

**SUPPLEMENTAL RESTATED DECLARATION  
Of  
COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
DESERT RIDGE TRAILS,  
an Addition To the City of  
Albuquerque, New Mexico  
To Run With the Land**

This Supplemental Declaration of Covenants, Conditions, and Restrictions for DESERT RIDGE TRAILS, an Addition to the City of Albuquerque ("Declaration") is made this 24th day of July, 2008, by Desert Ridge Trails Homeowners Association Inc., a New Mexico corporation, and supercedes and replaces the prior filed Declaration.

**Recitals**

1. Mesa Verde Development Corporation, a New Mexico corporation ("Declarant") owned a tract of land, which it developed into Desert Ridge Trails, and subjected to certain covenants contained in the Original Declaration filed of record;
2. Declarant has completed the Subdivision and no longer exercises control of the Association;
3. The Members of the Association have, through a meeting duly called, after receiving such approval as was required under the Declaration as it existed;

NOW, THEREFORE, the following shall be substituted for the Original Declaration previously filed.

**ARTICLE  
I**

**DEFINITIONS**

Section 1. The following terms when used in this Declaration or in any Supplemental Declaration (as defined below) shall have the following meanings (unless prohibited by the context):

(a) "Articles" shall mean and refer to the Articles of Incorporation of the Association, as the same may be amended from time to time.

(b) "Association" shall mean and refer to DESERT RIDGE TRAILS HOMEOWNERS ASSOCIATION, a New Mexico nonprofit corporation, and its successors and assigns.

(c) "Board" shall mean and refer to the Board of Directors of the Association.

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(d) "By-Laws" shall mean and refer to the By-Laws of the Association.

(e) "Common Expenses" shall mean and refer to all expenses and obligations of the Association, including allotments to any reserve fund.

(f) "Common Facilities" shall mean and refer to those areas and facilities of the Subdivision (defined below) which are for the common use and enjoyment of the Owners (defined below). The Common Facilities shall include, without limitation, the Perimeter Wall (defined below), Subdivision signs, Tracts for use as bicycle and pedestrian trails (Tracts AA and BB), a landscape irrigation system within the Tracts, landscaping, including the irrigation thereof, between the Park and the adjoining curbs and gutters, and any and all other community facilities, which currently are within, or may in the future be erected within the Subdivision, and shall include those areas and facilities designated as "Common Facilities" in this Declaration and in any Supplemental Declaration. The Common Facilities shall not include the Park, street lights, street lighting system, streets, curbs, gutters, and other public facilities which shall be owned by or dedicated to the City of Albuquerque or to the Albuquerque Metropolitan Arroyo Flood Control Authority ("Public Facilities"); however, the maintenance of the landscaping, including the irrigation thereof, between the Park and the adjoining curbs and gutters shall be the responsibility of the Association; the maintenance of the landscape areas within the public rights-of-way on the following streets as shown on the approved Site Development/Utility Plan for the Subdivision shall be the responsibility of the Association:

Blue Cypress Avenue NE  
Canyon Sage Drive NE  
Prairie Vista Drive NE  
Wild Olive Avenue NE;

(g) "Declarant" shall mean and refer to MESA VERDE DEVELOPMENT CORPORATION, a New Mexico corporation, its successors and assigns in interest.

(h) "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions for DESERT RIDGE TRAILS SUBDIVISION, UNIT 1, an Addition to the City of Albuquerque, New Mexico, To Run With the Land, including its exhibits, as the same may be amended from time to time, and shall include this and any other Supplemental Declaration.

(i) "Dwelling Unit" shall mean and refer to any structure, or part thereof, situated upon a Lot (defined below) within the Subdivision that is designed and intended for residential use by a single family. Where appropriate, any use herein of the term "Dwelling Unit" shall include the Lot upon which the Dwelling Unit is placed.

(j) "Lot" shall mean and refer to any separately numbered or lettered plot of land shown upon any recorded plat or map of the Subdivision, as amended from time to time, excluding the Common Facilities and the Public Facilities. Where appropriate, any use herein of the term "Lot" shall include any Dwelling Unit placed thereon.



(k) "Members" shall mean and refer to all members of the Association, and the term "Member" shall mean and refer to any one of the Members.

(l) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee-simple title to any Lot, but shall not mean or refer to any person or entity who or which holds title merely as security for the performance of an obligation. However, "Owner" shall include a record owner of the fee-simple title to any Lot who or which acquired such title at a judicial sale or by a conveyance in lieu of foreclosure.

(m) "Park" shall mean and refer to the area designated as "Park" on the Plat (Tract "B" as shown and designated on the Plat), which Declarant conveyed to the City of Albuquerque, New Mexico, which is owned by the City as a Public Facility, and which Park and Park Improvements shall be maintained by the City of Albuquerque.

(n) "Perimeter Wall" shall mean and refer to the perimeter wall along the perimeter boundary of the Subdivision, which Subdivision boundary is shown on the Plat, and which Perimeter Wall shall be maintained as set forth herein. The Perimeter Wall is a Common Facility.

(o) "Plat" shall mean and refer to the Plat of DESERT RIDGE TRAILS SUBDIVISION, UNIT 1, which was filed on February 8, 2002, as Document No. 2002017575, and recorded in Vol. 2002C at page 46, of the records of Bernalillo County, New Mexico.

(p) "Public Facilities" shall mean and refer to the Park, streetlights, street lighting system, streets, curbs, gutters, and other public facilities owned by or dedicated to the City of Albuquerque or to the Albuquerque Metropolitan Arroyo Flood Control Authority.

