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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
NORTH TRAMWAY ESTATES**

This Declaration of Covenants, Conditions and Restrictions for NORTH TRAMWAY
ESTATES

("Declaration") is executed this 5th day of May, 2015, by Heights
Investments, LLC, a New Mexico limited liability company ("Grantor")

RECITALS

- A. Grantor is the owner of the following described real property located in Bernalillo County, New Mexico (the "Subdivision"):

Lots Numbered 1 through 14 and Tracts A and B, inclusive, NORTH TRAMWAY ESTATES, as the same shown and designated on the plat thereof filed in the office of the County Clerk of Bernalillo County, New Mexico, on the 11th day of May, 2015, in Book 20156 Page 0052
- B. Grantor entered into a contract with Panorama Homes, Inc., a New Mexico corporation ("Panorama"), whereby Panorama will purchase the Subdivision from Grantor. Panorama intends to develop the Subdivision's infrastructure and improved lots.
- C. Grantor hereby grants Declarant rights for the Subdivision to Panorama Homes, Inc. and Scott Patrick Homes, Inc. Grantor, Panorama and Scott Patrick, together, shall be the "Declarants".
- D. For the purpose of protecting the value, desirability, attractiveness and character of the Subdivision, Declarants intend that the Subdivision shall be held, sold, and conveyed subject to the provisions hereof, which shall run with all of the Subdivision. This Declaration shall be binding on all parties having any right, title or interest in the Subdivision, or any part thereof, and shall inure to the benefit of such parties and their

successors and assigns.

- E. Declarants formed the North Tramway Estates Homeowners Association, a New Mexico nonprofit corporation (hereinafter called the "Association"), which is hereby delegated the powers of maintaining the Common Areas; administering and enforcing this Declaration and the Association's Articles and By-Laws; and collecting and disbursing assessments and charges which are imposed for such purposes.

NOW, THEREFORE, the Declarants hereby declare that the Subdivision and each part thereof, shall be owned, held, transferred, sold, conveyed, encumbered, used, and occupied subject to this Declaration.

ARTICLE 1 **DEFINITIONS**

The following terms when used in this Declaration shall have the following meanings (unless prohibited by the context):

1.1 "Articles" shall mean the Articles of Incorporation of the Association, as filed with the New Mexico Secretary of State, and as they may be amended from time to time.

1.2 "Assessments" shall mean periodic payments that Owners must pay to fund the Common Expenses and Reserves for the Association. Where appropriate, Assessments shall also include Special Enforcement Assessments that may be imposed pursuant to this Declaration.

1.3 "Association" shall mean the North Tramway Estates Homeowners Association, a New Mexico nonprofit corporation, and its successors and assigns.

1.4 "Bernalillo County Agreement" shall mean those certain conditions and restrictions referenced herein which are required by the Bernalillo County Planning Commission as a condition of their approval for development of the Subdivision. Future amendments to those certain conditions may require pre-approval from Bernalillo County prior to amending this Declaration. References to the Bernalillo County Agreement in this Declaration may not be all-inclusive.

1.5 "Board" shall mean the Board of Directors of the Association.

1.6 "By-Laws" shall mean the By-Laws of the Association, as they may be amended from time to time.

1.7 "Common Areas" shall mean those areas of the Subdivision which are for the common use and enjoyment of the Owners. The Common Areas shall include, without limitation, those areas described in Article 3 of this Declaration.

1.8 "Common Expenses" shall mean all expenses and obligations of the Association,

Including allotments to any reserve fund.

1.9 "Declarants" shall mean Heights Investments, LLC, a New Mexico limited liability company; Panorama Homes, Inc., a New Mexico corporation; and Scott Patrick, Inc., a New Mexico corporation; and their respective successors and assigns in interest.

1.10 "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions for North Tramway Estates, as the same may be amended from time to time.

1.11 "Lot" shall mean any separately numbered plot of land shown upon the recorded plat of the Subdivision, as amended from time to time, excluding the Common Areas. Where appropriate, the term "Lot" shall include any dwelling unit placed thereon.

