RESTRICTIVE COVENANTS FOR DESERT MIRAGE SUBDIVISION II, Phase _____

DESERT MIRAGE, INC., a New Mexico corporation, being the owner of Lots ______, Desert Mirage Subdivision II, Phase ______, a subdivision in Las Cruces, Dona Ana County, New Mexico, according to the plat thereof on file in Plat Book ______, Pages ______, In the County Clerk's Office, Dona Ana County, New Mexico, does hereby declare the following Restrictive Covenants for Desert Mirage Subdivision II, Phase ______, and therefore does hereby impose the following Restrictive Covenants on Lots ______, Desert Mirage Subdivision II, Phase ______, a subdivision in Las Cruces, Dona Ana County, New Mexico (the "Subdivision").

1. PURPOSE: The purpose of these covenants is to insure the use of the above described Property for attractive residential purposes only; to prevent nuisance; to prevent impairment of the attractiveness of the property; and to maintain the desired tone of the community.

2. TERM: These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of fifty years from the date these covenants are recorded. At the end of said term of fifty years, these covenants shall be automatically extended for successive periods of ten years; provided, however, that these Restrictive Covenants may be amended, modified or revoked, in part or in whole, in the manner set forth below in paragraph 10, sub-paragraphs (A) and (B).

3. ENFORCEMENT: All persons and entities owning a lot or lots in the subdivision, contract purchasers and sellers with an interest in a lot or lots in the subdivision, and holders of mortgages covering a lot or lots in the subdivision shall have the right and standing to enforce these Restrictive Covenants. In the event of a breach/violation of these Restrictive Covenants, said parties shall have the right to pursue their legal and equitable remedies to enforce these covenants, and the prevailing party in any such legal proceedings shall be entitled to an award of reasonable attorney fees and costs incurred. The Design Review Committee and/or Desert Mirage, Inc., shall not have any obligation whatsoever to enforce these covenants, nor shall the Design Review Committee and/or Desert Mirage, Inc., be deemed to be a necessary party to any legal proceedings instituted to enforce these covenants.

4. SEVERABILITY: Invalidation of any portion of these covenants by judgement and/or court order shall in no way affect any of the other provisions herein, which at all times shall remain in full force and effect.

5. DESIGN REVIEW COMMITTEE: There shall be a Design Review Committee, hereinafter referred to as the "Committee". The Committee shall initially be composed of Dale Hopkins, Boyd Welch, and Kiki Suggs. In the event of the death or resignation of any initial member of the Committee, the remaining members shall the right to designate a successor. The initial members of the Committee, or their successors may at any time state in writing in a document mailed to all property owners of the subdivision, that membership of the Committee shall pass to three persons elected by a majority of the property owners who are present at a meeting called by the initial members of the Committee or their successors and held at a place in the City of Las Cruces, New Mexico; in that event a majority of the property owners present at said meeting shall determine the means of continuation and succession of the members of the Committee.

6. LAND USE: All lots, and the improvements thereof, shall be subject to the Las Cruces Extra-Territorial Zoning Ordinance, and subject to any other applicable ordinance of any applicable municipal/governmental authority. In addition to the restrictions covered by such zoning ordinances, the following restrictions as to use, shall apply:

- (A) All lots of the subdivision are hereby declared to be residential lots. Only one single family dwelling on each lot is permitted, although separate quarters for housekeepers, guests or other family members will be allowed as long as such separate quarters are permitted by the applicable municipal zoning authority.
- (B) Two or more lots may be used for the erection and construction of a single-family dwelling and incidental building permitted under these restrictions, subject to replat requirements of the Las Cruces Extra-Territorial Zone Subdivision Ordinance and other applicable municipal ordinances. The area consisting of such combined lots, once replatted into one lot, shall not thereafter be subdivided. No lots shall be subdivided into small lots.
- (C) No manufacturing or commercial enterprise or enterprises of any kind for profit, churches, or schools, junk-yards, or abandoned vehicles, shall be maintained on, in front of, or in connection with, any property in the subdivision. However, home occupations are permitted at the sole discretion of the Design Review Committee, and such home occupations, if permitted by the Committee, shall be limited to a "home office" type use. If permitted by the Committee, such home occupation must still be approved by issuance of the required permit by the applicable municipal authority, and must comply with all restrictions and requirements of that authority in addition to the above limitations. No "cottage industry" shall be allowed.
- (D) No commercial or private kennels for pets are permitted. Dogs, cats and other domesticated household pets may be kept provided that such pets do not disturb other surrounding property owners, nor shall the keeping of such domesticated household pets create or become a nuisance. No other animals, livestock, poultry of any kind shall be raised, bred or kept on any lot.

