

**DECLARATION OF  
RESTRICTIVE AND PROTECTIVE COVENANTS  
FOR  
VINEYARD ESTATES UNIT IV-B SUBDIVISION**

Hoech Real Estate Corporation, a New Mexico corporation, is the fee simple owner of the following described real estate:

Lots numbered 1 through 4 of Plat of Vineyard Estates, Unit IV-B Albuquerque, Bernalillo County, New Mexico, as the same is shown and designated on the plat of said subdivision, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on December 4, 2003 in Plat Book 2003C, page 364.

All of such real estate is referred to as the "Subdivision".

Hoech Real Estate Corporation, does hereby establish a general plan for the development, improvement, ownership, use and sale of lots in the Subdivision and does hereby establish the manner, provisions, conditions, restrictions and covenants upon and subject to which lots shall be used, improved, occupied, owned, sold and conveyed. The provisions, conditions, restrictions, and covenants in this declaration shall run with the land, all of which shall be binding upon and inure to the benefit of the present and future owners of lots, and of any interest or interests in the lot or lots, all of which provisions, conditions, restrictions and covenants are, and each of them is, hereby impressed and imposed upon each and every lot as a servitude in favor of each and every other lot.

1. Land Use and Building Type. Vineyard Estates Unit IV-B Subdivision will be a 4 lot community.

- A. No lot, or portion of a lot, shall be used except for residential purposes. 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 a single family residence.
- B. No building shall be erected, altered, placed or permitted to remain on any lot for use other than (1) one detached single family dwelling not to exceed two (2) stories in height above ground level; together with a private garage attached to the dwelling, for not less than two (2) automobiles or not more than four (4) automobiles.
- 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, placed 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 shall be erected, altered, or permitted to have brick facade or a pitched composition, asphalt roof.



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- F. The stucco colors are to be approved by the Committee.
- G. There shall also be permitted, (upon approval of the Architectural Control Committee) but not required, one detached accessory building for storage of garden tools, garden and household furnishings, not to exceed 100 square feet and not to exceed eight (8) feet in height. The accessory building must be located inside required property line setbacks and not visible from the street. The exterior of any accessory building shall be stuccoed or wood clad to match the exterior color of the dwelling.
- H. The Architectural Control Committee will need to approve anything other than a standard gray concrete driveway or walkway.

2. Architectural Control Committee. An architectural control committee (the "Committee") is hereby established and shall be comprised of a minimum of two (2) persons, each of whom shall serve indefinitely until his or her successor is appointed and qualified or his or her obligations otherwise terminate. From time to time, if and when one or more vacancies may occur, the remaining member(s) of the Committee may appoint successor member(s) to fill any such vacancy or vacancies on the Committee. A majority of the Committee may appoint a representative to act for and on behalf of the Committee with all of the powers of the Committee. Until such time as all of the lots are sold and improvements are constructed on each lot. Thereafter, the owners of fee simple title to at least seventy-five percent (75%) of the lots, in an appropriately executed and recorded instrument, may dismiss, discharge and replace any or all of the Committee members and may modify, alter or change the duties and powers of the Committee.

The following three (3) persons are hereby appointed and declared to comprise the Committee:

- Justin D. Hoech
- Donald G. Hoech
- Michael Carlisle

If no member remains on the Committee, new members to the Committee may be chosen in the following manner: upon the written request of fifty percent (50%) of the owners of lots, a meeting shall be held for the purpose of selecting one or more members to the Committee. Reasonable diligence shall be used to notify the persons owning lots of the time, place and purpose of the meeting. At such meeting, up to three (3) persons shall be selected as members of the Committee. Each lot owner shall have one vote for each lot owned, and the three (3) persons receiving the most votes shall be selected as members of the Committee.

