

COUNTY OF EL PASO, STATE OF COLORADO FEE *24/100*  
 RECEIVED AT *805* O'LOCK *66* W. JAN 28 1980  
 RECEPTION NO *639111* ARDIS W. SCHMITT *Ardis* DEPUTY

AMENDED DECLARATION OF COVENANTS  
 CONDITIONS AND RESTRICTIONS

This Amended Declaration of the Covenants, Conditions and Restrictions made on the date hereinafter set forth by the undersigned who represent a majority of the lot owners within Discovery Subdivision Filing No. 2 in the City of Colorado Springs, El Paso County, Colorado by the signatures affixed hereto do hereby amend the covenants, conditions and restrictions originally recorded at Book 2569 Pages 302 through 308:

W I T N E S S E T H:

WHEREAS, the undersigned represent the majority of lot owners of certain real property in the County of El Paso and State of Colorado which is more particularly described as:

Lots 1 through 12, in Block 1, Lot 1 through 28, in Block 2, all in Discovery Subdivision Filing No. 2 in the City of Colorado Springs, El Paso County, Colorado.

AND WHEREAS, the original Declarants conveyed these properties subject to certain protective covenants, conditions, restrictions, reservations, liens and charges and further provided for a method of amendment of said covenants by an instrument signed by a majority of the lot (or living unit) owners; and

WHEREAS, by this instrument signed by the majority of the lot owners the lot owners desire to amend the original covenants to provide for, among other things, a homeowner's association, to amplify their original covenants concerning commercial vehicles, campers and trailers, to amplify their original covenants dealing with enforcement, and to add covenants for maintenance assessment and exterior maintenance, and

WHEREAS, there are nine separate Filings in the Discovery Subdivision and whereas the lot owners within all of the nine Discovery Subdivisions desire to be controlled by one Declaration of Covenants, Conditions and Restrictions that are identical throughout the Discovery Subdivisions all being controlled by one architectural control committee and one homeowner's association.

NOW THEREFORE, the undersigned declare that all the properties described above and all other property in the Discovery Subdivision Filings No. 1 through 9 shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions as amended, all of which are for the purposes of enhancing and protecting the value, desirability and attractiveness of the real property. These amended declarations of covenants, conditions and restrictions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the described property or any part thereof and shall inure to the benefit of each owner thereof.

## ARTICLE I

Definitions

Section 1. The following items when used in this Declaration or any Supplement or Amendment thereto shall have the following meanings unless prohibited by the context:

(a) "Properties" shall mean and refer to those certain real properties hereinbefore described along with all the properties in the Discovery Subdivision Filings No. 1 through 9.

(b) "Lot" shall mean and refer to any part of land shown upon this recorded subdivision map of the Properties.

(c) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract seller, but excluding those having such interests merely as security for the performance of an obligation.

(d) "Declarant" shall mean and refer to Deld Corporation or Vagge Development Company, their successors and assigns, if such successors or assigns shall acquire more than one undeveloped Lot from the Declarant for the purpose of development.

(e) "Living Unit" shall mean and refer to any portion of the building situated upon the properties designed and intended for use and occupancy as a residence by a single family.

(f) "Association" shall mean and refer to Discovery Home-owners Association.

## ARTICLE II

Architectural Control Committee

Section 1. Members. The members of the Architectural Control Committee to exercise control over Discovery Subdivision Filings No. 1 through 9 will be Ann Crock, Bill Engle, Lawrence Davis, Chuck Miller, Howard Askelson and Tom Royer; their successors or assigns. In the event of death or resignation of any member of said committee, the remaining member or members shall have full authority to approve or disapprove the plans and specifications to be reviewed and approved by the committee as hereinafter described. 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 restore to it any of its powers and duties.