(q) "Rules and Regulations" shall mean and refer to any and all rules, regulations, and design standards adopted and/or amended by the Association, acting through its Board from time to time in the manner permitted by the By-Laws

(r) "Special Meeting" A Special Meeting is a meeting of the membership called for a specific purpose as set out in this Declaration. A Special Meeting shall be called upon not less than thirty (30) days written notice, which notice shall include a description of the specific purpose of the meeting. Measures which require a Special Meeting shall be approved upon the assent of two-thirds (2/3rds) votes of the Members who are voting in person or by proxy at a Special Meeting at which a Special Quorum is present. A Special Quorum shall be 60% of the membership of the Association.

(s) "Subdivision" shall mean and refer to the DESERT RIDGE TRAILS SUBDIVISION, which includes the Existing Property, as defined in Article II below, and any and all additions thereto.

(t) "Supplemental Declaration" shall mean and refer to any instrument which amends, modifies, or terminates this Declaration, or which accomplishes some action taken under this Declaration, and which has been executed and acknowledged in the manner required by this Declaration, and recorded in the office of the County Clerk of

Bernalillo County, New Mexico, and shall be included in the term "Declaration," unless the context shall prohibit such construction.

## ARTICLE

### II

#### PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS

Section 1. **Existing Property.** The Existing Property shall be the Property Described in Exhibit A, to the original Declaration, which shall be owned, held, transferred, sold, conveyed, encumbered, used, and occupied subject to this Declaration.

Section 2. **Additions to Existing Property.** Additional real property may become subject to this Declaration in the following manner: Upon a merger or consolidation of the Association with another association as provided in the Articles, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights, and obligations of another association may, by operation of law, be added to the properties, rights, and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association may administer and enforce the Covenants, Conditions, and Restrictions established by this Declaration within the Existing Property, together with the covenants, conditions, and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall affect any revocation, change, or addition to the Covenants, Conditions, and Restrictions established by this Declaration within the Existing Property, except as herein provided.

## ARTICLE

### III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. **Membership.** Every person or entity who or which is a record Owner of a fee-simple interest in any Lot which is subject by the terms of this Declaration to assessment by the Association shall be a Member of the Association, including, without limitation, any record Owner of a fee-simple interest in any Lot who acquired such title at a judicial sale or by a conveyance in lieu of foreclosure. However, any person or entity who or which holds such an interest merely as security for the performance of an obligation shall not be a Member. The rights of membership, including the right to vote, the right to participate in Association affairs, and/or the right to use and enjoy the Common Facilities (but not easements of ingress and egress), may be suspended by the Association for any period during which the following-described delinquency or delinquencies shall continue upon written notice to any Lot Owner who: (i) fails, neglects, or refuses to pay any assessment or any other amount due and payable to the Association levied by a vote of the Board for more than thirty (30) days after it is due, or (ii) continues to violate any provision of this Declaration, the Articles, the By-Laws, or the Rules and Regulations after notice thereof. Ownership of a Lot shall be the sole qualification for membership. No Owner shall have more than one membership for each Lot owned by such Owner. Membership shall be appurtenant to and may not be separated from the ownership of any Lot that is subject to assessment by the Association.



**ARTICLE  
IV  
PROPERTY RIGHTS IN THE COMMON FACILITIES**

Section 1. **Members' Easements of Enjoyment.** Subject to the provisions of Section 3 of this Article IV, every Member shall have a right and easement of enjoyment in and to the Common Facilities, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. **Title to Common Facilities.** Declarant has, pursuant to the original Declaration, conveyed the Common Facilities to the Association, free and clear of all liens and encumbrances (except for ad valorem taxes and assessments for the year in which the conveyance is made; except for all patent reservations, conditions, restrictions, restrictive covenants, easements, and rights-of-way of record, if any). Before the title to any areas or facilities proposed as Common Facilities were conveyed to the Association, the maintenance and operating costs associated therewith was also considered as Common Expenses, if such proposed Common Facilities were used by the Association and its Members, and the Association shall pay such maintenance and operating costs thereafter.

Section 3. **Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association in accordance with its Articles and By-Laws, to borrow money for the purpose of acquiring or improving the Common Facilities and, for that purpose, to mortgage or otherwise encumber the Common Facilities; in the event the Association proposes to borrow money for the purpose of acquiring or improving the Common Facilities and, for that purpose, to mortgage or otherwise encumber the Common Facilities, such action must be approved by a simple majority of the Members at a Special Meeting.

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Facilities against foreclosure;

(c) The right of the Association, as provided in the Articles and By-Laws, acting by a vote of the Board, to suspend the rights of membership, including the right to vote, the right to participate in Association affairs, and/or the right to use and enjoy the Common Facilities (but not easements of ingress and egress) for any period during which certain delinquencies shall continue, as provided in the Articles;

(d) The right of the Association to dedicate, convey, or transfer all or any part of the Common Facilities to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication, conveyance, or transfer determination as to the purposes or as to the conditions thereof shall be effective unless approved at a Special Meeting;

(e) The right of individual Members to delegate their rights and easements of enjoyment in and to the Common Facilities; and

(f) If an Owner has an easement for ingress to or egress from such Owner's Lot through the Common Facilities, any conveyance or encumbrance of such Common Facilities is subject to that Lot Owner's ingress/egress easement. Such easements for ingress and egress shall not be subject to suspension for delinquency of an Owner.