1.12 "Member" shall mean any Owner holding a membership in the Association pursuant to this Declaration, as further set forth in Article 2.

1.13 "Owner" shall mean the record owner, whether one or more persons or entities, of the fee-simple title to any Lot, but shall not mean or refer to any person or entity who or which holds title merely as security for the performance of an obligation. However, "Owner" shall include a record owner of the fee-simple title to any Lot who or which acquired such title at a judicial sale or by a conveyance in lieu of foreclosure.

1.14 "Reserves" shall mean funds set aside by the Association to pay for projected repairs or replacements of Common Areas.

1.15 "SHHA" shall mean the Sandia Heights Homeowners Association, a New Mexico nonprofit corporation, and its successors and assigns.

1.16 "Special Enforcement Assessments" shall mean a fine or reimbursement of expenses that Owners must pay to the Association for violation of this Declaration.

1.17 "Subdivision" shall mean the North Tramway Estates Subdivision, as defined in Section A of the Recitals above, and any and all additions thereto.

ARTICLE 2 **GENERAL PROVISIONS**

2.1 Board of Directors, Officers, Committees and Managers. The affairs of the Association shall be conducted by the Board in accordance with this Declaration and the Articles and By-Laws, and by such officers, committees and managers as the Board may elect or appoint in accordance with the Articles and By-Laws. The Board shall determine the compensation to be paid to any manager or other employee of the Association.

2.2 Membership in the North Tramway Estates Homeowners Association. Every person or entity who or which is a record Owner of a fee-simple interest in any Lot which is subject by the terms of this Declaration shall be a Member of the Association, including, without limitation,

any record Owner who acquired such title at a judicial sale or by a conveyance in lieu of foreclosure. However, any person or entity who or which holds such an interest merely as security for the performance of an obligation shall not be a Member. The rights of membership, including the right to vote, the right to participate in Association affairs, and/or the right to use and enjoy the Common Areas, may be suspended by the Board for any period during which certain delinquencies continue, as provided in the provisions herein and in the Articles and By-Laws. Ownership of a Lot shall be the sole qualification for membership. No Owner shall have more than one membership for each Lot owned by such Owner. Membership shall be appurtenant to and may not be separated from the ownership of any Lot.

2.3 Additional Mandatory Membership in the Sandia Heights Homeowners Association.

Declarants intend to assign, in due time, certain rights and obligations of this Declaration with respect to the enforcement of use covenants and restrictions and with respect to the Association's Architectural Control Committee ("ACC") to the Sandia Heights Homeowners Association ("SHHA"). This is in accordance with Declarants' agreement with the SHHA and the Bernalillo County Planning Commission for the benefit of the Subdivision and the Sandia Heights community as a whole. Declarants hereby have the authority to grant such assignment(s). Beginning on the effective date of the initial assignment of certain rights and obligations to the Sandia Heights Homeowners Association, Every Member of the North Tramway Estates Homeowners Association, as defined in this Article 2 and in the By-Laws, shall also be required to be a member of the Sandia Heights Homeowners Association.

Declarants are exempt from the SHHA membership requirement. Should the SHHA not accept the assignment(s) of rights and obligations when granted, or should the SHHA reassign or otherwise terminate its rights and obligations after acceptance, then membership in the SHHA shall no longer be required by this Declaration.

2.4 Member Voting Rights. Member voting rights for the Association shall be in accordance with the provisions of this Declaration, and the Articles and By-Laws of the Association.

2.5 Creation of the Lien and Personal Obligation for Assessments. Declarants, for each Lot within the Subdivision, hereby covenants, and each Owner of any Lot by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association (i) Assessments for the Common Expenses of the Association; (ii) Assessments for the operation, maintenance, repair, improvement or replacement of the Common Areas; and (iii) Special Enforcement Assessments as set forth in Article 6 of this Declaration. All such assessments, together with interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge and a continuing lien upon the Lot against which each such assessment is made. All such assessments, together with interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot at the time the assessment was made. Any subsequent purchaser of a Lot shall be jointly and severally liable with the selling Owner for all assessments which are unpaid at the time the purchasing Owner takes title.

