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

THIS DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS is made this 15th day of September, 1994, ("Declaration"), by Hoech Real Estate Corporation, a New Mexico corporation, as to that real property described as follows:

Lots 1 through 133, inclusive, Vineyard Estates, Unit IV, as the same are shown on the plat thereof recorded in the Bernalillo County, New Mexico real estate records on September 15, 1994, in Vol 94C, Folio 309

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, Unit IV (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 purpose other than single family residence.

b. No building shall be erected, altered, placed or permitted to remain on any Lot other than (1) one detached single family dwelling not to exceed two (2) stories in height above ground level, except for Lots 1 through 7, inclusive, Lots 66 through 69 inclusive, Lots 77 through 81, inclusive, and Lots 103 through 114, inclusive, which are restricted to single story construction with structure height not to exceed eighteen feet (18'), which height will be determined by the City of Albuquerque Zoning Ordinance, 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 the height limitations of the City of Albuquerque Comprehensive Zoning Ordinance except where there is a more restrictive height limitation shown on the Plat.

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

f. No building shall be erected, altered or permitted to have a brick facade or a pitched composition, asphalt roof.

It is understood that ordinary roof projections, belt courses, cornices and ornamental features may project as much as twenty-four inches (24") 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 feet (10') 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) years term shall be appointed by a majority of the residential Lot owners in the 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, elevation, 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 the 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 the 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, nor any of its members, 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 hereto, 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.

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 MUST 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 inch (2") 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 insure to the benefit of all other Lot owners and Grantor, and bind the respective parties in the same manner as through 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.

8. MISCELLANEOUS

The construction or maintenance of billboards, posterboards, or advertising structures of any kind or 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 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, and for Lots which back up to major streets, from the major streets. 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. 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.

11. AMENDMENTS

These covenants may be amended from time to time by an affirmative vote of the then record holder of title to Lots representing a seventy-five percent (75%) majority of the total Lots in the Subdivision, or by Grantor, providing Grantor then holds title to at least thirty percent (30%) of the Lots in the Subdivision.

12. 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.

6883

IN WITNESS WHEREOF, HOECH REAL ESTATE CORPORATION has caused this instrument to be executed this 15th day of September, 1994.

HOECH REAL ESTATE CORPORATION, a
a New Mexico corporation

By: Don Hoeh
Don Hoeh
President

STATE OF NEW MEXICO)
COUNTY OF BERNALILLO) ss.

This instrument was acknowledged before me on September 15, 1995, by Don Hoeh, President of Hoeh Real Estate Corporation, a New Mexico corporation, on behalf of said corporation.

Karen Lee Ward
Notary Public

My Commission Expires:

11-13-97

vineyard.dec/klw/legaldoc.dlr

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED FOR RECORD

94 SEP 16 PM 2: 36

EX-26 PG 6872-6883
JUDY D. WOODWARD
CO. CLERK & RECORDER

94110672

No. of Lots: 134
Nearest Major Streets
Ventura NE & Paseo Del Norte
9918

FIGURE 19
SIDEWALK DEFERRAL AGREEMENT
PROJECT NO. 3391.88

THIS AGREEMENT is made this 2nd day of Sept, 1994, by and between the City of Albuquerque, New Mexico ("City"), a municipal corporation, whose address is P. O. Box 1293 (One Civic Plaza), Albuquerque, New Mexico 87103 and Hoech Real Estate Corporation ("Developer"), whose address is 6729 Academy Road NE, Suite B* and whose telephone number is 921-4440, a [state the type of business entity, for instance, "New Mexico corporation," "general partnership," "joint venture," "individual," etc.:] New Mexico Corporation *Albuquerque, NM 87109, is made in Albuquerque, New Mexico, and is entered into as of the date of final execution of this Agreement.

WHEREAS, the Developer is developing certain lands within the City of Albuquerque, County of Bernalillo, State of New Mexico, known as [existing legal description] Lots 6-9, Inclusive, & 24-32, Inclusive, Block 16; Lots 1-9, Inclusive, & 24-32, Inclusive, Block 17; Lots 1-9, Inclusive & 25-27, Inclusive, (the "Subdivision"); and Block 18, Tract 3, Unit 3, North Albuquerque Acres

WHEREAS, the Developer has submitted and the City has approved Developer's development plans and [state "preliminary" or "final":] Preliminary plat, to be identified as [state name of plat:] Vineyard Estates Subdivision, Unit IV - Phase IV A; and

WHEREAS, Developer has requested and the City has determined that it is acceptable for the Developer to defer construction of the sidewalks within the Subdivision until after construction of other required infrastructure; and

WHEREAS, the Subdivision Ordinance requires all sidewalks to be completed within four (4) years after execution of the Agreement to Construct Subdivision Improvements; and

WHEREAS, the Developer must execute and deliver to the City an Agreement and an acceptable financial guaranty to provide funds for constructing the sidewalk improvements in case the Developer does not complete the construction as required.

THEREFORE, the City and the Developer agree:

1.A. Sidewalk Construction Deadline. Developer has obtained a sidewalk deferral, as shown in the attached Exhibit "A", which is a copy of the Development Review Board's decision regarding the deferral granted. Developer agrees to utilize the City's sidewalk permit process and complete the sidewalk to the satisfaction of the City by August 26, 1995 ("Sidewalk Construction Deadline").

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
FILED FOR RECORD

94 SEP -8 AM 8:26

94-25-9948-9952

HUBBARD
CO. CLERK