

**ORIGINAL**

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EXHIBIT "B"

- - 496

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DECLARATION OF PROTECTIVE  
COVENANTS AND RESTRICTIONS  
FOR  
VINEYARD ESTATES SUBDIVISION  
A SUBDIVISION IN THE  
CITY OF ALBUQUERQUE, NEW MEXICO

This declaration is made this 5th day of April, 1988 by Vineyard Partnership, a New Mexico General Partnership as to that real property described in Exhibit "A", Subdivision Plat of Vineyard Estates, which is attached to this Declaration and incorporated by reference herein.

**DEFINITIONS**

The word "lot" as used herein is intended to refer to single parcels of land shown as lots on the recorded plat described above. A "corner lot" is one which abuts more than one street, and in the absence of any other designation shall be deemed to front on the street on which it has the smaller dimension; but the Owner reserves the right, through the Architectural Control Committee, to designate the street on which any corner lot shall be deemed to front.

The word "residence" as used herein with reference to building lines shall include galleries, porches, steps, projections and every other permanent part of the improvements, except roofs.

The word "street" as used herein shall include any street, road, lane, path or public way as shown on the plat.

NOW, THEREFORE, Vineyard Estates Subdivision (the "Subdivision") is hereby subjected to the following protective covenants, reservations and restrictions, which are to run with the land and shall be binding upon all parties and all persons owning lots in the Subdivision or claiming under them.

I. LAND USE AND BUILDING TYPES

a. All lots within the Subdivision are hereby declared to be single family residential lots, and no lot shall be used for any other purpose than single family residence.

b. No building shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling not to exceed two (2) stories in height above ground level as described below, and a private garage for not more than three (3) cars and not less than two (2) cars. Storage sheds, work shops, swimming pools, gazebos and such shall be allowable upon approval being granted by the Architectural Control Committee.

c. No building shall be erected, altered, placed or permitted to remain on any such lot with a fully enclosed heated area of less than 1800 square feet, exclusive of garages and open porches or patios. The Architectural Control Committee may allow a variance of less than 1800 square feet if the lot, setbacks, or floor plans indicate an unusual condition.

d. No building shall be erected, altered, or permitted to remain on any such lot that will exceed a vertical distance of twenty-six (26) feet above ground level to the highest point of a flat roof, or a mansard roof, or the average between the plat and the highest ridge of a gable, hip or gambrel roof. Ground level shall be defined as the construction pad elevation for the specific lot, or as directed by the Architectural Control Committee.

e. No building or any part thereof, including garages, shall be erected on any lot closer than twenty (20) feet to the front street line.

It is understood that ordinary roof projections, belt courses, cornices and ornamental features may project as much as twenty-four (24) inches into the front, rear and side set back lines. For the purpose of this paragraph, eaves, steps, flues, and equipment pads shall not be considered as part of the building. Where contiguous lots are owned by one owner, the side lot lines shall refer only to the lot lines bordering the adjoining property owners. Notwithstanding anything to the contrary herein, the Architectural Control Committee shall have the right to permit reasonable modifications of the side yard set back requirements where a minimum of ten (10) feet will be maintained between structures and where, in the discretion of the Committee, strict enforcement of the set back provisions would work an extreme hardship.

## 2. ARCHITECTURAL CONTROL COMMITTEE

The Architectural Control Committee, hereinafter referred to as the "Committee", is hereby established and shall be comprised of three (3) persons; who shall be appointed by the Grantor to serve for a period of three (3) years from the date hereof and until their successors shall be appointed and qualify. Vacancies occurring at the end of the three (3) year term, shall be appointed by a majority of the residential lot owners in VINEYARD ESTATES SUBDIVISION, who are present at a special meeting called for the purpose of filling such vacancy.

No member of the Committee shall be entitled to any compensation for services performed on said Committee.

Any two (2) members shall be able to act on the behalf of the Committee, and in rendering any decision, a majority of the Committee shall rule.

Before the commencement of construction, remodeling, addition to, or alteration of any lot grade, building, swimming pool, wall, fence, tank, out building or any other structure whatsoever on any lot, there shall be submitted to the Architectural Control Committee:

(1) A complete set of plans, including but not limited to, foundations, floor plan, elevations, details, specifications (including exterior finish schedule), a plot plan, landscaping plan, and grading plan showing the location and finished grade of the structure on the lot.

(2) Within three (3) calendar days after constructing the foundation, the Owner will submit to the Architectural Control Committee a letter containing the "as-built" set back dimensions of the structure.

(3) One (1) complete set of plans and specifications upon approval will be retained by the Committee to remain on file.

NO STRUCTURE OR IMPROVEMENTS OF ANY KIND shall be erected, altered, placed or maintained, including lot grading alterations, upon any lot unless and until the complete set of final plans therefore have received such written approval as herein provided.

