

AMENDED AND RESTATED DECLARATION OF RESTRICTIONS  
VOLCANO CLIFFS  
UNIT 18  
BERNALILLO COUNTY, NEW MEXICO

THIS AMENDED AND RESTATED Declaration of Restrictions, Volcano Cliffs, Unit 18, Bernalillo County, New Mexico ("Amended Declaration") is effective the date it is recorded in the real estate records of Bernalillo County, New Mexico.

WHEREAS, the undersigned are the owners of not less than seventy-five percent (75%) of the "Lots" within Unit No. 18, Volcano Cliffs Subdivision, as the same are shown and designated on the plat thereof filed in the office of the County Clerk of Bernalillo County, New Mexico, on January 19, 1971, as Document No. 1971008669 ("Subdivision");

WHEREAS, a Declaration of Restrictions, Volcano Cliffs, Unit 18, Bernalillo County, New Mexico regarding the Subdivision was filed January 28, 1971 , in Book Misc. 202, page 541, records of Bernalillo County, New Mexico ("Declaration"); and

WHEREAS, the City of Albuquerque is the owner of the following Lots within the Subdivision:

Lots 1 through 11, Block 1  
Lots 10 through 13, Block 5

("City Lots"); and

WHEREAS, the undersigned desire to amend and restate the Declaration.

NOW, THEREFORE, in consideration of the above and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. The Declaration is hereby declared null and void and of no further force and effect.

**Doc# 2013091170**

08/15/2013 09:52 AM Page: 1 of 6  
AMND R:\$25.00 M. Toulouse Oliver, Bernalillo County



2. The City Lots shall be restricted to use- for municipal purposes as defined by applicable regulations, ordinances, statutes, and laws of the City of Albuquerque and the State of New Mexico, as the same may be amended from time to time.

3. All Lots, except the City Lots, are hereby designated "Residential Lots".

4. No structures shall be erected, altered, placed or permitted to remain on any Residential Lot other than one detached single family dwelling and buildings related hereto, except that this provision shall not prevent the combination of two (2) adjoining Residential Lots for one (1) such dwelling.

5. No dwelling on a Residential Lot shall have a heated combined floor area of less than 1,600 square feet.

6. No trade (except home offices) or offensive activity of any kind shall be carried on upon any Residential Lot, nor shall anything be done on any Residential Lot which shall constitute an annoyance or nuisance to the Subdivision.

7. No trailer, basement, tent, shack, garage or other outbuilding shall be used as a residence on a Residential Lot, temporarily or permanently, except during construction.

8. Garbage and waste shall be kept in covered containers and stored or disposed of in a manner approved by the City of Albuquerque.

9. Electric, telephone and cable lines shall be installed underground.

10. No animals shall be kept on Residential Lots, except domestic animals permitted by City of Albuquerque ordinances, laws and regulations.

11. It shall be the responsibility of the owners of vacant Residential Lots to keep them clear of trash, rubbish or noxious materials.

12. No unshaded flood lights shall be permitted on a Residential Lot which shine light directly into the dwelling(s) on other Residential Lots.

13. These covenants shall run with the land and shall be binding upon the undersigned, their heirs, personal representatives, successors and assigns in all respects.

14. The covenants herein related to the Residential Lots may be amended in whole or in part by the owners of seventy-five percent (75%) of the Residential Lots, by recording an instrument in the real estate records of Bernalillo County, New Mexico. The provisions of this paragraph are not effected by, nor do they apply to, the City of Albuquerque as owner of the City Lots.

15. Each owner of a Residential Lot shall have the right to enforce these covenants against the owner(s) of another Residential Lot, and delay or omission on the part of an owner of a Residential Lot in exercising any right, power or remedy in the event of any breach of the covenants herein contained, shall not be construed as a waiver thereof or acquiescence therein.

16. If any owner of a Residential Lot is required to enforce the provisions hereof by judicial proceedings, the prevailing party or parties shall be entitled to reasonable attorney's fees and court costs from the non-prevailing party or parties.

17. Invalidation of any of these covenants shall in no way affect the validity of the other provisions, which shall remain in full force and effect.

18. This Amended Declaration may be executed in several counterparts and all so executed counterparts shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties are not signatories to the original or same counterpart.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands effective the date the same is recorded in the real estate records of Bernalillo County, New Mexico.

*SIGNATURE PAGES FOLLOW*

SIGNATURE PAGE TO  
AMENDED AND RESTATED DECLARATION OF RESTRICTIONS  
VOLCANO CLIFFS

UNIT 18

BERNALILLO COUNTY, NEW MEXICO

*Lts 10 through 13, Block 5*

*Lts 1 through 11, Block 1*

Owner of Lot(s) \_\_\_\_\_, Unit 18, Volcano Cliffs Subdivision

*Steve Metro*

STATE OF New Mexico )

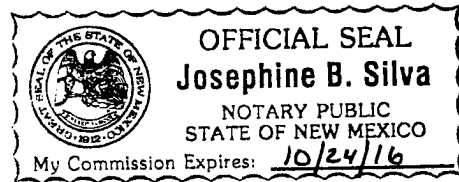
COUNTY OF Bernalillo )

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of August, 2013, by Steve Metro.

