

RESTRICTIVE COVENANTS

KNOW ALL MEN BY THESE PRESENTS:

The under signed, MOHAGO, INC., a New Mexico Corporation, the sole owner of the real property now duly platted as "MT. CAPITAN SUBDIVISION, UNIT TWO", an addition to the village of Capitan, Lincoln County, New Mexico; the above and foregoing subdivision of that certain tract of land situate within the N $\frac{1}{2}$  SW $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$ , & S $\frac{1}{2}$  N $\frac{1}{2}$  of section 17, T9S, R14E, N.M.P.M., Lincoln County, New Mexico, as shown by the plat thereof filed in the office of the County Clerk and Ex-officio Recorder of Lincoln County, New Mexico on August 9, 1966, hereby make the following declarations as to limitations, restrictions and uses to which the lots and/or tracts constituting said subdivision may be put, hereby specifying that said declarations shall constitute covenants to run with all of the land, as provided by law, and shall be binding on all parties and all persons claiming under them, and for the benefit of and limitations upon all future owners in said subdivision, this declaration of restrictions being designed for the purpose of keeping said subdivision desirable, uniform and suitable in architectural design and use as herein specified, whether or not the same are embodied in the conveyance or other instrument effecting title thereto:

I

All lots in the MT. CAPITAN SUBDIVISION, UNIT 2, are hereby designated, "residential area". The said residential area shall be used for residential purposes only, and no business, manufacturing, commercial enterprises, public or commercial amusement, shall be conducted, operated, or maintained thereon.

II

No structure shall be erected, altered, placed or permitted to remain on any residential building plot, other than one detached single family dwelling, not to exceed two stories in height, and a private garage and garden structures such as are ordinarily used in connection with a single family residence.

III

No building shall be located on any lot nearer than twenty-five

46

(25) feet to the front lot line. Upon written application, the Architectural Control Committee may, due to particular lot configurations, permit construction to twenty (20) feet of the front lot line. No building shall be located on any lot nearer than ten (10) feet to any side street line nor nearer than ten (10) feet to any side lot line. No buildings shall be located on any lot nearer than fifteen (15) feet to the rear lot line. Provided, however, nothing herein contained shall be construed to prevent the use as one building site of two or more lots. For the purpose of this covenant, eaves, steps, and open porches shall not be considered as part of the building, provided however, this shall not be construed to permit any portion of a building on a lot to encroach upon another lot.

IV

Residential lots shall not be resubdivided.

V

No basement, tent, shack, garage, barn or other outbuilding shall at any time be used as a residence, temporary or permanent, nor shall any residence of a temporary character be erected or permitted to remain. Contractors may use a temporary building during the course of construction.

VI

Minimum ground floor area, exclusive of porches and garages, shall not be less than six-hundred (600) square feet. Construction, once commenced, must be completed, as to the exterior, within one (1) year.

VII

No old or second-hand buildings shall be moved on any lot in the subdivision, nor shall second-hand materials be used in the construction of any building thereon without the written consent of the Architectural Control Committee. No residence of any kind of what is commonly known as "boxed" or "sheet metal" construction shall be built in said tract unless the same shall be covered upon all its outside walls with stucco, brick, stone or other veneer material.

VIII

No building or fence shall be erected on any lot until plans and specifications and plot plan have been approved by the Architectural Control Committee of MT. CAPITAN SUBDIVISION. In no case shall barbed wire or chicken wire be used as fencing material.

IX

No fence, wall, hedge, or strub planing which obstructs sight lines at elevations between three (3) 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 lines, or in cases of rounded corner lot lines, from the intersection of the street property lines extended.

X

The Architectural Control Committee's approval or disapproval, as required in these covenants, shall be in writing. In the event the Committee, or its designated representative, fails, within thirty (30) days after plans and specifications have been submitted to it, to approve or disapprove the same, or in any

event, if no suit to enjoin the construction has been commenced prior to the completion thereof, written approval will not be required, and the related covenants shall be deemed to have been fully complied with.

