, Inc., a Colorado corporation, is the owner of all of the lots in blocks located within said Sub-division, does desire to establish restrictions and protective covenants applicable to all of the lots and blocks within said Subdivision for the use and benefit of each and every lot in said Subdivision;

NOW, THEREFORE, The Shepard Companies, Inc., a Colorado Corporation, being the owner of all of said lots, does hereby declare that all of the lots, blocks and real property located and embraced within The Bluffs Filing No. 3 in the City of Colorado Springs, El Paso County, Colorado, shall be conveyed subject to and shall be acquired, used and held by all grantees subject to the following restrictions and protective covenants, and any person acquiring any of said real property or any Interest therein, either by purchase, gift, inheritance, foreclosure, operation of law, or otherwise shall acquire said real property subject to and bound by these restrictions and protective covenants, and each and every said person so acquiring said real property or any interest therein shall be deemed, by accepting title to sold property of said interest therein, to specifically agree to be bound by these restrictions and protective covenants and shall conform to the same .

I

PROPERTY SUBJECT TO THIS DECLARATION - All the Lots, blocks and real property located within The Bluffs Filing No. 3 in the City of Colorado Springs, El Paso County, Colorado, shall be subject to this declaration.

II

PERMITTED LAND USE - No lot shall be used except for residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling and a private garage for not less than two and not more than four cars.

No dwelling shall be erected on a lot containing less than 10,000 square feet in area.

ARCHITECTURAL CONTROL COMMITTEE - An Architectural Control Committee, hereinafter referred to as Committee, of three persons is hereby created. The first committee shall be composed of Omer F. Shepard, Bruce E. Shepard and Donell R. Jeffries. If any member of said committee shall die, resign, move from El Paso County, Colorado, or for any other reason be unable to serve, the remaining members shall appoint a successor. Said committee shall exercise the controls, authority and discretion herein vested in it. Two members of said committee shall constitute a quorum. All action taken by said committee shall require the affirmative vote or approval of two members.

No dwelling, building or any other structure may be erected, altered exteriorly or construction commenced thereon unless a complete set of plans and specifications, hereinafter referred to as plans, is submitted in advance of such construction or alteration to the committee. The plans submitted to committee shall be in such complete form and detail as to be bidable and I contain sketches of all exterior and site elevations. The committee shall approve or disapprove such plans within thirty days after they are submitted. Failure of the committee to act within said thirty days shall constitute approval said plans.

In approving or disapproving the plans submitted to it, the committee shall take into consideration the design, style and construction of the proposed building or alteration, its location on the lot, the harmony of its design, architecture and location with the terrain and surrounding neighborhood and shall determine whether such proposed building is consistent with the general terrain, the architecture of other buildings located upon property subject to this declaration and whether or not the construction or alteration of said building will adversely affect or decrease the value of other property in the Subdivision because of its design, location, height or type of materials used in construction. The committee may make reasonable requirements of the lot owner, including the submission of additional plans to insure conformance of such building when erected with these restrictions and

covenants and the plans submitted and approved. The committee may require such changes as may be necessary to conform to the general purposes as herein expressed.

The committee shall have authority to grant variances from the provisions of this declaration in cases of irregularly shaped lots, unusual terrain, or other conditions wherein the strict enforcement of these covenants would result in unusual hardship. The committee shall be the sole and exclusive judge of whether or not said hardship exists.

Whenever the committee disapproves of any proposed plans or specifications, it shall state in writing its reasons for such disapproval in general terms so that the objections can be met by alterations acceptable to the committee.

All plans submitted to the committee shall be left on file with the committee.

It is the intent of these declarations that the committee shall exercise broad discretionary powers hereunder and its decisions shall be final and conclusive except for an arbitrary abuse of its discretion or an excess of its authority.

The committee shall resolve all questions of interpretation. They shall be interpreted in accordance with their general purpose and intent as herein expressed.