MY COMMISSION EXPIRES:

10/24/16

*Josephine B. Silva*  
NOTARY PUBLIC



STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_.

MY COMMISSION EXPIRES:

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

SIGNATURE PAGE TO  
AMENDED AND RESTATED DECLARATION OF RESTRICTIONS  
VOLCANO CLIFFS  
UNIT 18  
BERNALILLO COUNTY, NEW MEXICO

Owner of Lot(s) 1 through 11, Block 1, Lots 10 through 13, Block 5, Unit 18, Volcano Cliffs Subdivision

CITY OF ALBUQUERQUE,  
a municipal corporation

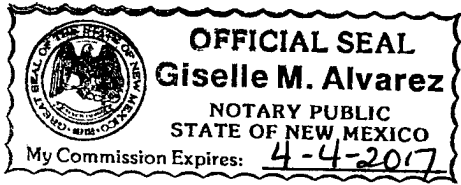
By:    
7-25-13  
Robert J. Perry, Chief Administrative Officer

STATE OF New Mexico     )  
  )  
COUNTY OF Bernalillo     )

The foregoing instrument was acknowledged before me this 1ST day of August, 2013, by Robert J. Perry of the City of Albuquerque, a municipal corporation.

MY COMMISSION EXPIRES:  
4-4-2017

  
NOTARY PUBLIC





DECLARATION OF RESTRICTIONS  
VOLCANO CLIFFS  
UNIT 18  
Bernalillo County, New Mexico

9789

KNOW ALL MEN BY THESE PRESENTS that all the reservations and restrictions hereafter set forth are made for the benefit of each and every owner of any portion of the land in said Subdivision or any interest therein, and shall inure to and pass with each and every parcel thereof, and shall apply to and bind all owners thereof as follows:

1. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until the owners of record of seventy-five percent (75%) of the lots contained in said Subdivision, by an instrument in writing signed by them, modify or extinguish said restrictions.

2. Invalidation of any of these covenants shall in no way affect the validity of the other provisions, which shall remain in full force and effect.

3. Lots 3 through 11 in Block 1, all lots in Block 3, all lots in Block 4, all lots in Block 5, lots 1 through 8 and lots 33 through 41 in Block 6, and lots 1 through 7 in Block 9 are zoned R-3 multiple zoning. The remainder of Unit 18 is zoned R-2 multiple zoning except Lot 31 in Block 9. All lots will enjoy all the privileges allowed by the City of Albuquerque under the R-2 and R-3 zoning classification. City Commission ordinance No. 2726 adopted October 12, 1965 covering R-2 and R-3 zoning is as follows:

"R-2 APARTMENT ZONE. This zone permits R-1 uses and low density apartments.

A. Permissive Uses:

- 1. Uses permissive in the R-1 zone.
- 2. Apartments

B. Conditional Uses. Uses conditional in the R-1 zone.

C. Height. Structures may exceed 26 feet in height, but any portion of a structure which exceeds 26 feet in height may not exceed a plane drawn at a 45 degree angle from the horizontal from the ground level of land zoned R-1, which is unimproved or is improved with a conforming permissive use.

D. Area. The same regulations apply as in the R-1 zone.

E. Setback. The same regulations apply as in the R-1 zone.

F. Density. A floor area ratio of 0.5 is permitted.

G. Off-Street Parking. Off-street parking spaces must be provided as set forth in Section 24.

SECTION 9. R-3 APARTMENT ZONE. This zone permits R-1 and R-2 uses, and higher density apartments.

A. Permissive Uses:

- 1. Uses permissive in the R-2 zone.



2. Uses incidental to an apartment, such as news, cigar, or candy stand, delicatessen, personal-service shop, and the like, are permitted with an apartment, provided:
    - a. The use is intended for the exclusive use of occupants of the apartment in which the incidental use is located.
    - b. At least 100 dwelling units are contained within the apartment.
    - c. The use is limited to a maximum of two percent of the total floor area of the apartment.
    - d. The use is so situated within the interior of the building that it is not directly accessible from a public way.
    - e. A sign or window display relating to the use is not discernible from a public way.
  3. Boarding or lodging house.
  4. Parking lot incidental to another use permitted in this zone.
- B. Conditional Uses:
1. Uses conditional in the R-2 zone.
  2. Club or lodge, provided it has no liquor license.
  3. Fraternity or sorority house or dormitory.
  4. Nursing or rest home, provided it is conducted in a structure which has the outward appearance of a residential structure.
  5. Sign for identification of a use permitted in this zone, provided:
    - a. The sign does not exceed 20 square feet in area or five feet in height.
    - b. The sign may be illuminated by a non-oscillating, concealed light source.
- C. Height. The same regulations apply as in the R-2 zone.
- D. Area. The same regulations apply as in the R-1 zone.
- E. Setback.
1. There must be a front yard setback of not less than 15 feet.
  2. There must be a side yard setback of not less than five feet, except on a corner lot the side yard setback on the street side must be not less than ten feet.
  3. There must be a rear yard setback of not less than 15 feet.
- F. Density. A floor area ratio of 1.0 is permitted.
- G. Off-street Parking. Off-street parking spaces must be provided as set forth in Section 24.