## ARTICLE

### V

## COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. **Creation of the Lien and Personal Obligation for Assessments.** Each Owner of any Lot by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in any such deed or other conveyance, agrees to pay to the Association (i) annual assessments in quarterly installments for the Common Expenses of the Association; (ii) special assessments for the construction or reconstruction, repair or replacement of any capital improvement constituting a part of the Common Facilities, for the operation, improvement, and maintenance of the Public Facilities, and for Association-administered repairs, replacements, and maintenance of Dwelling Units and/or Lots, such special assessments to be fixed, established, and collected from time to time as hereinafter provided; and (iii) special enforcement assessments. All such assessments, together with interest thereon and costs of collection thereof as are hereinafter provided, shall be a charge and a continuing lien upon the Lot against which each such assessment is made. All such assessments, together with interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot at the time the assessment was made. Any purchaser of a Lot shall be jointly and severally liable with the selling Owner for all assessments, which are unpaid at the time the purchasing Owner takes title.

Section 2. **Purpose of Annual Assessments.** The annual assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, welfare, and recreation of the residents of the Subdivision; for the preservation of the values and amenities of the Subdivision; for the operation, improvement, and maintenance of the Common Facilities and payment of Common Expenses.

Section 3. **Fixing the Amount of Annual Assessments for Common Expenses.**

The Common Expenses shall also include all other expenses and obligations of the Association, including allotments to any reserve fund, accounting, legal, and other professional fees, landscaping costs, maintenance and operating costs of all areas and facilities which may become Common Facilities before the title thereto is conveyed to the Association and other operational expenses, and all other expenses associated with the operation and maintenance of the Association's affairs and assets. From and after July 1, 2005, the annual assessment for Common Expenses shall be adopted by the Board, subject to the ratification thereof by the Members, as provided in the By-Laws. The limitations of this Section shall not apply to any change in the amount of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles and under Article II, Section 2, hereof.

Section 4. **Special Assessments for Capital Improvements and Maintenance of Public Facilities.** In addition to the annual assessments for Common Expenses authorized by Section 3 of this Article V, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the



cost of the construction, reconstruction, repair, or replacement, of any capital improvement constituting a part of the Common Facilities, including the necessary fixtures and personal properties related thereto, or the cost of maintaining the Public Facilities, provided that any such special assessment shall be approved at a Special Meeting. Such Special Assessment shall be a lien upon the Lots effective upon the date, and shall be due and payable, as determined by the Association.

**Section 5. Special Assessments for Association-Administered Repairs, Replacements, and Maintenance of Dwelling Units and/or Lots.** In addition to the annual assessments for Common Expenses and other special assessments as set forth herein, the Association may levy in any assessment year a special assessment against any Owner, applicable to that year only, for the cost of repairs, replacements, and/or maintenance to the Owner's Dwelling Unit and/or Lot, under the circumstances described in Article VI, Section 23, below; provided, however, that any such Special Assessment for Association-Administered Repairs shall have the unanimous assent of the entire Board of Directors (other than the affected Owner, if he or she is a Director). Such special assessment shall be a lien upon the affected Owner's Lot(s) effective upon the date, and shall be due and payable, as determined by the Association acting through its Board.

**Section 6. Special Enforcement Assessments.** In addition to the annual assessments for Common Expenses and other special assessments as set forth herein, the Association, acting upon a vote of the Board, may levy a special enforcement assessment against any Owner as a result of that Owner's acts or omissions, or the acts or omissions of his, her, or its tenants, family members, or invitees, in violation of this Declaration or the Articles, Bylaws or Rules and Regulations. Such special enforcement assessment shall be a lien upon the defaulting Owner's Lot(s) effective upon the date, and shall be due and payable, as determined by the Association and may be enforceable in the same manner as other assessments.

**Section 7. Change in the Amount of Annual Assessments for Common Expenses.** Subject to the limitations of Section 3 of this Article V, and for the period therein specified, the Association may change the amount of the assessments fixed by Section 3 of this Article V prospectively for any such period provided that any such change shall be approved at a Special Meeting, and, provided, further, that the limitations of Section 3 of this Article V shall not apply to any change in the amount of the assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under its Articles and under Article II, Section 2, hereof.

**Section 8. Quorum for Any Action Authorized Under this Article.** The quorum required for any action authorized under this Article V other than a Special Meeting shall be as follows: Except as otherwise provided in the By-Laws or the Articles, the presence of Members at the meeting of Members, in person or by proxy, entitled to cast ten percent (10%) of the votes of each class of membership shall constitute a quorum. For any Special Meeting, a Special Quorum, defined previously herein, shall be required. If the required quorum is not present at any such meeting on the first call therefore, the Members present and entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present. A quorum once attained continues until adjournment despite withdrawal of enough members to leave less than a quorum.



Section 9. **Effective Date of Annual Assessments; Due Dates.** The effective date for the annual assessments provided for herein shall be the date (which shall be the first day of a month) fixed by the Board and shall be payable in quarterly installments on the dates fixed by the Board. The assessments for any fiscal year, after the first year, shall become due and payable on the first day of each fiscal quarter of such fiscal year or such other date or dates as the Board shall fix. The first assessment levied against any Lot which is hereafter added to the Existing Property at a time other than the beginning of any fiscal year shall be similarly prorated for the number of months remaining in such year.

The effective and due dates of any special assessment shall be fixed in the resolution authorizing such assessment.

Section 10. **Duties of the Board.** The Board shall fix the effective date and the amount of the assessment, subject to ratification by the Members, against each Lot for each annual assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall be sent to every Owner.

