

Disclaimer:

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DECLARATION OF RESTRICTIONS

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SANDIA HEIGHTS SOUTH, UNIT 28C

BERNALILLO COUNTY, NEW MEXICO

KNOW ALL MEN BY THESE PRESENTS:

That SANDIA PEAK TRAM COMPANY, a New Mexico corporation, hereinafter called Grantor, being the owner of the following described property situate in Bernalillo County, New Mexico, to-wit:

Lots numbered 2873 through 2900, inclusive, SANDIA HEIGHTS SOUTH, UNIT 28C, as the same is shown and designated on the plat thereof filed in the office of the County Clerk of Bernalillo County, New Mexico, on the 16th day of November, 1990;

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 lots in said subdivision shall be sold or conveyed.

All the 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 and bind all subsequent owners thereof; said restrictions, reservations and covenants being 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 year 2015 A.D., at which time said covenants shall be automatically extended for successive periods of ten (10) years. These covenants may be amended at any time by the affirmative vote of the then record owners of three-fourths (75%) of the residential lots in said subdivision, Sandia Heights South, Unit 28C.
2. If the parties hereto, or any of them, or their grantees, successors-in-interest or assigns, shall violate or attempt to violate any of the covenants herein provided, Grantor or any person or persons owning any real property in said Sandia Heights South, Unit 28C, shall have the right to prosecute any action in the proper court to enjoin such party from violating such covenant, or to recover damages for such violation, or both.

South Unit 28C

3. Invalidation of any of these covenants shall in no way affect the validity of the other provisions, which will remain in full force and effect.
4. All lots in Sandia Heights South, Unit 28C, are hereby designated as residential lots. No structures shall be erected, altered, placed or permitted to remain on any lot other than single-family dwellings not to exceed 18 feet in height per 1985 UBC 409 and buildings related thereto, except that this provision shall not prevent the combination of adjoining lots for one such dwelling; however, in no event shall any lot be further subdivided.
5. An Architectural Control Committee, hereinafter called the Committee, is hereby established consisting of Robert M. Murphy, Louis Abruzzo and Cleve Matthews as the appointees, to serve for a period of ten (10) years from the date hereof or 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 appointment or a successor by the members of the Committee, provided that within 30 days of any appointment, owners of a majority of the residential lots may select other appointees in their stead.
6. BEFORE ANYONE SHALL COMMENCE THE CONSTRUCTION, REMODELING, OR ALTERATION OF ANY BUILDING SWIMMING POOL, WALL, FENCE, TANK, ANTENNA, VISIBLE MECHANICAL EQUIPMENT OR OTHER STRUCTURE WHATSOEVER, ON ANY LOT, PLANS SHALL BE SUBMITTED TO THE GRANTOR FOR TRANSMITTAL TO THE ARCHITECTURAL CONTROL COMMITTEE:
 - a. Preliminary floor plans, elevations and location of the structure on the lot; and
 - b. After approval of preliminary plans, two complete sets of the final plans and specifications for said work.
7. No structure or improvement of any kind shall be erected, altered, placed or maintained upon any lot 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 of any structures proposed to be constructed, placed, altered, or maintained, and elevation of same, together with the proposed color scheme for roofs and exteriors thereof, indicating materials for same.
8. No mechanical or other device not a part of or a replacement for original construction shall be installed or maintained on the roof or exterior surface of any house. Any visible heating or air conditioning equipment shall be thoroughly screened on all four sides with a stucco wall or other approved weatherproof material and color coated to match the house. Solar heating equipment will be considered for approval based on the merit of its design and the manner in which it is constructed so as not to be seen or detract from other homes in the subdivision.
9. The Architectural Control Committee WILL NOT APPROVE the following:
 - a. WHITE ROOFING MATERIAL.
 - b. TRANSLUCENT OR TRANSPARENT GARAGE DOORS.
 - c. CHOICE OF EXTERIOR COLORS WHICH DO NOT BLEND INTO THE NATURAL TERRAIN.
 - d. OUTSIDE CLOTHESLINES.
 - e. VISIBLE BUTANE OR PROPANE TANKS OR AIR CONDITIONERS.

- f. BRICK OR BRICK VENEER EXTERIOR.
 - g. ROOFTOP DECKS, DECK ADDITIONS, OR ROOM ADDITIONS/ALTERATIONS TO EXISTING HOUSES.
10. The Architectural Control Committee is authorized to charge not more than \$250 for review of plans for structures and alterations. At the time of submission of the plans and specifications as set forth herein, the owner shall pay said fee in advance to the Grantor. 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 other copy thereof shall be retained by the Grantor.

