

Disclaimer:

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DECLARATION OF RESTRICTIONS

**SANDIA HEIGHTS SOUTH, UNIT 19 SINGLE FAMILY AND SPECIAL USE
RESIDENTIAL TRACTS
BERNALILLO COUNTY, NEW MEXICO**

KNOW ALL MEN BY THESE PRESENT: That SANDIA PEAK TRAM COMPANY, a New Mexico corporation, hereinafter called Grantor, being the owner of a SANDIA HEIGHTS SOUTH, UNIT 19 Subdivision in Bernalillo County, New Mexico in accordance with the Plat thereof filed in the Office of the County Clerk of said county on the 20th day of October, 1983, hereby declares that it has established, and does hereby establish a general plan for the improvement, development, and restriction of said property, subject to which all tracts, lots and portions of lots in said subdivision shall be sold and conveyed.

All the covenants, reservations and restrictions hereinafter set forth are made for the benefit of each and every subsequent owner of any portion of the land in said subdivision or any interest therein, and shall inure to the benefit of and bind all subsequent owners thereof.

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until the year 2010 A.D. Said covenants shall be automatically extended thereafter for successive periods of ten (10) years except that at any time these covenants may be amended, but only by the affirmative consent of the record owners of three-quarters (3/4) of the total acreage in SANDIA HEIGHTS SOUTH, UNIT 19 Subdivision.

ARTICLE I

DEFINITIONS

Section 1: "The property" shall mean and refer to that certain real property above being Sandia Heights South, Unit 19, according to the plat thereof filed in the Office of the County Clerk, Bernalillo County, New Mexico on the 20th day of October, 1983.

Section 2: "Single family residential lot" shall mean a residential lot in a tract zoned for and restricted to one single family dwelling and buildings related thereto per lot.

Section 3: "Multifamily residential tract" shall mean a tract zoned for and restricted to apartments, town houses, patio homes, garden homes, condominiums or similar dwellings and used for such purposes, under single or multi-ownership.

Section 4: "Owner" shall mean and refer to the record owner whether one or more persons or entities, or a fee simple title to any lot or tract which is part of the property, and contract buyers, but excluding those having such interest merely as security for the performance of an obligation.

Section 5: "Grantor" shall mean and refer to Sandia Peak Tram Company, its successors and assigns.

Section 6: "Common area" shall mean any real property owned by any association of property owners for the common use and enjoyment of two or more lot or tract owners within the exterior boundaries of the property.

ARTICLE II

RESTRICTION PERTINENT TO SINGLE FAMILY AND MULTI-FAMILY

Section 1: Single family residential lots. No structures shall be erected, altered, placed or permitted to remain on any single family residential lot other than one single family dwelling and buildings related thereto, except that this provision shall not prevent the combination of two adjoining lots for one such dwelling.

Section 2: Multi-family residential tracts. No structure shall be erected, altered, placed or permitted to remain on any multi-family residential tract other than an apartment, town house, patio home, garden home, condominium or similar living unit with appurtenant recreational and service facilities if any.

ARTICLE III

Section 1: Architectural Control Committee. An Architectural Control Committee hereinafter called the Committee is hereby established consisting of Ben L. Abruzzo, Max Flatow and Robert Murphy as the appointees of the Grantor, to serve for a period of 10 years from the date hereof and until their successors shall be appointed and qualified. Vacancies occurring either before the end of or as a result of the expiration of such 10 year term shall be filled by members of the Committee, provided that within 30 days of any appointment owners of a majority of acreage in the property may select other appointees in their stead.

Section 2: Before anyone shall commence the construction, remodeling, addition to or alteration of any building, swimming pool, wall fence, coping, tank, visible air conditioning unit, radio antenna more than five feet in total height, or any structure or sign (except for rent or for sale signs, less than 5 square feet in area) on any lot or tract, there shall be submitted to the Grantor for transmittal to the Architectural Control Committee.

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- a. Preliminary floor plans, elevations, and locations of any structure on the lot, including drainage plans for any earth work on multifamily tracts, and drawings of any signs in excess of five square feet in diameter.
- b. After approval of preliminary plans, two complete sets of the final plans and specifications for said work.

Section 3: No structure or improvement of any kind shall be erected, altered, placed or maintained upon any lot or shall any earth work be commenced unless and until the final plans, elevations and specifications therefore have received such written approval as herein provided. Such plans shall include plot plans, showing the location on the lot or property of the building, wall, fence, coping, sign or other structure proposed to be constructed, placed, altered or maintained, and elevation of same, together with proposed color scheme for roofs and exteriors of any structure, indicating the materials for the same.

