

ARNDIS M. SCHMIDT
EL PASO COUNTY CLERK & RECORDER

AN INSTRUMENT

TO WHOM IT MAY CONCERN:

dated: April 15, 1994

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AMENDMENT TO PROTECTIVE COVENANTS FOR BLOCK 2, COUNTRY CLUB ADDITION NO.1, AND BLOCKS 1 AND 2, COUNTRY CLUB ADDITION NUMBER 2, BOTH OF WHICH WERE RECORDED FEBRUARY 24, 1956, AT BOOK 1550, PAGE 07 OF THE EL PASO COUNTY, COLORADO RECORDS (AND RESCINDING THE ATTEMPTS TO AMEND COVENANTS AFFECTING BLOCK 2, COUNTRY CLUB ADDITION NUMBER 1, RECORDED ON NOVEMBER 22, 1993, AT BOOK 6315, PAGES 899-906.)

WHEREAS a majority of the lot owners in Block 2 of Country Club Addition No. 1 and Blocks 1 and 2 of Country Club Addition No. 2 are desirous of protecting and maintaining the stability and diversity of Country Club Additions Nos. 1 and 2 as originally established and;

WHEREAS the original covenants recorded on February 24, 1956 no longer reflect current day laws, regulations and values, and;

WHEREAS, a majority of the lot owners in Block 2 of Country Club Addition No. 1 desire to rescind the covenants filed November 22, 1993, recorded at Book 6315, Pages 899-906 inclusive, and;

WHEREAS it is desired to enhance and protect the established quality of life and to satisfy the needs of Block 2, Country Club Addition No. 1 and Blocks 1 and 2 of Country Club Addition No. 2 in keeping with the accepted developmental standards reasonably expected by considerate neighbors in an urban residential neighborhood;

NOW THEREFORE, the undersigned, being a majority of the owners of all lots in the aforesaid, declare that the real property in Block 2, Country Club Addition No. 1, and Blocks 1 and 2, Country Club Addition No. 2 shall be held, transferred, sold, conveyed and occupied subject to these covenants and all amendments thereto and do hereby amend the text and format of said Protective Covenants recorded at Book 1555, pages 07-10 of The El Paso County, Colorado records to read as follows:

ARTICLE ONE

Section 101: No business, profession, service, or any other activity of any kind conducted for gain shall be carried on or within any lot or structure, except a household occupation as hereinafter defined, unless such activity shall be approved in advance by the Approving Authority or mandated by Federal or State law or Colorado Springs City Ordinance.

Section 102: No structure shall be erected, used or maintained within Block 2, Country Club Addition No. 1 and Blocks Nos. 1 and 2 of Country Club Addition No. 2 (hereinafter referred to as "The subdivision") except those designed for occupancy as one family dwellings and those accessory structures which have been approved by the Approving Authority. No structure other than a dwelling, no accessory building, no trailer, recreational vehicle, tent, or other similar or dissimilar temporary quarters may be used for living purposes.

Section 103: No dwelling or other structure shall be more in height than one (1) story or twenty-five (25) feet, whichever is less, except with the prior written permission of the Approving Authority. Height shall be measured from the highest original ground contour at any point adjoining the foundation perimeter of the structure to the highest point on the structure exclusive of standard chimneys.

Section 104: Any accessory building or structure shall harmonize in appearance with the dwelling situated on the same lot.

Section 105: No tent, treehouse, barn, other temporary living or camping quarters or other temporary structures shall be placed on any lots at any time without written permission of the Approving Authority.

Section 106: No building materials shall be stored on any lot except temporarily during continuous construction of a building or its alteration, repair or improvement. All work of construction shall be prosecuted diligently and continuously from the time of commencement until fully completed.

Section 107: The exterior change or alteration of any building must be completed within six (6) months after commencement of construction or alteration except where such completion is impossible or would result in great hardship due to strikes, fires, natural calamities or national emergency. Any demolition and new construction of a single family dwelling on any lot must be completed within one (1) year except where it is impossible due to the causes stated above.

Section 108: If such construction referred to in Sect. 107 is not so completed, or if construction shall cease for a period of sixty (60) days without written permission of the Approving Authority, the unfinished structure or unfinished portion thereof, or demolition thereof, shall be deemed a nuisance and shall be removed forthwith by and at the cost of the Owner. Any owner in the subdivision (see definitions) or the Approving Authority or combination of both, may prosecute any proceedings at law or in equity against the person or persons violating these covenants.

