

RESTRICTIVE COVENANTS OF DESERT SUN ESTATES, BLOCK TWO  
CITY OF ALAMOGORDO, OTERO COUNTY, NEW MEXICO

A. PREAMBLE.

A.1. Property Covered. The undersigned, Desert Sun Limited Partnership, acting by and through its duly authorized general partner, Desert Sun Development, Inc., a New Mexico corporation, being the owner of 55 lots in Block Two, Desert Sun Estates, City of Alamogordo, Otero County, New Mexico, according to plat filed on February 20, 1991, in Book Number 41, page 69-72, Plat Records of said county, does hereby make the following declarations and covenants as to limitations, restrictions, and uses of lots. The described property is sometimes referred to herein as the "Property" or the "Land".

A.2. Term. This document and its provisions shall be in full force and effect upon all of the described Property from the date of recording hereof for a period of fifty years, at which time it shall be automatically renewed for an additional term of fifty years, unless amended or replaced by an affirmative vote of 75% of the then lot owners, and this document and its provisions shall run with the described Land and shall be binding upon all parties and all persons claiming under the undersigned, for the benefit and limitation upon all future owners of the Property.

A.3. Purposes. The purposes of these covenants are to insure the use of the Property for attractive residential purposes only; to prevent nuisances; to prevent the impairment of the attractiveness of the Property; to maintain the desired tone of the

community and thereby secure to each site owner the full benefit and enjoyment of his Property, with no greater restriction on free and undisturbed use of his site than is necessary to insure the same advantages to other site owners; and to allow only that use which is consistent with these covenants, whether or not the same are embodied in the conveyance or other instrument affecting title to the Property.

#### B. RESTRICTIVE COVENANTS

B.1. Land Use and Building Types. The Land shall be used for single-family residential dwelling purposes only. No building or structure of any kind shall be erected or permitted to remain on any building site other than a one story detached single-family dwelling; as used herein, a "building site" means that area consisting of one or more lots or any portion thereof designated by an owner as the location upon which a one story detached single-family residential dwelling will be constructed.

B.2. Approval of Architecture. No construction, remodeling, or improvements of any structure of any kind, including buildings, walls, fences, sidewalks, and driveways shall be erected or allowed to remain on any building site unless the plot, house, floor, and construction plans and elevation, and all other building plans, shall have first been reviewed and approved by the Architectural Review Committee as hereinafter provided. Such plans shall be reviewed and approved to accomplish the purposes of these covenants and to consider the harmony of exterior design with existing or proposed structures, with respect to topography, finished grade

elevation, siting, and water drainage. The Architectural Review Committee may require the construction of fences or other structures of specified design so as to maintain harmony of design and to facilitate water drainage. Notwithstanding anything herein to the contrary, approval of the Architectural Review Committee shall not waive or otherwise alter the responsibility of any owner or contractor to satisfy all federal, state, or local building requirements, including building codes.

B.3. Dwelling Size. No dwelling shall be constructed that has less than 1,500 square feet minimum of heated, ventilated and air conditioned (HVAC) area, specifically excluding patios, porches, and garages. The term "dwelling" shall include square footage under a single roof enclosed by walls.

B.4. Dwelling Exterior. All single-family residential dwellings shall be constructed in the contemporary mediterranean style of architecture and have the same or similar color tone of exterior stucco and the same or similar color tone of roof tile approved by the Architectural Review Committee.

B.5. Dwelling Landscaping. No more than 20% of the front yard of any single-family dwelling shall be planted in grass. The remaining 80% will be a xeriscape water saving design.

B.6. Yard Walls and Fences. Alteration of location, design, height, or building material of any original fence or retaining wall constructed on any building site shall not be permitted.

B.7. Nuisances. No noxious or offensive activities shall be carried on upon the Property, nor shall any activity be carried on

which may be or may become an annoyance, nuisance, or offensive activity to other property owners, including interference with receiving or operating television, telephone or other electrical appliances.

B.7.a. Vehicles. No more than three personal vehicles to include automobiles, pickups, vans, motorcycles, and one golf cart, may be parked on the property at any given time.

B.7.b. Parking of Vehicles. No trailer, trailerhouse, boat, or recreational vehicle shall be parked on the street in Desert Sun Estates for more than 72 hours.

B.7.c. Storage of Objects. Inoperable, dilapidated, or abandoned vehicles, or vehicles under restoration, conveyances, trailers, boats, recreational vehicles, equipment, structures, machinery, or similar objects, whether operable or inoperable, shall be deemed unsightly nuisances, and shall not be permitted to remain within view on the Property.

B.7.d. Property shall be used for Single-Family Residential Purposes Only. All other uses are prohibited, particularly, no part of the Property shall be used for the carrying on or any manufacturing business, commercial amusement enterprise or activity, or for the carrying on of any retail business or other enterprise, whether or not for profit.

B.7.e. Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on the Property except that dogs, cats, or other household pets may be kept provided that they are not bred, kept, or maintained for any commercial purpose.

B.8. Outside Structures and Storage Buildings. No outside structures including antennas and satellite dishes, or equipment or drying lines shall be allowed in the back yard past the end of the privacy fence. All storage buildings must be of the same construction as the residential dwelling and situated in the side yard, and have a height no greater than 8 feet, including roof.

B.8.a. Mail or Paper Boxes. No free-standing mail or rural newspaper boxes are permitted on the property.

B.9. Roof Conformity. No antennas, solar collectors or panels, or satellite dishes shall be placed upon the roof of any residential dwelling, nor shall any other object be placed on the roof of any residential dwelling unless written permission has been obtained from the Architectural Review Committee.