Section 11. **Effect of Non-Payment of Assessment; The Personal Obligation of the Owner; The Lien; Remedies of Association.** If any assessment, or any installment thereof, described in this Declaration or other amount owed to the Association by the Owner pursuant to this Declaration is not paid when due, then such assessment or other charge shall become delinquent and shall, together with interest thereon and cost of collection thereof as hereinafter provided, become a continuing lien on the assessed Lot, which shall bind such Lot in the hands of the then Owner, his, her, or its heirs, personal representatives, successors, and assigns. The personal obligation of the Owner to pay such assessment, however, shall remain his, hers, or its personal obligation, and any purchaser of a Lot shall be jointly and severally liable with the selling Owner for all unpaid assessments as provided in the Bylaws. Mortgagees are not required to collect assessments. Late charges for assessments may be established in the Bylaws.

In the event that any Lot's assessment for Common Expenses or special assessments remains unpaid for more than thirty (30) days after it becomes due, the Association may suspend for any period during which such delinquency shall continue, the rights of membership, including the right to vote, the right to participate in Association affairs, and/or the right to use and enjoy the Common Facilities (but not easements of ingress and egress) by the delinquent Owner and his, her, or its officers, employees, tenants, guests, and invitees.

Further, if the delinquent assessment and any late charges, or other amounts owed by an Owner to the Association pursuant to this Declaration are not paid within thirty (30) days after the due date thereof, the assessment shall bear interest from the due date at the rate set by the Bylaws, and the Association may (i) bring an action at law against the Owner(s) personally obligated to pay the same and/or (ii) foreclose the lien against the Lot. In any action by the Association to foreclose its lien or to otherwise enforce this Declaration, its Bylaws or Rules and Regulations in which the Association prevails in whole or in part, the Association shall also be entitled to costs of such action and litigation expenses, including reasonable attorney's fees. In any foreclosure of a lien under this Declaration, the Owner's right of redemption pursuant to NMSA 1978 Section 39-5-18, or any successor statute, shall be reduced to thirty (30) days.



Section 12. **Subordination of the Lien to Mortgage.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage then or thereafter placed upon the Lot subject to assessment; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure, or any other proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such Lot or the Owner thereof from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment. Such transfer shall not relieve the Owner from any personal liability for assessments that accrued prior to the transfer.

Section 13. **Exempt Property.** The following property subject to this Declaration shall be exempted from the assessments, charges, and liens created herein: (i) all properties to the extent of any easement or other interest therein dedicated and accepted by the local public authority or utility provider and devoted to public use; (ii) all Common Facilities as defined in Article I, Section 1 hereof; and (iii) all properties exempted from taxation by the laws of the State of New Mexico upon the terms and to the extent of such legal exemption.

Notwithstanding any provision herein, no land or improvements devoted to residential use shall be exempt from assessments, charges, or liens duly imposed.

Section 14. **Uniform Rate of Assessments.** Both annual and special assessments (but not special enforcement assessments) shall be fixed at a uniform rate for all Lots.

## ARTICLE VI LAND USE

Section 1. **Antennae, solar collectors.** No antenna (television, amateur radio, citizen's band radio, satellite dish, or other antenna) or solar collector shall be erected upon any Lot except as permitted by the Rules and Regulations.

Section 2. **Architectural and Other Standards.** Except for construction of all types performed by or for Declarant prior to the date of this Amended and Restated Declaration, no Dwelling Unit including the garage, wall, accessory dwelling, or other structure of any kind whatever, whether permanent or temporary, shall be erected, placed, or altered on any Lot until (i) a building permit has been issued by the City of Albuquerque; (ii) the plans and specifications therefore contain a certification by the builder of the proposed Dwelling Unit including the garage, wall, accessory building, or other structure confirming their compliance with all applicable federal, state, and local codes, regulations, restrictions, and ordinances; and (iii) construction plans and specifications have been approved in writing by the Architectural Control Committee as to compliance with the design standards set forth herein and in the Rules and Regulations, including without limitation, quality of materials, harmony of external design with existing structures, and location of the Dwelling Unit and other structures with respect to topography, setback requirements, and finished grade elevations. These restrictions shall not apply to the Declarant or to construction of all types previously performed by or for Declarant. Likewise, no existing Dwelling Unit including the garage, wall, accessory dwelling, or other structure of any kind shall be altered, remodeled, painted, or changed until the plans for such have been approved in writing by the Architectural Control Committee. These restrictions shall not apply to the Declarant or to alteration, remodeling,



painting, or changes of all types previously performed by or for Declarant. Notwithstanding the foregoing, Architectural Control Committee approval shall not be required to repaint, restrain, or restucco a structure in a color that the Architectural Control Committee has previously approved. The procedures for obtaining Architectural Control Committee approval are set forth in Article VII. All construction, whether new construction, alterations, additions, or remodeling, shall be commenced within one (1) year of the Architectural Control Committee's written approval thereof, after which such approval shall become void. All exterior construction, including the final stucco color coat, paint, trim, and landscaping shall be fully completed within one (1) year after commencement of such construction. No Lot shall be used for the storage of materials for a period greater than thirty (30) days prior to the start of construction.

Section 3. **Architectural Style.** The architectural style of all dwellings in the Subdivision shall be based upon "Pueblo Revival," "Spanish Mission," "Contemporary Pueblo," or "Scottsdale" style. Modifications of the foregoing styles in reasonable, innovative, and creative ways are encouraged and permitted subject to the prior written approval of the Architectural Control Committee.