- (E) No mining, drilling, quarrying, tunneling or excavating for any substance within the earth, including oil, gas, minerals, gravel, sand, rock and earth, shall ever be permitted within the limits of the Desert Mirage Subdivision.
- (F) "For Sale" signs (not to be larger than 24 x 48 inches) and construction signs identifying contractors and owner (not to be larger than 36 x 48 inches) will be permitted for the duration of construction or the sale of the property. No other signage shall be allowed. These sign restrictions, however, do not apply to any signage that may be erected by the Committee or Desert Mirage, Inc., whether temporary or permanent.
- (G) All rubbish and trash shall be removed from each lot and shall not be allowed to accumulate during construction or burned thereon. Private trash collection services are currently available and individual lot owners will be responsible for arranging this service.
- (H) There shall be no hunting of any animals within the subdivision. The discharge of firearms within the boundaries of the subdivision is prohibited.
- (I) No obnoxious or offensive activity or public nuisance shall be carried on within the subdivision. The use of quads, ATV's, 3 wheelers, motorized dirt bikes, etc., shall not be permitted within the subdivision.
- (J) No radio or television transmission or receiving towers shall be erected, placed or permitted upon any part of said property. Satellite receivers shall be permitted above the roof line of the house, subject to the approval of the Committee.
- (K) All structures constructed on the lots shall be site-built construction. No manufactured homes, trailers, mobile homes, moved houses, metal buildings, prefabricated homes, "A" frames, cubical, geodesic or other structures of like kind or nature shall be placed upon any lot.
- (L) Travel trailers or recreational vehicles may be temporarily parked within the subdivision if belonging to bona-fide guests of a lot owner. Said vehicles may not remain within the subdivision for longer than 30 days and must be parked off-street in an unobtrusive area.
- (M) Parking of any vehicle on the streets within the subdivision is not permitted. All vehicles including boats, campers, other trailers, recreational vehicles or equipment shall be parked or stored in either a garage, carport or within a walled-in area with such walls to be 6' in height and constructed of rock or stucco, matching the exterior stucco of the residence. Any vehicle under repair, unregistered motor vehicles, storage piles and construction materials shall be stored only in a garage.

- (N) Lot ponds for the purpose of controlling run-off caused by construction on lots, shall be the responsibility of the individual lot owners and shall be constructed at the time of construction of the residence. No house in the subdivision shall be occupied until the required on-lot ponding has been constructed.
- (O) Utility easements and rights-of-way designated on the plat of the subdivision, as amended from time to time, are hereby reserved (as specifically shown on the recorded subdivision plat) for the constructing, installing, maintaining, operating, replacing, enlarging any and all electric, telephone, water, sewer, gas and similar lines, pipes, wires, conduits, ditches, drain channels and the like, necessary or desirable for public health, welfare and convenience and to effect the developmental and residential intentions set forth herein. All easements shall be kept free from permanent structures and shall provide access without trespass by maintenance personnel for the installation, upkeep, repair, removal and replacement of such facilities which may be constructed within those easements.
- 7. BUILDING REQUIREMENTS:
- (A) SIZE: The minimum size of a residence (exclusive of basements, carports, garages, open porches, detached accessory dwellings or accessory buildings of any kind) is 1750 square feet of heated area. A minimum of 400 square feet will be required for garage space to accommodate 2 vehicles.
- (B) HEIGHT: Except as hereinafter provided, all structures shall be limited to one story and a maximum height being 16 feet for at least two-thirds of the house and 20 feet for remainder of the house. The maximum height for attached or detached garages, accessory dwellings and accessory buildings is 16 feet. The highest natural ground immediately adjacent to the building pad shall be considered the elevation for the purpose of measuring maximum height of the structure. A pitched roof will be measured to the highest point of the roof and a flat roof will be measured to the top of the parapets. Flues, chimneys, vents and other allowed roof mounted items shall not be permitted to extend more than 3 feet above the maximum height. Roof-mounted heating/cooling units are discouraged and shall not be permitted to extend above the maximum height; moreover, such roof-mounted units must be completely screened by parapets from view of the streets and from all yards and houses in the subdivision. Roof-mounted heating/cooling units shall not be installed or allowed on pitched roofs.
 - On those lots where ground elevations are lower than the surrounding lots, the Committee in its absolute discretion may permit a height variance in order to permit the height of the structure on said lower lots to be at a height of the structure on the surrounding higher lots.

