

**DECLARATION AND AGREEMENT ESTABLISHING PROTECTIVE COVENANTS
IN CHERRY HILLS NORTH, FILING NO. ONE**

Know all men by these presents, That,

WHEREAS, the undersigned, 1959, INC., a Colorado Corporation, is the, record owner of all that certain subdivision known as CHERRY HILLS NORTH, FILING NO. ONE, Arapahoe County, Colorado; and,

WHEREAS, the said 1959, INC. desires to place certain protective covenants on said subdivision for use and benefit of itself and its grantees;

NOW, THEREFORE, in consideration of the premises, the said 1959, INC., for itself and for its grantees, does hereby publish, acknowledge, and declare and agree with, to and for the benefit of all persons who may hereafter purchase and from time to time hold and own any of the lots in CHERRY HILLS NORTH, FILING NO. ONE. that it owns and holds said lots subject to the following reservations, covenants, easements and conditions, all of which shall be deemed to run with the land and to inure to the benefit of and be binding upon the owners at any time of any of the said lots, their heirs, personal representatives, successors and assigns, to wit.

1. Definitions

“Company” when used herein shall mean 1959, INC.

Lot and block numbers used herein shall be understood to refer to the lots and blocks bearing the numbers given as laid out and described on the recorded plat of CHERRY HILLS NORTH, FILING NO. ONE herein before referred to.

A “corner lot” is one the front line of which and one entire side line of which on two intersecting streets.

The street or streets upon which a lot fronts shall be deemed to be the front street, except as hereinafter provided in Section 5. Any other street or streets contiguous to such a lot shall be deemed to be a side street.

The word “plot”, as used herein is intended to mean a single piece or parcel of land consisting of one lot or more or less than one lot, used or to be used as a. building site.

An “outbuilding”, as the word is used herein, is intended to mean an enclosed, covered structure, not directly attached to the residence which it serves.

A “residence”, as the word is used herein, is intended to include any attached garage.

The word “street”, as used in these protective covenants, shall include any street, avenue, way or place as shown on the recorded plat .

"Committee" means the Architectural Control Committee.

2 . Use of Land

None of said lots may be improved, used or occupied for other than private residential purposes, and no building of any kind whatsoever shall be erected or maintained thereon except private, single family dwelling houses which are not to exceed two stories in height, and such outbuildings as are customarily appurtenant to such residences. Each residence is to be detached, and is to be designed for occupancy by a single family only.

The covering of each roof shall be either cedar shingles, wood shake shingles, clay or cement tile shingles, or other materials satisfactory to the Company.

The principal exterior material of any residence or outbuilding shall be materials satisfactory to the Company or its duly authorized representative. Every outbuilding shall correspond in style and architecture to the residence to which it is appurtenant.

Each residence to be erected will be required to have a front yard lantern light, of which the design, size, and height shall be approved by the Architectural Control Committee.

All downspouts from gutters must have an extension or a splash block at the bottom, carried out from the wall of the residence at least five (5) feet in the same direction that the ground drains, said extensions or splash blocks are to be installed simultaneously with the downspouts. The ground around the exterior of the residence should be well sloped, a slope of at least twelve (12) inches for the first ten (10) feet is recommended.

In cases where the owner or a contractor raises or lowers the elevation of the ground and establishes the finished grade elevation at any exterior property line of an adjoining lot, said contractor or owner must erect a retaining wall, at his cost, to protect the dirt from falling or washing down on the adjoining property.

No outbuilding on any plot shall exceed the residence to which it is appurtenant in height or number of stories, nor shall any outbuilding be used as a residence or living quarters. All garages shall be part of, or attached to the residence, and have a width on the entrance side of not less than twenty-five (25) feet. Not more than one residence shall be erected on any one of said lots as shown on the recorded plat.

The ridge heights of a residence on any site shall be approved by the Architectural Control Committee.