Section 109: Easements or alleys for installation and maintenance of utilities, including cable television service, and drainage facilities are reserved as shown on the recorded plat and over the rear 10 feet of each lot. Easements and alleys shall be kept free of all weeds and debris. No buildings, fences or structures of any type shall be built over or across said easements or alleys, but such easements or alleys shall remain open and readily accessible for service and maintenance of said utility and drainage facilities.

Section 110: Each owner shall maintain the exterior of the dwelling, any accessory building, and all other structures, lawns, landscaping, walks and driveways in good condition and shall cause them to be repaired as the effects of damage or deterioration become readily apparent. Exterior building surfaces and trim shall be repainted periodically and before the surfacing becomes weatherbeaten or worn off.

Section 111: Each owner shall prevent the development of any unclean, unsanitary, unsightly or unkept conditions of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the established neighborhood as a whole or in the specific area. No building materials shall be stored on any lot, except temporarily during continuous construction or repair of a building, unless enclosed out of view in a service yard or within a building.

Section 112: Any dwelling or building which may be damaged or destroyed in whole or in part by fire, windstorm or any other cause or act of God must be rebuilt or all debris must be removed and the lot restored to slightly condition. Such rebuilding or restoration must be completed

with reasonable promptness and in any event within six (6) months of the event.

Section 113: All maintenance equipment shall be stored in an enclosed structure or otherwise adequately screened so as not to be visible from neighboring property or adjoining streets.

Section 114: No ashes, trash, junk, rubbish, garbage, grass or shrub clippings, scrap material, or other refuse or receptacles or containers therefor, shall be stored, accumulated or deposited outside or so as to be visible from any adjacent street, except during refuse collection days. All receptacle(s) or container(s) for the foregoing shall be tightly and securely covered so as to discourage scavenging by dogs, racoons and other animals.

Section 115: No noxious or offensive activity shall be carried on or upon, or emanate from, any lot or living unit thereon, nor shall anything be done thereon which tends to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood, including, but not limited to, annoying lights, sound, smoke, or odors and other environmental pollution. No owner or occupant of any part of the property will do or permit to be done any act upon his/her/their property which may be, is or may become a nuisance. Examples of such activity include, but are not limited to, the conducting of any regular or frequently scheduled activity which shall cause excessive traffic within the subdivision, or which will result in excessive noise emanating from any lot or dwelling, or which would interfere with any property owners' right to the use and enjoyment of his/her/their lot or dwelling house.

Section 116: No speakers, horns, whistles, bells or other sound device except security devices used exclusively for security purposes shall be located, used or placed in or on any structure or living unit on any lot.

Restrictions Requiring Permission from the Approving Authority.

Section 117: Except as the Approving Authority may from time to time grant written permission, which permission shall be revocable:

a.) No dwelling shall be rented in whole or in part except for use as a one family dwelling as defined elsewhere in these covenants.

b.) No business, profession, service, or any other activity of any kind conducted for gain, except a household occupation, shall be carried on or within any lot or structure in the subdivision unless approved in advance by the Approving Authority. The Approving Authority shall approve such activity provided it meets the criteria as defined in Section 301 of these covenants.

Section 118: No stripped down, partially wrecked, or junk motor vehicle or sizeable part thereof, shall be permitted to be parked on any street or on any lot in such manner as to be visible at ground level from any neighboring lot or street.

Section 119: No maintenance, servicing, repair, dismantling or repainting of any type of vehicle, boat, machine or device may be carried on except within a completely enclosed structure which screens the sight and sound of the activity from the adjacent streets and from adjoining property.

Section 120: There shall not be used or displayed on any lot or structure any banners, streamers, flags, lights or other devices calculated to attract attention in aid of sale or rental.

Section 121: No sign of any kind shall be displayed to the public view on any lot except one sign of not more than one (1) square foot for identification of the occupant and address of any dwelling and one sign of not more than five (5) square feet advertising the property for sale or rent and such other signs as may be required by law.

Section 122: No person shall be allowed to keep, breed, or raise chickens, turkeys, rabbits, cows, cattle, horses, sheep or other domestic or wild animals, on any lot or erect thereon any structure designed to house the same. This restriction shall not be construed to prohibit any person from keeping cats, dogs, or other domesticated household pets on any lot, provided they are not kept, bred, or raised for any commercial purposes.