Section 4: No signs shall be erected or maintained on any place within the property limits except as specifically approved by the Architectural Control Committee.

Section 5: The Architectural Control Committee is authorized to charge not more than \$100.00 for review of plans for structures and alterations of single family units and not more than \$500.00 for review of plans for structures and alterations of multi-family units or complexes. At the time of submission of the plans and specifications as set forth herein the owner shall cause to be paid to the Grantor an initial fee of \$100.00 for single family units or \$500.00 for multi-family or commercial units. The Committee shall approve or disapprove said plans and specifications within thirty (30) days from the receipt thereof. One set of said Plans and specifications with the Committee's approval or disapproval endorsed thereon shall be returned to the owner and the copy thereof shall be retained by the Grantor.

The Committee shall have the right to disapprove any plans, specifications or details submitted as aforesaid, in the event such plans and specifications are not in accord with all provisions of this declaration, or a design or color scheme in the proposed structure is not in harmony with the general surroundings of such lot or tract or adjacent structure, apartments or other multi-family residences, or if the plans and specifications submitted are incomplete, or if the Committee deems that plans and specifications are contrary to the spirit and intent of these restrictive covenants, or contrary to the interest and welfare and rights of all or any part of the owners of lots or tracts in Sandia Heights South, Unit 19. The decision of the Committee in any of these matters shall be final. No building or improvement of any kind shall be constructed or placed on any tract or lot in Sandia Heights South, Unit 19, without the prior written consent of the Committee. Neither the Committee, its members or the Grantor shall be responsible in any manner whatsoever for any defect in any plans or specifications submitted or as revised by said Committee or the Grantor, or for any work done pursuant to the requested changes or any plans and specifications.

Section 6: The exterior of all buildings on all lots and tracts shall be completed according to plans approved by the Architectural Control Committee within twelve (12) months of start of construction, except where extensions of time are requested and granted by the Architectural Control Committee or the Grantor.

ARTICLE IV

CONSTRUCTION STANDARDS

Section 1: Drainage. On single family residential lots each dwelling shall be developed in such a manner as to comply with the standards of the Albuquerque Metropolitan Arroyo Flood Control Authority, or its successor then in force. Multi-family complexes shall be developed to provide on-site retention of storm water according to Albuquerque Metropolitan Arroyo Flood Control Authority Standards.

Section 2: Height. Except by specific approval of the Architectural Control Committee, no structure on single family or multi-family residential lots shall be a full two story structure. A two story structure is defined as one which is two full stories above the natural grade of the lot on all sides.

Section 3: Conservation. Natural vegetation shall be left undisturbed where practical on all tracts and lots except as required for access to property, clearing of building sites and establishment of landscaping adjacent to buildings. No chinese elm, cotton bearing cottonwood trees, or bermuda grass shall be maintained on any lot or tract. No grouping of trees shall be planted to constitute a screen except as specifically approved by the Architectural Control Committee.

Section 4: Roads and Utilities. Access roads and utility easements are dedicated and reserved as shown on the recorded plat of the property. No additional access roads or driveways, either public or private shall be constructed directly from any lot or tract to Tramway Blvd., N. E., other than those as shown on the plat of the property. No utilities on lots or tracts within the property shall be installed or maintained above ground, except during construction. All rights to water, oil and natural gas underlying the property are reserved to the Grantor.

Section 5: Each living unit complex structure on the property shall be provided with a method of sewage disposal consistent with the master plan of sewage disposal for the property and otherwise meeting the recommended standards of the appropriate governmental authority and approved by the Architectural Control Committee. Garbage and waste shall be kept in covered metal containers, screened from general view, and stored or disposed of in a manner approved by the appropriate governmental authority. Outdoor privies are prohibited except during construction.

Section 6: Butane and similar tanks shall conform to appropriate municipal or state regulations and must be screened and landscaped and located so as not to detract from the appearance of any lot or tract.

Section 7: No wire fence, or party wall shall be maintained on the property, except by Grantor on subdivision boundaries, and except for party walls maintained between living units in multi-family complexes as approved by the Architectural Control Committee.

