

Disclaimer:

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DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

**93081465 SANDIA HEIGHTS SOUTH, UNIT 21385-393
WILLOW BEND SUBDIVISION
BERNALILLO COUNTY, NEW MEXICO**

KNOW ALL MEN BY THESE PRESENTS:

That CENTEX HOMES, hereinafter called Grantor, being the owner of the following described property situate in Bernalillo County, New Mexico, to-wit:

Lots numbered 2100 through 2186, inclusive, SANDIA HEIGHTS SOUTH, UNIT 21, 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 21st day of May, 1993;

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, restrictions and reservations 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 recorded written 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 21.
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, 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 South, Unit 21, 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 restriction shall in no way affect the validity of the other provisions, which remain in full force and effect.
4. All lots in Sandia Heights South, Unit 21, are hereby designated as residential lots. No structures shall be erected, altered, placed or permitted to remain on any lot other than one single-family dwelling 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 NEIGHBORHOOD WILL BE RESTRICTED TO A MAXIMUM OF 75% TWO STORY HOMES OR A CAP OF SIXTY-FIVE (65) TWO STORY HOMES. AT LEAST FIVE (5) ONE STORY HOMES WILL BE CONSTRUCTED ON LOTS 1 - 11, 27, 28, 37, AND 38. AT LEAST EIGHT (8) ONE STORY HOMES WILL BE CONSTRUCTED ON LOTS 59 - 78. THE REMAINING NINE (9) ONE STORY HOMES MAY BE SCATTERED THROUGHOUT THE NEIGHBORHOOD. TWO STORY UNITS MAY NOT EXCEED 23' TO THE TOP OF THE PARAPET.

NO HOUSE SHALL BE LOCATED ON ANY LOT IN SUCH A MANNER AS TO VIOLATE THE BERNALILLO COUNTY APPROVED SITE DEVELOPMENT PLAN FOR TRACT 3A, SANDIA HEIGHTS SOUTH, UNIT 21. THE SETBACKS ARE ESTABLISHED BY AND CONTAINED IN THE SITE DEVELOPMENT PLAN.

5. A Committee is hereby established, consisting of Lynn M. Johnson, Steve Lassiter and Tim Woodruff 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 of a successor by the members of the Committee. Within thirty (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, INCLUDING WITHOUT LIMITATION, SITE PREPARATION, CLEARING OF NATURAL VEGETATION OR EXCAVATION, INSTALLATION, REMODELING, OR ALTERATION OF ANY BUILDING, SWIMMING POOL, WALL, FENCE, TANK, ANTENNA, SATELLITE RECEIVER DISH, 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 REQUIREMENTS SHALL 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 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 or the Committee, 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 \$250.00 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 (30) 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 thirty (30) 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 Committee's absolute authority to approve plans and specifications prior to construction, alteration, or placement of improvements. Approval of plans and specifications for all construction, installation, improvements, remodeling or alterations shall be valid only for a period of one 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 proposed 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, or 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 21. 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 21, 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.

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 be seen or 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 EARTHTONES (TANS/BROWNS) OR COLORS NOT APPROVED IN WRITING BY THE COMMITTEE (NO WHITE OR OFF-WHITE).
 - b. WHITE ROOFING MATERIAL.
 - c. TRANSLUCENT OR TRANSPARENT GARAGE DOORS.
 - d. OUTSIDE CLOTHESLINES, RADIO ANTENNAS, TV ANTENNAS AND SATELLITE DISCS.
 - e. RAISING OF WALLS NOT CONSISTENT WITH EXISTING WALL MATERIAL.
 - f. UNSCREENED, GROUND-MOUNTED OR ROOF-MOUNTED HEATING AND AIR CONDITIONING EQUIPMENT.
 - g. BRICK OR BRICK VENEER EXTERIORS.
10. Construction of any structure or improvement shall be continuous and proceed in an orderly fashion without interruptions, and any structure or improvement on a lot shall be completed in a reasonable time, not to exceed twelve (12) months from the date the plans were approved by the Committee. Failure to complete structures or improvements within a 12 month time frame will necessitate reapplication in accordance with paragraph 7 above.
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 construction, 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: (a.) Southwest style front yard landscaping to be installed by the homebuilder in accordance with the approved landscape plans. (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 and shall not exceed 500 square feet. (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.
14. Each dwelling shall be developed in such a manner as to comply with the County approved drainage plan. Public agencies and Grantor or its designee shall have the right to enter upon all easements for construction and maintenance of utility facilities.
 15. 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.
 16. No wire fences shall be maintained in the area of the subdivision, except by Grantor, on subdivision boundaries. Fences, walls, patios and porches must adhere to approval by the Committee.
 17. No signs of more than five (5) square feet with the exception of the entry signs 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.
 18. 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.
 19. Garbage cans, equipment, service yards, woodpile or storage piles shall be kept screened by adequate plantings, fencing or other acceptable screening techniques so as to conceal them from view of neighborhood residential units and streets. Only pole mounted basketball backboards will be acceptable.
 20. 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 within twelve (12) months of the incident.
 21. 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 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 or its agent or assigns, the right and power to bring all actions against such owner personally for collection of all charges provided for in his 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 or its agent or assigns, shall be subordinate to the lien or charge of any prior mortgage or deed of trust for value of said property.

