

00790755

1981 JUL 23 PM 1:25

3458 934

ARGUMENT
El Paso County Clerk of Records

2700

PROTECTIVE COVENANTS
OF
SUNSET MESA SUBDIVISION
FILING NO. 1, 2, and 3
IN THE CITY OF COLORADO SPRINGS
EL PASO COUNTY, COLORADO

File
1, 2, 3
7/1/81

THIS DECLARATION OF PROTECTIVE COVENANTS is made July 1,
1981, by Sunset Development Corporation, a Colorado corporation,
herein "Developer".

RECITALS

A. Developer is the owner of residential property in the
City of Colorado Springs, described as follows:

Sunset Mesa Subdivision Filing No. 1 - Lots 4,
18, 21, 26, 31, 35, 38.

Sunset Mesa Subdivision Filing No. 2 - Lots 2
through 7, 9 through 11, 13, 14, 16 through 28,
30 through 36, 38, 39, 40.

Sunset Mesa Subdivision Filing No. 3 - Lots 1, 2,
6, 10, 11.

Hereinafter collectively referred to as "Real
Property".

B. The Developer desires to place certain restrictions on
the use of the above-described real property for the benefit of
Developer and the grantees, successors or assigns of Developer in
order to establish and maintain the character, values and amenities
of the Sunset Mesa Subdivision.

IN CONSIDERATION OF the mutual covenants and conditions
contained herein, the Developer, for itself and its grantees,
successors and assigns, does hereby impose, establish, publish,
acknowledge, declare and agree with the following restrictions,
covenants, and conditions, all of which shall be deemed to run with
the land and inure to the benefit of and be binding upon the
Developer, its respective grantees, successors and assigns for the
benefit of all persons who may acquire an interest in any of the
Real Property.

1. Land Use, Building Type and Occupancy. The Real Property shall be used for single-family residential purposes only. No more than one dwelling shall be permitted on any lot as originally platted. No business, professional or commercial enterprise shall be conducted or maintained upon, in front of, or in connection with any lot or building site. No structure shall be erected within the subdivision except single-family dwellings, which shall include no less than a two-car attached garage.

2. Continuity of Construction. Construction of all structures commenced on the Real Property shall proceed diligently to completion and shall be completed within nine (9) months of commencement of construction. The time for completion shall be extended by any reasonable delay resulting from labor unrest, strikes, fire, national emergency or natural calamity. Failure to proceed diligently with construction or to complete within the time permitted shall be deemed a breach of these covenants.

3. Temporary Structures. No temporary structure, excavation, basement, trailer or tent will be permitted, except as may be determined to be necessary during construction and specifically authorized by the Architectural Control Committee, hereinafter "ACC", prior to installation.

4. Architectural Control Committee. To carry out the administration and enforcement of the provisions of these protective covenants, there is hereby formed an Architectural Control Committee ("ACC"). Members of the Committee are appointed by and shall serve at the sole pleasure of the Developer, and the following named persons are hereby appointed to the initial committee: David D. Jenkins, Barry M. Martin, Robert I. Hawbaker, Jr., all of 728 Manitou Avenue, Manitou Springs, Colorado. The Committee shall meet as required to consider and approve or disapprove applications for permission to build in accordance with these protective covenants or to approve or disapprove any proposed change, addition or deletion of these protective covenants. The majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, the Developer shall have full authority to designate a successor. Neither the members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. At any and all times after June 30, 1991, the then record owners of a majority of the lots subject to these covenants shall have the power 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 or to modify its powers and duties.

5. Architectural Control. No building, structure, fence, landscaping or walls shall be erected, placed, or altered on any lot until the construction plans and specifications and a plan showing the location of the structure and the topography of the lot have been approved by the ACC as to quality of workmanship and materials, harmony of external design with existing structures, and, as to location with respect to topography and finished grade elevation. In reviewing plans and specifications, the ACC shall consider the following criteria:

5.1. Cost of Construction. It is the intent of the ACC to maintain the integrity and amenities of the subdivision by not granting approval for a dwelling that will cost less than \$80,000.00 as of July 1, 1981. In computing the cost for purposes of this paragraph, the following items shall not be included: cost of the lot; financing costs and expenses; recording fees; title policy fees; builder profit and administration costs. The "costs of construction" shall be adjusted monthly in accordance with the cost of living index chosen by the ACC which, in its sole discretion, most nearly reflects the increase or decrease in the cost of construction in Colorado Springs, Colorado. Notwithstanding the foregoing, the cost of construction shall not be less than \$80,000.00.

5.2. Floor Area. Excluding basement, porches, patios, covered but unenclosed areas, and garages, a single story dwelling shall contain not less than 1,600 square feet on the main level and multi-story dwellings shall have not less than 2,200 square feet of living area.

5.3. Building Setbacks. Building setbacks must comply with City requirements for front, rear, and side lot lines, as of the date of commencement of construction.