XI

No outdoor-type toilet shall be erected or maintained, and all toilets shall be located inside the principal building and shall be connected with proper septic tanks that conform with state and county health laws and regulations. Each property owner will supply his property with a garbage can of not less than twenty (20) gallons capacity, together with cover. Garbage will be disposed of in accordance with the regulations of the State of New Mexico Department of Health, or at the Village of Capitan community dump.

XII

Butane tanks and water storage tanks must conform to state regulations and will be located so as not to detract from the appearance of the lot. No windmills or wind chargers will be erected on any lot.

XIII

No brush, trash or other material shall be burned, except in compliance with the fire regulations of the Lincoln National Forest.

XIV

Live trees may not be removed, except for locating driveways and homes, without the written consent of the Architectural Control Committee.

XV

No commercial activity shall be carried on, except for the sale of real property constituting the subdivision. No signs shall be displayed, except that occupants may post "for sale" or "name" signs.

XVI

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

XVII

No animals or poultry of any kind shall be bred, raised or kept on any lot. One horse per lot, dogs, cats or other household pets may be kept, provided they are not used for any commercial purposes. Stables, corrals and pet shelters shall be located only to the rear of the principal dwelling. The said premises shall at all times be kept clean and sanitary by frequent and proper removal and disposal of manure and other refuse.

XVIII (omit)

XIX

The subdivider, MOHOCO, INC., and every person hereafter having any right, title or interest in any lot in the said subdivision, shall have the right to prevent or stop violation of any of the said restrictions by injunction or other lawful procedure and to recover any damages resulting from such violation.

XX

These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until twenty (20) years from the date of the filing of these covenants, at which time, the covenants shall be automatically continued in force for successive periods of ten (10) years each unless discontinued or amended at the end of the first or any subsequent ten-year period by a vote of fifty-one (51) per cent or more of the property owners. Record owners of the lots shall be entitled to one vote for each lot as shown on the recorded plat. Any owner who desires to call an election for the purpose of suspending or amending all or any part of these protective covenants and restrictions after twenty (20) years from the date of filing thereof, in accordance with the foregoing provisions, shall request such election by written notification to the subdivider and all record owners of lots within the subdivision at least one year before the expiration of the first or any subsequent ten-year period.

XXI

Failure to enforce any restriction, condition, covenant or agreement herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequent thereto. In the event any covenant or condition or restriction hereinabove contained, or any portion thereof, is invalid or void, such invalidity or voidness shall in no way effect any of the other covenants, conditions or restrictions which shall remain in full force and effect.

XXII

Mobile Homes will be permitted on MT. CAPITAN SUBDIVISION, Unit 2, provided that no mobile home is of no greater age than 10 years from date of manufacture to the date it is placed on any of the above numbered lots and blocks; furthermore, any mobile home so placed, shall be permanently set and shall be connected to water and sewer facilities in a manner acceptable to the requirements and specifications of the State of New Mexico and the Village of Capitan, New Mexico.

IN WITNESS WHEREOF, we have set our hands and seals this 9th day of August, 1966.

WITNESSES:

MOHACO, INC.



Maryanne Walker Hall  
Secretary-Treasurer

Valton Hall  
President

STATE OF NEW MEXICO }  
COUNTY OF LINCOLN } ss.

THE FOREGOING INSTRUMENT was acknowledged before me this day of August, 1966, by VALTON HALL, President of MOHACO, INC., a New Mexico Corporation, on behalf of said Corporation.

Lucille Smith  
NOTARY PUBLIC

My commission expires: Feb. 6, 1967

STATE OF NEW MEXICO }  
COUNTY OF LINCOLN }

Filed for record in the Clerk's office this 26th day of August, 1966, at 4:40 o'clock P. m. and recorded in Book 450 Page 450

Public Records

78 Archimedes

Summer Session

Not. # 9819 Fee: 4.75