3. Architectural Control Committee

A. The architectural control committee shall be: L. C. Fulenwider, Jr., Robert L. Eichberg, and Andrew H. Sanford. In the event of resignation or withdrawal of all or any members of the architectural control committee, 1959, INC., through a duly recorded instrument, shall have the power to designate a successor committee. In the same fashion, 1959, INC., may designate the architectural control committee, or withdraw from the committee, or restore to it, any of its powers and duties.

In the event 1959, INC. shall become defunct under the corporation laws of the State of Colorado, its legal status as a Colorado corporation shall cease and terminate, or for any other reason, then the forgoing power shall be exercised by a Homeowners Association, consisting of the owners of the lots of said subdivision herein before described, and if there is none, then the foregoing powers shall be exercised by the then record owners of sixty per cent (60%) of the area subject to these covenants in the same manner as described above.

B. 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 written notice of such disapproval has not been given prior to completion thereof, such approval will not be required, and the related covenants shall be deemed to have been fully complied with.

C. The Committee shall have all duties and powers as are hereinafter provided and set forth. Neither the Committee, nor its duly authorized representative, shall be entitled to any compensation for service, nor shall the Committee or its duly authorized representative be liable, in any manner, for any action or failure of action taken in these premises.

D. An affidavit executed and recorded by the majority of the members as a Committee shall be sufficient evidence of the membership and other recitals t herein contained.

4. Approval of Plans

No building, wall, fence, or other structure shall be constructed, erected or maintained, nor shall any addition thereto, or change or alterations therein, be made until all plans and specifications, plot plan therefor, and other information satisfactory to the Architectural Control Committee, or its duly authorized representative, shall have been submitted to and approved in writing by the Architectural Control Committee, or its duly authorized representative, and copies thereof, as finally approved, lodged with the Committee, or its duly authorized representative. In so passing upon such plans, specification and other requirements, the Committee, or its duly authorized representative, may take into consideration into the suitability of the proposed building or other structure, and The materials of which it is to be built, to the site upon which it is proposed to erect same, and the harmony thereof with the surroundings.

No plans shall be approved, nor shall any construction be commenced on any residence, until soil tests have been made by a reputable, qualified soil engineer or Company on the plot on which the residence is to be erected, and the proper footings and foundation to be used are designed by a professional, licensed engineer after receiving said soil test, and a copy of said test and design are filed with the Committee or its. duly authorized representative.

No landscaping on any site shall be done until a landscaping plan shall have been submitted to and approved by such Committee. Such Committee shall have the right to refuse to approve any such plans or specification or grading or landscaping plan which are not suitable or desirable, in the Committee's opinion, for esthetic or other reasons.

5. Frontage of Lots

For the purpose of these covenants, all lots shall be deemed to front on the street or streets on which the lot or lots abut, provided, however, when a residence is erected on a corner lot or plot, the street on which the residence fronts shall be deemed to be the front street. Every residence erected on any lot or lots, plot or plots, shall have an approved, acceptable and presentable exterior on the street or streets and/or all of the street or streets on which said lot or lots, plot or plots, abut.

6. Setback of Residence From Street Line

No residence, or any part thereof, or fence, wail, or hedge, shall be erected or maintained on any lot or lots, plot or plots, nearer than twenty-five (25) feet from the front plot line, or nearer than twenty five. (25) feet from the rear plot line, or nearer than twenty-five (25) feet from any side street plot line. No residence, or any part thereof, may be erected nearer than fifteen (15) feet from the interior side line or lines of any plot, except that cornices, spoutings, Chimneys and purely ornamental projections may extend four (4) feet nearer said plot

lines, subject to the provisions of Article 7 thereof, except upon the approval of the Architectural Control Committee.

However, uncovered, but no covered or enclosed porches, balconies, and terraces, may extend beyond the building limit line toward the street or streets on which such plot fronts, not more than five (5) feet. Bay, or other windows, vestibules, and stairway landings, cornices, chimneys or other similar projections may extend no more than four (4) feet beyond the front and side building lines, and Steps leading to residence may extend beyond such building limit lines, provided such steps are not higher than the level of the first floor of the residence, subject to the provisions of Article 7 hereof.