- (C) EXTERIOR DESIGN: All structures shall be that of an architectural design characterized as either traditional Southwest, Pueblo, Spanish Colonial, Territorial or recognized contemporary variations of the above. All structures shall be constructed with stucco exterior walls in light to medium earth tones only. The intent of the above color restrictions is to prevent the use of dark, excessively bright or garish exterior building colors, staying within the parameters of a light to medium earth tone exterior color scheme. As in the above architectural designs and color restrictions are not susceptible to an absolute and specific definition, approval of the lot owner's desired architectural design and desired exterior building colors shall be at the sole discretion of the Committee.
- (D) PITCHED ROOFS: Pitched roofs shall not be permitted to be steeper than a five and twelve pitch. Pitched roofs must use tile. The tile and their color shall be subject to approval by the Committee at the Committee's sole discretion. Reflective, shiny or glare-producing roofing products are prohibited.
- (E) EXTERIOR PRIVACY WALLS: Exterior privacy walls that interrupt the natural views from the subdivision will not be approved. Provided however, for the sake of privacy, exterior rock walls (or stucco walls matching the exterior stucco of the residence) shall be permitted around the perimeter of the building site/lot, or around defined yards, patios, courtyards, swimming pools, recreational areas and gardens within the lot. Such privacy walls are not to exceed 6 feet in height when measured from the highest natural ground immediately adjacent to the privacy wall. If the applicable municipal zoning ordinance requires such exterior walls to be lower 6 feet in height because of their location on the lot, such municipal requirements shall be adhered to.
 - 1. Chain link fences constructed for dog runs are permitted when located completely within an enclosed exterior wall. The fence height for such runs shall be a maximum of 6 feet, but, notwithstanding that maximum height, no higher than the surrounding exterior wall.
- (F) SETBACKS: Setbacks for each lot shall be as required by the Las Cruces Extra-Territorial Zoning Ordinance, or by any other applicable municipal authorities.
- (G) LANDSCAPING: The use of native plants and materials is strongly encouraged. The natural flora shall be disrupted to a minimum during and after construction. Irrigated patio, yard and pool areas should be closely related to the house and clearly divided from the natural vegetation. Landscaping shall be substantially completed within 180 days after completion of the dwelling.

- Individuals or contractors shall use the building pad or driveway of the lot and not the street, to store landscape and construction materials. Under no circumstances shall such materials be stored in areas of native vegetation or on adjoining lots. The complete clearing and stripping of all native vegetation on any lot will be prohibited without prior written approval of the Committee
- 2. No lot may be landscaped or graded in such a manner as to cause the drainage characteristics of the lot to differ from the approved grading plan; and in no case shall the drainage characteristics be modified in such a way as to cause drainage to adjacent properties. All modifications shall require written approval of the Committee.
- (H) EXTERIOR LIGHTING: The Committee recommends installation and maintenance of a front-yard exterior light for every residence. Indirect sources and horizontal cut-off fixtures are recommended to reduce glare and provide general ambient light. Use of other than soft white exterior lights shall not be permitted without specific written approval of the Committee. No exterior light which produces excessive glare to pedestrians, the neighbors or vehicular traffic shall be permitted, and such exterior lighting shall be directed in a manner to avoid such excessive glare.
- (I) SOLAR: The use of passive solar and/or energy efficient designs are encouraged for all structures. However, roof-mounted solar panels and ground-mounted solar panels will be permitted only if they are completely screened from view of the street and from all yards and houses in the subdivision, and shall not violate the height requirements of these covenants.
- (J) IMPROVEMENTS AND CONSTRUCTION: No construction of any kind shall commence until construction plans, specifications and plot plan showing the location of the structure(s) and landscaping plan have been approved in writing by the Committee as to compliance with these covenants.
 - All buildings, structures and improvements for which construction is commenced on any lot shall be entirely completed within one year after commencement of construction except for delays that may be caused by Acts of God, strikes or inability to obtain material or acts beyond the control of the owner. However, financial inability of the owner or his contractor or subcontractors to secure labor and materials because of their inability to pay for same, shall not be considered a reason or cause for the failure to complete improvements.