2.6 Owner Assessments. The Board shall adopt a budget of the estimated Common Expenses

for the Association for each fiscal year, including any contribution to be made to a reserve fund, which budget shall serve as the basis for determining the Assessments. The Assessment shall be levied at a uniform amount for each assessable Lot. Declarants shall be exempt from Assessments for a period of two years following completion of the Subdivision development work. Within a reasonable period following the meeting of the Board at which they adopt the budget for the year in question, the Board shall deliver or mail to each Owner a copy of the budget and a statement of the amount of Assessments to be levied against such Owners Lot(s) for that year. In the event the Board fails to adopt a budget for any fiscal year prior to commencement of such fiscal year, then until and unless such budget is adopted, the budget (and the amount of the assessments provided for therein) for the year immediately preceding shall remain in effect. If the Board determines that the funds budgeted for the fiscal year are, or will, become inadequate to meet all Common Expenses for any reason, the Board may amend the budget and increase the Assessment for that fiscal year, and the revised Assessment shall commence on the date designated by the Board. Neither the budgets nor any Assessments levied pursuant thereto shall be required to be approved by the Owners. Assessments shall be due and payable as determined by the Board.

2.7 Capital Contribution Fee. To ensure that the Association shall have adequate funds for its expenses, each Owner, other than Declarants, who purchases or otherwise obtains a Lot, shall pay to the Association a sum of Two Hundred Fifty and No/1 00 Dollars (\$250.00). Such payment shall become due at the close of escrow or immediately upon the transfer of title to the Lot, whichever occurs first, and shall be required upon each transfer of title to each Lot. Funds paid to the Association pursuant to this Section may be used by Association for payment of Common Expenses or Reserves for the Common Areas. Payments pursuant to this Section shall be nonrefundable and shall not be offset or credited against or considered as advance payment of other Assessments levied by the Association.

2.8 Effect of Nonpayment of Assessments; Remedies of Association. The Association shall have a lien on each Lot for (i) all Assessments levied against the Lot or the Owners, and (ii) any other amounts payable to the Association pursuant to this Declaration and other applicable Association documents, subject to any limitations imposed by New Mexico law. Such lien(s) shall be prior and superior to all other liens affecting the Lot in question, except (i) taxes, bonds, assessments and other levies which, by law, are superior thereto, and (ii) the lien or charge of any First Mortgage made in good faith and for value. Such liens may be foreclosed in the manner provide by law for the foreclosure of mortgages. The sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of the Assessments as to payments which became due prior to such sale or transfer, but shall not relieve such Lot from liability for any Assessments becoming due after such sale or transfer, or from the lien thereof. Recording of this Declaration constitutes record notice and perfection of the liens established hereby, and further recordation of any claim of a lien for Assessments or other amounts hereunder shall not be required, whether to establish or perfect such lien or to fix the priority thereof; or otherwise (although the Board shall have the option to record written notices of claims of lien in such circumstances as the Board may deem appropriate). The Board may invoke any or all of the sanctions provided for herein or in this Declaration, or any other reasonable sanction, to compel payment of any Assessment (or installment thereof), or any other amount payable to the Association

under this Declaration, which is not paid when due (a "Delinquent Amount"). Such sanctions include, but are not limited to, the following:

- a. Interest and Late Fees. The Board may impose late fees for payment of any Delinquent Amount that is not made within ten (10) days of the due date, and interest in such amounts as it determines are appropriate from time to time, subject to any limitations imposed by law which such amounts shall be secured by the aforementioned liens;
- b. Suspension of Rights. The Board may suspend for the entire period during which a Delinquent Amount remains unpaid the obligated Owner's voting rights, rights to use and enjoy the Common Areas, and other membership rights as provided in this Declaration and other applicable Association documents;
- c. Collection of Delinquent Amount. The Board may institute an action at law for a money judgment or any other proceeding to recover the Delinquent Amount to the fullest extent permitted by law;
- d. Recording of Notice. Subject to applicable law, the Board may record a notice of lien covering the Delinquent Amount plus interest and accrued collection costs as provided in this Declaration and other applicable Association documents. The Board may establish a fixed fee to reimburse the Association or its representative for the cost of recording the notice, processing the delinquency, and recording a notice of satisfaction of the lien; and
- e. Foreclosure of Lien. The Board may foreclose the recorded lien against the Lot in accordance with the prevailing New Mexico Law relating to the foreclosure of realty mortgages (including the right to recover any deficiency).

2.9 Rules & Regulations. By a vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal Rules and Regulations, which shall apply to, restrict, and govern, the use of the Lots and Common Areas by any Member, provided, however, that the rules and regulations shall not be inconsistent with this Declaration, or the Articles or By-Laws of the Association. Adoption, amendment, and repeals of Rules and Regulations for the Subdivision must be approved by Declarants while Declarants own any Lot(s) in the Subdivision.

2.10 Amendments of Declaration. Except as otherwise stated in this Declaration, this Declaration may be amended, modified or terminated by the Owners of Lots in the Subdivision. Some provisions are required conditions of Bernalillo County or other governmental authorities specifically for this Subdivision and may not be amended, modified or terminated without first obtaining approval from the appropriate governmental authority. This Declaration may be amended at any time by the affirmative vote of the then record Owners of not less than two-thirds (2/3rds) of the Lots in the Subdivision, which shall be effective upon recording an Amendment to Declaration at the office of the County Clerk of Bernalillo County. Any rights or provisions granted by this Declaration, the Articles, and the By-Laws, for the benefit of the

Declarants while Declarants own any Lot(s) in the Subdivision may not be amended, modified or terminated without Declarants' prior written approval. Should the provisions in this Section for Amendments of Declaration contradict provisions of the Articles, By-Laws, or other Association documents, the provisions in this Section shall prevail.

2.11 Private Access Easement. There shall be a Private Access Easement located on the southeasterly portion of Lot 1 which provides ingress and egress to both Lots 1 and 2. No parking or other obstruction of the Private Access Easement shall be permitted except with the prior approval of the Owners of Lots 1 and 2. Repairs and maintenance costs for the shared portion of the Private Access Easement shall be divided and paid for equally by the Owners of Lots 1 and 2.

2.12 Transfer of Right, Title, Interest and Estate. Any and all of the right, title, interest and estate given to or reserved by the Declarants herein or on the plat may be transferred to any person, firm or corporation by appropriate instrument in writing duly executed by the Declarants and recorded in the office of the Clerk and Recorder of Bernalillo County, New Mexico, and whatever the Declarants is hereby referred to, such reference shall be deemed to include its successors and assigns.

2.13 Duration. This Declaration is to run with the land and shall be binding on all parties and all persons claiming under them until the year 2035, at which time said Declaration shall be automatically extended for successive periods of ten (10) years.

2.14 Severability. Invalidation of any one or more of the provisions, restrictions, conditions, or covenants of this Declaration by judicial determination or otherwise shall in no way affect any other provision, restriction, condition, or covenant of this Declaration, all of which shall be and remain in full force and effect.

ARTICLE 3 **COMMON AREAS**

3.1 Declarants may convey one or more lots or tracts, or any portion thereof, as a Common Area for the benefit of the Subdivision.

3.2 The Board shall be responsible for managing and maintaining all Common Areas for the Subdivision.

3.3 The Common Areas shall include, without limitation:

- a. the private storm water detention pond (Tract A) and related drainage facilities, landscaping, irrigation and adjacent walls;
- b. the private open space (Tract B) and related landscaping, irrigation and adjacent walls;
- c. the landscaping and irrigation within the public right-of-ways around the perimeter of the Subdivision for which the County of Bernalillo or NM Department of Transportation may require Association to maintain; and

- d. possible maintenance of the Tramway Boulevard sound wall that is adjacent to the Subdivision, to be determined upon dedication to the NM Department of Transportation.