If any disputes arises as to what constitutes a front, rear or side line, the decision of the Architectural Control Committee shall be final.

7. Minimum Area for Residence

Any residence erected wholly or partially on any of the lots or part or parts thereof, herein described, shall have a ground floor area of the main structure, exclusive of garages, porches or terraces, of at least 2,000 square feet in the case of one-story structures, and, in the case of structures of more than one story, a minimum of 2,500 square feet in the aggregate, exclusive of garages, porches or terraces.

A garage shall be required, and shall be of a size at least large enough to enclose two passenger automobiles, be at least twenty (20) feet deep and twenty-five (25) feet wide, and contain a minimum of 500 square feet. Any garage shall be attached to, and be a part of a single family dwelling erected or placed on any site. Garage doors shall not open toward the street except with the consent of the Architectural Control Committee. All garage doors shall be electronically controlled.

8. Easements Reserved

Easements and rights of way are reserved on, over and under said lots, as shown on the recorded plat of CHERRY HILL NORTH, FILLING NO. ONE, for construction, maintenance, repair, replacement and reconstruction of poles, wires, pipes, and conduits for lighting, heating, electricity, gas, telephone, and any other public or quasi-public utility service purposes, and for sewer and pipes of various kinds. No building or other permanent structures shall be erected or maintained on any part of any area reserved in an easement and/or right of way, but the owners of lots may erect and maintain a fence, wall or hedge along the property lines within the areas reserved as "easements" and/or rights of way, subject to the provisions of Article 9 hereof, and subject at all times to the prior right to use such areas for utility and quasi-utility purposes, and except in the six (6) foot easements shown on the plat of CHERRY HILLS NORTH, FILING NO. ONE, located in the lots immediately adjacent to all platted roadways, which easements are reserved for the exclusive use of gas mains; other utilities shall have the right to cross these easements at approximately right angles, but in no event shall any water meters, valves, street lights or power poles, mail boxes, other structures, trees and shrubs be allowed in these six (6) easements; concrete drives and sidewalks are permissible as long as they cross at substantially right angles, and do not exceed twenty-six (26) feet in width.

9. Signs, Billboards and Miscellaneous Structures

The construction or maintenance of for sale signs larger than six (6) square feet, poster boards, or advertising structures of any kind, except those belonging to 1959, INC., on any part of any said lots is prohibited. No fence, wall or hedge, nor any pergola or other detached structure for ornamental purposes, shall be erected or maintained on any part of any lot in front of the front building limit line, and on corner lots, in front of either the front building limit line or side street building limit line as provided Herein.

No radio short-wave antennas for receiving and sending shall be erected on any of said lots, or on the roof of any structure on said lots, unless approved by the Company or its duly authorized representative.

No part of any lot, or any improvement situate on any lot or lots, shall be used for the raising of poultry or the housing of cows, horses, or other Livestock.

No tank for the storage of oil or other fluids may be maintained on any lot above the surface thereof.

No trailer, basement, tent, shack, barn, or other similar outbuilding erected on the tract shall, at any time, be used as a residence, temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

No trash, ashes, or other refuse may be thrown or dumped on any vacant lot in the subdivision.

All clotheslines, equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate planning or fencing so as to conceal them from view of neighboring residence and streets. All rubbish, trash, or garbage shall be regularly removed from the property, and shall not be allowed to accumulate thereon.

The reservations and covenants and easements herein set forth shall run with the land and bind the Company, its successors and assigns, and all parties claiming by, through or under them shall be taken to hold, agree and covenant with the Company and its successors in title, to conform to and observe all the covenants as to the use of said lots and the construction of improvements thereon, but no reservation or covenant herein set forth shall be personally binding upon the Company, or any corporation, person or persons, except in respect to breaches, committed during its, his or their seizing of or title to said land, and the owner or owners of any of the land shall have the right to sue for and obtain an injunction, prohibitive or mandatory, to prevent the breach of, or to enforce the observance of, the reservations and covenants above set forth, in addition to the ordinary legal action for damages and failure of the Company or the owner or owners of any other lot or lots above described to enforce any of the reservations or covenants herein set forth at the time of its violation shall, in no event, be deemed to be a waiver of the right to do so at any time thereafter.