Section 4. **Building Location.** No building shall be located on any lot in such a manner as to violate the City of Albuquerque zoning ordinances, subdivision rules or regulations, or any other public ordinance, rule, or regulation adopted by any governmental authority having jurisdiction over the Lots which might pertain to building construction and/or location. Minimum building setback shall be (a) fifteen feet (15') for front yards and rear yards, except for garages for which the minimum building set back shall be twenty feet (20') from the front property line and five feet (5') from either side property line; or (b) the front yard and side yard setback requirements imposed by the ordinances, rules, or regulations of the City of Albuquerque. Any Lot owner proposing to build improvements on his Lot must obtain approval from the City of Albuquerque for the proposed plan for compliance with all applicable ordinances, rules, and regulations in effect at that time regarding building height and front and side yard setbacks. For the purpose of the limitations imposed by these restrictive and protective covenants (but not those imposed by municipal ordinances, rules, or regulations if defined otherwise therein), eaves, steps, patios, walkways, and open porches shall not be considered as part of a building. In no case shall eaves, steps, patios, walkways, or open porches encroach upon another Lot

Section 5. **Certain Structures Prohibited.** No tent, barn, carport, or other outbuilding of more than seven feet (7') in height shall be used, erected, or constructed, as the case may be, on any Lot other than those specifically allowed by the rules and regulations of the Association. In no case shall any of the above-mentioned structures be used as a residence, either temporarily or permanently. The Association may provide in its rules and regulations for approved outbuildings provided they are consistent in style, color and appearance with the standards of the Subdivision. The Architectural Control Committee shall have the power to grant variances from the standards in this paragraph on a case-by-case basis for good cause.

Section 6. **Courtyard Walls.** Courtyard walls are walls that are not built on the property line of a Lot. Courtyard walls must comply with all requirements of the City of Albuquerque and must have the prior written approval of the Architectural Control Committee.

Section 7. **Destruction of Party Wall by any Casualty.** If any Party Wall as defined herein is destroyed or damaged by any casualty, the restoration cost shall be



proportionately shared between or among the Owners of the Lots upon or between which such party wall is located unless caused by one or more of such owners, in which case the cost of restoration shall be his, hers, or theirs.

Section 8. **Drainage.** Surface drainage courses within Lots shall be kept free and clear of debris or other obstruction that might prevent the free flow of storm waters.

Section 9. **Drainage and Utility Easements.** Easements and rights-of-way for installation and maintenance of utilities and drainage facilities are reserved either as indicated on the Plat, or as granted by a recorded document.

Section 10. **Driveways.** All driveways shall be graded and sloped for proper drainage and shall be maintained so as to reduce erosion and eliminate unsightly conditions. Driveways shall be surfaced with concrete acceptable to the Architectural Control Committee. Driveway size may not be expanded beyond that which was originally constructed unless approved in writing by the Architectural Control Committee.

Section 11. **Dwelling Unit Size.** The heated floor area within the structure of any Dwelling Unit, exclusive of porches, garages, or other appurtenant structures, shall not be less than 1,200 square feet. In the case of a residence of more than one story, not less than 1,000 square feet shall be within the ground floor area. In cases of multiple-level Dwelling Units, the Architectural Control Committee shall conclusively determine what constitutes ground floor area as distinguished from the basement or other non-ground floor areas.

Section 12. **Exterior Lighting.** All exterior lights must be situated so as not to be directed toward surrounding Lots and shall be installed in compliance with the Rules and Regulations. The Architectural Control Committee has the authority to require the relocation or removal of any fixtures, including the wattage and type of bulb or other illuminating element therein, which adversely affect neighboring properties.

Section 13. **Exterior Materials, Colors, and Finishes.** The exterior building materials, paints and stains for each Dwelling Unit shall be selected to complement, coordinate, and harmonize with the overall existing architectural design of DESERT RIDGE TRAILS as deemed appropriate by the Architectural Control Committee as shall be further described in the Rules and Regulations.

Section 14. **Garages.** All Dwelling Units shall have a minimum of a two (2)-car garage and in the case of three (3) car garage no more than two (2) garage doors are allowed. Carports are not permitted. No Garage shall be erected with a door taller than eight (8) feet. Garages shall not be used for habitation. Any modification or addition to an existing garage shall require specific prior written approval by the Architectural Control Committee and shall be considered on a case-by-case basis in relation to design, placement, Lot, street visibility, etc.

Section 15. **Gates, Generally.** Wall gates in front yard courtyard walls shall be decorative in design and construction as approved in writing by the Architectural Control Committee. Back yard access gates shall be constructed of wrought iron as approved in writing by the Architectural Control Committee. No gates shall be permitted in the Perimeter Wall except at the Subdivision entrances.



Section 16. **Grading.** No Lot may be landscaped or regraded in such a manner as to cause the drainage characteristics of the Lot to differ materially 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 property.

Section 17. **Grading and Drainage Modifications.** Applicants shall not make modifications to the grading or drainage improvements installed by the builder without written approval of the Architectural Control Committee. The Association will not assume any responsibility whatsoever for any damage brought about by the grading, drainage, or other improvements or modifications thereto made by a builder or a Lot Owner.

Section 18. **Gutters and Downspouts.** Gutters and downspouts shall conform to the colors and other standards set out in the Rules and Regulations.

Section 19. **Identical Front House and Rear House Elevations, Massing.** No more than three (3) identical, or substantially identical, front house elevations shall be constructed next to each other. Not more than three (3) identical, or substantially identical, rear house elevations on Dwelling Units constructed on Lots where the rear faces streets or open space shall be constructed next to each other. All Dwelling Units shall include at least two distinct masses, which must be visible on each side of the house that faces a street. Each mass must be distinguished by horizontal and vertical offsets of at least 6 inches.