3.4 Common Areas shall not include the perimeter walls that are adjacent to Lots, shared walls that are between Lots, and public areas and facilities which shall be owned by or dedicated to governmental authorities such as streets, curbs, gutters, sidewalks, and street signs, except for such time during which governmental authorities may require the Association or Owners to maintain additional Common Areas.

3.5 The Board shall have the right to regulate the use of the Common Areas and prohibit or limit access to certain Common Areas for reasons of public safety or preservation.

3.6 The Board shall establish Reserves for the future periodic repair or replacement of the major components of the Common Areas. Reserves may be funded from Assessments, the Capital Contribution Fee, or any other revenue of the Association.

ARTICLE 4 **ARCHITECTURAL CONTROL COMMITTEE**

4.1 Architectural Control for North Tramway Estates shall be under the authority of the Architectural Control Committee (the "ACC"). The ACC shall be managed by committee members appointed by the Declarants until such time that all Lots owned by the Declarants have been sold. Once Declarants' Lots have all been sold, it is the intention of the Declarants that all ACC rights and obligations be assigned to the Sandia Heights Homeowners Association ("SHHA") as discussed in Article 2. In the event that such assignment is not accepted by SHHA, the Board for the North Tramway Estates Homeowners Association shall automatically assume all ACC rights and obligations.

4.2 BEFORE ANYONE SHALL COMMENCE CONSTRUCTION, INCLUDING WITHOUT LIMITATION SITE PREPARATION CLEARING OF NATURAL VEGETATION OR EXCAVATION, LANDSCAPING, 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 ACC THAT INCLUDE THE FOLLOWING REQUIREMENTS; PROVIDED, HOWEVER, THAT THE FOLLOWING NOT BE THE SOLE BASIS FOR CONSIDERATION, BY THE ACC:

- 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.

c. All other documents deemed necessary by the ACC.

4.3 No landscaping, 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 ACC in its written approval. Once approved, no construction, structure, or improvement may vary from the approved plan without further written approval of the ACC. 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 Declarants, the ACC 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.

4.4 The ACC 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 ACC's approval or disapproval endorsed thereon shall be returned to the owner and the other copy thereof shall be retained by the ACC. Should the ACC fail either to approve or disapprove any plans or specifications submitted to it within said 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 ACC's 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 and specifications to the ACC.

4.5 The ACC 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 also include, but shall not be limited to, if the proposed structure is not in harmony with the general surroundings of such lot or the adjacent structure, and if the structure shall unduly interfere with the view from nearby residences. The decision of the ACC in any these matters shall be final and no building or improvement of any kind shall be constructed or placed upon any Lot in the Subdivision without the prior written consent of the ACC.

4.6 Declarants shall be exempt from the ACC approval process required by this Article 4.

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

4.8 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.

4.9 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.

4.10 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.

4.11 In the event any owner fails to remove debris or unsightly material discussed in this Section, the ACC may remove said unsightly material and charge the cost of removal, including a reasonable overhead charge, together with interest, as an Assessment against the Lot. If such Assessment is not paid within thirty (30) days after written notice to the owner demanding payment, the Assessment shall become delinquent and bear interest from the date of said notice at the rate of fifteen percent (15%) per annum. Sanctions for the Delinquent Amount shall be in accordance with the provisions of this Declaration.

ARTICLE 5 **PERMITTED USES AND RESTRICTIONS**

5.1 All Lots in North Tramway Estates are hereby designated as residential lots. North Tramway Estates 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.

