

RESTRICTIVE COVENANTS OF DESERT SUN ESTATES

VERDI PARQ

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 FIFTEEN (15) LOTS IN VERDI PARQ, CITY OF ALAMOGORDO, OTERO COUNTY, ACCORDING TO THE PLAT FILED IN BOOK 47, PAGE 45/46 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 "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 THIRTY (30) YEARS, AT WHICH TIME IT SHALL BE AUTOMATICALLY RENEWED FOR AN ADDITIONAL TERM OF FIFTY (50) YEARS. THESE RESTRICTIVE COVENANTS MAY BE AMENDED OR REPLACED BY AN AFFIRMATIVE VOTE OF THE HOMEOWNERS (AN OWNER OF A DWELLING ON A LOT) OF SEVENTY-FIVE PERCENT (75%) OF THE IMPROVED LOTS, AT ANY TIME. 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 EFFECTING 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 BUILDINGS OR STRUCTURES OF ANY KIND SHALL BE ERECTED OR PERMITTED TO REMAIN ON ANY BUILDING SITE OTHER THAN A ONE OR TWO STORY, DETACHED, SINGLE FAMILY DWELLING. AS USED HEREIN, A "BUILDING SITE" MEANS THAT AREA CONSISTING OF ONE LOT PLUS ANY PORTION THEREOF OF ANOTHER LOT DESIGNATED BY AN OWNER AS THE LOCATION UPON WHICH A ONE OR TWO 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 ELEVATIONS, AND ALL OTHER BUILDING PLANS, SHALL HAVE FIRST BEEN REVIEWED AND APPROVED BY THE ARCHITECTURAL CONTROL 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 CONTROL 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 CONTROL 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 A DEMONSTRATED CONSTRUCTION COST OF LESS THAN ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), BASED ON THE 1995 CONSUMER PRICE INDEX AND ADJUSTED ACCORDINGLY EACH YEAR OR HAS LESS THAN ONE THOUSAND EIGHT HUNDRED (1,800) SQUARE FEET MINIMUM OF HEATED, VENTILATED AND AIR CONDITIONED (HVAC) AREA, SPECIFICALLY EXCLUDING PATIOS, PORCHES, STOREROOMS AND GARAGES. THE TERM "DWELLING" SHALL INCLUDE SQUARE FOOTAGE UNDER A SINGLE ROOF ENCLOSED BY WALLS.

B.4. DWELLING EXTERIOR: ALL RESIDENTIAL DWELLINGS SHALL BE CONSTRUCTED OF FRAME, BRICK, STUCCO, WOOD OR OTHER MATERIALS AND WOOD OR METAL TRIM. MATERIALS, PLANS AND COLOR SELECTIONS WILL BE SUBJECT TO APPROVAL OF THE ARCHITECTURAL CONTROL COMMITTEE.

B.5. YARD WALLS AND FENCES: FENCES SHALL HAVE CEMENT FOUNDATION AND SHALL BE QUARRY ROCK, BLOCK AND/OR METAL. NO WOOD OR PLAIN CINDER BLOCK. FENCES MUST CONFORM TO THE STYLE OF THE HOME AND BE APPROVED BY THE ARCHITECTURAL CONTROL COMMITTEE.

B.6. 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.6.a. VEHICLES: NO MORE THAN THREE (3) PERSONAL VEHICLES TO INCLUDE AUTOMOBILES, PICKUPS, VANS, MOTORCYCLES, AND ONE GOLF CART, MAY BE PARKED ON THE PROPERTY AT ANY GIVEN TIME.

B.6.b. PARKING OF VEHICLES: NO TRAILER, TRAILER HOUSE, BOAT, OR RECREATIONAL VEHICLE SHALL BE PARKED ON THE STREET WITHIN VERDI PARQ (THE PROPERTY) FOR MORE THAN SEVENTY-TWO (72) HOURS. (NO ON-STREET PARKING OF ANY VEHICLE FOR MORE THAN SEVENTY-TWO (72) HOURS.)

B.6.c. STORAGE OF OBJECTS: INOPERABLE, DILAPIDATED, OR ABANDONED VEHICLES, OR VEHICLES UNDER RESTORATION, CONVEYANCES, 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 FOR MORE THAN TWENTY-FOUR (24) HOURS. (EXCEPTION: MOTORHOMES, RV'S, BOATS AND TRAILERS MAY BE STORED ON EACH LOT IN VERDI PARQ BUT MUST BE SCREENED FROM PUBLIC VIEW FRONT AND BACK.)

B.6.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 OF 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.6.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. HOUSEHOLD PETS MUST BE KEPT ON THE OWNER'S PROPERTY, AND IN ACCORDANCE WITH CITY ORDINANCES.

B.7. 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. ALL STORAGE BUILDINGS MUST BE OF THE SAME CONSTRUCTION AS THE RESIDENTIAL DWELLING AND SITUATED IN THE SIDE YARD. ITEMS OTHER THAN STORAGE BUILDINGS MUST BE SCREENED FROM PUBLIC VIEW.

B.8. TRASH AND GARBAGE CONTAINERS: TWO (2) 30 GALLON 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.9. 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.10. OWNER IS RESPONSIBLE TO KEEP PROPERTY CLEAN OF ALL DEBRIS AND WEEDS.

B.11. SIGNS: NO SIGN OF ANY KIND SHALL BE DISPLAYED TO THE PUBLIC VIEW ON ANY LOT, EXCEPT TWO SIGNS OF NOT MORE THAN FIVE (5) SQUARE FEET ADVERTISING THE PROPERTY FOR SALE OR RENT, OR SIGNS USED BY A CONTRACTOR TO ADVERTISE THE PROPERTY DURING THE CONSTRUCTION AND SALES PERIOD.

C. ARCHITECTURAL CONTROL COMMITTEE

C.1. CREATION AND COMPOSITION OF COMMITTEE: AN ARCHITECTURAL CONTROL COMMITTEE (THE "COMMITTEE") IS HEREBY CREATED. THE INITIAL MEMBERS OF THE COMMITTEE ARE: TOMMIE C. HERRELL AND GEORGE E. FETTINGER. EACH MEMBER OF THE COMMITTEE SHALL HAVE ONE VOTE EACH AND SUBSEQUENT MEMBERS OF THE COMMITTEE SHALL BE HOME OWNERS AND SHALL BE APPOINTED BY THE COMMITTEE MEMBERS AS FOLLOWS:

(a) UPON SALE OF TWO-THIRDS (2/3) OF THE LOTS, ANOTHER HOMEOWNER SHALL BE SELECTED BY THE THEN ACTING COMMITTEE MEMBERS.

(b) UPON DEATH OR RESIGNATION OF ANY EXISTING COMMITTEE MEMBER.

THE COMMITTEE SHALL HAVE A MAXIMUM OF THREE (3) 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, INTERPRETATIONS, SUPPLEMENTATION AND CONSTRUCTION OF THE 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, GOLF CART PLAY AREA 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 FIVE (5) 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 (30) 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 ACTIONS 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 THE RESTRICTIVE COVENANTS WHEN, IN THE DESCRETION OF THE COMMITTEE, SUCH VARIANCES ARE JUSTIFIED FROM THE STANDPOINT OF 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.

