

PROTECTIVE COVENANTS AND RESTRICTIONS
FOR PINNACLE ESTATES SUBDIVISION
TO THE CITY OF ALBUQUERQUE, NEW MEXICO

KNOW ALL MEN BY THESE PRESENTS: that TRACT C JOINT VENTURE, hereinafter called "Grantor" being the owner of PINNACLE ESTATES SUBDIVISION in Albuquerque, Bernalillo County, New Mexico being described as:

PINNACLE ESTATES SUBDIVISION, formerly Tract C, Embudo Hills of the plat of PINNACLE ESTATES SUBDIVISION as the same is shown and designated on the plat thereof, filed in the Office of the County Clerk of Bernalillo County, New Mexico, on December 17, 1987, hereby declares that it has established, and does hereby establish a general plan for the improvement, development and restrictions of said property, subject to which all lots and portions of lots in said subdivision shall be sold and conveyed as herein setforth.

DEFINITIONS

The term "lot" as used herein is intended to refer to single pieces of parcels of land shown as lots on the recorded plat described above.

The term "corner lot" means a lot which abuts on more than one street.

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

The term "single-story dwelling" shall mean a dwelling that includes only rooms with floors at grade level; second-story rooms, lofts, and attic rooms are not permitted.

NOW, THEREFORE, 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.

1. 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 or carport 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 living area of less than 2,400 square feet, exclusive of carports, garages and open porches or patios.

d. No building shall be erected, altered or permitted to remain on any such lot that will exceed a vertical distance above ground level to the highest point of the coping of a flat roof, deck line of a mansard roof or the average between the plat and the ridge of a gable, hip or gambrel roof of twenty-six (26) feet. Ground level shall be defined as the highest pad elevation of said lot, as shown on the grading plans on file at the office of Department of Public Works, City of Albuquerque and Bohannon-Huston, Inc. or as directed or approved by the Architectural Control Committee. All decisions and judgments pertaining to view obstruction shall be granted solely by the Architectural Control Committee.

e. The following lots shall be restricted to construction of single story dwellings unless waived by the Architectural Control Committee only: Not Applicable

f. No building or any part thereof, including garages, shall be erected on any lot closer than twenty (20) feet to the front street line, or closer than fifteen (15) feet to the rear lot line or closer than ten (10) feet on one side and five (5) feet on the other side.

g. No antenna, building, garage, garden, swimming pool, structure, workshop, wall, et al. shall be permitted at or above the Environmental Preservation Easement for Lots 8, 9, 10, 11, 27, 28, 29, and 30, as defined on the Pinnacle Estates Subdivision Plat.

It is understood that ordinary projections of sills, belt courses, cornices and ornamental features may project as much as twenty-four (24) inches into the side set back lines. For the

purpose of this paragraph, eaves, steps, and equipment pads shall not be considered as part of the building. Where more than one lot is acquired as a single building site, 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 set back requirements where in the discretion of the Committee, strict enforcement of the set back provisions would work an extreme hardship.

h. No alteration of any kind shall be made on any drainage ponds on lots requiring backyard ponding, as designated on the grading plans for the subdivision, without written approval from the City of Albuquerque Hydrology Department, with said approval being submitted to the Architectural Control Committee.

i. Corner lots shall front in the same direction as the row of lots on the block unless otherwise decided by the Architectural Control Committee.

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 five (5) years from the date hereof and until their successors shall be appointed and qualify. Vacancies occurring either before the end of, or as a result of the expiration of such five (5) year term, shall be appointed by a majority of the residential lot owners in PINNACLE 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 service performed on said Committee.

Any two (2) members shall be able to act on the behalf of the Committee, and in the event of any conflict, 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 Grantors for transmittal 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 and grading plan showing the location and finished grade of the structure on the lot.

(2) The Committee shall be authorized to charge a reasonable fee, not to exceed One Hundred Dollars (\$100.00) for review of each submittal.

(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 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 all or any part of PINNACLE 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 PINNACLE ESTATES SUBDIVISION without the prior written consent of 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 thirty (30) 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 Grantees shall be responsible in any manner whatsoever for any defect in any plans or specifications submitted or as revised by said Committee or the Grantor, or for work done pursuant to the 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 AND FENCES

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, except with the prior written consent of the Architectural Control Committee.

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, except with the prior written consent of the Architectural Control Committee.

c. All walls and fences shall be built of masonry block walls except as follows:

(1) Wing walls and street facing walls on corner lots shall be finished to match the dwelling.

(2) Any decorative walls provided by Grantor along lots adjoining PINNACLE ESTATES SUBDIVISION shall be neither added to nor subtracted from or modified in any means whatsoever without approval from the Architectural Control Committee.

The builder or lot owner shall be responsible to maintain said walls provided by Grantor in good condition. Should the builder or lot owner fail to maintain said walls, the Grantor reserves the right to enter the property to perform any required maintenance and invoice the builder or lot owner for all work and costs incurred.

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

d. 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.

e. No walls or fences shall be erected or placed on any lot of lots lower than four (4) feet nor higher than six (6) feet above ground level except as directed or approved by the Architectural Control Committee. "Ground" in this instance shall be defined as the highest ground elevation on either side of the wall.

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 for the purpose of installing and maintaining municipal and public utility facilities and for such other purposes incidental to the development of the property as shown on the recorded plat.

6. NUISANCES

No business, trade or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

7. 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.

8. OIL AND MINERAL OPERATIONS

No oil drilling, oil development, oil refining, derrick or other structure designed for use in boring for oil or natural gas, quarrying or mining operations of any kind shall be permitted upon or in any lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot.

9. GENERAL PROVISIONS

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

The restrictions herein set out shall be referred to, adopted and made part of each and every contract and deed executed by and on behalf of the Grantors of said property, or any part thereof, to all such intents and purposes as though incorporated in full thereof; and each such contract and/or deed shall be conclusively held to have been so executed, delivered and accepted upon the express conditions herein stated.

10. MISCELLANEOUS

The construction or maintenance of billboard, poster boards, or advertising structures of any kind on any part of any lot is prohibited, except that such billboards or posters may display a sign with their name and telephone number during construction, and realtors 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, motor home, shack, tent, garage or other out building be used as a residence, either temporarily or permanently.

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

Owners of vacant lots will be responsible for keeping their lots cleared of all weeds, trash and all other obstructing impediments.

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 twelve (12) months of the start of construction.

No cotton bearing cottonwood trees or elm trees of any nature 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 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, television or others) shall be erected upon any lot or dwelling without 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 so conform to these restrictions, or all remaining structures, including debris and foundations shall be removed from the lot.

The exterior of all dwellings shall be of pastel pinks, whites and creams or earth tone colors with no bright or garish colors being allowed.

11. LANDSCAPING

All front yard landscaping shall be complete within one year from date of occupancy of dwelling and shall be so designed and constructed as to compliment and enhance the subdivision.

12. RIGHT TO ENFORCE

The restrictions herein set forth are imposed upon each lot for the benefit of each and every 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, the individuals comprising such corporations, their assigns and each and every purchaser of any person acquiring any interest in any part of such land, their assigns and all persons acquiring any of the 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 (no restrictions or covenants herein except in respect to breaches committed during the time such corporations, or person owns or has an interest in said land and/or part thereof); and the Grantors, their successors and assigns, and the stockholders hereof, their heirs, assigns, executors, and administrators, 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 above 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.

13. AMENDMENTS

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