5.2 The heated living areas within the house structure will be restricted to a minimum of 2,000 square feet on all Lots.

5.3 No structures shall be erected, altered, placed or permitted to remain on any Lot exceeding nineteen (19) feet in height. Chimneys and roof screen walls for mechanical equipment shall not exceed twenty-three (23) feet in height. [Bernalillo County Agreement]

5.4 All residences shall be flat roof with parapets, excepting that tile roof accents, not to exceed 10% of the total roof area, including house, garage and patios, may be used. Roof material color will be grey, black, tan or brown. White roofs are prohibited. [Bernalillo County Agreement]

5.5 All residences shall have synthetic stucco, and the primary building colors shall be limited to tan, brown, or earth tone colors approved by the ACC. Lap siding, brick siding, wood siding, vinyl siding, and metal siding materials are prohibited. [Bernalillo County Agreement]

5.6 Garage doors shall be limited to a height of nine (9) feet and shall match the stucco color of the house. Translucent, transparent, and white garage doors are prohibited. Garage doors shall be kept closed at all times except when in immediate use.

5.7 Exterior door colors, window trim colors, and all other exterior trim colors shall harmonize with the primary building colors in the Subdivision and require prior written approval of the ACC prior to installation or changing of colors.

5.8 Mechanical equipment for heating and cooling and any other visible equipment shall be screened from view, whether on grade or located on the roof. This requirement does not apply to solar equipment. [Bernalillo County Agreement]

5.9 Solar 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.

5.10 Satellite dishes and other antennae must be installed in a location that reasonably conceals its visibility from the street and other Lots (i.e., on a very short stand behind a parapet on the roof, or concealed behind a wall). Satellite dishes and other antennae larger than forty (40) inches in diameter require the prior written approval of the ACC.

5.11 All front yards, and side yards facing the street on corner Lots, must be landscaped with natural plants and/or southwestern type landscape on or before completion and/or occupancy of the house. 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 Owners restrict lawns to a maximum of 500 square feet on any Lot.

5.12 Lot owners shall maintain their landscaping in a neat, clean and attractive condition consistent in appearance with other properly maintained, improved Lots within the subdivision. Landscaping shall be kept free of debris, weeds, and dead vegetation at all times.

5.13 In order to protect the views of each homeowner in the community, TREES SHALL NOT BE ALLOWED ON ANY RESIDENTIAL LOT. If there are any ambiguous or questionable distinctions for what may be a tree, shrub or other similar plant, it shall be at the sole discretion of the ACC to allow or disallow such plants on a residential Lot. No shrubs or hedges may be planted that shall unduly interfere with the view from nearby residences.

5.14 Subdivision perimeter walls and Lot boundary walls must be constructed of Smooth or Split-Faced Gold Block manufactured by Southwest Block, Inc., and shall be maintained by the adjacent Lot Owners. Any costs associated with shared boundary walls between Lots shall

be divided equally between the adjacent Lot Owners. Retaining walls shall not be removed or moved. Additions, modifications and removal of walls shall be approved by the ACC.

5.15 Courtyard walls and all other privacy walls (excluding perimeter and Lot boundary walls) must be constructed of synthetic-stuccoed cement block matching the color of the house, or Split-Faced Gold Block manufactured by Southwest Block, Inc. Other construction materials for walls and fences shall not be permitted. All walls, fences, patios, courtyards, and porches shall be approved by the ACC.

5.16 Storage sheds/units require ACC approval. They shall match the color of the house as closely as possible, not exceed seven (7) feet in height above the finished grade of the house, and be set back at least five (5) feet from the side property lines, except as approved by the ACC. Metal sheds/units are prohibited.

5.17 Play structures up to seven (7) feet in height above the finished grade of the house are permitted. Play structures over seven (7) feet in height require ACC approval.

5.18 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.

5.19 Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any Lot, unless they are concealed and are not visible from the street or neighboring Lots.

5.20 Equipment, service yards, wood piles or storage piles shall be kept screened by adequate planting, fencing or other acceptable screening techniques so that they are concealed and are not visible from the street or neighboring Lots.