Section 2. Review by Committee. No structure, whether residence accessory building, tennis court, swimming pool, antenna, whether on a structure or on a Lot, flagpoles, fences, walls, house numbers, mail boxes, exterior lighting, or other improvements shall be constructed or maintained on any Lot and no alteration or re-painting of the exterior of a structure shall be made and no landscaping, site grading or removal of existing trees, shrubs, or rock formations, performed unless complete plans, specifications, and Lot plans therefore, have been submitted to and approved in

writing by the Architectural Control Committee. The plans and specifications shall show the exterior design, height, building materials and color scheme thereof, the location and size of driveways, the plans of landscaping, fencing walls and windbreaks, and grading plans. The plans shall show the entire Lot including the existing topography at 2 foot contour intervals, the size and location of existing trees, scrub oak, rock outcropping and other vegetation and shall show the proposed site grading and those trees, shrubs, or rock outcropping that are to be removed or altered during the course of construction.

Section 3. Procedures. The Architectural Control Committee shall approve or disapprove in writing all plans and requests within thirty (30) days after submission. In the event the Architectural Control Committee fails to take action within thirty (30) days after requests have been submitted, approval will not be required, and this Article will be deemed to have been fully complied with. A majority vote of the members of the Architectural Control Committee is required for approval or disapproval of the proposed improvements. The Architectural Control Committee shall maintain written records of all applications submitted to it and of all action taken. In approving or disapproving the plan submitted to it, the Architectural Control 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 the 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 Lots because of its design, location, height or type of materials used in the 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 the 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 restrictions 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 reason 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.

Section 4. Liability of Committee. The Architectural Control Committee shall not be liable in damages to any person submitting requests for approval or to any Lot Owner by reason of any action, failure to act, approval, disapproval or failure to approve or disapprove with regard to such requests.

### ARTICLE III

#### Use Restrictions

The following restrictions, covenants and easements are imposed uniformly upon the Properties and the use thereof as a common scheme for the benefit of each Lot and may be enforced by the Architectural Control Committee, any Owner or the Association.

Section 1. Land Use, Building Type and Occupancy. Lots shall be used solely for one detached single family residential dwelling purposes not to exceed thirty-five (35) feet in height. However, in no case will structures exceed in height sixteen (16) feet above the highest point on the Lot except where this height restriction is waived by the Architectural Control Committee on relatively flat Lots where the committee determines that the views from other Lots will not be adversely affected. No building shall be permitted on any Lot unless such building has been duly constructed thereon and the removal of dwellings or structures from other locations to any Lot shall not be permitted. A private garage for not less than two (2) cars shall be provided with each single family dwelling, and in accordance with the set back requirements herein contained.

Section 2. Subdivision. No further subdivision or resubdivisions of any Lot or combination of Lots as shown on the recorded plat shall be permitted.

Section 3. Building Size. No dwelling shall be permitted on any Lot in which the finished living area on the primary level, exclusive of open porches and garages, is less than 1400 square feet.

Section 4. Buildings Costs. No dwelling shall be permitted to be constructed on any Lot at a cost of less than \$50,000 based on the cost levels prevailing on the date these covenants are recorded. It is the intention and purpose of this covenant to insure 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 dated herein for the minimum permitted dwelling size.

Section 5. Building Location. No building shall be located on any Lot or building site nearer to the front Lot line or nearer to the side street lines than shall be allowed by the applicable zoning ordinances of the City of Colorado Springs, Colorado; but in any event, no building shall be located on any Lot nearer than twenty (20) feet to the front Lot line or nearer than fifteen (15) feet to any side street line. No building shall be located nearer than five (5) feet to an interior Lot line and no dwelling shall be located on any Lot nearer than twenty (20) feet to the rear Lot line. For the purposes of this covenant, eaves, steps and open porches shall be considered as part of the building.

**Section 6. Building Construction.** All buildings erected on the Properties shall be designed and constructed in accordance with the following standards:

Roof materials shall be shake or cedar variety shingles unless a different material is approved by the Architectural Control Committee.

Gutters are not required; however, if they are used gutters and downspouts shall be constructed of wood or shall be painted to blend with the earth tone colors of the dwelling.

Aluminum or wood windows are allowed; however, if aluminum windows are used, they must be anodized or painted to blend with the earth tone colors of the dwelling.