IV

DWELLING, SIZE AND LOCATION - All dwellings erected on property subject to this declaration shall contain the minimum square footage of enclosed floor space, exclusive of basement, garage, porches, balconies, sundecks, roof-overhangs or outbuildings, and can be composed of the materials hereinafter set forth.

Every dwelling built on one level shall consist of no less than 1,350 square feet of lot space enclosed by the perimeter of said building, exclusive garage, porches, balconies, sundecks, roof-overhangs and out-buildings.

Every split-level dwelling shall contain no less than 1,350 square feet in the main and upper floor and in no event shall be less than 1,350 square be enclosed by the perimeter of said building, exclusive of garage, except when said garage is located within the ground floor and under the second floor and exclusive of porches, balconies, sundecks, roof-overhangs and out-buildings.

Every two-story dwelling shall cover not less than 1,000 square of lot space enclosed by the perimeter of the ground floor, exclusive garage, porches, balconies, sundecks, roof-overhangs and out-buildings.

Two-story dwellings shall be permitted only with the approval of committee and then only when located on terrain where said two-story dwellings will be compatible with surrounding terrain and existing development.

The exterior walls of any dwelling shall only be constructed of material approved by the committee.

All roofs shall only be constructed of materials approved by the committee. If other than natural wood, the color of the roofing material must be approved.

All construction shall be of new materials. However, the committee shall have authority to authorize the use exteriorly of select used materials which are incorporated in the structure for design and architectural purposes. Samples of all used materials shall be submitted to the committee prior to use.

No dwelling, building or other structure shall be moved onto the premises, except temporary structures required during construction.

No clothes lines, exterior antenna, tower, receiver, car-ports, patio covers or similar improvements shall be erected without first securing permission of the committee.

Once construction of any building is commenced, it must be completed within 180 days.

V.

SETBACKS - No building shall be located on any lot nearer than 25 feet to the front lot line or nearer than 10 feet to any interior lot line. Lots which are corner lots shall not have houses erected thereon which are nearer than 25 feet to the side street or front yard building lines. No dwelling shall be located nearer than within 20 feet of the rear lot line. For the purposes of these covenants, steps and open porches shall be considered as a part of a building. The committee may grant variances from said setbacks in cases of irregularly shaped lots, terrain or other conditions which could result in a hardship to the owner. The committee will be the sole judge of hardship.

VI.

FENCES, HEDGES AND WALLS - No fence or wall shall be erected, placed or altered on any lot in excess of four feet in height whether it can be seen through or not, unless approved by the Architectural Control Committee as to height, location, materials and design. No fence or wall, erected, placed or altered on any lot nearer to any street than the building setback line unless similarly approved. (Fence or wall as used here include any hedge or shrubbery used for such purpose.)

All fences, hedges and walls on the rear lot line shall be subject to the additional restriction that where the rear lot line adjoins a linear park, then the fence, hedge or wall shall not encroach upon said linear park.

VII

NUISANCES - No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood. No oil drilling, water drilling, oil development operations, oil refining, quarrying or mining operation of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other such structure designed for use in drilling for oil, water or natural gas shall be erected, maintained or permitted upon any lot.

VIII

COMMERCIAL ENTERPRISES - No manufacturing or commercial enterprises shall be conducted or maintained upon, in front of or in connection with any lot or lots or shall said lot or lots in any way be used for other than strictly residential purposes.

IX

SIGNS - No sign of any kind shall be displayed to the public view on any lot except one non-illuminated professional sign of not more than 5 square feet advertising the property for sale or rent; a sign used by the builder during construction, provided, however, that one or more signs advertising the Subdivision or adjoining subdivisions developed by The Shepard Companies, Inc. or its assigns may be displayed in such a manner as to not interfere, the use or enjoyment of any property in the Subdivision.