5.21 Basketball backboards are prohibited.

5.22 Displaying the American and New Mexico State flags are permitted. Displaying any other flags that the Association is required to allow in accordance with federal or state law or county or municipal ordinance are also permitted. Freestanding flagpole installations require prior ACC approval. Freestanding flagpoles must be set back at least fifteen (15) feet from the front property line, at least ten (10) feet from the rear property line, at least five (5) feet from the side property lines, not exceed eighteen (18) feet in height above the finished grade of the house, and have an internal or no halyard supporting mechanism so as to minimize the noise emitted by the supporting structure. A removable flag staff may be mounted on the front or rear of the home placed in a wall mounted bracket. The wall mounted staff shall not exceed six (6) feet in length. All flags shall be no more than fifteen (15) square feet in size. Proper flag etiquette must be observed in accordance with US Flag Code. The ACC may apply reasonable restrictions to flag installations or displays that present a safety risk, or in some way interferes with a neighbor's enjoyment of their property. If lighting is used for nighttime display, it shall be in accordance with the North Albuquerque Acres and Sandia Heights Light Pollution Ordinance, as well as the provisions provided by this Declaration. No other flags

may be displayed except as approved by the ACC (sports team flags are prohibited).

5.23 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 Lots unless specifically approved by the ACC. All signs, other than a typical "for sale" or "for rent" sign, must be approved by the ACC.

5.24 All exterior lighting shall be maintained and installed to minimize light pollution in accordance with the **North Albuquerque Acres and Sandia Heights Light Pollution Ordinance** of the Bernalillo County Code. All exterior light fixtures shall be (i) designed and operated as cutoff or shielded aimable fixtures so that no fugitive light crosses into adjacent lots, (ii) equipped with and controlled by light and motion sensors or automatic timing devices, and (iii) shall remain off between 11:00 p.m. and sunrise except for illuminating walkways or driveways. No neon arc lamps or mercury lights shall be permitted.

5.25 Street lights are prohibited. [Bernalillo County Agreement]

5.26 No Lot may be either subdivided, nor may a portion of any Lot be sold except to adjacent property holders for the purpose of increasing the size of an adjacent Lot.

5.27 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, Tramway Lane, 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.

5.28 If and when the property, which is the subject of these affirmative covenants, meets the statutory annexation requirements enabling annexation of the property to the City of Albuquerque, such property shall 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. [Bernalillo County Agreement]

5.29 **All owners of Lots must subscribe to the garbage and security service provided by Sandia Heights Services LLC ("Sandia Service"), its successors and assigns so long as (i) Sandia Services provides these services to the residents of North Tramway Estates, and (ii) the residents of the Subdivision are charged fees on a non-discrimination basis as compared to the fees charged to all of the other customers of Sandia Services.** [Bernalillo County Agreement]

5.30 No trash or garbage shall be burned on the premises. Garbage shall be placed in covered containers. Said containers must be concealed from public view, either inside the confines of the residence such as in the garage, or behind a wall or structural enclosure, at all times other than during regularly scheduled pick up times so that it is not visible from the street

or from neighboring Lots.

5.31 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.

5.32 No trailer, tent, shack, garage or other vehicle or outbuilding shall be used as a residence, temporarily or permanently.

5.33 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 Lot except in enclosed garages, except when engaged in transport to and from a Lot. 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.

5.34 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 automobile or 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 automobile or vehicle remains parked on any tractor Lot within the property boundaries, the Declarants 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.

5.35 No motor vehicle or trailer of any type shall be constructed, reconstructed or repaired on any street or any Loi in such a manner as will be visible from neighboring Lots.

5.36 No animals shall be kept on any Lot except domestic cats and dogs. Keeping of these animals will be in accordance with County ordinances.

5.37 Owners may rent or lease an entire Lot together with its improvements as a single unit to a single family for no less than 30 days; however, no portion of any Lot or improvements thereon may be separately rented or leased out from the remainder of the Lot and its improvements. All tenants renting or leasing a Lot, and all other occupants of a Loi, shall be subject to the provisions of this Declaration. Each Owner shall cause his, her, or its tenants or other occupants to comply with this Declaration and, to the extent permitted by applicable law, Owner shall be responsible and liable for all violations and losses cause by such tenants or other occupants, notwithstanding the fact that such tenants or other occupants are also fully liable for any violation of provisions in this Declaration.