**BEFORE ANYONE SHALL COMMENCE THE INSTALLATION OF, CONSTRUCTION OF, REMODELING OF, ADDITION TO, OR ALTERATION OF ANY BUILDING, SWIMMING POOL, WALL, FENCE, SIDEWALK, DRIVEWAY OR OTHER STRUCTURE ON ANY LOT, THERE SHALL BE SUBMITTED TO THE COMMITTEE PLANS AND SPECIFICATIONS AS FOLLOWS:**

- A. Plans and specifications shall clearly show the nature of the work or installation proposed and location on the lot, which shall include sufficient description of materials, textures, etc., as shall enable the Committee to determine whether the alteration, installation, etc., will harmonize with the architectural style of the Subdivision and the external design of existing structures within the Subdivision; and

- B. No improvement of any kind, installation, painting, or texturing, shall ever be, or permitted to be, erected, constructed, installed, placed or maintained on a lot, unless and until the final plans, specifications and elevations shall have written approval of the Committee. All plans shall further include elevations and textures indicating the materials for the same.

The Committee shall have the right and power to disapprove any plans, specifications or details submitted to it, if the Committee finds that the plans and specifications are not in accordance with all provisions of this declaration, or if the design, materials or color scheme submitted are not in harmony and in accordance with the Subdivision, or with other improvements constructed within the Subdivision or if the plans and specifications are incomplete.

Neither the members of the Committee, either in their individual or in their collective capacities, nor the Grantor, shall be responsible, or have any liability, whatsoever for any defect in any plans, specifications or other data submitted to, approved by or revised by the Committee, or in any work done or improvements made pursuant to such plans and specifications.

The Committee shall approve or disapprove the plans and specifications within thirty (30) days after receipt of the plans and specifications. If the Committee fails to approve or disapprove the plans and specifications within thirty (30) days after receipt, then such approval shall not be required; provided, that no structure, building or other improvement shall be installed, erected, painted, textured, altered or modified which violates any part of this declaration.

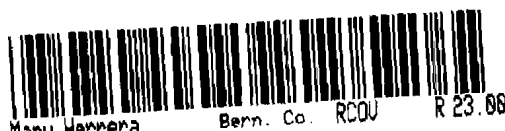
3. Further Subdivision of Lot. No lot may be divided into two or more parcels, however; two or more lots may be combined into one building site.

4. Grading. No lot may be landscaped or re-graded in such a manner as to cause the drainage characteristics of the lot to differ significantly from the approved grading plan for the Subdivision approved by, and on file with, the City of Albuquerque Engineering Department (the "Drainage Report"). In no case may the drainage from one lot drain on to any other lot, except as allowed by the Drainage Report.

It is the responsibility of the owner to obtain from the Grantor the latest copies of the Drainage Report and as-built plans for the use of design by the owner's architect or designer.

5. Compliance with the Grading Plan and Development Plan. All construction of improvements on each lot shall comply with the City of Albuquerque approved Grading Plan and Development Plan for the Subdivision. All plans and specifications submitted to the Committee must contain sufficient information to enable the Committee to determine compliance with the Grading Plan and Development Plan. The Committee may request that a New Mexico licensed civil engineer perform a grading and drainage plan with his seal affixed to the plan. However, the Committee shall not be liable to the owner or any other person for approval of plans, which are contrary to the Grading Plan and Development Plan.

It is the responsibility of the owner that all structures built on each lot are in compliance with the soils report, a copy of which is on file with the City of Albuquerque and is also available at the office of the



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Grantor. If the structure is to be built on any portion of the lot in addition to the prepared pad, the structure must be built on controlled fill dirt.

6. Minimum Area of Dwelling. The total enclosed living area of any dwelling, exclusive of open porches, garage, and any accessory building shall not be less than 1800 square feet.

7. Setbacks. No dwelling shall be located on any lot within the Subdivision, in contradiction of the following setback requirements:

- A. There shall be a front-yard setback of not less than fifteen (15) feet from the front property line.
- B. There shall be a garage setback of not less than twenty (20) feet from the front property line.
- C. There shall be a rear-yard setback of not less than fifteen (15) feet.
- D. There shall be no required side-yard setback except there shall be a side yard of ten (10) feet on the street side of corner lots, and there shall be a distance of not less than ten (10) feet between dwellings.