Mailboxes will be designed by the Declarant; and this design will be used throughout the subdivision.

Only earth tone colors shall be used on exterior siding and garage doors.

Garage doors shall be wood or wood composition material only.

All exterior walls shall be constructed of wood, stone, stucco, or brick. Wood can be stained or left natural to weather. Painting exterior wood shall not be allowed. Stucco must be either dark tan or brown in color. Stone must be left natural and shall not be painted. Brick shall be limited to sand brick, clinker brick and bricks without a sheen appearance, brick with a color that blends with the natural surroundings. Standard red brick is an example of a disapproved material. Only two (2) combinations of the allowed materials may be used unless prior approval of the Architectural Control Committee is obtained.

Only two (2) and three (3) car-sized garages are allowed. No carports will be permitted.

Exposed concrete will be allowed only when it is textured or patterned and is to be approved by the Architectural Control Committee. All other exposed concrete must be stuccoed.

Bright accent colors can be used in small areas to add interest and variety such as on door panels and small wall panels.

**Section 7. Building Design.** Only custom designed homes will be approved; standard builder models will not be allowed. The design should be done in an effort to protect as much of the natural environment as possible, minimizing the removal of trees and the disturbance of the natural topography and native vegetation. Modern, multi-level, shed roof dwellings using natural materials will be encouraged.

**Section 8. Fences or Walls.** Fences or walls are encouraged to enclose limited areas on the Lot where privacy is desired in either the front, side or rear yard. Fencing the entire Lot or long continuous fences on any Lot lines will be discouraged except along the Lot lines that adjoin the City Park. All fences or walls will be consistent with and a visual extension of the architecture of the house. Similar materials will be used and the scale will be appropriate.

**Section 9. Removal of Trees.** The removal of trees, shrubs and other landscaping will not be allowed unless the landscaping is replaced by a comparable and must be approved by the Architectural Control Committee. No existing trees, rocks, scrub oak or other natural vegetation shall be removed from the Lot unless required in the construction of the dwelling and must be approved by the Architectural Control Committee. If trees must be removed, they must be replanted on the Lot if possible or the Architectural Control Committee must be advised thirty (30) days prior to the removal of any tree that will not be replanted on the Lot so that the Committee will have the opportunity to replant the tree, if possible, in another area within the development. The existing natural vegetation, trees and rock outcroppings that are to remain on each Lot must be maintained without change.

**Section 10. Landscaping.** Excluding paved driveways, patios and sidewalks, all areas of the Lot are to be grassed, shrubbed, treed or otherwise landscaped. Preservation of the natural landscaping will be encouraged and only those areas that are disturbed or graded during the course of construction or that are enclosed by walls or fences can be replanted with landscaping not native to the area. Substitute materials such as rock, gravel or paving must be approved by the Architectural Control Committee and will generally be discouraged. Landscaping shown on the approved plot plan must be completed within one (1) year after construction of the house has been completed.

**Section 11. Construction Restrictions and Materials Storage.** No storage of materials will be allowed on any Lot except when enclosed or out of view of the adjoining Lots. During construction material storage and equipment movement and grading will be allowed only in those areas where the structures will be built and those areas to be relandscaped or enclosed by fences or walls. Other areas of the Lot shall be fenced to prevent access by construction equipment prior to beginning any construction on the Lot. One access point to the fenced area where construction will be allowed shall be provided to the public street. The area to be fenced shall be indicated along with the type of fence on the plot plan submitted to the Architectural Control Committee.

**Section 12. Unightly Objects.** Refuge piles or other unightly objects or materials shall not be allowed to be placed or to remain upon any premises, easements or any street unless placed in a suitable container. Garbage cans are to be behind decorative fencing or otherwise hidden from the view of the street.

**Section 13. Commercial Vehicles, Campers and Trailers.** No commercial-type vehicles, recreational vehicles, campers, trailers, motor homes or trucks shall be stored or parked on any Lot or parked on any street except while engaged in transport to or from a dwelling, unless the same can be stored inside of the garage or otherwise stored at the rear of the Lot out of sight of the street and screened from the view of adjoining Lots. For the purposes of this restriction, a truck having a 3/4 ton manufacturer's rated capacity, commonly known as a pickup truck, shall not be deemed to be a commercial vehicle or a truck.