5.38 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.

ARTICLE 6
ENFORCEMENT OF DECLARATION

6.1 Of the parties hereto, if any of them, their grantees, successors-in-interest or assigns, shall violate or attempt to violate any of the provisions of this Declaration, the Declarants, the Association and its assigns, and any Owner of a Lot in the Subdivision, shall have the right to enforce by proceeding, at law or in equity, for damages or for its junction 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.

Except in cases where damage or injury to persons or property is imminent as a result of a violation of this Declaration, or as otherwise described in this Declaration or other governing documents of the Association, the Special Enforcement Assessment procedure will be as follows:

- a. For a complaint of violation to be valid, it must either be (i) be received by the Association in writing from an Owner or occupant of a Lot; (ii) be reported by a member of the Board or the ACC; or (iii) be observed by a Board authorized representative whose purpose is to enforce this Declaration.
- b. Notice of the reported violation shall be mailed to the alleged violator to the address of the Lot owned by such person, unless the Association has previously been notified in writing to use some other address.
- c. The violator shall be given fourteen (14) days from the date of mailing to correct the violation. The Board authorized representative may approve a reasonable extension at the homeowner's written request.
- d. The notice shall describe (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a period of not less than fourteen (14) days within which the alleged violator may present a written request for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within fourteen (14) days of the notice.
- e. Sanctions will be imposed as follows:

FIRST NOTICE: An initial notice of the violation shall be mailed via regular mail to the Owner requesting compliance with in (14) days. NO FINE.

SECOND NOTICE: If the violation still exists, and an extension has not been

granted, a second notice requesting compliance within fourteen (14) days shall be mailed via certified mail to the Owner. A \$50.00 FINE will be assessed and due immediately from Owner with the second notice, and collected in the same manner as Assessments.

THIRD NOTICE: If the violation still exists, and an extension has not been granted, the Association may proceed with any one or all of the following actions: (i) a third notice requesting compliance within fourteen (14) days shall be mailed via certified mail to the Owner; (ii) take legal action against the Owner; and/or (iii) remedy the violation.

A \$100.00 FINE will be assessed and due immediately from Owner with the third notice. All costs associated with taking legal action or remedying the violation shall be due and payable immediately from the Owner and collected in the same manner as Assessments.

CONTINUING VIOLATIONS: If the violation continues without resolution after the third notice, a FINE OF \$100.00 shall be assessed every fourteen (14) days until the violation is resolved, which shall be due and payable immediately from the Owner and collected in the same manner as Assessments.

- f. If a violation for which notice is given is resolved, but then another recurrence of the same violation occurs within six (6) months of the original violation, additional notices and fines shall begin at the point in time where notice of the original violation ended (for example, if a first and second notice was sent during the original violation before resolution, the recurrence of the same violation within six months will result in an immediate third notice, subject to the fines and remedies imposed for third notices).
- g. If a hearing is requested within the allotted (14) day period, the hearing shall be held before the Board or Board-designated representative(s) at their earliest convenience. The alleged violator shall be given a reasonable opportunity to be heard. After a hearing, based on the circumstances, the Board or Board-designated representative(s) may decide to reverse a notice of violation and/or fine.
- h. If the Sandia Heights Homeowners Association ("SHHA") accepts the assignment(s) of certain rights and obligations discussed in Article 2, SHHA may adopt the Special Enforcement Assessment procedure set forth in this Article 6.2 (including subparts a-g); modify the Special Enforcement Assessments procedure; or choose to replace the Special Enforcement Assessments procedure set forth herein with SHHA's procedures for addressing purported covenant violations.

6.3 No delay or omission on the part of the Declarants, the North Tramway Estates Homeowners Association, or any of their respective agents, successors or assigns, in exercising any right, power or remedy herein provided for in the event of any breach of the

conditions, covenants, restrictions or reservations contained in this Declaration, 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 Declarants, the North Tramway Estates Homeowners Association, or any of their respective 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, conditions, restrictions, or reservations.

Signatures on file in the SHHA office.