

PROTECTIVE COVENANTS  
FOR FISHER SUBDIVISION, REPLAT A  
AN ADDITION TO THE CITY OF ALAMOGORDO,  
OTERO COUNTY, NEW MEXICO

A. Recitals.

A-1. Whereas, George D. Thomas Builder, Inc. (the "Declarant") is the sole owner of Fisher Subdivision, Replat A, an addition to the City of Alamogordo, Otero County, New Mexico (the "Project").

A-2. Whereas, to insure the orderly development of the Project, Declarant desires to establish these Protective Covenants governing the use of land within the Project.

A-3. Now, therefore, Declarant does hereby establish the following Protective Covenants as to the Project:

B. Definitions.

B-1. Protective Covenants - as defined in the Recitals

B-2. Project - defined in the Recitals.

B-3. Declarant - defined in the Recitals.

B-4. Minimum Building Setback Line - the line demarking the closest point from the front or rear of any lot that a building or improvement is or might be constructed or built.

B-5. Owner - any individual, partnership, corporation or other entity owning or holding all or any part of a multi-family building or Lot within the Project.

B-6. Lot - a parcel of land as shown on the plat of this subdivision as it presently exists or may hereafter be amended or revised.

B-7. Multi-family Building - a single building containing two or more attached dwelling units.

C. Multi-Family Area Covenants.

C-1. Land Use and Building Type. The Lots herein shall be used solely for multi-family residential purposes. No building shall be erected or constructed on any Lot which contains more than four attached dwelling units. No trade or business shall be conducted on or from any Lot, provided however, the owning of any Lot(s) with improvements thereon as an investment and offering same for rental shall not be a violation of these covenants.

C-2. Architectural Control. No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structures have been approved by the Architectural Control Committee 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. After such location with respect to topography and finished grade elevation has been approved and the finished grade of the lot has been completed, such finished grade shall not be altered, changed or disturbed without the approval of the Architectural Control Committee. Approval of the Architectural Committee shall be as provided in paragraph D.

C-3. Building Height. No building on the Project shall exceed two stories in height.

C-4. Building Location. No building shall be located on any Lot nearer than 25 feet from the front lot line, nor nearer than 12 feet from the side street lines, nor nearer than 4 feet to the interior lot lines. For purposes of this covenant, eaves, steps, projections of fireplaces, and open porches shall not be considered a part of the building, provided however, this shall not be construed to permit any portion of a building on a Lot to encroach upon any other Lot.

C-5. Building Size. For quadruplex buildings, the ground floor living area of the main structure, exclusive of one story open porches and garage, shall not be less than 1,900 square feet or 480 square feet minimum for each unit in the quadruplex for a one story quadruplex. For one and one-half or two story quadruplexes, the combined living area of the quadruplex shall not be less than 2,600 square feet for the first and second stories or 650 square feet minimum for each unit. In no event shall the ground floor living area of a one and one-half or two story quadruplex be less than 1,600 square feet.

C-6. Lot Area and Width. No quadruplex shall be erected or placed on any Lot having a width of less than 60 feet at the Minimum Building Setback Line nor having an area of less than 7000 square feet. No Lot shall be resubdivided to a width of less than 60 feet at the Minimum Building Setback Line.

C-7. Easements. Any Owner shall have the right to break through any party wall or common fence for the purpose of repairing or restoring electrical lines or other utility lines or facilities subject to the obligation to restore said party wall or common fence to its previous structural condition at his own expense and the payment to the adjoining Owner for any damages caused thereby.

C-8. Nuisance. 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 or other Owners.

C-9. Temporary Structures. No structure of a temporary character (including but not limited to trailer, basement, tent, shack, garage, barn or other outbuilding) shall be used on any Lot at any time as a residence, either temporarily or permanently. During the period of construction within the Project and until all quadruplexes constructed thereon have been sold, temporary construction trailers, completed homes or model homes may be used as sales offices and construction and/or administrative offices for builders, and upon completion and sale of all quadruplexes in the subdivision, all such uses will terminate and any temporary construction trailers or buildings will be removed from the subdivision. All boats, camping trailers, recreational vehicles or mobile homes shall be placed in the rear yard.

C-10. Fences and Garden Walls. Only fences and walls of a material or materials uniformly used throughout the Project shall be permitted across the rear of any Lot, the interior lot line of any Lot or along the side yard of a corner Lot where such side yard shall abut on a side street. No fence or garden wall of any type shall be erected, placed or altered on any Lot nearer to the street than the minimum building setback line, except that on corner Lots a fence may be placed or erected along the rear lot line to the side street lot line and forward along the side street lot line not farther than within 10 feet of the front of the dwelling. This provision shall not preclude any necessary masonry wall, fence or garden wall that divides the rear yards of any quadruplex. This provision shall also not preclude or

prohibit any masonry retaining walls located on or within a Lot or between Lots which are necessary due to the elevation or slope of the finished grade of the Lot, provided that the top of said retaining wall or walls shall not project more than one foot above the highest adjoining grade abutting the wall if the wall is located in the front of any Lot.

C-11. Maintenance. The exterior of all structures, walks, driveways, walls, retaining walls, lawns and landscaping shall be maintained in good order, repair and condition by the respective Owners thereof.

C-12. Sidewalks. A sidewalk shall be constructed across the front of each Lot and along the side yards of corner Lots of any Lot in the Project.

C-13. Sight Distance at Intersections. No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two and six feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within 10 feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

C-14. Miscellaneous. Except as required by ordinance during construction, no privy shall be placed upon any Lot in said subdivision. No signboard or other visible advertisement larger than one square foot may be placed on any Lot, other than signs pertaining to the sale of or the construction of improvements on the Property. No excavation shall be made on the Property for the purpose of obtaining sand, rock, clay, dirt, coal or gravel, whether for profit or otherwise. No animals, livestock, poultry or fowl of any kind shall be raised, bred or kept on any portion of the Project except that a total of two customary household pets, such as dogs or cats, may be kept on the Project provided they are not kept, bred or maintained for any commercial purpose whatsoever.

