

Disclaimer:

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95057820 Declaration of Protective Covenants and Restrictions 0398

**SANDIA HEIGHTS SOUTH, UNIT 8C,
BERNALILLO COUNTY, NEW MEXICO**

KNOW ALL MEN BY THESE PRESENTS:

That Morgan Real Estate and Development Inc., a New Mexico corporation, hereinafter call Grantor, being the owner of the following described property situated in Bernalillo County, New Mexico, to-wit:

Lots number 8201 through 8252 inclusive of SANDIA HEIGHTS SOUTH, UNIT 8C, 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 day of 1995

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 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 and bind all subsequent owners thereof; said covenants, reservations and restrictions being as follows:

1. These covenants, reservations and restrictions 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, reservations and restrictions shall be automatically extended for successive periods of ten (10) years. These covenants, reservations and restrictions may be amended at any time by a recorded instrument, executed and acknowledged by the then record owners of not less than two-thirds (66%) of the residential lots in said Sandia Heights South, Unit 8C.
2. Of 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, reservations and restrictions herein provided, Grantor, the Architectural Control Committee (hereinafter called the "Committee"), any person or persons owning any real property in said Sandia Heights

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South, Unit 8C, or the Sandia Heights Homeowners Association (hereinafter called the "Association"), on behalf of such owners, shall have the right to enforce by proceeding, at law or in equity, for damages or for injunction or both, all restrictions, covenants, conditions, rights and duties imposed, allowed, or granted by the provisions of this Declaration. In any such proceedings, the prevailing parties shall be entitled to recover cost and expenses, including reasonable attorney's fees.

3. Invalidation of any of these covenants and restrictions 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 8C, are hereby designated as residential lots. Sandia Heights South, Unit 8C, is zoned SU-Residential for one-story, planned development. No structures shall be erected, altered, placed or permitted to remain on any lot other than one story, single-family dwellings 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. The Grantor may dedicate one or more lots or any portion thereof, as a park. No structures shall be erected, altered, placed or permitted to remain on Lots numbered 8201 through 8227, inclusive, and 8237 through 8252 inclusive, of Sandia Heights South, Unit 8C, that exceed eighteen (18) feet in height. No structures shall be erected, altered, placed or permitted to remain on Lots numbered 8228 through 8236, inclusive, of Sandia Heights South, Unit 8C, that exceed seventeen (17) feet in height.
5. A Committee is hereby established, consisting of Don Morgan, Ted Zmroczek, Scott Schiabor, Bill Chreist, and Richard Krumbein as the appointees, to serve for a period of ten (10) years from the date hereof and until their successors shall be appointed and qualify. At least one appointee to the Committee shall be a member of the Board of Directors of the Association. Vacancies occurring either before the end of or as a result of the expiration of such 10-year term shall be filled by appointment of a successor 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. A majority constitutes a quorum in any meeting of the Architectural Control Committee.
6. BEFORE ANYONE SHALL COMMENCE CONSTRUCTION, INCLUDING WITHOUT LIMITATION SITE PREPARATION CLEARING OF NATURAL VEGETATION OR EXCAVATION, INSTALLATION, REMODELING OR ALTERATION OF ANY BUILDING, SWIMMING POOL, WALL, FENCE, TANK OR OTHER STRUCTURE WHATSOEVER, ON ANY LOT, PLANS SHALL BE SUBMITTED TO THE COMMITTEE THAT INCLUDE THE REQUIREMENTS LISTED IN (a) and (b:); PROVIDED, HOWEVER, THAT THE FOLLOWING NOT BE THE SOLE BASIS FOR CONSIDERATION, BY THE COMMITTEE [SEE ITEMS NUMBERED SEVEN (7), EIGHT (8), AND NINE (9) OF THIS DECLARATION;
 - a. Plot plans showing the location on the lot of any structures proposed to be constructed, placed, altered, or maintained; floor plans and elevations; finished

- grades different from the existing grades on the lot; proposed colors, including color schemes for roofs and all exteriors, indicating materials for same.
- b. Two complete sets of the final plans and specifications for said work.

No construction, structure, or improvement shall commence or 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. All construction, improvements, installations, remodeling, or alterations shall comply strictly with the approved plans, and any terms and conditions imposed by the committee in its written approval. Once approved, no construction, structure, or improvement may vary from the approved plan without further written approval of the Committee. Any person purchasing any portion of the property subject to this Declaration acknowledges that the breach or violation of this covenant is likely to result in irreparable harm to the rights and interests of other owners in the subdivision and that the Grantor, the Committee or the Association, on behalf of such owners, shall be entitled to injunctive relief, temporary or permanent, in order to prohibit such violation; provided, however, that this provision shall be in addition to any other remedies available hereunder or at law or equity.