The Committee shall have the right to disapprove any plans, specifications or details submitted to it as aforesaid, in the event such plans and specifications are not in accord with all the provisions of this Declaration, or if a design or scheme in the proposed structure is not in harmony with the general surroundings of such lot or the adjacent structure, or if the structure shall unduly interfere with the view from nearby residences, or if the Committee deems said plans and specifications to be contrary to the interest and the welfare and rights of all or any part of Sandia Heights South, Unit 28C. The decision of the Committee in any of these matters shall be final and no building or improvement of any kind shall be constructed or placed upon any lot in Sandia Heights South, Unit 28C, without the prior consent of the Committee.

Neither the Committee, its members, nor the Grantor shall be responsible in any manner whatsoever for any defect in any plans or specifications submitted nor as revised by said Committee or the Grantor, or for any work done pursuant to the requested changes of said plans and specifications.

- 11. No trade or offensive activity of any kind shall be carried on upon any lot which shall constitute an annoyance or nuisance to the neighborhood.
- 12. No trash or garbage shall be burned on the premises. Garbage shall be placed in covered containers, said containers to be concealed from public view by an attractive enclosure. The collection service provided by Sandia Peak Services or their successors or assigns must be used.
- 13. No trailer, tent, shack, garage or other outbuilding shall be used as a residence, temporarily or permanently.
- 14. No commercial type vehicles, trucks, campers, boats, house trailers, mobile homes, recreational vehicles, or camper trailers shall be visibly parked or stored on any residential lot 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 pickup truck, shall not be deemed a commercial vehicle or truck. Such vehicle shall be deemed a commercial vehicle or truck 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 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 30 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 charges shall become a lien upon the recording of a notice of a lien and shall be enforceable.

15. Parking Areas, Vehicles: For overnight parking, each owner shall park his vehicles in their garage or in the driveway.

There shall be no overhauling or rebuilding of any vehicle or machine in any driveway or street, or in front of any property.

16. The exterior of all buildings on all lots shall be finished according to plans approved by the Architectural Control Committee within twelve (12) months of start of construction.
17. Each residence shall be provided with a method of sewage disposal meeting the recommended standards of the Environmental Impact Division of the State of New Mexico and approved by the Architectural Control Committee. Garbage and waste shall be kept in covered metal containers.
18. Landscaping: (a.) Front yard landscaping to be installed by the home builder in accordance with the County approved landscape plan. (b.) No Chinese Elms, Poplar, cotton-bearing cottonwood trees or Bermuda grass shall be maintained on any lot. (c.) Lawns shall be in an enclosed area. (d.) Natural vegetation is to be restored to its original state whenever and wherever possible within 180 days of the completion of construction of the house located on any lot. All side yards facing the street on corner lots and rear yards must be landscaped with natural plants and/or southwestern type landscape within six (6) months of completion and/or occupancy of the unit. (e.) All dead vegetation, including trees, shall be removed and replaced by the owner within thirty (30) days. Plantings to be trimmed and cut by the owner as necessary at regular intervals to maintain them in a neat and attractive manner.
19. Without specific approval of the Architectural Control Committee, no grouping of trees shall be planted to constitute a screen. 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. Drainage easements as identified on the plat must be observed and maintained by each owner. Public agencies and Grantor or its designee shall have the right to enter upon all drainage easements for construction and maintenance of drainage facilities.
20. Access roads and utility easements are dedicated and reserved as shown on the Plat of the subdivision. All rights to minerals, water, oil and natural gas underlying the property are reserved to the Grantor.
21. No animals shall be kept on any lot except domestic cats and dogs. Keeping of these animals will be in accordance with County ordinances.
22. No wire fences shall be maintained in the residential area of the subdivision, except by Grantor, on subdivision boundaries. Fences, walls and patios must adhere to approval by the Architectural Control Committee. No signs of more than five (5) square feet shall be maintained within the subdivision after completion of the original development and sale

of the dwelling units unless specifically approved by the Architectural Control Committee. All signs, other than a typical "for sale" or "for rent" sign, must be approved by the Architectural Control Committee.

