

*11:10 AM*

FEB 2 1990

BOOK **2482** PAGE **247**

DECLARATION OF PROTECTIVE COVENANTS

OF

MID WAY RANCHES FILING NO. 6, Pueblo County Colorado

TO WHOM IT MAY CONCERN:

WHEREAS, MIDWAY DEVELOPMENT COMPANY, INC., a Colorado Corporation, duly authorized to do business in the State of Colorado, is the owner of the following described real property situated in Pueblo County, Colorado, to wit: Lots 61 thru 78, MIDWAY RANCHES FILING NO. 6, as contained in the recorded Plat filed December 19, 1989 in Book 2476 at page 433 of the records of Pueblo County, Colorado;

WHEREAS, the owner is desirous of protecting and preserving the present and future values of the above described property and desires to develop and maintain a quality subdivision, and

WHEREAS, the owner believes it necessary and proper to place the following covenants and restrictions on said property for the mutual protection and benefits of present and future owners of lots in said subdivision.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, MIDWAY DEVELOPMENT COMPANY, INC. does hereby establish and declare the following covenants and restrictions upon the above described property and does hereby declare that all rights, titles and interest in and to all of the above described property shall henceforth be subject to the covenants and conditions as herein set forth:

1. ARCHITECTURAL CONTROL COMMITTEE.

(a) COMPOSITION. The Architectural Control Committee (hereinafter referred to as "ACC") is composed of Declarant or its designated agent. Declarant shall remain on ACC until all tracts have been sold; however, at its option and timing, Declarant may relinquish full control of the ACC to the Property Owners Association and resign, at which time three (3) members will be subject to election as provided herein.

Any elected member of the ACC whose performance is found objectionable by other property owners may be removed by two-thirds (2/3) majority of the tract owners. In the event of the death or resignation of any elected member of the ACC, the remaining members shall have full authority to designate a successor to fulfill the remaining term.

(b) LIABILITY OF ACC. Neither Declarant, ACC, nor any persons acting therefor, shall 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, or with regard to any other good faith actions taken by the ACC under authorization of provisions of these covenants.

(c) COMPENSATION. Neither the membership of the ACC nor its designated representatives shall be entitled to any compensation for services performed to this covenant.

(d) VOTING. A simple majority vote, or one vote if there is only one member of the ACC, will determine approval or disapproval. The ACC will coordinate and work in concert with each other and report their decisions as a group and not individually.

## 2. LAND USE.

Except for areas designated as open space, no tract is to be used for any purpose other than residential or agricultural, unless otherwise specified. No construction shall be made in violation of any zoning.

## 3. LOCATION AND NATURE OF STRUCTURES AND APPURTENANCES.

No building or appurtenances thereto shall be located nearer than 50 feet from the exterior boundaries of any lot or tract.

No septic tank or waste disposal facilities shall be located nearer than 50 feet to the exterior boundaries of any lot and no outside toilets shall be erected or maintained, and lavatories and toilets shall be located inside the principal residences and connected with waste disposal facilities which meet the approval of the Colorado State Health Department, Pueblo County Health Department and the ACC. Septic tanks and leech field disposal systems will be located where acceptable percolation rate and quality can be maintained. Construction material of any fence must be approved by the ACC.

All chimneys and fireplaces shall have a protective wire inside the chimney near the top to prevent any burning particles from escaping.

If any structure, mobile home or vehicle be abandoned, Declarant shall have the authority to remove all or portions of such so as to prevent them from being unsightly and a detriment to the area. Notice of intent to remove will be posted on the tract ten (10) days prior to such action and in the event such removal becomes necessary, the owner of the tract shall be liable for all reasonable costs of such work.

#### 4. EASEMENTS.

Easements for installation and maintenance of utilities, roadways, snow removal and such other purposes incident to development of the property as reserved and shown by notes on the plat will be open and readily accessible for use, service and maintenance by the individual property owners. No motorized vehicles shall be permitted to use any easement right-of-way, except improved roadway easements. Any fencing erected across any existing easement must contain gates within such easement in a width which will accomodate maintenance vehicles.