8. Landscaping. The builder constructing any dwelling shall install the front-yard landscaping. The owner shall ensure the front yard landscaping is maintained in good condition at all times. No irrigation systems, turf, or plants shall be placed within three (3) feet of any adjacent dwelling.

9. Tolerance. A four-inch (4") tolerance for mechanical variances in construction is hereby automatically allowed for building and improvement setback requirements imposed by this declaration.

10. Completion of Work. Once installation, construction or erection of new improvements shall commence, all such installation, construction and erection shall be finished and completed in all respects in accordance with the Committee-approved plans and specifications within nine (9) months after that commencement. All installation, construction and erection activities shall be accomplished in such a manner as shall not create unreasonable, unsightly, noisy or objectionable conditions.

11. Nuisances. No noxious or offensive activity shall be carried on, or permitted upon any lot. Nothing shall be done, placed or stored on any such lot which may be or become an annoyance or nuisance to the owner(s) of other lot(s), or which will occasion any noise or odor which will or might disturb the peace, comfort or serenity of the occupants of dwellings on other lot(s). Owners of vacant lots shall be responsible for keeping, and shall keep, their lots clear of weeds, trash, and other detracting impediments. No trash or garbage shall be burned on any lot. Garbage and other waste materials shall be placed in the covered containers when provided by the City of Albuquerque. These containers shall be concealed from the street on non-garbage collection days.

A wire receptacle shall be provided in the construction area and all debris easily displaced by wind shall be placed in the receptacle. The receptacle shall be emptied when full. All lots shall be maintained in a neat, orderly condition at all times.

12. Temporary Buildings. No structure of a temporary character, such as a shack, barn, basement, trailer, tent, garage or other outbuilding, mobile home, or motor home, shall be used on any lot at any time as a residence, either temporarily or permanently. No dwelling placed or erected on a lot shall be



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occupied in any manner at any time prior to its being fully completed; provided, however, that this provision shall not prevent the occupancy and use of improvements on a lot for residential purposes being modified or altered or while additions are being made pursuant to plans and specifications duly approved by the Committee.

Notwithstanding anything to the contrary, any lot may be used as sales office, model home complex, or storage and construction yard during the construction and sales period. All such temporary uses must have the prior approval of the Committee, which shall establish the requirements for such uses.

13. Equipment. No satellite dish, radio, television or other antennas shall be erected upon a lot unless the antenna(s) can be concealed from view behind a parapet or inside the roof structure or attic, or unless approved by the Committee. Where externally visible air conditioners or evaporative coolers are installed, they shall be so installed that they will not be visible from 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 clotheslines of any type shall be placed on or at any dwelling.

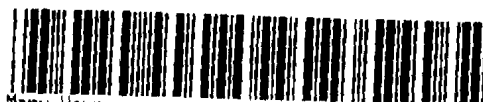
14. Parking and Storage of Vehicles, Etc., Within the Subdivision. No camper, recreational vehicle, trailer, mobile home, boat, commercial type vehicle, van, motorcycle, dune buggy, bus, inoperative vehicle, or tractor shall be stored or parked on any lot continuously for a period of more than twenty-four (24) hours. No camper, recreational vehicle, trailer, mobile home, boat, commercial type vehicle, van, motorcycle, dune buggy, bus, inoperative vehicle, or tractor shall be parked on the street overnight.

15. Flood Lights. No un-shaded exterior lights shall be permitted which project light more than fifteen (15) feet from a dwelling.

16. No Structure to Obstruct Vision of Vehicle Operator. No wall, fence, hedge, or other obstruction shall be erected, placed, altered, or permitted to remain upon any lot which would obstruct or reduce the vision of an operator of any type of vehicle or the entrance to the Subdivision and shall also comply with the City of Albuquerque's ordinances or guidelines for the clear sight triangle.