5.4. Materials and Colors. All exterior materials for roofing, siding, windows, doors, screens, and other items visible from the exterior of the dwelling must be approved by the ACC, prior to installation, as to quality of workmanship and materials, harmony of external design with the surrounding area and existing structures, and compatibility with subdivision.

5.5. Exterior Lighting. Exterior lighting that is subdued and whose light source is not directly visible from adjacent dwellings will be permitted for such purposes as illuminating entrances, decks, driveways and parking areas and other purposes as approved. Exterior lights are subject to the prior approval by the ACC.

5.6. Variations. The ACC may, by two-thirds (2/3) vote, in its sole discretion, allow reasonable variances from the requirements herein. The ACC may consider topography, location of trees, configuration of the lot, area aesthetic considerations, views or other circumstances, not limited to the foregoing types, in making its decision to allow or disallow a variance.

5.7. Landscaping. No trees, shrubs or other natural landscaping shall be removed or changed without the express consent of the ACC, which consent shall not be unreasonably withheld when such landscaping would interfere with the construction of a single-family dwelling approved by the ACC, or would interfere with driveways, sidewalks, site requirements or with requirements of the City of Colorado Springs, Colorado. Landscaping shall be completed in accordance with the plans submitted to the ACC as described below within ninety (90) days of substantial completion of the single-family dwelling. It is the intent of the ACC to limit the use of gravel, rock or paving as part of the landscaping on the Real Property.

5.8. Changes or Alterations. No changes or alterations to an improved single-family dwelling, structure or landscaping plan shall be made without submittal of the proposed changes or alterations to the ACC or its consent thereto as if a party were going to build on any of the Real Property as described in paragraph 6 below.

6. Procedure. Any party desiring to build on any of the Real Property, whether owner or builder, hereinafter referred to as "Builder", shall submit two sets of plans and specifications to the ACC showing the nature, kind, shape, height, materials, floor plans, location, exterior color scheme by providing paint chips, alterations, grading, landscaping plans, mailbox design, and a certification by Builder indicating the itemized cost breakdown of construction, square footage of the dwelling unit by story, and an indication of the amount of square feet that shall be finished and the amount that shall be unfinished. In addition, Builder shall indicate an address to which approval or disapproval may be mailed. All the named items shall be submitted at least thirty-five (35) days prior to commencement of construction. The ACC shall have thirty (30) days in which to indicate its approval or disapproval to the address hereinbefore required. In the event the ACC fails to give such written notice within thirty (30) days after receipt of the items described or if no suit is commenced to enjoin construction prior to the commencement, written approval will not be required. If the ACC gives written notice, it shall do so by

indicating its action in a letter accompanying the return of one set of the plans and specifications hereinbefore described. The other set shall be retained by the ACC, along with a record of its action on the plans and specifications, for a period of three (3) years from the date of submittal. Thereafter, the ACC may destroy such plans, specifications, and records without any liability being imposed on it thereby.

7. Liability. Neither the Developer nor the ACC, nor their successors and assigns, shall be liable in damages to any person or association submitting any plans and specifications or to any owner of the Real Property by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove any such plans and specifications. Any Builder submitting or causing to be submitted any plans and specifications to the ACC agrees and covenants that he will not bring any action or suit to recover damages against the ACC, the Developer, or any other owner of the Real Property collectively, its members individually or its advisers, employees or agents.

8. Easements. Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear seven feet of each lot. No structures, planting or other materials shall be placed or permitted to remain on or in the easements which may damage or interfere with the installation and maintenance of utilities or which may change the direction or flow of drainage in the easements. The improvements on or in the easements shall be maintained continuously by the owner of the pertinent lot, except for those improvements for which a public authority or a utility company is responsible. All boundary fences, when approved, shall be located on the property line or as close thereto as practical.

9. Nuisances. No noxious or offensive activity shall be carried on upon any lot nor anything done thereon to cause embarrassment, discomfort, or a nuisance in the neighborhood. No offensive or hazardous activity shall be permitted on any lot or in any living unit. No annoying lights, sounds, or odors shall be permitted to emanate from any living unit. No ashes, trash, rubbish, garbage, grass or shrub clippings, building materials, scrap materials or other refuse containers shall be stored or accumulated so as to be visible from any neighboring properties or street. All maintenance equipment shall be stored in an enclosed structure or otherwise adequately screened so as not to be visible from neighboring properties or adjoining streets. No outdoor clothes lines or poles or other drying facilities will be placed so

as to be visible from neighboring properties or adjacent streets. All lots and yards are to be kept free of weeds and insects. No stripped down, partially wrecked, or junk motor vehicles may be stored on the property, except in an enclosed structure which has been approved by the ACC. No maintenance, servicing, repair, dismantling, or repainting of any vehicle, boat, machine or device may be carried on except in an approved, completely enclosed structure.

10. Signs. No signs, bill boards, poster boards or advertising structure of any kind shall be erected or maintained on any lot or structure for any purpose whatsoever except for one sign of not more than five square feet advertising the pertinent property for sale or rent, or one sign for identification of a residence of not more than one square foot.