D. Architectural Control Committee.

D-1. Membership. The Architectural Control Committee is composed of George D. Thomas, J. Thomas Hodson and James P. Sorenson, Jr., all of El Paso, Texas. A 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 remaining members of the Committee shall have full authority to designate a successor. At any time a majority of the ownership votes as provided in paragraph E-3 hereof shall have the power through a duly written recorded instrument to change the membership of the Committee or to restore to it any of its powers and duties.

D-2. Procedure. The Committee's approval or disapproval as required in these Covenants shall be in writing. In the event the Committee, or its designated representative, fails to approve or disapprove within 30 days after such plans and specifications have been submitted to it, or in the event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related Covenant shall be deemed to have been fully complied with.

D-3. Members Compensation and Liability. None of the members of the Committee or its designated representative shall be entitled to any compensation for service performed pursuant to this Covenant. Architectural control of construction, as provided in paragraph C-2 and other duties of the Committee, being largely subjective in nature, the action or nonaction by the members of the Committee shall not subject any member of the Committee to personal liability nor shall the members of the Committee be charged with the responsibility of enforcement of the provisions hereof. The enforcement of architectural control provisions by any aggrieved party shall be as provided in paragraph E-4, and shall be pursued solely against the person or persons allegedly violating or attempting to violate the provisions and standards specified in these Covenants. The members of the Architectural Control Committee shall not be proper parties to such action.

D-4. Termination of Initial Membership. Any member of the Architectural Control Committee may resign by filing written notice thereof in the public records of Otero County, New Mexico. After quadruplexes have been built upon 100% of the Lots in the project, the membership of any of those persons named in D-1 hereof who are still members of the Committee shall automatically terminate without action or resignation by such initial members. The resulting vacancy or vacancies thereafter occurring shall be filled by a vote of a majority of the Lot owners in the Project. Successors to membership in the Architectural Control Committee shall be named in an instrument executed and acknowledged by the then chairman of the Committee, who shall be elected by a majority of the Lot Owners as provided in paragraph E-3 hereof. Such instrument shall be recorded in the public records of Otero County, New Mexico.

D-5. Powers. The Architectural Control Committee shall have the following powers:

- a. All of the power and authority herein designated for the Architectural Control Committee,
- b. The power to grant variances, waivers and exceptions to the restrictions and other provisions contained in this Declaration,
- c. To enforce, in such manner as the Committee deems appropriate, all of the provisions of this Declaration, and
- d. To enforce, in such manner as the Committee deems appropriate, zoning ordinances of the City of Alamogordo.

E. General Provisions.

E-1. Term. These Covenants shall run with the land and shall be binding on all parties and all persons claiming under them for a period of 40 years from the date these Covenants are recorded, unless amended as hereinafter provided in paragraph E-2, after which time said Covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the owners of the Lots at that time has been recorded to change said Covenants in whole or in part.

E-2. Amendment. This Declaration may be amended at any time by the then current Owners of not less than 60% of the Lots. Such amendment shall be in writing and shall be filed in the County Clerk's records of Otero County, New Mexico.

E-3. Voting. For purposes of voting hereunder, the Owner(s) of each Lot in this subdivision shall have one vote.

E-4. Enforcement. These Covenants shall run with the land in favor of and enforceable by any Owner of any Lot (or portion thereof) within the Project or the holder of any first lien mortgage on any Lot or portion thereof or by the Architectural Control Committee. Enforcement shall be by any proceeding at law or in equity, against any person or persons violating or attempting to violate any Covenant herein, either to restrain any violation or attempted violation or to recover monetary damages. If any suit for injunction is brought for the enforcement (either to prevent a violation or threaten violation) of any of the terms of this Declaration, no bond or other security shall be required of the party bringing such action in order to secure the issuance of a temporary restraining order, temporary injunction or final injunction. If the party bringing any action seeking enforcement of these Covenants or monetary damages prevails, the party against whom such action is brought shall pay all costs of court and reasonable attorney's fees incurred in the enforcement of these Covenants.

E-5. Severability. Invalidation of any one of these Covenants by judgment or court order shall not affect any of the other provisions which shall remain in full force and effect.

E-6. Zoning. Nothing contained in these Covenants shall allow or permit any use within the Project in violation of the zoning laws of the City of Alamogordo.

EXECUTED this 7 day of DEC., 1983.

DECLARANT  
GEORGE D. THOMAS BUILDER, INC.

BY:

*J.P. Sorenson, Jr.*

JAMES P. SORENSON, JR.  
Vice President

THE STATE OF NEW MEXICO §  
§  
COUNTY OF OTERO §

The foregoing instrument was acknowledged before me on the 7th day of December, 1983, by J.P. Sorenson, Jr., Vice President of GEORGE D. THOMAS BUILDER, INC., a Texas Corporation, on behalf of said corporation.

NOTARY PUBLIC

My commission expires:

May 19, 1987

*Debra T. Babcock*  
Notary Public  
State of New Mexico

OTERO COUNTY NEW MEXICO

STATE OF NEW MEXICO } ss.  
OTERO COUNTY }  
FILED FOR RECORD IN MY OFFICE  
This 13 day of DEC., 1983  
at 11:45 o'clock P. M. and duly recorded  
in Book No. 547 Page 420-421

(in records of Otero County, New Mexico)  
*Debra T. Babcock*  
County Clerk, Otero County, New Mexico

93783