B.10. Trash and Garbage Containers. All trash or garbage containers and receptacles will be located in ground at the front of the property, unless the City of Alamogordo or waste contractor refuses to service in ground receptacles, in which case they shall be screened from view on the property except on scheduled pickup days.

B.11. Maintenance of Property. Each owner of the Property shall maintain continuously all portions of all structures, including the residence, walls, fences, retaining walls, sidewalks, patios and porches, and any other portion of the Property which is exposed to public view, including yards and courtyards. The area to be so maintained shall extend from and include the exterior of

the residence or any wall open to public view to the curb on the front or the side, and to the rear and side lines.

B.12. Completion of Construction of Dwelling. Owner requires completion of construction of residential dwellings on a lot to be completed within 365 days of delivery of title to that lot.

C. ARCHITECTURAL REVIEW COMMITTEE

C.1. Creation and Composition of Committee. An Architectural Review Committee (the "Committee") is hereby created. The initial members of the Committee are: Tommie C. Herrell and Allan Dorn. Each member of the Committee shall have one vote each and subsequent members of the Committee shall be appointed by the Committee members as follows:

(a) Upon sale of one-third of the lots, a lot owner shall be selected by the then acting Committee members.

(b) Upon sale of one-half of the lots, another lot owner shall be selected by the then acting Committee members.

(c) Upon sale of three-fourths of the lots, another lot owner shall be selected by the then acting Committee members.

(d) Upon death or resignation of any existing Committee member.

The Committee shall have a maximum of five members selected by the Committee, and action of the Committee shall be by majority vote.

C.2. Authority. The Committee may adopt resolutions or policies, or both, not inconsistent with the laws of New Mexico,

any of its subdivisions, or these Restrictive Covenants for the purpose of:

(a) providing for the clarification, interpretation, supplementation and construction of these Restrictive Covenants;

(b) enforcing obedience to these Restrictive Covenants and such resolutions and policies of the Committee by imposing assessments, or by directing the occurrence or termination of any act required or prohibited by these Restrictive Covenants and resolutions and policies and by taking such other action as may be necessary to enforce such obedience; and

(c) Maintaining the general appearance of the street entrances, streets and drainage areas; and

(d) Such other purposes as may hereafter become apparent for the continued assurance of the welfare of the residents.

C.3. Lien. To correct any violations of these Restrictive Covenants, or the resolutions and policies published by the Committee, the Committee is granted, in addition to the rights herein granted, the authority to take any action that any owner of property in Block Two could take. Each owner of Property affected by such action or against whom an assessment has been imposed under provisions of these covenants hereby grants to the Committee or its assigns a lien against his Property and all improvements thereon for the payment of all expenses thereby incurred by the Committee. The lien may be foreclosed in accordance with the statutory provisions of the Mechanics and Materialmens Lien Law of the State of New Mexico.

C.4. Committee Procedures. The Committee shall meet at times and places to be determined by the Committee. Any party wishing to submit a matter to the Committee for consideration shall submit such matters in writing delivered to the office of the undersigned, or such other location as may be designated by the Committee, all upon such forms and in accordance with such procedures as may be hereinafter prescribed by the Committee. The Committee shall respond to such requests in writing within thirty days after the submission thereof. Should the Committee fail to so respond, any such request shall be deemed to have been denied. All plans, specifications, plot plans, requests for variances or other requests for action pursuant to these Restrictive Covenants shall be submitted in accordance with the above-described procedures.

C.5. Variances. The Committee is hereby authorized to grant variances from the provisions of these Restrictive Covenants when, in the discretion of the Committee, such variances are justified from the standpoint of the aesthetics, architectural design, variety, harmony, value enhancement or other reasons deemed by the Committee to justify a variance.

C.6. Disclaimer. Nothing herein shall be construed to require the Committee to take any actions herein authorized. The taking of any such action by the Committee shall not constitute a waiver of this provision. The Committee shall at all times have the option to disregard its authority, regardless of prior publication of resolutions or policies.

D. RESERVES RIGHTS

D.1 Owner reserves the right to maintain and operate, itself or through its authorized agent, a real estate and/or construction office, and model home on the property until all lots are sold or construction completed on all lots.

E. SAVINGS CLAUSE.

E.1. In the event any part of these Restrictive Covenants shall be held to be ineffective or be otherwise invalidated by a Court of competent jurisdiction, the other provisions hereof shall remain in full force and effect and shall not thereby be affected.

IN WITNESS WHEREOF, the foregoing Restrictive Covenants of Desert Sun Estates, Block Two, City of Alamogordo, Otero County, New Mexico, are adopted, and we have hereunto set our hand this

25<sup>th</sup> day of October, 1991.

DESERT SUN LIMITED PARTNERSHIP

By: DESERT SUN DEVELOPMENT, INC.,  
General Partner

By: Tommie C. Herrell  
Tommie C. Herrell, President

STATE OF NEW MEXICO )  
 )  
COUNTY OF OTERO )

The foregoing instrument was acknowledged before me this  
25th day of October, 1991, by Tommie C. Herrell,  
President of Desert Sun Development, Inc., General Partner, on  
behalf of Desert Sun Limited Partnership, a limited partnership.

  
NOTARY PUBLIC IN AND  
FOR THE STATE OF NEW MEXICO

My Commission Expires:  
10-10-1993

STATE OF NEW MEXICO } S.S.  
OTERO COUNTY

FILED FOR RECORD IN MY OFFICE

This 28th day of October, 1991

At 3:35 o'clock P. and duly attended

in Book No. 714 Page 618-627

the records of the County of New Mexico

Guanna J. Duran

County Clerk of the County of New Mexico

By Denise Duran Deputy

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