

**AMENDED AND RESTATED**  
**RESTRICTIVE COVENANTS FOR**  
**DESERT MIRAGE SUBDIVISION**

WE, the undersigned, being all of the lot owners of Desert Mirage, a subdivision in Las Cruces, Dona Ana County, New Mexico, according to the plat thereof on file in Plat Book 19, Pages 286-287 in the County Clerk's Office, Dona Ana County, New Mexico, do hereby declare the following Amended and Restated Restrictive Covenants for Desert Mirage Subdivision amending and restating those restrictive covenants on the 19th day of August, 1999 in Book 191, at Pages 90-98 of the records of Dona Ana County, New Mexico.

1. **PURPOSE:** The purpose of the covenants is to insure the use of the 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, these covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the then owners of the lots has been recorded, changing, altering, amending or removing said covenants in whole or in part.

3. **ENFORCEMENT:** In addition to the enforcement power hereinafter given the Administrative Control Committee, all property owners in the subdivision shall have the right to enforce these covenants and to recover any damages, including reasonable attorney's fees suffered by them from any violation thereof.

4. **SEVERABILITY:** Invalidation of any one of these covenants by judgment or court order shall in no way effect any of the other provisions, which at all times shall remain in full force and effect.

5. **ADMINISTRATIVE CONTROL COMMITTEE:**  
There shall be an Administrative Control Committee, hereinafter referred to as "Committee". The Committee shall initially be composed of Dale Hopkins, Boyd Welch, and Patty Pereyra. In the event of the death or resignation of any initial member of the Committee, the remaining members shall have 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 shall be subject to the zoning code of the County of Dona Ana, New Mexico as designated by the "governing authority". In addition to the restrictions covered by such zoning, 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.

(B) Two or more lots may be used for the erection and construction of a single-family dwelling and incidental buildings permitted under these restrictions. The area consisting of such combined lots shall not thereafter be subdivided.

(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. Home occupations or cottage industry may be permitted.

(D) No commercial or private kennels for pets are permitted. A maximum of two dogs and/or cats (two (2) each) may be kept. Litters shall be disposed of within one year of their birth. 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. Signage under ETZ Cottage Industry Provisions will be allowed. These restrictions do not apply to any signage that may be erected by the Committee, 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 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, 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 under 20 inches in diameter shall be permitted above the roof line of the house, subject to the approval of the Committee. Satellite receivers larger than 20 inches in diameter will be permitted within an enclosed fence and ground set so that it will not be visible from any street.

(K) All structures constructed on the lots shall be site construction. It being the intention of these covenants that no manufactured homes, trailers, mobile homes, moved houses, metal buildings, prefabricated homes, "A" frames, cubical, geodesic or other structures of any 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 temporarily parked 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 walls or fences. Any vehicle under extensive 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 unto the Declarant, and/or the City of

Las Cruces, the County of Dona Ana and all public and private utility companies (as specifically shown on such plat or assigned by the Declarant) 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. 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 housekeeper, guest quarters or accessory building of any kind) is 1600 square feet. 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 two-thirds of the house and 20 feet for one-third of the house. The highest natural ground immediately adjacent to the building pad shall be considered the elevation for the purposes 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 and chimneys 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.

1. 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 contemporary variations of the above. Examples of said design characteristics are available for inspection from members of the Committee. All structures shall be constructed with stucco walls in white, off-white and light to medium earth tones only.

(D) **ROOFS:** Pitched roofs shall not be permitted with a pitch of more than five (5) inches every twelve (12) feet. Pitched roofs must use tile. The tile and their color shall be approved by the Committee. Reflective, shiny or glare-producing roofing products are prohibited.

(E) **FENCES:** Exterior fences 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 building site or defined yards, patios, swimming pools, recreational areas, and gardens. Such privacy walls are not to exceed 6 feet in height when measured from the highest natural ground immediately adjacent to the privacy wall. Such exterior walls may only be erected on portions of the lot to the rear of the front wall of the residence.

1. Chain link fences or any other type approved by the Committee exceeding 6 feet in height, but not exceeding 10 feet in height, are permitted only when surrounding or enclosing a recreation court such as a tennis, badminton, racquetball, volleyball, etc. However, such recreational court shall not exceed an area of 8,000 square feet within the fence. If lighting is provided for such courts, the lighting must be directed and/or shielded to prevent their direct beam or glare from crossing the property lines of the lot on which they are located.

2. Chain link fences constructed for dog runs are permitted when located within an enclosed exterior fence. The fence height for such runs shall be a minimum of 1 foot lower in height than the exterior fence.

(F) **SETBACKS:** Setbacks for each lot shall be as required by the “governing authority”.

(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.

1. 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 or 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 regarded 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 damage 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 white or pale white exterior lights shall be permitted with specific written approval of the Committee. No exterior light which produces excessive glare to pedestrians, the neighbors or vehicular traffic shall be permitted.

(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.

(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.

1. All building, structure and improvements that 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 proposed buildings, driveways, sidewalks, decks, fences/walls, pool, drainage, easements, lot pond, property boundaries, utility location, proposed contours, areas of cut and fill.

(B) Floor Plans drawn at 1/8” or 1/4” scale which includes all room dimensions, door and window locations, sizes and location of mechanical and electrical systems. Indicate

building walls and height, finished exterior grades and any other information to clearly describe the interior/exterior relationship of the building.