11. Vehicles. No boat, trailer, camper, tractor, commercial vehicle, mobile home, motor home, motorcycle or utility trailer or other tow trailer may be kept on the property unless enclosed in the structure which has been approved by the ACC. None of these vehicles are to be parked in the street or where visible to the surrounding properties or adjacent streets.

12. Oil and Minerals. No oil drilling, oil development operation or refining, quarrying or mining operations of any kind shall be permitted upon or in any lot or under any lot, nor shall oil wells, tanks, tunnels, mineral expeditions, or shafts be permitted on or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on or in any lot.

13. Livestock and Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept upon any of the Real Property, except dogs, cats or other household pets for personal enjoyment and not for commercial purposes.

14. Towers, Disks and Antenna. No towers, disks, antenna or other device for the transmission or reception of radio, television or other signals shall be permitted on any of the Real Property without the prior written consent of the ACC. No approval shall be granted if such tower, disk, antenna or other device is visible from the street or nearby lots.

15. Amendment. The conditions, restrictions, stipulations, agreements and covenants contained herein shall not be waived, abandoned, terminated, or amended, except by the ACC or the

Developer up to and including JUNE 30, 1991, and thereafter except by written consent of the owners of at least seventy-five percent (75%) of the lots subject to these protective covenants.

16. **Enforcement.** Enforcement of these protective covenants, special conditions, stipulations, and agreements shall rest with the Developer and the ACC. If any person shall violate or threaten to violate any of the provisions of this instrument, the Developer, the ACC or any owner of any of the Real Property, in addition to all other available remedies, may enforce the provisions of this instrument by instituting such proceedings at law or in equity as may be appropriate to enforce the provisions of this instrument, including a demand for injunctive relief to prevent or remedy the threatened or existing violation of these covenants and for damages, including all the attorney's fees incurred by any such party. In the event of any violation, and in addition to any remedies available, the Developer or the ACC shall have the right of entry on the Real Property owned by the party in violation, and may cure any deficiency or violation, without jeopardy of any claim of trespass. The Developer or ACC may order any work necessary to cure the deficiency or violation.

17. **Penalties and Expenses of Enforcement; Liens for Nonpayment.** If any person shall violate any of the provisions of this instrument or of the rules and regulations promulgated by the ACC pursuant to this instrument, or cause expenses to the Developer or the ACC as a result of such violations, including the expenses incurred in curing any violation or deficiency, and fails to or refuses to pay such expenses, then such expenses shall be chargeable to the owner of the Real Property on which the work has been done, including interest from the date of billing at the highest permitted rate for a consumer loan or sale in the State of Colorado, and shall constitute a lien thereon superior to all other liens or encumbrances except (a) tax and special assessment liens in favor of any assessing unit and (b) all sums unpaid on a first mortgage or first deed of trust of record, including all unpaid obligatory sums as may be provided by such encumbrances and including additional advances made thereon prior to the creation of such a lien.

To evidence such a lien, the Developer or ACC shall prepare a written notice setting forth the amount of the unpaid indebtedness, the name of the owner of record of the Real Property subject to such lien, and the legal description thereof. Such notice shall be signed by the Developer or by a member of the ACC and shall be recorded in the office of the Clerk and Recorder of the County of El Paso, State of Colorado. Such lien shall attach from

the date of the failure of payment of such assessment of expenses, and may be enforced by foreclosure on the defaulting owner's property. In the event of such foreclosure, the owner of the Real Property subject to such foreclosure shall be required to pay the costs and expenses of such proceedings, the costs and expenses for filing the notice for claim of lien and all attorney's fees incurred by the Developer or the ACC. The grantor hereunder shall have the power to bid in on the Real Property at any foreclosure sale and shall have the right to acquire and hold, lease, mortgage or convey it.

The amount of any such expense as assessed against the Real Property shall also be a personal debt of the owner thereof at the time the assessment is made. Suit to recover a money judgment for any such unpaid expenses may be maintained without foreclosing or waiving the lien securing the debt, and shall include all costs and expenses thereof including all attorney's fees incurred to obtain such judgment.

Any mortgage holder or similar encumbrancer holding a lien on the subject property, may pay any unpaid expenses created hereunder with respect to the Real Property, and upon such payments such encumbrancer shall have a lien on the Real Property for the amounts paid, the lien to be of the same priority as the lien of his respective encumbrance.

18. Effect and Duration of Covenants. The conditions, restrictions, stipulations, agreements and covenants contained herein shall be for the benefit of and be binding upon each lot described herein and each owner of the Real Property, their respective successors, representatives and assigns, and shall continue in full force and effect until June 1, 1999, at which time they shall be automatically extended five (5) successive terms of ten years each.

19. Waiver. Failure to insist upon the enforcement of any one or more of the covenants or restrictions contained herein shall not constitute a waiver of that covenant or of any of the remaining covenants or restrictions. The granting of a waiver by the ACC shall be applicable only to the specific matter waived, and shall not be deemed a waiver of any like or subsequent request.

20. 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.