Section 8: In the event that any structure is destroyed, wholly or partially by fire or any casualty, such structure shall be promptly rebuilt or repaired to conform to this declaration or shall be removed from the lot. In the event any owner fails to remove the debris or unsightly material, the

Grantor may remove said debris or unsightly material and charge the cost thereof including reasonable overhead charge against the owner thereof together with interest. If such charge is not repaid to the Grantor within 30 days after written notice to the owner demanding payment, the assessment shall bear interest from the date of said notice at the rate of 10% per annum and the Grantor may bring an action at law against the owner obligated to pay the same. Such charges shall become a lien against the lot or tract concerned upon the recording of a notice of lien and said lien may be foreclosed by the Grantor against the property and interest costs and reasonable attorney's fees of any such action shall be added to the amount of such lien. Said notice of lien shall state the amount which has become delinquent including attorney's fees and interest accrued thereon, a description of the property in respect to which the delinquent amount is owing and the name of the record owner of such property. Such notice shall be executed by the Grantor, or its agent, and acknowledged. Upon the satisfaction of said lien, the Grantor or its agent shall record a further notice similarly signed and acknowledged satisfying said lien and releasing the same. Each owner of any lot or tract by his acceptance of a conveyance to said lot or tract hereby vests in the Grantor, its agents or assigns, the right and power to bring all actions against such owner personally for the collection of all charges provided for in this Declaration of Restrictions, and to enforce any such lien by all means available for the enforcement of such liens, including foreclosure in like manner as a Mortgage or Deed of Trust lien on said property. The Grantor, its agents or assigns shall have the power to bid in any interest foreclosed at foreclosure sale as provided by law in the foreclosure of Mortgage liens. Said lien shall be subordinate to the lien or charge of any prior Mortgage or Deed of Trust for value on said property.

ARTICLE V

USE RESTRICTIONS

Section 1: No trade or offensive activity of any kind shall be carried on upon any residential lot or tract nor shall anything be done on any lot or tract which shall constitute an annoyance or nuisance to other owners and the property.

Section 2: No trash shall be burned on the premises except in approved incinerators located indoors or within the service yard. No garbage shall be burned. No barbecue or other outdoor cooking facility shall be located thereon nearer than 5 feet from either side of the lot line unless made a part of the building structure.

Section 3: No house trailer, recreational vehicle, camper trailer, camper, or boat shall be on any lot, nor shall any trailer, basement, tent, shack, garage or other building be used as a residence temporarily or permanently.

Section 4: No commercial type vehicles, trucks, campers, boats, recreational vehicles or camper trailers shall be stored or parked on any residential lot or tract for an unreasonable period of time (15 consecutive or 30 non-consecutive days or more) except in enclosed garages, or parked on any residential street or alley except while engaged in transport to and from a residence. For the purpose of this covenant a 3/4 ton or smaller vehicle, commonly known as a pick-up truck, shall not be deemed a commercial vehicle or truck. Such vehicle shall be deemed a commercial vehicle or truck

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when equipped with a camper and shall not be exempt from the restrictions heretofore mentioned in this section.

No unused automobiles or vehicles of any kind except as hereinabove provided shall be stored or parked on any lot except in a closed garage. An "unused vehicle" shall be defined as any vehicle which has not been driven under its own power for a period of thirty consecutive days or longer. In the event any unused vehicle remains parked on any tract or lot within the property boundaries, the Grantor shall have the right to remove the same after 48 hours notice to the owner thereof, the expenses to be charged against the owner thereof, and such charge shall become a lien upon the recording of a notice of lien and shall be enforceable as provided in Article IV, Section 8.

Section 5: No animals, livestock, poultry of any kind shall be raised, bred or kept on any of said lots or tracts except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purposes. Grantor reserves the right to publish and record regulations, binding upon all owners, for reasonable restraint of animals running loose within the property boundaries.

Section 6: No advertising signs (except one of not more than 5 square feet "For Rent" or "For Sale" sign per lot or tract), billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any portion of said property, nor shall said property be used in any way for any purposes which may endanger the health or unreasonably disturb the owner of any tract within the boundary of Sandia Heights South, Unit 19, provided however that the foregoing covenant shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, of Grantor, its agents or any purchaser from the Grantor, during the construction, sale or lease of any apartments, town houses or complex of living units provided however that such advertising signs shall be subject to the reasonable control of the Architectural Control Committee and the privilege of displaying such signs shall terminate upon completion of construction and sale or lease of 90% of the living units in any town house, patio home, garden home or apartment complex.

Section 7: All clotheslines, antenna receiver discs, basketball backboards, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighborhood residential units and streets. All clotheslines shall be confined from view in any direction.

Section 8: No refuse piles or other unsightly objects or materials shall be allowed to be placed or remain upon any lot or tract on the property. The Grantor or the Architectural Control Committee or their agents shall have the right to enter upon said lands and remove such refuse piles or other unsightly objects or materials at the expense of the owner (and such entries shall not be deemed as trespass) upon due notice to lot owner and failure of owner to comply. The cost of removal of such refuse piles or other unsightly objects shall be charged by the Grantor against the owner and upon failure of the owner to repay the Grantor for such charges, the charges shall bear interest from the date of said notice at the rate of 10% per annum and the Grantor may enforce payment thereof and said charges shall become a lien against the premises upon recording of a notice of lien as provided in Article IV, Section 8 above.