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 the restrictions, or if a design or color scheme on the proposed structure is not in harmony with the general surroundings or in harmony with such lot or adjacent structure, or if the plans and specifications submitted are incomplete, or if the Committee deems said plans and specifications to be contrary to the spirit and intent of these restrictive covenants, or contrary to the interest and welfare and rights of the owners of all or any part of VINEYARD ESTATES SUBDIVISION. The decision of the Committee shall be final and no building, structure or improvement of any kind shall be constructed or placed upon any lot in VINEYARD ESTATES SUBDIVISION, if disapproved by the Committee.

In the event the Committee shall fail to approve or disapprove the plans, specifications and other such information as may be required within fourteen (14) days after submission, then such approval shall not be required, provided that no building or structure shall be erected which violates any of the covenants contained herein.

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

A majority of the Committee may, from time to time, grant exceptions or variances to any of the Articles hereof, without the consent of any of the owners of the other lots in the subdivision.

### 3. WALLS

Retaining walls shall be party walls if placed on the common property line between two (2) lots and shall not be removed by either property owner. Liability as between the owners with the respect to the maintenance of the party wall shall be as provided for in New Mexico law.

Except for necessary retaining walls, which shall be of minimum height, the following requirements shall apply to all walls and fences:

a. No wall or fence shall be erected or allowed to remain nearer the street than the front of the dwelling, and

b. On corner lots, no wall or fence facing the side street shall be erected or allowed to remain nearer to the front street than the rear of the dwelling.

c. All rear walls must extend the full length of the rear property line. All side walls must extend frontward at least to the rear of the Residence on both sides.

d. All walls shall be constructed of a minimum of seven course 6" x 8" x 16" concrete block including solid top cap. Exposed tops of pilasters shall be finished with mortar or with 4" cap blocks. Any side lot line wall or side lot line wall return that is facing a street, must be finished in a texture and color that is compatible with the Residence.

ALL WALLS SHALL BE SUBJECT TO THE APPROVAL OF THE ARCHITECTURAL CONTROL COMMITTEE.

All builders and/or lot owners shall be responsible for the construction of retaining walls on common property lines including rear property lines in accordance with all applicable Federal, State, City and County codes and ordinances.

4. SUBDIVISION OF LOTS

None of the lots within the subdivision shall be further subdivided to create two (2) or more building sites, however, two (2) or more lots may be combined into one (1) building site.

5. UTILITY EASEMENTS

Easements are hereby reserved as shown on the recorded plat for the purpose of installing and maintaining municipal and public utility facilities and for other similar purposes incidental to the development of the property.

6. TOLERANCE

A two (2) inch tolerance by reason of mechanical variance of construction is hereby automatically allowed for any distance requirements imposed by these covenants.

7. GENERAL PROVISIONS

The Grantors may include restrictions, other than those set out herein, in any contract or deed to any lot(s) without otherwise modifying the general plan above outlined, and such other restrictions shall inure to the benefit of all other lot owners and Grantor, and bind the respective parties in the same manner as though they had been expressed herein.

The restrictions herein set out shall be deemed incorporated and made part of each and every contract of sale and deed of any lot or parcel within the Subdivision, to all intents and purposes as though repeated in full therein; and each such contract and/or deed shall be conclusively held to have been executed, delivered and accepted upon the express conditions herein stated.

§. MISCELLANEOUS

The construction or maintenance of billboards, posterboards, or advertising structures of any kind on any part of any lot is prohibited, except that architects and builders may display a sign with their name and insignia thereon during construction, and brokers and owners may display temporary FOR SALE signs. The sign shall not exceed more than six (6) square feet in size.

No trash, ashes, paper or refuse of any kind may be thrown or dumped in any vacant lot in the subdivision.

No trailer, house trailer, motor home, or boat shall ever be parked or placed on any vacant lot, nor shall any trailer, house trailer, motor home, boat, shack, tent, garage or other out building be used as a residence, either temporarily or permanently.

Owners of vacant lots will be responsible for keeping their lots cleared of all weeds, trash and all other detracting impediments as determined by the Architectural Control Committee.

All lots shall be kept clean and maintained during the course of construction.

All buildings constructed on lots shall be finished in accordance with the plans and specifications as approved by the Committee within six (6) months of the start of construction.

No cotton bearing cottonwood trees of any nature or fruit bearing Mulberry trees shall be planted or permitted to grow on any lot within the subdivision.

Where externally visible air conditioners are erected or installed, they shall be so installed that they will not be visible from the front street or in the case of corner lots, from either the front or a side street. Roof mounted units shall be allowed, however, they shall be installed as to comply with this restriction as much as possible.

No antennas (radio, shortwave radio, television or others) shall be erected upon any lot or dwelling without prior written approval of the Architectural Control Committee.

In the event that a structure is destroyed, wholly or partially by fire or other casualty, said structure shall be properly rebuilt, repaired or replaced to conform to these restrictions, or all remaining structures, including the debris and foundations, shall be removed from the lot.

#### 9. LANDSCAPING

All front yard landscaping and side yard (if corner lot) shall be completed or substantially complete at the time of occupancy. A minimum of sixty percent of the front yard and side yard (if corner lot) landscape area, excluding driveway and public sidewalk, shall be grass or ground cover. Substantial completion of landscape construction shall compliment and enhance the subdivision.