7. The Committee is authorized to charge not more than \$150 for review of plans. At the time of submission of the plans and specifications as set forth herein, the owner shall pay said fee in advance. The Committee shall provide full approval, conditional approval, or disapproval of said plans and specifications in writing within thirty (15) days from the receipt thereof. All conditions of approval and variances shall be confirmed in writing. 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 Committee. Should the Committee fail either to approve or disapprove any plans or specifications submitted to it within said thirty (15) day period, failure to do so shall not be construed as a tacit approval of said plans and specifications, nor shall such failure to approve or disapprove constitute a waiver of the Committees absolute authority to approve plans and specifications prior to construction, alteration, or placement of improvements. Approval of plans and specifications for all construction installations, improvements, remodeling, or alterations shall be valid only for a period of one (1) year. Failure to commence and complete construction within one (1) year following date of approval shall require reapplication and resubmittal of plans, specifications, and fees to the Committee.

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. Considerations may include, but shall not be limited to, the following: if a color is not a natural earthtone (brown) or other color approved in writing by the Committee; if the proposed Structure is not in harmony with the general surroundings of such lot or the adjacent structure; if the structure shall unduly disturb trees, ground cover, rocks, for other natural features on the lot; if the structure shall unduly interfere with the view from nearby residences; 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 8C. The decision of the Committee in any these

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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 8C, without the prior written 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

8. Any visible equipment shall be thoroughly screened. 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 detract from other homes in the subdivision. Roof-mounted solar equipment will be difficult to conceal; however, if the color and structure are done in good taste, this type of installation can be considered for approval
9. The Architectural Control Committee WILL NOT APPROVE the following:
 - a. EXTERIOR USE OF COLORS THAT ARE NOT NATURAL EARTH TONES (BROWN) OR COLORS NOT APPROVED IN WRITING BY THE COMMITTEE. APPROVED COLORS AS THE FILING DATE OF THIS DECLARATION OF RESTRICTIONS ARE THE FOLLOWING COLORS MANUFACTURED BY STO INDUSTRIES: PECOS (# 01001), ABIQU (#01002), SANTA FE MOCHA (#01003), ADOBE BROWN (#01004), PUEBLO (#01005), SUEDE (#01006), DESERT LACE (#01007), CHAMISA (#01010), TUMBLEWEED (#01011), SEDONA (#01013), PALOMA (#01014), CIMMARON (#01015), AND MESA DEL SOL (#01016). USE OF COLORS OTHER THAN BROWNS OR THOSE SPECIFICALLY NAMED ABOVE MUST BE APPROVED IN WRITING BY THE COMMITTEE PRIOR TO USE OR APPLICATION.
 - b. WHITE ROOFING MATERIAL.
 - c. TRANSLUCENT OR TRANSPARENT, GARAGE DOORS
 - d. OUTSIDE CLOTHESLINES, RADIO ANTENNAS, TV ANTENNAS AND SATELLITE DISCS.
 - e. BUTANE OR PROPANE TANKS.
 - f. FRONT COURTYARD WALLS WILL BE ALLOWED.
 - g. WALLS OR FENCES TALLER THAN SIX (6) FEET ABOVE THE NATURAL GRADE ON THE LOT.
 - h. UNSCREENED GROUND-MOUNTED OR ROOF-MOUNTED HEATING AND AIR CONDITIONING EQUIPMENT.
 - i. BRICK OR BRICK VENEER EXTERIORS.
10. Construction of any structure or improve shall be continuous and proceed in an orderly fashion without interruptions, and any structure or improvement on any lot shall be completed in a reasonable time, not to exceed twelve (12) months from the commencement of construction. Commencement of construction shall mean the first on-site work for construction, including, but not by way of limitation, excavation the purpose of foundation.

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11. Materials and equipment necessary for construction, and all debris resulting from clearing or construction, shall be confined to the lot and shall not be permitted on any other lots, common, areas or roadways. During constructions a receptacle must be on site to contain all trash and debris.
12. 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 Committee. Garbage and waste shall be kept in covered metal or plastic containers of adequate weight so as not to turn over or blow over and litter the neighborhood.
13. Landscaping: No Chinese Elms, or Poplar, cotton-bearing Cottonwood trees or Bermuda grass shall be maintained on any lot. Lawns shall be in an enclosed area. In keeping with the long standing commitment of the Sandia Heights community to water conservation, it is recommended that property owners restrict the area to a maximum of 500 square feet on any lot. All front yards, side yards facing the street on corner lots and rear yards facing an internal subdivision street must be landscaped with natural plants and/or southwestern type landscape within six (6) months of completion and/or occupancy of the unit.
14. Without specific approval of the Committee, no grouping of trees shall be planted to constitute a screen nor may any grouping of trees, shrubs, or hedges be planted that shall unduly interfere with the view from nearby residences.
15. 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. Public agencies and Grantor or its designee shall have the right to enter upon all drainage easements for construction and maintenance of drainage facilities.
16. 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.
17. No wire fences shall be maintained in the residential area of the Subdivision, except by Grantor, on subdivision boundaries. Fences, walls, patios and porches must adhere to approval by the Committee.
18. 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 Committee. All signs, other than a typical "for sale" or "for rent", sign, must be approved by the Committee.
19. 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.