**Section 14. Nuisances.** No noxious or offensive activities shall be carried on upon any Lot nor shall anything be done thereupon which may or may become an annoyance or nuisance to the neighborhood.

**Section 15. Animals.** No persons shall be allowed to keep, breed or raise chickens, turkeys, cattle, horses, sheep, goats, swine, rabbits or any other domestic farm or barnyard animals or fowl on any Lot or erect thereupon any building designed to house the same. This restriction shall not be construed to prohibit any person from keeping dogs, cats or other household pets on any Lot, provided they are not kept, bred or raised for any commercial purpose.

**Section 16. Temporary Residences.** No structure of temporary character, trailer, basement, tent, shack, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently and no used structure of any sort shall be moved onto any Lot.

**Section 17. Signs.** No signs of any kind shall be displayed to the public view on any Lot except one Professional sign of not more than five (5) square feet advertising the property for sale or rent, or signs used by a builder, developer or subdivider to advertise the property during the construction, development and sales period.

**Section 18. Easements.** Easements for the installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat and over the rear five (5) feet to each Lot. Within these easements no structure, planting or other material shall be placed or permitted to remain, which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of the flow of drainage channels in the easements; or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements on it shall be maintained continuously by the Owner of the Lot except for those improvements for which a public authority or utility company is responsible.

**Section 19. Outside Clotheslines, Aerials, Antennas, Carports, Patio Covers and Other Similar Structures.** Outside aerials, clotheslines, antennas, carports and patio covers or similar structures shall not be allowed unless approved by the Architectural Control Committee.

**Section 20. Site Distance at Intersections.** No fence, wall, hedge or shrub planting, which obstructs site lines at elevations between two (2) and six (6) 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 twenty-five (25) feet from the intersection of the street line; or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitation shall apply on any lot within ten (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No trees shall be permitted to remain within such distances of such height to prevent obstruction of such sight-line.

**Section 21. Unused Vehicles, Vehicle Repairs.** Unused vehicles shall not be parked on any street and shall not be parked on any lot unless the same can be stored inside of the garage. An unused vehicle shall be any vehicle which is not properly licensed or registered. No lot or street shall be used for the purpose of repair or maintenance of any motor vehicle.

## ARTICLE IV

Discovery Homeowners Association

Section 1. General. In order to insure that the purposes of the Covenants, Conditions and Restrictions are carried out, the Undersigned have caused the incorporation under the laws of Colorado of the Discovery Homeowners Association, a nonprofit corporation with the power of administering and enforcing the Covenants, Conditions and Restrictions and collecting funds as hereinafter set forth.

Section 2. Membership. Every person or entity who is an Owner of any Lot which is subject to assessment by the Association shall be a member of the Association. When more than one member is a record Owner of a Lot, all such persons shall be members. No Owner shall have more than one membership and membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 3. Board of Directors. The affairs of the Association shall be managed by a Board of six (6) Directors who will have overlapping terms. The names and addresses of the persons who are to act in the capacity of Directors until a selection or qualification of their successors are:

NAMEADDRESSAnn Crock7155 Wintery LoopColorado Springs, ColoradoBill Engle675 Big ValleyColorado Springs, ColoradoLawrence Davis7430 Delmonico DriveColorado Springs, ColoradoChuck Miller615 Carved TerraceColorado Springs, ColoradoHoward Askelson7145 Higher Ridge CourtColorado Springs, ColoradoTom Royer7230 Fleetwood CourtColorado Springs, Colorado

Section 4. Incorporation and By-laws. The initial Board of Directors shall have the responsibility of preparing and filing the Articles of Incorporation and providing for the By-laws of the Association.

Section 5. Scope. There are nine (9) separate filings in the Discovery area. It is the intent of the Undersigned that the "Association" will serve the Owners within all of the Discovery filings one through nine.