ARTICLE TWO

Architectural Control by the Approving Authority

Section 201: No building, fence, wall or other structure shall be erected, placed, moved on to any lot, or altered in any way, except in accordance with detailed plans and specifications and other information submitted to, and approved by, the Approving Authority in writing. Matters which require the approval of the Approving Authority include but are not limited to: the exterior appearance, material, height, location of each structure, driveways, vehicle parking, walks, fences and grading of the lot. In granting or withholding approval the Approving Authority shall consider among other things: the adequacy of the materials for the intended use, the harmonization of the external appearance with the surroundings, the proper relation of the structure to the environment and surrounding uses, the degree - if any - to which the proposed structure or alteration thereof will cause intrusions of sound, light or other adverse effects on neighboring lots beyond those reasonably to be expected in an urban one family residential area from considerate neighbors.

Section 202: All plans, specifications, samples and other materials shall be submitted to the Approving Authority in duplicate. Such plans shall show the location of all buildings, drives, walks, fences and any other structures. Structure plans shall show all exterior elevations, and shall indicate and locate on the elevation the materials to be used and designate each exterior color to be used by means of actual color samples.

Section 203: The Approving Authority's approval or disapproval or other action shall be in writing. In the event the Approving Authority, or its designated representatives, fails to approve or disapprove or propose other action within forty-five (45) days after complete plans, specifications and other required materials have been submitted to it, or, in any event, if no suit to enjoin the proposed construction or alteration 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.

Section 204: The Approving Authority may charge reasonable fees to cover expenses incurred in review of plans, samples, specifications and materials submitted pursuant to this Declaration, exclusive of any compensation to the members of the Approving Authority.

Section 205: No structure shall be located on any lot nearer to the front lot line than twenty-five (25) feet, or nearer than fifteen feet (15) to any interior lot line except that no side yard shall be required for a garage or

other permitted accessory building located fifty (50) feet or more from the front lot line. No dwelling or other structure shall be located on any interior lot nearer than twenty (20) feet to the rear lot line. For purposes of these covenants, eaves, steps, and open porches and patios shall be considered as a part of a structure.

Variances:

Section 206: The Approving Authority shall have the authority to grant for a lot or building a variance from the terms of one or more sections of these Covenants subject to terms and conditions fixed by the Approving Authority as will not be contrary to the interests of the owners and residents of the subdivision where, owing to exceptional and extraordinary circumstances, literal enforcement of these Sections will result in unnecessary hardship.

Section 207: Following an application for a variance, the Approving Authority shall call a meeting of all of the Owners of lots in the subdivision, notice of which meeting shall be given to the Owners at least twenty (20) days in advance, at which meeting all Owners shall have an opportunity to appear and express their views.

a) Whether or not anyone appears at said meeting in support of or in opposition to the application for variance, the Approving Authority shall within two (2) weeks after the scheduled meeting either grant or deny the variance.

Section 208: If a variance is denied another application for a variance for the same lot or building may not be made for a period of one (1) year.

Section 209: A variance shall not be granted unless the Approving Authority shall find that all of the following conditions exist:

a): Owing to the exceptional and extraordinary circumstances, literal enforcement of every section of these covenants will result in unnecessary hardship.

b): The variance will not substantially or permanently injure the use of other property in the sub-division.

c): The variance will not alter the essential and established character of the subdivision.

d): The variance will not weaken the general purposes of these covenants.

e): The variance will be in harmony with the spirit and purposes of these covenants;

f): The circumstances leading an applicant to seek a variance are unique to the lot or building or its owner and are not applicable generally to lots in the subdivision or their owners.

Composition of the Approving Authority

Section 210: The membership of the Approving Authority (originally termed "Architectural Control Committee") shall be maintained at three(3) members and two(2) alternate members. Members appointed by these covenants, superseding the previous Architectural Control Committee, are: Allen H. Bennett presently of 2810 Country Club Drive; Richard Ducommun presently of 3002 Marilyn Road; Dr. John Overturf presently of 3006 Marilyn Road. Alternate members are: Rella Lee Kibort presently of 2919 Country Club Drive and Edwin Spuhler presently of 2912 Marilyn Road. Whenever a member shall be deceased, unwilling, unavailable or mentally unqualified to act the remaining members and alternates or the remaining member or alternate, if only one, shall be empowered to act or empowered to appoint owners of lots in the area as members of the Approving Authority so as to fill existing vacancies. Alternatively, at any time, a majority (51%) of the then record owners of the lots shall have the power through duly recorded written instrument to change the membership of the Approving Authority or to withdraw from said Authority any powers and duties delegated to it by

these covenants or to add to the powers and duties of said Authority. Any appointment, removal or replacement of any member of the Approving Authority or any change in its duties and powers shall be by written instrument signed by a majority (51%) of the then record Owners and filed for record with the County Clerk and Recorder of the County of El Paso, State of Colorado.