17. Party Walls. Party walls include privacy walls (see below). The rights and duties of the owners of dwellings with respect to party walls are as follows:

- A. If any party wall is damaged or destroyed through the act of one adjoining owner or any of his guests, tenants, licensees, agents, or family members, such owner shall immediately proceed to rebuild and repair the wall to as good as condition as formerly, without cost to the adjoining lot owner.
- B. If any party wall is damaged or destroyed by some cause (including ordinary wear and tear and deterioration from lapse of time), other than the act of one of the adjoining owners, his guests, tenants, licensees, agents, or family members, then both adjoining owners shall proceed forthwith to rebuild or repair the wall to as good a condition as existed prior to the damage or destruction at their joint and equal expense.
- C. Any owner proposing to modify, make additions to, or rebuild a party wall in any manner shall first obtain the written consent of the adjoining owner.
- D. Any and all resurfacing or repainting of a party wall shall be done in a color to match the original.



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18. Privacy Walls & Gates.

- A. Walls for purposes of visual screening or privacy may be constructed within the rear and side yard set back lines, provided the style, color and materials are compatible with those of the dwelling. Side and front yard walls shall have a maximum height of seventy-two (72) inches. Rear yard walls shall have a maximum height of sixty (60) inches in height from the high side grade.
- B. A solid masonry, dividing (or run-out) wall may be located between the front property line of the dwelling not to exceed sixteen (16) inches in height from the high side grade. If a concrete masonry wall is used, it must be stuccoed to match the dwelling. In no case may a wall be in violation of any governmental codes.
- C. All side yard return walls and all front walls completing court yards that face the street shall be stuccoed to match the dwelling. Walls facing streets on corner lots must be stuccoed to match the dwelling
- D. Rear property line walls must be stuccoed or painted to match the dwelling.
- E. No barbed wire, welded wire, welded pipe, or wood slats shall be permitted on any lot.
- F. All gates shall be made of wrought iron and color coated to match the exterior stucco color of the home and walls.

19. Casualty. If any improvement on any lot is destroyed, wholly or in part, by fire or other casualty, the improvement so damaged or destroyed shall be promptly and properly rebuilt or repaired in conformity with the provisions of this declaration; or, in the alternative, all remaining improvements, including all foundations and all debris, shall be removed from the lot. If the owner of the lot elects to clear the lot, the razing and clearing work shall be completed within one hundred twenty (120) days after the casualty.

20. Animals and Pets. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that domestic dogs and cats or other household pets may be kept, providing that they are not kept, bred or maintained for any commercial breeding purpose.

21. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations or exploration of any kind shall be permitted upon any lot. No oil wells, tanks, tunnels, minerals excavation shafts or other such equipment or activities shall be permitted upon any lot.

22. Easements and Rights-of-Way

- A. Utility Easements and Rights-of-Way. All areas of the lots reserved for the installation, removal, repair, and maintenance of utilities are reserved and designated as utility easements on the Subdivision plat (the "Plat").
- B. Easements and Rights-of-Ways Include Right of Ingress and Egress. All easements and rights-of-ways of whatever type which are shown and designated on the Plat shall include the right of ingress to and egress from such easements and rights-of way over,



upon, or under any part of the Subdivision, for the purpose of installing, removing, repairing, and maintaining utilities, trimming or removing of interfering trees or shrubs, and any other purpose for which such easements and rights-of-way may be used.

C. No Construction or Obstacle on Any Type of Easement or Right-of-Way. No dwelling, obstacle, or other type of construction shall be erected, placed, altered, or permitted to remain upon any lot which is the subject of any type of easement or right-of-way which would in any way interfere with the use of such easement or right-of-way; nor shall any trees, shrubs, hedges, or other landscaping be planted or permitted to remain in place, or to remain untrimmed, which would interfere with the use of any easement or right-of-way.