Section 20. **Land Use and Building Type.** No lot or any portion thereof shall be used except for single-family residential purposes. No building shall be erected, altered, placed, or permitted to remain on any lot other than one (1) single-family detached Dwelling Unit plus one (1) accessory dwelling, e.g., a guest house or an employee dwelling. No lot shall be split or further subdivided except as necessitated by encroachments or boundary deficiencies caused by errors in surveying and/or construction.

Each Dwelling Unit shall have an attached private garage for no fewer than two (2) nor more than three (3) automobiles. No portion of any building shall exceed the lesser height of (a) twenty-six feet (26') above the highest finished grade of the residential lot, except for chimneys and antennae of reasonable size, or (b) the building height limitations provided in the ordinances, rules, and regulations of the City of Albuquerque. For purposes of this section, a garage shall be considered to be part of the Dwelling Unit of which it is attached. Once built, a dwelling unit cannot be changed to increase the height of the building. The Architectural Control Committee shall have and retain the power to grant variances from these standards on a case-by-case basis for good cause.

No business, even businesses which may be permitted under applicable zoning, shall be operated from any Dwelling Unit or on any Lot, except for a home office occupying not more than fifteen per cent (15%) of the floor space of the Dwelling Unit, for which there is no external evidence of the activity, including, but not limited to, signs, customer or commercial vehicles, outside storage, noise, odors, noxious fumes, or other nuisances. No storage of merchandise or manufacturing uses of any kind shall be permitted

Section 21. **Landscaping.** In addition to the landscaping requirements of the City of Albuquerque with which each Lot owner must comply, each Lot must be landscaped to meet the requirements set out in the rules and regulations of the Association and on the Site Plan for



Subdivision and the Site Plan for Building Permit, and landscape plans must be approved by the Architectural Control Committee.

Section 22. **Livestock, Poultry, and Pets.** No animal, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except for a reasonable number of dogs, cats, or other household pets as permitted by the Rules and Regulations.

Section 23. **Maintenance of Lots and Dwelling Units.** All Lots and Dwelling Unit exteriors shall be maintained by the respective Owner thereof in a neat, orderly condition and in a good state of preservation and cleanliness at all times and shall be maintained as provided in the Rules and Regulations. For the sole purpose of performing the repair, replacement, and/or maintenance authorized by this Section, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours.

Section 24. **Parking and Vehicles.** No mobile home, motor home, camper, trailer, recreational vehicle, motorcycle, boat, truck over one (1) ton, or any commercial vehicle shall be stored, kept, or maintained on any portion of the Subdivision visible from the exterior of a dwelling pursuant to the Rules and Regulations.

Section 25. **Party Walls and Costs Related Thereto.** With the exception of the Perimeter Wall, any wall on the common property line of two or more Lots shall constitute a Party Wall, and to the extent not inconsistent with the provisions of this Section, the general rules, laws, and ordinances regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of original construction and of reasonable repair, replacement and maintenance of a party wall shall be proportionately shared between or among the Owners of the Lots upon or between which such party wall is located. The right of any Owner to contribution from any other Owner for repair and maintenance shall be appurtenant to the Lot owned by such Owner and shall pass to such Owner's successors in title. All party walls must be constructed utilizing colored concrete block as in colors as prescribed by the Rules and Regulations.

Section 26. **Perimeter Wall.** The Perimeter Wall shall remain in place, shall not be defaced, altered, or removed.

Section 27. **Play Structures.** Play structures, including but not limited to swing sets, trampolines, play houses, climbing structures and basketball hoops shall be located only in the rear yard, except that regulation and commercially purchased portable/moveable basketball hoops may be placed in front of the dwelling unit. Such play structures shall be regulated, restricted or even prohibited by the Board pursuant to Rules and Regulations imposed by the Board.

Section 28. **Rentals.** The Board may, through the Bylaws or Rules and Regulations, impose fees, procedures, lease forms, requirements and restrictions upon the rental of Dwelling Units. Any Owner who rents a unit shall give their tenant a copy of the Desert Ridge Trails Homeowners Association Resident Handbook and Rules and Regulations and include in the lease form a clause requiring tenant to abide by the Rules and Regulations.



Section 29. **Retaining Walls.** Retaining walls shall be party walls if placed on the common property line of two or more Lots and shall not be removed, painted, or altered in any respect by any Lot Owner.

Section 30. **Roof-top-Mounted Equipment.** No evaporative coolers or HVAC units shall be constructed on a pitched roof of a Dwelling Unit but must be placed on a concrete pad on the ground and screened and not visible from any street. On flat rooftops evaporative coolers and HVAC units may be placed on the roofs or on concrete pads on the ground. If constructed on the flat rooftop they shall be screened by a structure of the same color of stucco as the Dwelling Unit and shall not protrude above the screening structure.

Section 31. **Roofs.** Roof Pitch, Form, and Material – Roofs may take on a variety of forms; however, gables or hipped roofs are preferred. Mansard, gambrel, and other types of non-standard roof forms are not permitted, except as may be approved in writing by the Architectural Control Committee before construction thereof is commenced. Flat roofs must be constructed with a positive slope to ensure proper drainage. Except as expressly allowed in this Declaration, no metal roofs except for metal accents approved by the Architectural Control Committee, or asphalt shingle roofs or wood shingle roofs shall be permitted. No rooftop decks shall be allowed on any single story unit. Balconies are allowed only on two story Dwelling Units that can be accessed from the interior of the Dwelling Unit.