(C) Elevations of the main dwelling structure, garage and housekeeper or guest's quarters (if any) labeled in accordance with the site plan and indicating the exterior appearance of all views. Describe all exterior materials, colors and finishes (walls, roofs, trim, chimneys, windows, doors, lighting fixtures, etc).

(D) Landscape Plan drawn at 1/16" or 1/8" scale can 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 coverage areas.

(E) The Committee shall have a period of 45 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 45 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.

(F) 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.

(G) The Committee may in its discretion solicit such expert opinions as they shall find necessary during any approval process.

(H) Neither the original subdividers, the Administrative Control Committee or its representative shall incur liability to anyone submitting plans for approval or to any owner of a lot subject to these covenants by reason of mistake in judgment, negligence or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval of any such plans. Anyone acquiring title to lots in the Desert Mirage Subdivision waives their claim for any such damages.

(I) All submissions to the Committee shall be submitted through the law offices of Yarbrow & Associates, 600 East Montana, Suite C, Las Cruces, New Mexico 88001.

9. **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:

1. Rule upon any questions arising with respect to interpretation of the restrictive covenants.


2. The Committee may but is not required to take any legal action necessary to enforce the covenants. Any action by the Committee shall not preclude any person authorized by these covenants from seeking to enforce the covenants.

3. 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 would be injurious or harmful to any person. 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 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.

10. TEMPORARY RESTRAINING ORDER: All persons buying lots within the subdivision agree that the Committee may seek and obtain a temporary restraining order without notice where any construction has been commenced by said property owner without the approval of the Committee as provided herein. All lot owners agree that it would be difficult if not impossible to measure the damages to be suffered by the other property owners and developers of the subdivision in that the injury resulting from commencement of such construction would be immediate and irreparable.

DESERT MIRAGE, INC.

A handwritten signature in cursive script that reads "Boyd Welch".

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BY: BOYD WELCH  
ITS PRESIDENT

Michael Abbott

MICHAEL C. ABBOTT

Jean Abbott

JEAN ABBOTT

Eric S. Luschei

ERIC S. LUSCHEI

Edan T. Luschei

EDAN T. LUSCHEI

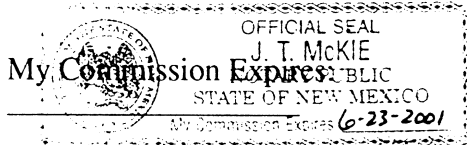
BISON ENTERPRISES, LTD. COMPANY

BY: Paul J. Faulk

STATE OF NEW MEXICO )  
 )  
COUNTY OF DONA ANA )

SS

The foregoing instrument was acknowledged before me on the 9<sup>TH</sup> day of November, 1999, by Boyd Welch as President of Desert Mirage Inc., a New Mexico Corporation.

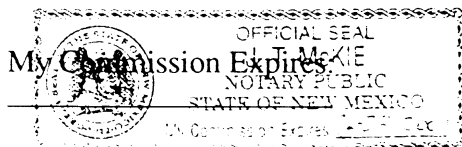


J. T. McKie  
NOTARY PUBLIC

STATE OF NEW MEXICO )  
 )  
COUNTY OF DONA ANA )

SS.

The foregoing instrument was acknowledged before me on the 10<sup>TH</sup> day of November, 1999, by Michael C. Abbott, a single man, dealing in his sole and separate property.

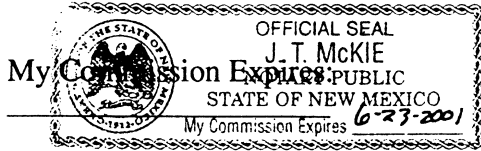


J. T. McKie  
NOTARY PUBLIC

STATE OF NEW MEXICO )  
 )  
COUNTY OF DONA ANA ) SS.

The foregoing instrument was acknowledged before me on the 9<sup>th</sup> day of November, 1999, by Jean Abbott, a single woman, dealing in her sole and separate property.

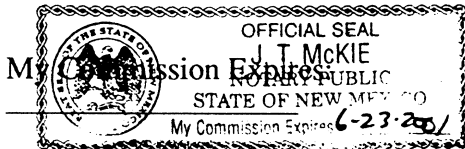
J. T. McKie  
NOTARY PUBLIC



STATE OF NEW MEXICO )  
 )  
COUNTY OF DONA ANA ) SS.

The foregoing instrument was acknowledged before me on the 15<sup>th</sup> day of November, 1999, by Eric S. Luschei and Edan T. Luschei, husband and wife.

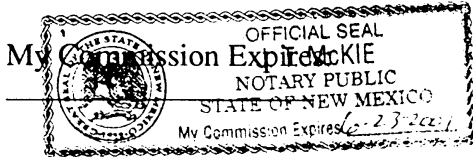
J. T. McKie  
NOTARY PUBLIC



STATE OF NEW MEXICO )  
 )  
COUNTY OF DONA ANA ) SS.

The foregoing instrument was acknowledged before me on the 12<sup>th</sup> day of November, 1999, by Charles L. FABIAN as PARTNER of Bison Enterprises, Ltd. Company.

J. T. McKie  
NOTARY PUBLIC



State of N. Mex. Co. of Dona Ana, ss  
RECEPTION NO 28710 I hereby  
certify that this instrument was filed  
for recording and duly recorded on.

NOV 15 1999

1118 A  
BOOK 301 PAGE 286 of the  
Records of said County. 293  
Rita Torres, County Clerk  
BY [Signature] DEPUTY