

Filed: February 2, 1956

RESTRICTIVE COVENANTS

Whereas, E. D. McKINLEY AND BEATRICE F. McKINLEY, his wife, and L. A. HENDRIX and ELIZABETH HENDRIX, his wife, are the owners of the following described real estate in Otero County, New Mexico, to-wit:

Lots 10 through 22 in Block 11, Lots 5 through 22 in Block 14, Lots 14 through 32 in Block 15, Lots 10 through 15 in Block 18 and Lot 1 in Block 19; Heights subdivision Unit III to the City of Alamogordo, New Mexico, according to the plat of said subdivision filed in the Office of the County Clerk of Otero County, New Mexico on the 1st day of February, 1956;

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 Unit III" to the City of Alamogordo, New Mexico, that the following restrictions apply to all lots or building sites in "Heights Subdivision Unit III" and that all conveyances of any lot or lots in above named 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 out-buildings 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 erected or permitted to remain on any lot nearer than 25 feet to the front lot line; nor more than 35 feet from the front lot line, or nearer than 20 feet to any side street line; nor nearer than 5 feet to any side lot line. These side line restrictions shall not apply to a detached garage, which shall be not less than 65 feet from the front building line. No dwelling shall be located on any lot nearer than 25 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 70 feet at the minimum building set back line and an area of less than 8,000 square feet.

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

(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 Unit III" having a ground floor square foot area of less than 1100 square feet in case of a one-story structure, nor less than 1000 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.

(h) Further restrictions are set forth for the following Lots: Lots 15 through 22 in Block 11, Lots 11 through 17 in Block 14, Lots 19 through 27 in Block 15, Lot 15 in Block 18 and Lot 1 in Block 19 are restricted to single family dwellings having not less than 1300 square feet of ground floor area for one-story structures and not less than 1150 square feet of ground floor area for one and one-half or two story structures, both exclusive of porches and garages.

(i) No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between three and six 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 25 feet from the intersection of the street lines, or in the case of a rounded corner lot line, from the intersection of the street property lines extended.

(j) No old or second-hand buildings shall be moved on any lot in the subdivision.

(k) No fences, except hedge fences not more than 3 feet in height shall be constructed, planted, placed, or permitted to remain on any lot nearer to any street line than the building set-back lines shown on the recorded plat.

These covenants and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until February 1, 1981, at which time they 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 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.

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 or 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 1st day of February, 1956.

/s/ E. D. McKinley
E. D. MCKINLEY

/s/ L. A. Hendrix
L. A. HENDRIX

/s/ Beatrice F. McKinley
BEATRICE F. MCKINLEY

/s/ Elizabeth Hendrix
ELIZABETH HENDRIX

STATE OF NEW MEXICO
COUNTY OF OTERO

On this 1st day of February, 1956, before me personally appeared E. D. McKINLEY and BEATRICE McKINLEY, his wife, and L. A. HENDRIX and ELIZABETH HENDRIX, his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Witness my hand and seal on this day and year last above written.

/s/ Mildred F. Toon
Notary Public

(Notarial Seal Imprint)
My Commission Expires:
July 1, 1959.

CLERK'S CERTIFICATE

STATE OF NEW MEXICO
COUNTY OF OTERO

I, Margaret Sanchez, County Clerk, of Otero County, New Mexico do hereby certify that the foregoing is a true and correct copy of Restrictive Covenants of the Heights Subdivision Unit III, filed in my office on the 2nd day of February A.D., 1956, and duly recorded in Reception 77756.

WITNESS my hand and official seal this 2nd day of
February, A. D. 1956.

/s/ Margaret Sanchez
County Clerk, Otero County
New Mexico

(SEAL)

We certify that this is a true and correct copy of that certain instrument recorded at Book 187 Page 251 of the records of Otero County, New Mexico.

PIONEER ABSTRACT COMPANY
By: _____
Abstracter