23. Billboards, Poster-Boards, and Advertising. The construction and/or maintenance of billboards, poster-boards, and advertising structures of any kind on any part of any lot is prohibited, except that real estate agents and/or the owner of a lot may display one (1) temporary "For Sale" sign or one (1) "Open House" sign on any lot. The sum of the length and width of such signs shall not exceed sixty inches (60").

24. No Business or Commercial Enterprise Permitted. No business, whether or not for profit, and no commercial enterprise of whatever kind, except from time to time as permitted by the City of Albuquerque Comprehensive Zoning Ordinance, shall be undertaken or carried on, upon, or from any lot, except only the original sales and subsequent sales of the lots and the dwelling constructed and to be constructed thereon. No stores, shops, businesses, commercial, or industrial buildings, or other such structures of whatever type shall be erected, placed, altered, or permitted to remain upon any lot, except only in connection with the original development and sales of the lots and construction and sales of the improvements, such as model homes or a show home, or a sales office.

Home offices shall be allowed in occupied dwellings under the following guidelines:

- A. There shall be no signs and/or advertising of the home office;
- B. The garage shall remain a garage and shall not be converted to an office; and
- C. There shall be a maximum of one customer and the owner of the home office conducting business at any one time from the home office.

25. Enforcement of Covenants. Violation or breach of any provision, condition, restriction or covenant in this declaration, after notice of such violation or breach has been presented to an owner, shall give each owner, the Grantor and the Committee the right to prosecute at law or in equity, the person or persons who have violated or are attempting to violate any provision, condition, restriction or covenant in this declaration, to enjoin or prevent them from doing so, to cause the violations to be remedied or to recover damages for the violation. Any one of the above-listed persons or entities may so enforce this declaration and the cooperation of any other person or entity is not required.

The result of every action or omission whereby any provision, condition, restriction or covenant in this declaration are violated in whole or in part, is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against an owner, either public or private, shall be applicable against every such result.



The failure of the Grantor, the Committee or any owner to enforce any provision, condition, restriction or covenant in this declaration shall not be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other provision, condition, restriction or covenant in this declaration.

All questions of interpretation, construction, or terms of the covenants shall be resolved by the Committee.

26. Severability. If any one or more of the provisions, conditions, covenants and restrictions in this declaration are held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions, covenants and restrictions shall continue unimpaired and in full force and effect.

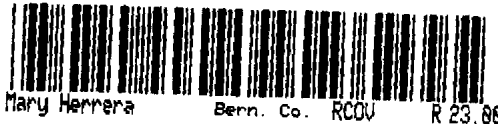
27. Duration of These Covenants. The provisions, conditions, covenants and restrictions in this declaration shall run with the land and continue in full force and effect for a period of thirty (30) years, at which time they shall be automatically extended for a period of ten (10) years and thereafter for successive ten year periods, unless before the commencement of any extension period the then owners of the fee simple estate of seventy percent (70%) or more of the lots by written instrument, duly executed and recorded, shall declare a termination of this declaration. Any such termination shall become effective upon the date upon which otherwise the automatic extension would take effect.

28. Amendment. At any time after the date of filing this declaration may be amended by the majority approval of the fee simple owners owning at least seventy-five percent (75%) of the lots.

Hoech Real Estate Corporation  
A New Mexico Corporation

By Justin D. Hoech  
Justin D. Hoech, Corporate Secretary

Dated: December 1, 2003



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ACKNOWLEDGMENT

STATE OF NEW MEXICO )  
 ) ss.  
COUNTY OF BERNALILLO )

This instrument was acknowledged before me on Dec. 5<sup>th</sup>, 2003, by Justin D. Hoech, Corporate Secretary of Hoech Real Estate Corporation, a New Mexico corporation.

Della Ortiz  
Notary Public

My commission expires:  
10-30-05