Section 211: Members and alternates of the Approving Authority shall not be liable in law or in equity to any party whatsoever for any act or omission unless the act or omission is in bad faith and amounts to fraud.

ARTICLE THREE

General Provisions for Effect of the Covenants

Definitions

Section 301: The following words and expressions as used in these covenants have the meaning indicated below unless the context clearly requires another meaning:

a) Accessory Building: Detached garages, patios, swimming pools and hot tubs, dressing rooms for swimming pools and hot tubs, separate guest houses without kitchen, separate servant's quarters without kitchen, storage sheds, tool sheds, outdoor exercise equipment, and other structures customarily used in connection with the single family dwelling.

b) Building Site: A lot as established by recorded plat or the combination of two or more lots or portions thereof aggregating not less than ten-thousand (10,000) square feet.

c) "These Covenants": The original covenants as recorded at Book 1555, pages 07-10, and as amended by this instrument dated 15th of April 1994.

d) Lot: Each area designated as a lot in the recorded plat of the Subdivision.

e) Lot lines and Yards: i) A front lot line shall mean the line separating such lot from any street, but not including alleys. In the case of corner lots, there shall be as many front lot lines and yards as there are street frontages. ii) A side lot line shall mean any lot line not a front lot line or a rear lot line. iii) A rear lot line shall mean that lot line which is opposite and most distant from the front lot line or lines. In the case of corner lots, the owner shall have the privilege of selecting any lot line other than one of the front lot lines to be the rear lot line.

f) Owner: Person having fee simple legal title to a lot. If more than one person has such title, all such persons are referred to collectively as "Owner" and shall exercise their rights as an owner through such one of them as they may designate from time to time.

g) Structure: Any thing or device other than trees and landscaping the placement of which upon any building site might affect its architectural appearance including by way of illustration and not limitation any dwelling, house, building, garage, porch, shed, greenhouse, driveway, walk, patio, swimming pool, hot tub, tennis court, fence, wall, or outdoor lighting. Structure shall also mean an excavation or fill the volume of which exceeds five (5) cubic yards or any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters upon or across any lot or which affects or alters the flow of any waters in any natural or artificial stream, wash, or drainage channel upon or across any lot.

h) The Subdivision: The area subdivided as Country Club Addition No. 1, Block 2, El Paso County, Colorado as recorded on April 14, 1955 in Plat Book W at page 42, under Reception No. 957686; and Country Club Addition No. 2, Blocks 1 and 2, El Paso County, Colorado, as recorded December 17, 1956 in Plat Book Y, Page 63, under reception No. 22551; in the records of the Clerk and Recorder of the County of El Paso, State of Colorado

i) Dwelling: A building or structure, or portion thereof, which is used exclusively for one family occupancy, and which includes only one kitchen facility per building or unit therefor, as the case may be, and located on one lot in the subdivision.

j) Accessory Structure: A detached structure located on the same lot as the principal building which is devoted exclusively to an accessory use. An example of such is a detached garage for one or more automobiles.

k) Adjoining Lot: The lot separated from the lot under consideration by a rear lot line, side lot line or alley.

l) Alley: A narrow public or private way less in size than a street, designed for the special accommodation of the property it reaches, and not intended for general travel.

m) Building: Any structure having a roof supported by columns or walls for the housing or enclosure of persons, animals or chattels. When any portion thereof is completely separated from every other portion thereof by a division wall without openings, then such portion shall be deemed to be a separate building.

n) One Family Dwelling: A detached building on one lot used exclusively for occupancy by one (1) family which may include up to two (2) unrelated lodgers or boarders or employees.

o) Family: Family shall mean an individual, or two or more persons related by blood, marriage, adoption or similar legal relationship.

p) Junk: Any good, appliance, fixture, furniture, machinery, vehicle, personal property or any other thing or part thereof, whether of value or valueless, that is demolished, discarded, dismantled, partially dismantled, dilapidated, or so worn, deteriorated or in such a condition as to be generally unusable and/or inoperable in its existing state.

q) Nonconforming Use: A use which was permissible on a lot at the time these covenants and any amendments to these covenants became effective and which does not now conform with the use provisions of these covenants, as amended by this instrument dated April 15, 1994.

r) Parking Space, Off Street: A storage area for vehicles that is directly accessible to an adjacent public street and which is not located in a front yard.

s) "Activity conducted for gain" shall mean any entity organized and intended to operate for profit and any non-profit entity organized and operated at all times for exempt purposes within the meaning of Sect. 501(c)(3) of the Internal Revenue Code of 1986, or corresponding section of any future federal or state tax law.

t) Household Occupation: A business, profession, service, or any other activity of any kind, intended either for profit, or intended for non-profit as defined in sub-paragraph "s" above, conducted and maintained by an owner-occupant, on the building site the nature of which activity does not usually, regularly or frequently require any third party to come to, or reside at, the building site in order to receive the benefits of such business, profession, service, or any other activity.