X

PROHIBITED STRUCTURES - No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out-building shall ever be used on any lot at any time whatsoever as a human habitation or residence, either permanent or temporary. No temporary structure, building, supplies, equipment or the like may be maintained, stored or kept on any lot except during the construction of the dwelling or other approved building thereon. No house-trailer, trailer, except boat trailers, or bus shall ever be kept or stored on any lot unless completely inside of an approved garage. No boat or boat trailer shall ever be kept upon any of said lots except to the rear of the frontline of the improvements, and then only when properly screened from all adjoining thoroughfares. Nothing contained herein shall be deemed to prevent the committee from designating a common area wherein all boats or boat trailers must be kept.

Basketball backboards and free standing mailboxes shall not be erected unless first approved by the Architectural Control Committee.

XI

GARBAGE AND REFUSE DISPOSAL -No lot or easement shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be disposed of in a sanitary manner. All containers or other equipment for the storage or disposal of garbage and trash shall be kept in a clean, sanitary condition. The burning of trash in outside incinerators, barbeque pits or the like is prohibited, it being intended that all refuse, trash, garbage and the like shall be hauled from the Subdivision. Garbage cans are to be inside garages, behind decorative fencing or otherwise hidden from view to the street.

XII

DURATION OF COVENANTS - The covenants and restrictions of this declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by the owner of any lot subject to this declaration, their respective legal representatives, heirs, successors and assigns, for a term of 20 years from the date this instrument is recorded after which time said covenants shall be automatically extended for successive periods of 10 years. The covenants and restrictions of this instrument may be amended during the first 20-year period by an instrument signed by not less than 90 per cent of the lot owners and thereafter by an instrument signed by not less than 75 per cent of the lot owners. Any amendment must be properly recorded. Regardless of ownership, the lot shall be entitled to one vote.

XIII

PROPERTY OWNERS' BENEFIT - These covenants shall be for the benefit of all present and future owners of property subject to this declaration and it is hereby declared that any breach of the provisions of this declaration cannot adequately be compensated for by recovery of damages and that any party and, future owner may require and shall be entitled to the remedy or injunction to restrain any breach of this declaration in addition to any other remedies which may exist. No change of condition or circumstances shall operate to extinguish, terminate or modify any of the provisions of this declaration, that they shall be extinguished, terminated or modified only by the expiration of time and the failure to renew the same as hereinabove provided for.

XIV

VIOLATIONS AND ENFORCEMENT - Violation of any restrictions contained or provided for in this declaration shall give the undersigned and the event the undersigned fails to act within a reasonable time, any owner of property subject to this declaration, in addition to all other remedies provided for by law, the right to enter upon the land upon or as to which such violation exists and abate or remove the same, using such force as may reasonably necessary, at the expense of the owner thereof, an erection, thing or condition that may be or exists thereon contrary to the intent and meaning of the provisions hereof and neither the undersigned nor its agents or employees or any other lot owner shall be deemed guilty of liable for any manner of trespass for such entry, abatement or removal. The owner of said premises agrees to pay the undersigned upon demand the costs and expenses of such abatement and such costs and expenses shall be a lien upon the premises.

Every violation or breach of this declaration is hereby declared to be and constitute a nuisance and every remedy allowed by law or equity against nuisance, either public or private, shall be applicable thereto and not exclusive.

The undersigned shall not be liable in any way whatsoever for failure or omission to take action of any kind for the enforcement of any restriction or violation hereof.

The failure of the undersigned or any other property owner to take action in the event of any one single breach of any of these covenants shall not be construed to be a consent to future breaches or waiver of any of the terms and provisions of this declaration.

XV

CONFLICT WITH ZONING - In the event the terms and conditions of this declaration conflict with the applicable zoning laws, then the higher standard shall control.

XVI

SEVERABILITY - The determination by any court that any provision of this declaration is unenforceable or void shall not affect the validity and, enforceability of any other provision hereof.

IN WITNESS WHEREOF, the undersigned have caused this Declaration of Restrictions and Protective Covenants for all property as described herein, to be filed and recorded on this 20th day of May 1971.
THE SHEPARD COMPANIES, INC.