22. 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 Grantor is hereby referred to, such reference shall be deemed to include its successors and assigns.
23. **Road 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 Tennyson Street, 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.
24. By acceptance of a deed to his or her property, each owner of residence or lot in Sandia Heights South, Unit 21 agrees to be a member of the Willow Bend Homeowners Association upon establishment of such. The purpose of the Association is to coordinate planning 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 21 of the County of Bernalillo, New Mexico, in order to preserve the quality of life for which the subdivision was established.
25. If and when the property of SANDIA HEIGHTS SOUTH, UNIT 21, 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.
26. Retaining walls shall not be removed. Walls and fences must be constructed of adobe, brown slump block to match the existing slump used by the Grantor, stuccoed cement block, cedar, or redwood. Other construction materials for walls and fences shall not be permitted. Wood fences are restricted to the side and rear lot property lines, except for corner lots. Corner lots are restricted to having wood fences at the rear property line.

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 provision, 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. The collection service provided by Sandia Peak Services or their successors or assigns must be used.
 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 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.
 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 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.
 6. No motor vehicle or trailer of any type shall be constructed, reconstructed or repaired on any street or in front of 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 shall be trimmed and cut as necessary at regular intervals to maintain them in a neat and attractive manner. Some low-maintenance plantings have been provided by the Grantor in Willow Bend in an effort to maintain and add to the attractive nature of the neighborhood. Maintenance of these areas will be detailed as follows:
 - a. Landscaped entrance areas at the rear of lots 2169 and 2170 will be the responsibility of those lot owners respectively, including maintenance of the entrance monument. Low-maintenance trees and plant material on the east side of Navajo Willow Drive will be the responsibility of lot owners 2101 through 2111 and 2127. More specifically, each lot owner will be responsible for that area of landscaping that is encompassed as the lot lines are extended in an easterly fashion to the base of the retaining wall on the east side of Navajo Willow Drive (Exhibit "B").
 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.

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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, but not by way of limitation, the maintenance of any exterior structures and finish included in the plans approved by the Committee.

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 of 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.

ASSIGNMENT

WHEREAS, Centex Homes was the developer and Grantor of Willow Bend Subdivision, Sandia Heights South, Unit 21, located in Bernalillo County, New Mexico, and pursuant to that development, it prepared and recorded certain declarations of restriction on said subdivision ("Covenants"), which were filed on June 25, 1993 in Book 93-16, pages 7020-7028, with the office of the County Clerk of Bernalillo County, New Mexico;

WHEREAS, on this 4th day of September, 2014 Centex Homes, the Grantor for the Willow Bend Subdivision, the Willow Bend Architectural Control Committee, and the Willow Bend Homeowners Association (collectively, the "Grantor"), formally assigns to Sandia Heights Homeowners Association ("SHHA"), SHHA's Architectural Control Committee ("SHHA's ACC"), and SHHA's Covenant Support Committee ("SHHA's CSC") (collectively, the "Assignees") all Grantor's rights and obligations in and to the administration and enforcement of the Covenants, effective on this same date, which assignment is effective for the Willow Bend Subdivision, Unit 21 of Sandia Heights South, as further set forth below;

WHEREAS, this written Assignment memorializes the unrecorded Assignment that occurred in the mid-1990's, of all rights and duties addressed herein, under which Assignee and the Unit 21 homeowners have been thereafter operating, with 56 of the 86 properties currently being members of SHHA;

WHEREAS, Grantor desires to assign any and all rights and duties it may have under the Covenants for this subdivision to Assignees;

WHEREAS, Assignees desire to accept the assignment of such rights and to undertake the duties with enforcement of the Covenants;

IT IS THEREFORE AGREED that Grantor hereby assigns to Assignees the rights and duties to enforce the Covenants on the following subdivision:

Sandia Heights South, Unit 21, Willow Bend Subdivision, Lots numbered 2100 through 2186, inclusive, as the same shown and designed on the plat thereof filed in the office of the County Clerk of Bernalillo County, New Mexico, on the 21st day of May 1993.

IT IS FURTHER AGREED that Assignees accept the assignment of such rights and duties, and that following such assignment neither Centex Homes, nor any of its officers, directors, agents or employees; nor its Architectural Control Committee; nor Willow Bend Homeowners Association shall have any further rights, duties and liabilities related to the enforcement of the Covenants.

Executed effective this 4th day of September, 2014.
Recorded in Bernalillo County Records Doc# 2014079682
Signed copies on file in SHHA office.