#### 5. ANIMALS.

No owner shall have more than two (2) livestock animals of any kind (cows, horses, pigs, etc.) per family housed on the property unless the animals have a secondary feeding source, (not to exceed 10 animals per 40 acre tract). All animals MUST BE FENCED IN AND UNDER CONTROL at all times. Kennels, stables, corrals or any structure for the permanent housing or feeding of animals or poultry of any kind shall only be permitted on any tract with prior written approval of the Declarant. Fences must be kept up and maintained in a workable manner. This Ranch is considered "Open Range" and it is up to Tract Owners to fence animals out, if desired.

#### 6. PRESERVATION OF NATURAL RESOURCES.

No oil, gas, coal, sand, gravel or other mineral development, drilling, refining, quarrying, mining, crushing, manufacturing or processing operations of any kind shall be permitted upon or in any portion of the property, nor shall oil or gas wells, tanks, tunnels, mineral excavations or shafts be permitted unless such activity is under the control of MIDWAY DEVELOPMENT COMPANY, INC. The foregoing shall not be construed to prevent the drilling of water wells to serve the premises for domestic purposes nor the use of propane tanks.

7. WELLS.

Each residential tract shall contain no more than one water well. No wells shall be drilled on any tract until a permit has been first obtained from the State of Colorado or other regulatory authority, and their requirements thereto having been met. The drilling or use of any well on this ranch in a manner contrary to the provisions of the covenant or contrary to the conditions set forth in any well permit issued by proper authorities shall constitute a violation of these protective covenants. Declarant hereby assigns to the State of Colorado acting by and through its duly appointed officials, the right to enforce the covenants contained in this paragraph 7, as fully as Declarant itself could do.

8. HUNTING, FIREARMS, FIREWORKS AND NUISANCES.

No hunting of any kind shall be permitted in any of the areas covered by these covenants. Further, the use of or discharge of fireworks of any kind in the area covered by these covenants shall be expressly forbidden. No noxious or offensive activity shall be conducted on any portion of the property, nor shall anything be done which may be or may become an annoyance or nuisance to the neighborhood.

9. GARBAGE AND REFUSE DISPOSAL.

Trash, garbage and other waste shall be kept in sanitary containers. Incinerators can be utilized for the disposal of any garbage and trash on the premises in accordance with local codes. No tract or portion thereof shall be used for dumping trash or garbage. Any items considered unsightly or offensive by the ACC shall be removed by the owner of the tract on which said items are located. Reasonable preventions shall be taken against fire hazards.

10. SIGNS.

All signs displayed upon any of the premises or tracts must be first approved by the ACC. This covenant does not preclude the display of builders' or realty-type signs or small professional signs not to exceed one (1) square foot in area per side. The ACC reserves the right, however, to require modification or removal of signs if they are deemed not to be in keeping with the area and subdivision decor.

11. STORAGE.

No tract may be used for the storage of property in the open, except that building materials intended for use in the erection of a building or auxillary structure on the premises may be kept in the open during the construction period, but not to exceed six months in any event. No motor vehicle of any type shall be permitted to remain on the property in a non-operating condition for more than 30 days in any calendar year. Any such vehicle which does not display current and valid license plates and safety inspection stickers where required by state law, shall be deemed to be in a "non-operating condition".

12. PROPERTY ASSESSMENT.

The Declarant shall have the right to charge the owner of each tract of land a reasonable sum of money for the purposes of installing utilities, maintaining private roads through the property and such other uses as shall be deemed appropriate for the improvement of the property, in sole and absolute discretion of the Declarant. Assessments shall be on a per acre basis. All monies collected shall be held in a trust account and used exclusively for the purposes stated herein. An accounting shall be made to the property owners paying into the account not less than annually. By collecting this assessment, the Declarant, its successors and assigns, assume no responsibility for developing, installing or maintaining the property or any utilities, private roads or improvements of whatsoever kind or nature within the property or any tract contained within the property. The sole responsibility and liability of Declarant is to see that the money is expended for the purposes stated in this paragraph. The sole and exclusive purpose for the collection of this assessment shall be to attempt to pro rate and share the costs of improvements among the several owners of tracts within the property.

