

By _____

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Filed: December 28, 1953

AMENDED RESTRICTIVE COVENANTS

WHEREAS, Eber D. McKinley and Beatrice F. McKinley, his wife, L. A. Hendrix and Elizabeth Hendrix, his wife, Edward N. Sowell and Ruby D. Sowell (formerly Ruby J. Daniels), his wife, Ed L. Greenwood and Beth Greenwood, his wife, Ted Horlick and Judith Horlick, his wife, L. R. Larsen and Roberta B. Larsen, his wife, Harold V. Baird and Catherine L. Baird, his wife, Fred O. Bonnell and Mildred L. Bonnell, his wife, Ray H. Mahaffey and Nola B. Mahaffey, his wife, R. J. Gesting and Jennie B. Gesting, his wife, Lowell R. Hoffman and Blanche Hoffman, his wife, Edward E. Rich and Ruth L. Rich, his wife, Paul D. Jose and Helen Jose, his wife, Jack O. Rathgeber and Maude O. Rathgeber, his wife, are the owners of the following described real estate in Otero County, New Mexico, to-wit:

All of Blocks One, Two, Three, Four, Five, Six, Seven and Eight; Heights Subdivision of the Town of Alamogordo, New Mexico, according to the amended plat of said subdivision filed in the Office of the County Clerk, Otero County, New Mexico on the 28th day of December, 1953.

AND WHEREAS, said owners above named desire to place certain restrictions in regard to the buildings and improvements thereon and other matters as hereinafter set out upon and against all property in the Subdivision as shown on the filed plat.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That the above named owners, hereby declare and agree with all future purchasers of lots or building sites in the above named "HEIGHTS SUBDIVISION" to the Town of Alamogordo, New Mexico, that the following restrictions apply to all lots or building sites in

Blocks One, Two, Three, Four, Five, Six, Seven, and Eight, in said Subdivision known as "HEIGHTS SUBDIVISION" to the Town of Alamogordo, New Mexico, and that all conveyances of any lot or lots in said "HEIGHTS SUBDIVISION" shall be subject to certain restrictions as follows:

(a) All lots in the tract shall be known and described as single family residential lots and no structure shall be erected on any residential building plot other than one detached single family dwelling, not to exceed two stories in height, and private garages for not more than 3 cars, and other outbuildings incidental to residential use of the plot, all in accordance with such zoning regulations and building code as may legally apply at the time of construction.

(b) No building shall be located on any lot nearer to the front lot line or nearer to the side street line than the minimum building set back lines shown on the recorded plat. In any event no building shall be located on any lot nearer than 30 feet to the front lot line, or nearer than 20 feet to any side street line. No building shall be located nearer than five feet (5) to an interior lot line. No dwelling shall be located on any lot nearer than 35 feet to the rear lot line. For the purposes of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided however, that this shall not be construed to permit any portion of a building, on a lot to encroach upon another lot.

(c) No lot shall be resubdivided into, nor shall any dwelling be erected or placed on any lot having a width of less than 60 feet at the minimum building setback line and an area of less than 6,000 square feet.

(d) Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat.

Any person who desires to call an election for the purpose of suspending or amending all or any part of these protective covenants and restrictions at the time or times mentioned, in accordance with the foregoing provisions will request such election by written notification to the subdividers and any and all owners of lots within the subdivision at least one year before the expiration of the first or any subsequent ten year period.

If the parties hereto, or any of them, or their heirs or assigns, shall violate or attempt to violate any of the covenants or restrictions contained herein, it shall be lawful for the subdividers, their successors and assigns, or any other person or persons owning any lot in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions and either to prevent him or them from so doing or to recover damages or other dues for such violation.

Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the provisions which shall remain in full force and effect.

IN WITNESS WHEREOF the said owners have caused this instrument to be executed this 28th day of December, 1953.

Eber D. McKinley	Fred O. Bonnell
Beatrice F. McKinley	Mildred L. Bonnell
L. A. Hendrix	Ted Horlick
Elizabeth Hendrix	Judith Horlick
Edward N. Sowell	R. J. Gesting
Ruby D. Sowell	Jenny B. Gesting
Ed L. Greenwood	Edward E. Rich
Beth Greenwood	Ruth L. Rich
Ray F. Mahaffey	Paul D. Jose
Nola B. Mahaffey	Helen Jose
L. R. Larsen	Lowell R. Hoffman
Roberta B. Larsen	Blanche Hoffman
Harold V. Baird	Jack O. Rathgeber
Catherine L. Baird	Maude O. Rathgeber

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

(f) No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out-building shall be used on any lot at any time as a residence either temporarily or permanently.

(g) No single family dwelling shall be permitted on any lot in "HEIGHTS SUBDIVISION" having a ground floor square foot area of less than 800 square feet in case of a one story structure, not less than 700 square feet ground floor area in the case of a one and one-half story or two story structure, both exclusive of porches and garages.

(1) Further restrictions are set forth for the following lots: All of lots One through Eight inclusive in Block Two, all of lots One through Eight inclusive in Block Three, all of lots One through Eight inclusive in Block Five, and all of lots One through Nine inclusive in Block Six are restricted to single family dwellings having not less than 950 square feet ground floor area for one story structures and not less than 850 square feet ground floor area for one and one-half or two story structures, both exclusive of porches and garages.

These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1st, 1978, at which time they shall be automatically continued in force for successive periods of ten years each unless discontinued or amended at the end of the first or any subsequent ten year period by a vote of 51% or more of the then property owners, as hereinafter provided. These covenants and restrictions, or any portion thereof, may at such time or times be amended or terminated by a vote of 51% or more of the then property owners. In case any vote is called, the record owners of the lots shall be entitled to one vote for each lot as shown on the recorded plat.