Section 32. **Rules and Regulations.** The Board or the Architectural Review Committee may, by rule and regulation, regulate or prohibit other uses that are reasonably deemed to be inconsistent with the architectural style of the Subdivision or detrimental to the use of Lots by other Owners. In addition to other regulations as set out in this Declaration, such regulations may include, but are not limited to, procedures for approval of building and landscape plans, regulation of construction materials, party walls, animals, nuisances, occupancy, parking, refuse, and maintenance of areas of the property visible from outside the property or having an effect on neighboring property. The Board shall not regulate alterations and activities which are not visible from outside the property and do not have a direct affect on other properties within the Subdivision.

Section 33. **Screening of Ground-Mounted Mechanical Equipment.** All ground-mounted mechanical equipment, including, but not limited to, evaporative coolers and HVAC units, and pool and any other mechanical equipment, shall be placed on concrete pads and screened from public view by being placed in one of the side yards to the rear of the cross wall (the wall separating the front and back yards). Screening may consist of architectural or planting elements approved in writing by the Architectural Control Committee.

Section 34. **Signs.** No sign of any kind shall be displayed to the public view on any Lot except as permitted in the Rules and Regulations.

Section 35. **Storage Tanks.** No storage tank of any kind, other than tanks associated with water harvesting, shall be erected or placed on any portion of the Subdivision without the prior written approval of the Architectural Control Committee

Section 36. **Utilities.** All extensions of utilities on any portion of the Subdivision shall be underground. No electrical or telephone lines shall be maintained above ground except during construction unless such lines are already present at the time this Declaration is recorded.



Section 37. **Wall Construction Standards.** All walls exterior to the Dwelling Unit shall be constructed of concrete block and have a thickness of at least six inches (6") in colors as prescribed by the Rules and Regulations with matching grout and on concrete footings, which shall extend to at least sixteen inches (16") below finished grade. In no event shall footings be visible. Return walls in front of the Dwelling Units shall be tan colored, split-face concrete block as set out in the Rules and Regulations. All side yard walls must be at least four feet (4') in height. With the exception of courtyard walls, retaining walls or as necessary to avoid enclosing utility equipment, all walls shall be constructed on the property lines, unless a deviation there from is granted by the Architectural Control Committee in writing.

Section 38. **Wood Fences and Exteriors.** No wooden fences shall be permitted. No wooden exteriors of structures other than trim, decks or pergolas approved by the Architectural Control Committee shall be permitted.

Section 39. **Zoning; Development.** All development, construction, use, modifications to use, buildings, alterations and occupancy thereof shall comply with the Plat, Site Development Plan for the Subdivision, Site Development Plan for the Building Permit, City Zoning Rules or Regulations, this Declaration, and the Rules and Regulations for the Subdivision, and any applicable ordinance, rule, or regulation adopted by any governmental authority having jurisdiction.

## ARTICLE VII ARCHITECTURAL CONTROL COMMITTEE

Section 1. **Review by Architectural Control Committee.** No Dwelling Unit including the garage, wall, accessory dwelling, or other structure of any kind whatever, whether permanent or temporary shall be erected, placed, modified or altered on any Lot, until the construction plans and specifications have been approved by the Architectural Control Committee as to compliance with the design standards set forth herein and in the Rules and Regulations, including without limitation, quality of materials, harmony of external design with existing structures, and location of the structure with respect to topography, setback requirements, and finished-grade elevations. Likewise, no existing Dwelling Unit including the garage, wall, accessory dwelling, or other structure of any kind whatever, shall be altered, remodeled, painted, or changed until the plans for such alteration, remodeling, painting, or change have been approved in writing by the Architectural Control Committee. The Architectural Control Committee shall be appointed by the Board. The Chairman of the Committee and the other members may, but need not, be Board members. The Board shall appoint the Chairman and the two or more other members of the Architectural Control Committee prior to each Annual Meeting of Members to serve from the close of that annual meeting until the close of the next annual meeting of Members, and such appointments shall be announced at that annual meeting of Members.

All requests for approval hereunder shall be submitted to the Architectural Control Committee in writing, together with any additional documentation reasonably necessary for the Architectural Control Committee to act on the request in so many copies as the Committee shall prescribe. The Architectural Control Committee may request additional information should the same be deemed necessary. Submissions shall also comply with this Declaration and the Rules and Regulations of the Association.



**Section 2. Procedure and Variances.** The Architectural Control Committee's approval or disapproval as required hereunder shall be in writing. In the event the Architectural Control Committee or its designated representative fails to approve or disapprove a request within thirty (30) days after complete plans and specifications have been properly submitted to it, then the Architectural Control Committee shall be deemed to have approved the same. If the plans and specifications for construction or modification of any construction requiring approval by the Architectural Control Committee are not submitted and approved, then this Declaration may be enforced by any party as provided below, before or after commencement and/or completion of construction.

The Architectural Control Committee shall have and retain the power to grant variances from the provisions of this Declaration on a case-by-case basis for good cause. The Architectural Control Committee may charge a reasonable fee for processing applications for approvals and variances.

**Section 3. Participating Master Builder Program.** The Architectural Control Committee may establish a Participating Master Builder Program for approving contractors who may build in the Subdivision or any portion thereof. If such a program is in effect, no contractor may build a Dwelling in the Subdivision unless approved by the Architectural Control Committee.