#### 10. RESTRICTED ACCESS TO ANAHEIM AVENUE

The plat prohibits direct access from Lots 15 through 22 to Anaheim Avenue. Anaheim Avenue right-of-way abutting Lots 15 through 22 may be vacated. The owners of Lots 15 through 22 waive all claims and rights to Anaheim Avenue right-of-way land and direct access.



11. RIGHT TO ENFORCE

The restrictions herein set forth are imposed upon each lot for the benefit of each and every other lot, and shall constitute covenants running with the land, and shall inure to the benefit of and be binding on the Grantors, their successors and assigns. Each and every purchaser of and any person acquiring any interest in any part of such land, covered by these restrictions shall be taken to agree and covenant to conform to and observe all such restrictions as to the use of said land and the Grantors, their successors and assigns, the Committee and the owner or owners, of any part of such land and of any interest therein acting jointly or severally, shall have the right to sue for and obtain an injunction, to prevent the breach of or to enforce the observance of, the restrictions and covenants above set forth in addition to the ordinary legal action for damages, and the failure of any or all such persons to enforce any of the restrictions or covenants herein set forth at the time of its violation, shall in no event be deemed to be a waiver of the right to do so at any time thereafter, except as herein specifically set out, nor shall the failure to enforce such restrictions as to any one or more lots, or as to any one or more owners thereof, be deemed a waiver of the right to enforce them as to any and all other lots and owners.

12. AMENDMENTS

These Covenants may be amended from time to time by an affirmative vote of the then record holders of title to lots representing a seventy-five percent (75%) majority of the total single family residential lots in the subdivision, or by Grantor, providing Grantor then holds title to at least thirty percent (30%) of the total residential lots in the subdivision.

13. DURATION

All of the restrictions and covenants herein set forth as amended from time to time shall continue and be binding upon, for a period of twenty-five (25) years from the date this instrument is filed for record in the Office of the County Clerk of Bernalillo County, New Mexico, and shall automatically be extended for successive periods of fifteen (15) years each; provided, however, that at any time during the first five (5) years of the first twenty-five (25) year period or during the first five (5) years of any fifteen (15) year period thereafter, the owners of 90% in number of the lots then covered by this dedication may provide for the release of any and all of the lots hereby restricted, from any one or more of said restrictions and covenants at the end of such twenty-five (25) year period or such fifteen (15) year period, by executing and acknowledging a proper agreement or agreements in writing for such purpose and filing same for record in the manner then required for the recording of land instruments.

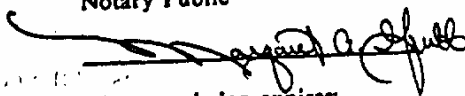
IN WITNESS WHEREOF, VINEYARD PARTNERSHIP has caused this instrument to be executed this 5th day of April, 1988.

VINEYARD PARTNERSHIP

  
Managing Partner

This instrument was acknowledged before me this 5th day of April, 1988 by Donald G. Hoech, Managing Partner of VINEYARD PARTNERSHIP, a New Mexico partnership, on behalf of said partnership.

Notary Public

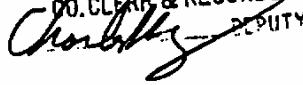


My commission expires:

7-9-88

STATE OF NEW MEXICO  
COUNTY OF BERNALILLO  
FILED FOR RECORD

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GLADYS M. DAVIS  
CO. CLERK & RECORDER  
 DEPUTY

**ORIGINAL**

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AMENDMENT II TO  
 DECLARATION OF PROTECTIVE  
 COVENANTS AND RESTRICTIONS  
 FOR  
 VINEYARD ESTATES SUBDIVISION  
 A SUBDIVISION IN THE  
 CITY OF ALBUQUERQUE, NEW MEXICO

This declaration is made this 11th day of October, 1988 by Vineyard Partnership, a New Mexico General Partnership as to that real property described in Exhibit "A", Subdivision Plat of Vineyard Estates, which is attached to this Declaration and incorporated by reference herein.

ARTICLE 1 PARAGRAPH C AMENDED AS FOLLOWS:

c. No building shall be erected, altered, placed or permitted to remain on any such lot with a fully enclosed heated area of less than 1800 square feet, exclusive of garages and open porches or patios. The Architectural Control Committee may allow a variance of less than 1800 square feet if the lot, setbacks, or floor plans indicate an unusual condition.

IN WITNESS WHEREOF, VINEYARD PARTNERSHIP has caused this instrument to be executed this 11th day of October, 1988.

VINEYARD PARTNERSHIP

Donald G. Hoeh  
 Managing Partner

This instrument was acknowledged before me this 11th day of October, 1988 by Donald G. Hoeh, Managing Partner of VINEYARD PARTNERSHIP, a New Mexico partnership, on behalf of said partnership.

Notary Public

Colinda Jones

My commission expires:

3/28/90