

CERTIFIED A TRUE COPY.

PIONEER ABSTRACT COMPANY

BY *Kenneth W. Hull*

Book 236 Page 468

Filed: October 22, 1958

PROTECTIVE COVENANTS
FOR
DESERT GARDENS SUBDIVISION

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS an undated, imcomplete, and unacknowledged instrument entitled "Protective Covenants for Desert Gardens Subdivision" was recorded in Book 236 at page 193 of the records of Otero County, New Mexico, on August 5, 1958, and the undersigned desire to cancel, null, void, and revoke such instrument and any legal effect thereof; and

WHEREAS the undersigned are the owners and holders of the title to and all equities in the following described lands situated and located in Otero County, New Mexico, towit:

All of DESERT GARDENS, a Subdivision to the City of Alamogordo, New Mexico, as the same is shown and designated on the Plat thereof filed in the Office of the Clerk of Otero County, New Mexico, on June 25, 1958;

and

WHEREAS the undersigned desire to restrict and impose certain protective covenants on the above-described lands:

NOW THEREFORE, in consideration of the foregoing and other good and valuable considerations, the Undersigned, being the owners of all the lands and all equities therein in said described land, do hereby create and establish the following protective and restrictive covenants for said land, towit:

PART A - SINGLE-FAMILY DETACHED DWELLINGS AREA COVENANTS

A-1

AREA. The Restrictive Area Covenants in this Part A in their entirety shall apply to all of said DESERT GARDENS SUBDIVISION.

A-2

LAND USE AND BUILDING TYPE. 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 not to exceed two and one-half (2½) stories in height and a private garage for not more than two cars, and other appropriate accessory buildings.

A-3

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 structure 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 finish grade elevation. No fence or wall shall be erected, placed or altered on any lot nearer to any street than the minimum front building setback line, unless similarly approved. Approval shall be as provided in Part B hereof. On corner lots no fence or wall shall be erected or allowed to remain on the street Right-of-Way.

A-4

DWELLING, COST, QUALITY, AND SIZE: No dwelling shall be permitted on any lot at a cost of less than \$8,000.00 based on cost levels prevailing on the date these covenants are recorded, it being the intention and purpose of the covenant to assure that all dwellings shall be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded at the minimum cost stated herein for the minimum permitted dwelling size. The ground floor area of the main structure, exclusive of one-story open porches and garages, shall be not less than 800 square feet for a one-story dwelling, nor less than 800 square feet for a dwelling of more than one story.

A-5

BUILDING LOCATION: No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building setback lines shown on the recorded Plat. In any event no building shall be located on any lot nearer than 25 feet to the front lot line, or nearer than 15 feet to any side street line. No building shall be located nearer than 5 feet to an interior lot line, except that only 2½ feet shall be required for a garage or other permitted accessory building located 65 feet or more from the minimum building setback line. No dwelling shall be located on any interior lot nearer than 25 feet to the rear lot line. For corner lots the street side of the lot having the shorter distance shall be the front of the lot and the street side of the lot having the greater distance shall be a side of the lot for the purpose of determining setback requirements, but structures built thereon may face either street. No dwelling on a corner lot shall be located nearer than 25 feet to either the interior lot line or the rear lot line nor nearer than 5 feet to the other of these two lines--In other words, if the dwelling on a corner lot is less than 25 feet from the interior lot line, it must be at least 25 feet from the rear lot line, and if the dwelling on a corner lot is located less than 25 feet from the rear lot line, it must be at least 25 feet from the interior lot line. For the purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

A-6

LOT AREA AND WIDTH: No dwelling shall be erected or placed on any lot having a width of less than 60 feet at the minimum building setback line, nor shall any dwelling be erected or placed on any lot having an area of less than 6500 square feet.

A-7

EASEMENTS: Easements for installation and maintenance of utilities are reserved as shown on the recorded plat.

A-8

NUISANCES: No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become any annoyance or nuisance to the neighborhood.

A-9

TEMPORARY STRUCTURES: No structure of a temporary character, 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.

A-10

SIGNS: No signs of any kind shall be displayed to public view on any lot except, when appropriate, one sign of not more than 5 square feet advertising the property for sale or rent, or signs used by a builder to advertise the property during the construction and sale.

PART B - ARCHITECTURAL CONTROL COMMITTEE

B-1

MEMBERSHIP: The Architectural Control Committee is composed of Edward H. Snow, D. F. Matheson, and Elmer T. Lewis, all of 4821 Central Avenue, NE, Albuquerque, New Mexico. A majority of 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. At any time the then record owners of a majority of the lots shall have the power through a duly recorded written instrument to change the membership of the committee, or to withdraw from the committee, or to restore to it any of its powers and duties.

B-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 thirty (30) days after plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related covenants shall be deemed to have been fully complied with.

PART C - GENERAL PROVISIONS

C-1

TOLERANCE: A two-inch (2") tolerance by reason of mechanical variance of construction is allowed for minimum distance requirements from interior lot lines.

C-2

OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, quarrying or mining operations 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 structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

C-3

LIVESTOCK AND POULTRY. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred, or maintained for any commercial purpose.

C-4

TERM: These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from the date these covenants are recorded, after which time said 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 said covenants in whole or in part.

C-5

ENFORCEMENT: Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

SEVERABILITY: Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the Undersigned have executed and caused this instrument to be executed on the 30th day of September, 1958.

CASA ALEGRE, INC. (NO STOCKHOLDERS
LIABILITY)

(Corporation Seal)

By s/ Donald F. Matheson, Jr.
President

Attest:

s/ Elmer T. Lewis
Secretary

DESERT GARDENS, INC.

(Corporation Seal)

By s/ Alfred T. Morgan
President

Attest:

s/ Ruth D. Morgan
Secretary

STATE OF NEW MEXICO }
County of Bernalillo } ss.

The foregoing instrument was acknowledged before me this 15th day of October, 1958, by Donald F. Matheson, Jr., President of Casa Alegre, Inc., a New Mexico Corporation, on behalf of said Corporation.

(Notarial Seal)

s/ H. M. Russell
Notary Public

My commission expires
March 15, 1961

STATE OF ARIZONA }
County of Yuma } ss.

The foregoing instrument was acknowledged before me this 18th day of October, 1958, by Alfred T. Morgan, President of Desert Gardens, Inc., an Arizona Corporation, on behalf of said Corporation.

(Notarial Seal)

s/ J. C. Bickers
Notary Public

My Commission Expires Jan. 1, 1962