H. Usable Open Space. Usable open space must be provided in an amount equal to 200 square feet for each efficiency or one-bedroom apartment, 250 square feet for each two-bedroom apartment, and 300 square feet for each apartment containing three or more bedrooms."

5. An Architectural Control Committee is hereby established, consisting of two (2) representatives selected by FALLS LAND AND DEVELOPMENT CORPORATION, and one (1) representative residing at VOLCANO CLIFFS as the first appointees, to serve for a period of ten (10) years from the date hereof and until their successors shall be appointed and qualify. Vacancies occurring either before the end of or as a result of the expiration of such ten year term shall be filled by the members of the Committee, provided that within thirty (30) days of any appointment, owners of a majority of the residential lots may select other appointees in their stead.

6. Preliminary plans and elevations for all structures on R-2 and R-3 lots, including accessory buildings and walls, shall be submitted to the Architectural Control Committee. The location and conformity and harmony of external design of each building (including walls) to the Subdivision as a whole, must be approved by the said Committee. Visible air conditioners must be screened and attractive in appearance. Final plans and specifications must be approved in writing by the said Committee.

7. The exterior of all buildings on R-2 and R-3 lots shall be finished according to plans approved by the Architectural Control Committee within twenty-four (24) months of start of construction.

8. Garbage and waste shall be kept in covered metal containers and stored or disposed of in a manner approved by the City of Albuquerque. Outdoor privies are prohibited.

9. Access roads and utility easements are dedicated and reserved as shown on the Plat of the Subdivision. When electricity, water, gas, sewer, paving and curb and gutters are installed, the owner of each lot will be liable for the cost of such installations assessed by the company providing the cost to the appropriate utility company, and the cost shall constitute a lien against the lot until paid.

10. No animals shall be kept on R-2 and R-3 lots except domestic cats and dogs.

11. No wire fences shall be maintained in the Subdivision unless approved by the Architectural Control Committee.

12. No R-2 or R-3 lot may be subdivided, nor may a portion of any R-2 or R-3 lot be sold except to adjacent property holders for the purpose of increasing the size of an adjacent lot.

13. It shall be the responsibility of owners of vacant R-2 and R-3 lots to keep said

lots clear of trash, rubbish or noxious material.

14. No unshaded flood lights shall be maintained which cause light directly in the homes of other residents in the Subdivision.

No delay or omission on the part of the undersigned, successors or assigns, or of the owners of other lots in said Subdivision having the right hereunder to exercise the same, in exercising any right, power or remedy herein provided for in the event of any breach of the restrictions, covenants or reservations herein contained shall be construed as a waiver hereof or acquiescence therein; and no right of action shall accrue, nor shall any actions be brought or maintained by anyone whatsoever against the undersigned, its successors or assigns, for and on account of failure or neglect to exercise any right, power or remedy herein provided for in the event of breach of any of said covenants, restrictions or reservations.

ATTEST:

*Gene Rogman*

FIRST AMERICAN TITLE INSURANCE COMPANY

By *P. C. Templeton*

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO )  
                                  ) ss.  
COUNTY OF BERNALILLO )

The foregoing instrument was acknowledged before me this 25th day of January 1971, by P. C. Templeton, President, of FIRST AMERICAN TITLE INSURANCE COMPANY, a New Mexico Corporation, on behalf of said Corporation.

My Commission Expires: 10/15/74

*Barbara Holmberg*  
Notary Public

ATTEST:

*Glenda McConnell*  
Glenda McConnell, Secretary

FALLS LAND AND DEVELOPMENT CORPORATION

By *D. W. Falls*  
D. W. Falls, President

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO )  
                                  ) ss.  
COUNTY OF BERNALILLO )

The foregoing instrument was acknowledged before me this 25th day of January 1971, by D. W. Falls, President, of FALLS LAND AND DEVELOPMENT CORPORATION a New Mexico Corporation, on behalf of said corporation.

My Commission Expires: Nov. 14, 1973

*Paula Briggs*  
Notary Public

State of New Mexico )  
County of Bernalillo ) ss.  
This instrument was filed for record on

10:50 JAN 28 1971 MISC  
At 10:50 a.m. Recorded in Vol. 302  
of records of said County Folio 544  
..... Clerk & Recorder  
..... Deputy Clerk