23. No lot may be further subdivided, nor may a portion of any residential lot be sold except to adjacent property holders for the purpose of increasing the size of an adjacent lot. No room or rooms in any residence may be rented or leased to any person, providing, 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.
24. It shall be the responsibility of owners of lots, vacant or otherwise to keep said lots, and all easement areas encompassed within the exterior boundaries of said lot, clear of trash, rubbish or noxious materials.
25. Basketball backboards, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate plantings or walls so as to conceal them from view of neighborhood residential units and streets. No clotheslines shall be erected on any lot. Basketball backboards must have specific approval by the Architectural Control Committee prior to installation. TV and Radio antennas and satellite dishes will not be considered.
26. No unshaded flood lights shall be maintained which cause light to shine directly into the home of any other resident in the subdivision.
27. Retaining walls shall be party walls if placed on a common property line of two lots and shall not be removed by either property owner.
28. 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.
29. In the event any owner fails to remove debris or unsightly material, the Grantor may remove said debris or unsightly material and charge the cost of removal, including reasonable overhead charge, against the owner together with interest. If such charge is not paid to the Grantor within thirty (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 fifteen percent (15%) 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 recording of a notice of lien and said lien may be foreclosed by the Grantor against the property, the same as any mechanic's lien, and interest costs and reasonable attorney 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 due, a description of the property and the name of the owner or reputed 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 issue a further notice similarly signed and acknowledged, stating that said lien has been satisfied and releasing the same. Each owner of any lot or tract by his acceptance of a conveyance of 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 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 mechanic's lien, 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 the foreclosure sale. Said lien shall be subordinate to the lien or charge of any prior mortgage or deed of trust for value on said property.
30. Any and all of the right, title interest and estate given to or reserved by the Grantor herein or on the plat 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 whatever the Grantor is hereby referred to, such reference shall be deemed to include its successors and assigns.
 31. **Garage Doors:** Garage doors shall be kept closed at all times except when in immediate use.
 32. Alarm systems installed in houses and automobiles must be regulated to terminate within five (5) minutes.
 33. **Roads and Utilities.** Access roads, easements 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 Boulevard or Tennyson Road, 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.
 34. **Special Easement for Construction and Maintenance.** Certain residential structures in SANDIA HEIGHTS SOUTH, UNIT 28C, are constructed close to the next lot line. There is hereby established an easement approximately five feet (5') 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.

35. Wood fences are restricted to the side and rear lot lines, except for corner lots. Corner lots are restricted to having wood fences at the rear lot line.
36. If and when the property of SANDIA HEIGHTS SOUTH, UNIT 28C, 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.

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

No delay or omission on the part of the undersigned, its 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 thereof or acquiescence therein; and no right or action shall accrue, nor shall any action be brought or maintained by anyone whatsoever against the undersigned, 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 said covenants, restrictions, or reservations.

Note: Signatures on file in the SHHA office.

**FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS
SANDIA HEIGHTS SOUTH UNIT 28C SUBDIVISION
BERNALILLO COUNTY, NEW MEXICO**

THIS FIRST AMENDMENT to the DECLARATION OF RESTRICTIONS, SANDIA HEIGHTS SOUTH, UNIT 28C SUBDIVISION is entered into, by and between the record owners of the lands comprising at least seventy-five percent (75%) of the parcels of land in SANDIA HEIGHTS SOUTH UNIT 28C SUBDIVISION.

WHEREAS, SANDIA HEIGHTS SOUTH UNIT 28C is more particularly described on the plat of said Subdivision as such plat was filed with the County Clerk of Bernalillo County on November 16, 1990, at Book 9CC, at Folio 281; and

WHEREAS, the Declaration of Restrictions of SANDIA HEIGHTS SOUTH UNIT 28C was filed with the County Clerk of Bernalillo County on December 26, 1990, at Book BCR 90-20, at Pages 45 15-4522; and

WHEREAS, best efforts were used to notify all twenty-eight (28) residences in person or by other means (telephone or electronic mail) to obtain a signature;

WHEREAS, at least seventy-five percent (75%) of the current record owners of the residential lots in SANDIA HEIGHTS SOUTH UNIT 28C SUBDIVISION desire to modify paragraph 9g. of the Declaration of Restrictions filed on December 26, 1990, by allowing additions which do not violate the intent of the original Declaration of Restrictions; and

WHEREAS, the record owners of at least seventy-five percent (75%) of the residential lots in SANDIA HEIGHTS SOUTH UNIT 28C SUBDIVISION have executed a written instrument and voted to amend the Declaration of Restrictions of said SANDIA HEIGHTS SOUTH UNIT 28C SUBDIVISION, as shown by the signatures on the amendment petition, attached hereto as Exhibit A, and which is on file at the office of the Sandia Heights

South Unit 28C

Homeowners Association, Inc.;

NOW, THEREFORE, BE IT RESOLVED that the Declaration of Restrictions of SANDIA HEIGHTS SOUTH UNIT 28C SUBDIVISION is hereby amended as follows:

Paragraph 9g. shall read:

“9g. ROOFTOP DECKS, DECK ADDITIONS, OR ROOM ADDITIONS /ALTERATIONS TO EXISTING HOUSES, EXCEPT THAT APPROVAL OF A VARIANCE FOR ANY ADDITION SHALL BE BASED UPON MEETING THE FOLLOWING REQUIREMENTS:

(1) does not extend beyond the current roof line in height; (2) cannot be seen from the street on which the house faces; (3) is not readily seen by nearby residences; (4) does not affect the existing views that nearby residences have; (5) does not invade the privacy of adjacent neighbors; (6) does not encroach on the existing minimum distance between any other part of the applicant’s structure and the lot lines, both side and rear.”

All provisions of the above noted Declaration of Restrictions not specifically changed or modified herein shall remain in full force and effect.

Note: Signatures on file in the SHHA office.