**ARTICLE  
VIII  
GENERAL PROVISIONS**

**Section 1. Duration.** All Lots will be owned and, if transferred, shall be transferred, subject to this Declaration. All of the provisions of this Declaration are and shall be considered as "covenants running with the land." All of the provisions of this Declaration will run with and bind the land, Members, and Owners, will inure to the benefit of, and will be enforceable by and against the Association, any Owner, or any Member (unless a Member be then suspended, in which case the provisions of this Declaration shall be enforceable against but not by such suspended Member), and each of their respective heirs, personal representatives, successors, and assigns, for a term of twenty-five (25) years from the date on which this Declaration is recorded in the office of the County Clerk of Bernalillo County, New Mexico, after which date this Declaration shall be automatically extended for successive periods of ten (10) years each unless a Supplemental Declaration executed and acknowledged by the President and any other one (1) officer or member of the Board with the approval of the then-Owners of two-thirds (2/3rds) of the Lots has been recorded in the office of the County Clerk of Bernalillo County, New Mexico, amending, modifying or terminating this Declaration, which Supplemental Declaration shall be effective upon such recordation following the proper execution and acknowledgement thereof.

**Section 2. Amendments of Declaration.**

This Declaration and all Supplemental Declarations may be amended, modified, or terminated by the Members of the Association, at a Special Meeting duly called for this purpose, and evidenced by an instrument entitled "Supplemental Declaration," or "Amended Declaration" which amends, modifies, or terminates this Declaration or any



Supplemental Declaration, and which has been executed and acknowledged by the President and any other one (1) officer or member of the Board, and recorded in the office of the County Clerk of Bernalillo County, New Mexico, which shall be effective upon such recordation.

**Section 3. Enforcement.** This Declaration and the Articles, By-Laws, and Rules and Regulations of the Association, may be enforced by the Association or by any Owner or any Member, except then-suspended Members, in any proceeding at law or in equity, against any person or entity, violating or attempting to violate any provision of this Declaration, the Articles, the By-Laws, or the Rules and Regulations of the Association, either to restrain such violation or to specifically enforce any such provision, or to recover damages, and to enforce any lien, assessment, or charge now or hereafter imposed by the provisions of this Declaration. The failure by the Association, any Owner, or any Member to enforce any provision, restriction, condition, or covenant contained in this Declaration, or in the Articles, By-Laws, or Rules and Regulations of the Association, shall not constitute a waiver of the right to do so thereafter.

**Section 4. Severability.** Invalidation of any one or more of the provisions, restrictions, conditions, or covenants of this Declaration by judicial determination or otherwise shall in no way affect any other provision, restriction, condition, or covenant of this Declaration, all of which shall be and remain in full force and effect.

**Section 5. Provisions Obligatory on All Owners.** All of the provisions, restrictions, conditions, and covenants of this Declaration, the Articles, the By-Laws, and the Rules and Regulations, shall apply to all Owners, except where any such provision expressly exempts an Owner there from.

**Section 6. Actions by Owners and by Members.** Unless otherwise provided for in this Declaration, or in the Articles or Bylaws of the Association, the method for Owners and for Members to take action, and the evidence thereof, shall be as follows: Whenever any action is required or permitted to be taken by the Owners or Members, such action shall be taken (i) at a Special Meeting duly called for such purpose; or (ii) without holding any meeting by obtaining the execution and acknowledgment of a Supplemental Declaration by the then-Owners of the required majority of Lots. Thereupon, the President and any other one (1) officer or member of the Board shall execute and acknowledge any required Supplemental Declaration, which shall become effective upon its recordation in the office of the County Clerk of Bernalillo County, New Mexico.

IN WITNESS WHEREOF, These Amendments having been approved by more than two-thirds (2/3rds) of the votes (as allocated by this Declaration and the Articles and Bylaws) of the Members entitled to vote at a Special Meeting duly called for this purpose approving this amendment, this Amended Declaration of Covenants, Conditions, and Restrictions is executed on this 24th day of July 2008.

DESERT RIDGE TRAILS HOMEOWNERS  
ASSOCIATION, INC  
a New Mexico corporation

By *Thomas C. Clausen*  
Thomas C. Clausen  
President

Attest: *Helene Dobbins*  
Helene Dobbins  
Secretary

**ACKNOWLEDGEMENT**

STATE OF NEW MEXICO            )  
  )ss.  
COUNTY OF BERNALILLO        )

This instrument was acknowledged before me on September 25, 2008, by Thomas C. Clausen, as President of Desert Ridge Trails Homeowners Association, Inc., a New Mexico corporation.

(SEAL)

My commission expires:

August 29, 2010

*Latherine C Thornton*  
Notary Public

STATE OF NEW MEXICO            )  
  )ss.  
COUNTY OF BERNALILLO        )

This instrument was acknowledged before me on September 25, 2008, by Helene Dobbins, as Secretary of Desert Ridge Trails Homeowners Association, Inc., a New Mexico corporation.

(SEAL)

My commission expires:

August 29, 2010

*Latherine C Thornton*  
Notary Public



## EXHIBIT A

### DESCRIPTION OF "EXISTING PROPERTY"

All of the numbered Lots (whether or not such Lots bear the additional designation "P-1"), and Tracts C, E, F, G, H, I, J, K, L, M and N, but excluding Tracts A, B and D, and including the following named streets:

Autumn Rose Drive  
Blue Cypress Avenue  
Blue Holly Court  
Blue Mesa Drive  
Boxwood Avenue  
Canyon Sage Drive  
Copper Grass Court  
Desert Sun Road  
Hawthorn Avenue  
Palm Yucca Drive  
Piñon Vista Court  
Prairie Vista Drive  
Silver Sage Drive  
Silverwood Drive  
Vistas Drive  
Wild Olive Avenue

All as the same are shown on the Plat of DESERT RIDGE TRAILS SUBDIVISION, UNIT 1, which was filed on March 21, 2006, as Document No. 2006038107, and recorded in BK-2006C at Page 66, of the records of Bernalillo County, New Mexico.