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20. Basketball backboards, equipment, garbage cans, service yards, woodpiles or storage piles shall be kept screened by adequate planting, fencing or other acceptable screening techniques so as to conceal them from view of neighborhood residential units and streets. Backboards shall be clear or earthtone colors (tans, browns - no whites) to blend with the natural surroundings.
21. 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.
22. In the event any owner fails to remove debris or unsightly material, the Grantor or the Association may remove said unsightly material and charge the cost of removal, including reasonable overhead charge against the owner, together with interest. If such charge is not paid 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 or the Association 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 or the Association 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 its agent or the Association, and acknowledged. Upon the satisfaction of said lien, the Grantor, its agent, or the Association shall issue a further notice similarly signed and acknowledged stating that said lien had 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, or the Association 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, or the Association shall be subordinate to the lien or charge of any prior mortgage or deed of trust for value on said property.
23. 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 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.
24. 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 Boulevard or San Bernardino, other than those as shown on the plat of the property. No

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utilities on lots or tracts within the property shall be installed or maintained above ground, except during construction.

25. By acceptance of a deed to his or her property, each owner of a residence in Sandia Heights South, Unit 8C agrees to be a member of the Sandia Heights Homeowners Association, a New Mexico corporation formed pursuant to the Nonprofit Corporation Act, which ownership shall be the only criterion for membership in the Association. The purpose of the Association is to coordinate and implement the management of such services and activities as may be necessary or desirable to promote the common interests and welfare of the property owners of record and residents located in Sandia Heights South, Unit 8C of the County of Bernalillo, New Mexico, in order to preserve the quality of life for which the subdivision was established.
26. If and when the property of SANDIA HEIGHTS SOUTH, UNIT 8C, 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.
27. Retaining walls shall not be removed or moved. Walls and fences must be constructed of adobe, brown slump block, or stuccoed cement block. Other construction materials for walls and fences shall not be permitted. Side yard walls must be located on the property boundaries. Front courtyard walls will be allowed.

USE RESTRICTIONS

1. No trade or offensive activity of any kind shall be carried on upon any lot, nor shall anything be done on any lot which shall constitute an annoyance or nuisance to the neighborhood. Without limiting the generality of any of the foregoing provisions, no speakers, horns, whistles, bells or any other devices, except security devices used exclusively for security purposes, shall be located, used or placed on any lot which are audible from neighboring lots.
2. 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.
3. No trailer, tent, shack, garage or other vehicle or outbuilding shall be used as a residence, temporarily or permanently.
4. No commercial type vehicles, trucks, boat or horse trailers, campers or camper shells, 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 which 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

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deemed a commercial vehicle or truck when equipped with a camper and shall not be exempt from the restrictions heretofore mentioned in this section.

5. 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 or the Association 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 lien and shall be enforceable.
6. No motor vehicle or trailer of any type shall be constructed, reconstructed or repaired on any street or any lot in such a manner as will be visible from neighboring property.
7. All dead vegetation, including trees, shall be removed within thirty (30) days. Plantings to be trimmed and cut as necessary or regular intervals to maintain them in a neat and attractive manner.
8. No animals shall be kept on any lot except domestic cats and dogs. Keeping of these animals will be in accordance with County ordinances.
9. 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.
10. 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, unused building and/or landscaping materials, rubbish or noxious materials.
11. No neon arc lamps or mercury lights shall be permitted. No unshaded flood lights shall be maintained which cause light to shine directly onto the property or into the home of any other resident in the subdivision. All exterior lighting shall be maintained and installed to minimize light pollution.
12. Garage Doors: Garage doors shall be kept closed at all times except when in immediate use.
13. No building or structure within the subdivision shall be permitted to fall into disrepair, and each such building or structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Such duty to repair shall include the maintenance of any exterior structures and finish which was included in the plans approved by the Committee.
14. In order to preserve the natural views of the subdivision pitched roofs are not recommended, and must be approved by the Architectural Control Committee.

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15. Houses will be restricted to a minimum of 2,000 square feet on all lots with the exception of Lots #5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16. These lots will be restricted to a minimum of 1,800 square feet.

No delay or omission on the part of the undersigned, its successors or assigns, the Committee, the Association 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 of action shall accrue, nor shall any action be brought or maintained by anyone whatsoever against the undersigned, its successors or assigns, the Committee or the Association 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.

Signatures on file in the SHHA office.