- 8. DESIGN REVIEW: Drawings submitted for review should be in two copies and include the following:
- (A) Site Plan, indicating with precise measurements, the locations proposed buildings, the dimensions and square footage of those buildings, driveways, sidewalks, decks, walls, pool, drainage, easements, lot pond, property boundaries, utility location, proposed contours, setbacks, finished exterior grades and areas of cut and fill.
- (B) Elevations of the main dwelling structure, garage, accessory dwellings and accessory buildings (if any) labeled in accordance with the site plan and indicating the exterior appearance of all views. The elevations must describe all exterior materials, colors and finishes (walls, roofs, trim, chimneys, windows, doors, lighting fixtures, etc.). The elevations must also describe the exterior height of all buildings, parapets, pitched roofs, allowed roof mounted items, and privacy courtyard or perimeter walls to insure compliance with the height restrictions contained herein.
- (C) Landscape Plan drawn at 1/16" or 1/8" scale shall be included with the site plan drawing. Include site contours, plant materials (indicating size), rock or stone materials, decks, patios, pool, recreational courts with fencing and lighting (if any) and covered areas.
- (D) The Committee shall have a period of 20 days in which to approve or reject any plans submitted, provided the submission is complete. In the event the submission is complete and the Committee does not provide the applicant with a written response within 20 days of submission, then the submission shall be deemed approved. Provided however, any written response from the Committee requesting more information, granting partial approval or partial rejection, etc., shall be considered a response, and the automatic approval process set forth above shall not apply. Should more information be requested, changes or revisions to plans be required, then upon submission of same, the above 20 day period for approval or rejection of plans shall begin once again.
- (E) Approved plans will be kept on file and if changes or revisions are desired, there must be an additional submittal to the Committee for further review and approval.
- (F) The Committee may in its discretion solicit such expert opinions as they shall find necessary during any approval process.

- (G) Neither the original subdivider, its successors and assigns, the Design Review Committee or its members shall incur liability of any nature whatsoever to anyone submitting plans for approval, or to any owner of a lot subject to these covenants by reason of mistake in judgement, negligence, nonfeasance, omissions or intentional acts by such parties, their agents or employees, arising out of, or in connection with, or related to in any manner the approval or disapproval or rejection of any such plans. Any party, person or entity acquiring title or an interest in and to lots in the Desert Mirage Subdivision II, Phase ______, by acquiring such title or interest subject to these Restrictive Covenants, shall be deemed to have waived and released any and all claims and demands of any nature whatsoever against the original subdivider, its successors and assigns, the Design Review Committee or its members, and their respective agents and employees, that may arise out of, be connected with or related to in any manner the approval or disapproval or rejection of any such plans.
- ADDITIONAL POWERS AND AUTHORITIES OF THE COMMITTEE: In addition to other powers and authorities given to the Committee above, the Committee shall also have the following powers:
- (A) Rule upon any questions arising with respect to interpretation of the Restrictive Covenants.
- (B) The Committee shall have the authority to grant variances from the provisions contained herein where the enforcement of such covenant would not serve the original intent of the covenants, or, as a practical matter, such variance would be in keeping with the original intent of the covenants. Further, the Committee shall have the authority to grant variances from the provisions herein, in cases of irregularly shaped lots, unusual terrain or other conditions under which strict enforcement would result in unusual hardship to the lot owner. The Committee shall be the sole judge of such variances and whether or not they should be granted shall be in the sole discretion of the Committee.

10. AMENDMENTS:

- (A) Until such time as Desert Mirage, Inc., the declarant herein, has sold 100% of the lots in the subdivision, Desert Mirage, Inc., shall have the sole right and authority to modify or amend these Restrictive Covenants with the provision that such modifications or amendments shall not materially alter the nature and purposes of these Restrictive Covenants including the character, quality and number of lots within the subdivision.
- (B) At such time as Desert Mirage, Inc. has sold 100% of the lots in the subdivision, then these Restrictive Covenants may be amended, modified or revoked, in part or in whole, only by a written and recorded instrument signed and agreed to by the owners of 100% of the lots in the subdivision.

DESERT MIRAGE, INC., a New Mexico Corporation

By _____

Boyd Welch, President

STATE OF NEW MEXICO) ss. County of Dona Ana)

This instrument was acknowledged before me this _____day of _____by Boyd Welch, in his capacity as President of Desert Mirage, Inc., a New Mexico Corporation, on behalf of said Corporation.

Notary Public