Captions

Section 302: Captions, titles and headings in these covenants are for convenience only and do not expand or limit the meaning of a Section and shall not be taken into account in construing any Section.

Approving Authority Resolves Questions of Construction

Section 303: If any doubt or questions shall arise concerning the true intent or meaning of any of these covenants, the Approving Authority shall determine the proper construction of the provision or Section in question and shall set forth in written instrument duly acknowledged

by the Approving Authority and filed for record with the County Clerk and Recorder of El Paso County, the meaning and effect and application of this provision or any Section of these covenants; and any decisions made by the Approving Authority under this section shall be binding upon all of the then property owners in the subdivision.

ARTICLE FOUR
General Provisions

Section 401: These covenants shall run with the land and shall inure to and be binding on all parties or entities and their heirs, successors or assigns, and on all persons claiming under them for a period of twenty-five (25) years from the date these amended covenants are recorded, after which time said amended covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority (51%) of the then owners of the lots has been recorded, agreeing to amend said covenants in whole or in part.

Section 402: Each of these covenants and amendments thereto are cumulative and independent and are to be construed without reference to any other provisions dealing with the same subject matter or imposing similar or dissimilar restrictions. In the event of conflict between the original covenants dated January 10, 1956 and later amendments, the provisions of the later amendments, if any, shall prevail. A provision or Section shall be fully enforceable although it may prohibit an act or omission sanctioned or permitted by another provision.

Section 403: Except as these covenants may be amended or terminated in the manner hereinafter set forth, they shall not be waived, modified or terminated and a failure to enforce shall not constitute a waiver or impair the effectiveness or enforceability of these covenants. Every person or entity bound by these covenants is deemed to recognize and agree that it is not the intent of these covenants to require constant, harsh or literal enforcement of them as a requisite of their continuing vitality and that leniency or neglect in their enforcement shall not in any way invalidate these covenants or any part of them nor operate as an impediment to their subsequent enforcement and each such person or entity agrees not to plead as a defense in any civil action to enforce these covenants that these covenants have been waived or impaired or otherwise invalidated by a previous failure or neglect to enforce them.

Section 404: These covenants are for the benefit of the Owners, jointly and severally, and of the Approving Authority. These covenants may be enforced either by an Owner or The Approving Authority, or both, by action for damages, suit for injunction, mandatory and prohibitive; and other relief, and by any other appropriate legal remedy, instituted by one or more Owners then owning lots in Block 2, Country Club Addition No. 1, El Paso County, Colorado as recorded in the records of said county on April 14, 1955, in Plat Book W page 42, Reception No. 957686; and Blocks 1 and 2, Country Club Addition No. 2, El Paso County, Colorado as recorded in the records of the said county on December 17, 1956 in Plat Book Y, Page 63, Reception No. 22551. All costs, including reasonable attorney's fees, incurred by the Approving Authority, or one or more lot owners in said subdivision, in connection with any successful enforcement proceeding initiated by the Approving Authority (alone or in combination with Owners) shall be paid by the party determined to have violated these covenants

Section 405: From time to time any one or more Sections of these covenants (except Section 109 - easements) may be

amended or one or more new Sections may be added to these covenants by an instrument signed by a majority (51%) of the then owners of the lots in the Subdivision and filed for record with the County Clerk and Recorder of El Paso County, Colorado.

Section 406: A nonconforming use of a building or a lot which otherwise would be prohibited by these covenants and which was in existence and use before April 15, 1994 will be deemed to be in full compliance with these covenants. After April 15, 1994, any alterations, remodeling, changes, additions or other modifications to or on any lot or structure covered by these covenants shall comply in all respects with all provisions and requirements of these covenants as amended from time to time.

Section 407: If any Section of these covenants shall be held invalid or become unenforceable the other Sections of these covenants shall in no wise be affected or impaired but shall remain in full force and effect.