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Section 9: All utilities, driveways and structures constructed within any tract or lot boundary shall be maintained and kept in repair by the owner thereof. No owner shall do any act nor any work that will impair any utility easement or do any act or allow any condition to exist that will adversely affect owners of other lots or tracts.

Section 10: Special Easement for Construction and Maintenance. Certain residential structures in SANDIA HEIGHTS SOUTH, UNIT 19, are constructed close to the next lot line. There is hereby established an easement approximately five (5) feet in width running parallel to each such wall located close to or adjacent to the lot line, upon each adjacent lot, for the purpose of construction and maintenance of walls and buildings so located. The owner of the residence containing such a wall shall have the right at all reasonable times to enter such portion of the adjacent lot as is reasonably necessary for the purpose of repairing, maintaining or restoring the exterior walls; provided, however, that such access shall be permitted only at reasonable times during daylight hours, and with the prior knowledge of the owner of the adjacent lot.

The owner of such adjacent lot shall avoid any action which shall in any way damage the wall located close to or adjacent to his lot line and shall refrain from attaching any objects to such walls such as wires, trellises and plantings, defacing the wall in any manner, placing graphics or other design work, whether painted or otherwise, on such wall, or using the wall as a playing surface for sport.

The owner of the residence containing such wall shall similarly be prohibited from attaching anything to such wall or from altering it in any way other than painting the wall in such manner as shall be approved by the Architectural Control Committee and, in addition, shall take no other action except as specifically contemplated herein in connection with such wall which shall interfere with the owner of the adjacent lot.

Section 11: Easements for underground electrical, telephone and water service may be crossed by driveways and walkways provided the owner or builder makes prior arrangements with the utility company furnishing such service. Such easements for underground service shall be kept clear of all other improvements including buildings, patios or other paving, other than crossing walkways or driveways and neither Grantor nor any utility company using the easements shall be liable for any damage done by either of them or their assigns, agents, employees or servants to shrubbery, trees, flowers or other improvements of any owner located on the land covered by the easement.

Section 12: No single family residential lot may be further subdivided nor may any portion of any single family residential lot be sold except to adjacent property owners for the purpose of increasing the size of adjacent lots. No room or rooms in any single family residence may be rented or leased to any person provided, however, that nothing contained herein shall be construed as preventing the renting or leasing of an entire lot together with its improvements as a single unit to a single family.

Section 13: No unshaded flood lights shall be maintained which cause light to shine directly into the living units of any other residents on the property.

Section 14: Within the area of Sandia Heights South, Unit 19 is a particular "Open Space Easement". This area is to be used and maintained as a natural greenbelt with plantings of native grass and trees. ABSOLUTELY no other uses will be permitted in this area.

ARTICLE VI

ANNEXATION

Section 1: If and when the property of Sandia Heights South, Unit 19, meets the statutory annexation requirements enabling annexation of the property to the City of Albuquerque, such property shall, at the option of the City, be so annexed and become a part of the City.

Section 2: At such time of annexation, if ever, all property owners may be required to pay their proportionate share of bringing the water and sewer system servicing the property into compliance with all applicable standards imposed by the appropriate governmental authorities.

ARTICLE VII

Any part or all of the right, title, and interest in the estate reserved by the Grantor herein or owned by the Grantor may be transferred or assigned to any person, firm or corporation by appropriate instrument in writing duly executed by the Grantor and recorded in the office of the Clerk and Recorder of Bernalillo County, New Mexico and whenever the Grantor is hereby referred to such reference shall be deemed to include its successors and assigns.

ARTICLE VIII

If the parties hereto or any of them or their heirs, executors, administrators, successors, or assigns shall violate or attempt to violate any of the covenants herein provided, any other person or persons owning any lot or tract on said property, or the Grantor, shall have the right to prosecute any action in the proper court to enjoin such party of violating such covenant or to recover such damages for such violation or both.

No delay or omission on the part of the Grantor, its successors or assigns or the owners of other lots within the property, having a right hereunder to exercise the saw, 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 thereof or acquiescence therein and no right of action shall accrue or shall any action be brought or maintained by anyone whatsoever against the Grantor, its successors or assigns for or on account of failure or neglect to exercise any right, power or remedy herein provided for in the event of breach of any of these covenants, restrictions or reservations.

ARTICLE IX

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