**ARTICLE V**  
**Covenant for Maintenance Assessments**

**Section 1. Personal Obligation for Assessments.** Each Owner is deemed to covenant and agree to pay to the Association an annual assessment as may be established and collected from time to time by the Association as hereinafter provided. The annual assessment, together with the interest thereon, the cost of collection and reasonable attorney's fees shall be the personal obligation of the person who is the Owner of the property at the time when the assessment fell due.

**Section 2. Purpose of Assessments.** The assessments levied by the Association upon the Lot shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents of the Properties.

**Section 3. Basis and Maximum of Annual Assessments.** Each Lot shall, as hereinafter provided, be subject to an annual assessment of not more than \$30, which shall be fixed by the Board of Directors and may be raised or lowered within said maximum as the Board of Directors may deem necessary.

**Section 4. Date of Commencement of Annual Assessments.** The Board of Directors shall fix the amount of the annual assessment at least 30 days in advance of said commencement date. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors.

**Section 5. Assessment Lien.** Assessments levied upon lots shall be a perpetual lien upon said Lots until such assessments and any interest, penalties and charges which may accrue thereon shall have been paid. Said lien shall be subordinate to the lien of any trust deed or mortgage. Sale or transfer of any Lot shall not affect the assessment lien.

**Section 6. Effect of Nonpayment of the Assessment: Remedies of the Association.** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 10 percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment.

**ARTICLE VI**  
**Exterior Maintenance**

**Section 1.** The Owner of each Lot shall maintain the structures on and grounds and landscaping thereof in a neat and attractive manner. Upon the Owner's failure to do so, the Board of Directors may, at its option, after giving the Owner 30 days written notice, have the grass, weeds, trees, shrubs and other vegetation cut or trimmed when, and as often as, the same is necessary in its judgment, and have dead trees, shrubs and plants removed from any Lot to maintain the beauty of the Properties.

**Section 2.** Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance the Board of Directors may, at its option, after giving the Owner six (6) months' written notice, make repairs to and improve the appearance of such structure in a reasonable and workmanlike manner.

Section 3. Assessment of Cost. The cost of such maintenance referred to in Sections 1 and 2 above shall be assessed against the Lot upon which such maintenance is done and shall be added to and become part of the monthly maintenance assessment or charge to which such Lot is subject under Article V hereof.

Section 4. Access at Reasonable Hours. For the purpose solely of performing the maintenance referred to in Sections 1 and 2 of this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or exterior of any structure situate thereon at reasonable hours on any day except Sunday.

ARTICLE VII

General Provisions

Section 1. Enforcement. The Architectural Control Committee, any Owner, or the Association shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Architectural Control Committee or by any Owner or by the Association to enforce any covenant or restriction herein contained shall in no event be deemed to waiver of the rights to do so hereafter. The successful party in any proceeding to enforce these covenants, conditions and restrictions shall be entitled to recover the costs of said proceeding including reasonable attorney's fees.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect. The Amended Declaration of Conditions, Covenants and Restrictions shall apply to only those Discovery Subdivisions 1 through 9 who approve of this Amendment by a majority of the Lot Owners within the respective Subdivisions.

Section 3. Amendment. The covenants and restrictions of this Amendment shall run with and bind the land and shall inure to the benefit of and be enforceable by the Architectural Control Committee, the Owners of any Lots subject to this Declaration, their respective legal representatives, heirs, successors or assigns or the Association for a term of twenty (20) years from the date this Amended Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. These amended covenants and restrictions may be amended by an instrument signed by a majority of the Lot (or living unit) Owners collectively within the Discovery Subdivisions 1 through 9. Any amendment must be properly recorded.

IN WITNESSETH THEREOF, the undersigned have set their hands and seals the day and year noted below.

<u>DATE</u>	<u>SIGNATURE</u>	<u>ADDRESS</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

STATE OF COLORADO:

SS \_\_\_\_\_

COUNTY OF EL PASO:

Sworn to and Subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_.

My commission expires \_\_\_\_\_

NOTARY PUBLIC