The Company, by appropriate instrument, may assign or convey to any person, organization or corporation, any or all of the rights, reservations, easements and privileges herein reserved by them, and upon such assignment or conveyance being made, their assigns or grantees may, at their option, exercise, transfer, or assigns such rights, reservations, easements and privileges, or anyone or more of them, at any time or times, in the same way and manner as though directly reserved by them or it in this instrument, provided, however, that if the Company shall terminate its corporate existence during the existence of the reservations, covenants, conditions and easements herein before set forth without having assigned or conveyed some or all of the rights, reservations, easements or privileges herein before reserved to it, then all of such said rights, reservations, easements and of said Company, pass to and vest in L. C. FULENWIDER, INC., and L. C. FULENWIDER, INC. shall have the right to assign and convey all said rights, reservations, easements and privileges.

If any of the covenants, easements, reservations, or other provisions of this declaration and agreement are invalidated by any law, rule, regulation, judgment, court order, or otherwise, it shall in no way affect any of the other covenants, reservations, easements or provisions which shall remain in full force and effect.

All of the reservations and covenants herein set forth shall continue and be binding upon the company its successors and assigns, and all persons claiming by, through or under it, for a period of twenty-five (25) years from the date hereof, and shall automatically be extended thereafter for a further period of twenty-five (25)

years, provided, however, that the owners of the fee simple title of sixty per cent (60%) of the lots herein above described, together with the Company or its assigns, may at any time, and from time to time, release all of the said lots from any one or more of all said resolutions and covenants, and may release any lot shown on said plat from any of said reservation or covenants, or may modify, change or amend these covenants by executing and acknowledging an appropriate agreement or agreements in writing for such purposes, and filing the same of record in the manner than required for the recording of land instruments.

IN WITNESS WHEREOF, 1959, INC. has caused its corporate name and seal to be hereunto affixed by its officers thereunto duly authorized, on this 4th day of May, 1970.

**AMENDMENT OF THE PROTECTIVE COVENANTS OF
CHERRY HILLS NORTH FILING NO. 1**

WHEREAS, Protective Covenants relating to CHERRY HILLS NORTH FILING NO. 1, Arapahoe County, Colorado, were recorded on May 5, 1970 in Book 1863, Page 152, records of Arapahoe county, Colorado: and,

WHEREAS, 1959, Inc., a Colorado Corporation, Wm. Branch & Company, a Colorado corporation, Alsum Brothers, Inc., a Colorado Corporation, and Heritage Homes, Inc., by Alsum, Inc., a Colorado Corporation, being the fee simple title owners of more than 60% of the lots located in CHERRY HILLS NORTH FILING NO. 1, desire to amend paragraph Nos. 6 and 9 of the Protective Covenants covering the above- described property; and,

NOW, THEREFORE, this Amendment of Protective Covenants is hereby adopted and confirmed.

The first sentence of Paragraph 6, SET BACK OF RESIDENCE FROM STREET LINE, of the Protective Covenants of CHERRY HILLS NORTH FILING NO. 1, shall be and hereby is amended to read as follows:

"No residence, or any part thereof, shall be erected or maintained on any lot or lots, plot or plots, nearer than 25 feet from the front plot line, or nearer than 25 feet from the rear plot line, or nearer than 25 feet from any side street plot line."

The second paragraph of Paragraph 9, SIGNS, BILLBOARDS, AND MISCELLANEOUS STRUCTURES, of the Protective Covenants of Cherry Hills North Filing #1, which now read as follows:

"No radio short-wave antennas for receiving and sending shall be erected on any of said lots or on the roof of any structure on said lots unless approved by the Company or its duly authorized representative."

Is, shall be, and hereby is amended to read as follows:

"No radio short-wave antennas for receiving and sending or television aerial or antennas shall be erected on any of said lots or on the roof on any structure on said lots unless approved by the Company or its duly authorized representative."

Dated this 17th day of February, 1972