13. PROPERTY OWNERS ASSOCIATION.

A Property Owners Association may be formed if desired by owners of tracts in the property, and the sole qualification for membership shall be ownership of a fee interest in any tract in the property. Purposes of such an association could be for the development and maintenance of roads, government, installation and maintenance of utilities, maintenance and improvement of signs and properties, recreational enjoyment, development of services and facilities, publicity, enforcement of protective covenants, etc. If a simple majority of all tract owners elect to form such an association, then all owners agree to and shall become members and be subject to such assessment as may be fixed by the Board of Directors of said Property Owners Association. Owners shall have

one vote for each 40 acres owned. The Property Owners Association shall have the right to make assessments which may be increased or decreased by a majority vote of all owners on an annual basis. Tracts unsold or repossessed belonging to Declarant, its successors or assigns are nonassessable, but carry one vote for each 40 acres owned.

The Declarant shall have the right to turn over the collection of the property assessment to the Property Owners Association. Upon such collection being turned over, the Declarant shall have no further responsibility for the collection use or expenditure of such property assessment. The assessment shall then become a property owners assessment.

#### 14. 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. Covenants are for the use, convenience and protection of all property owners. Declarant, ACC, Property Owners Association, if formed, or any individual tract owner may act to enforce the covenants, none of the foregoing, however, are obligated to do so. Declarant and the ACC, together or separately, or through authorized agents or employees further reserve the right, whenever there shall have been an apparent violation of one or more of the provisions of these covenants and after ten (10) days notice to the owner, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner and such entry and abatement or removal shall not be deemed a trespass. Property owners in the property expressly agree to abide by injunctions without necessity of bond in order to simplify judicial proceedings to remedy covenant violations. In addition, if a judicial action is necessary to prohibit a covenant violation and a violation is established, the violator(s) shall pay and agree to pay all costs of the enforcement proceeding, including reasonable attorney's fees. The failure to enforce any right, reservation, restriction or condition contained herein, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. The invalidation by any court of any restriction herein contained shall not in any way affect any of the other restrictions but they shall remain in full force and effect.

The Declarant and/or the ACC shall have the right to record a lien against any property in the event the property owner fails to pay assessments due under these covenants.

Declarant and/or ACC is empowered to file such lien if within 30 days of written notification to owner of amount due, owner has not made payment in full. Such lien will run with the land unless said property is repossessed by Declarant, its successors or assigns, in which case the lien will be considered null and void and will be released. All liens shall apply to the land and improvements.

15. MISCELLANIOUS.

No existing perimeter fencing may be altered or removed without prior written permission of Declarant. No existing drainage or diversion ditches may be altered or removed without prior written permission of Declarant.

16. GENERAL PROVISIONS.

These covenants are to run with the land and shall be binding upon all parties and all parties claiming under them for a period of twenty years from the date hereof, after which time said covenants shall be automatically extended for successive ten year periods. These covenants may be amended by an instrument signed by 75% or more of the then owners of tracts which are subject to these covenants agreeing to said change in covenants. The signature of only one owner of a tract owned by more than one owner is required for the purposes of changing the covenants under this paragraph.

17. NOTICES.

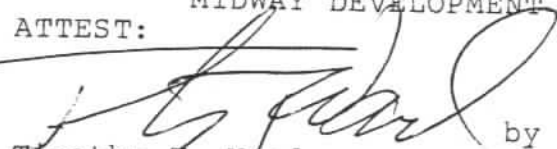
Any notice required to be given to any owner or other person under the provisions of these Protective Covenants shall be deemed to have been properly given when mailed, postage prepaid, to the last known address of the record owner of the tract in which the member has an interest.


18. DECLARANT MAY ASSIGN.

The undersigned Declarant or its successors may assign any and all of its rights, powers, obligations and privileges under this instrument to any other corporation, association or person.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunder subscribed this 22nd day of December, 1989.

MIDWAY DEVELOPMENT COMPANY, INC., a Colorado Corporation

ATTEST:  
  
by  
Timothy T. Ward  
Secretary-Treasurer

  
Harold B. Smith, President