

Declaration of
Covenants, Conditions
and Restrictions

Desert Ridge Place
Condominiums
Homeowners Association, Inc.

CONDOMINIUM DECLARATION
FOR
DESERT RIDGE PLACE CONDOMINIUMS - NORTH

Doc# 2016115216

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DEC R:\$25.00 M. Toulouse Oliver, Bernalillo County



AMENDED AND RESTATED CONDOMINIUM DECLARATION

FOR

DESERT RIDGE PLACE CONDOMINIUMS - NORTH

Introductory Provisions

A. This condominium having been originally created by a Condominium Declaration filed June 13, 2005, as Document Number 2005083917 in the records of Bernalillo County, (the "Original Condominium Declaration") which pertained to property described with particularity as:

Parcel 2-A, Desert Ridge Place, Unit 1, Albuquerque, New Mexico, as the same is shown and designated on the plat filed in the Office of the County Clerk of Bernalillo County, New Mexico on August 30, 2004, Book 2004C, Page 263, together with all easements and rights appurtenant thereto (the "Property").

The Condominium was expanded to include additional units by subsequent amendments to that Original Condominium Declaration.

B. The original Declarant no longer owns Units in the Condominium, and all special rights of the Declarant have expired by their own terms. Those rights are listed in this document for historical purposes. The Unit Owners desire to amend the Declaration and restate it in this document. It is not the intention of this Amended and Restated Condominium Declaration to affect the allocations of interests in the Condominium created by prior Declarations.

NOW, THEREFORE, the Owners adopt the following Amended and Restated Declaration:

Declaration

1. **Submission of Property.** Property is subject to the provisions of Sections 47-7A-1 *et seq.* NMSA 1978, known as the New Mexico Condominium Act, (the "Condominium Act"), and a condominium regime has been created to be known as Desert Ridge Place Condominiums - North (the "Condominium").

2. **Name.** The name of the Condominium is to be identified as the Desert Ridge Place Condominiums - North.

3. **Definitions.** The terms used herein shall have the meanings stated in the Condominium Act, unless otherwise defined or unless the context otherwise requires:

3.1 **Articles of Incorporation** means the Articles of Incorporation of the Condominium Association, including any amendments thereto.

3.2 **Bylaws** means the Bylaws of the Condominium Association, including any amendments thereto, whether or not filed with the New Mexico Public Regulation Commission, as from time to time amended.

3.3 **Common Elements** means and includes the items and areas of the Property described in Section 5.1, and shall include the tangible personal property required for the maintenance and operation of the Condominium even though owned by the Condominium Association, as well as the items stated in the Condominium Act.

3.4 **Common Expenses** include (a) expenses of administration, insurance, maintenance, operation, repair or replacement of the Common Elements, and of the portions of Units to be maintained by the Condominium Association; (b) expenses declared common expenses by provisions of this Declaration or the Bylaws; and (c) any valid charge against the Condominium as a whole.

3.5 **Condominium** means all of the Property as a whole when the context so permits, as well as the meaning stated in the Condominium Act.

3.6 **Condominium Association** means Desert Ridge Place Condominiums Homeowners Association, Inc., a New Mexico non-profit corporation and its successors.

3.7 **Condominium Declaration** shall mean the Original Condominium Declaration to be recorded with the Bernalillo County Clerk, as was and may be amended or supplemented from time to time.

3.8 **Desert Ridge Place Subdivision** shall mean the following described real property located in the County of Bernalillo, State of New Mexico, to-wit:

Unit 1, Desert Ridge Place, as the same is shown and designated on the Plat of said subdivision filed in the office of the County Clerk of Bernalillo County, New Mexico on November 4, 2002, in Book 2002C, Page 355.

and

Unit 2, Desert Ridge Place, as the same is shown and designated on the Plat of said subdivision filed in the office of the County Clerk of Bernalillo County, New Mexico on May 23, 2003, in Book 2003C, Page 150.

3.9 **Gated Community Association** means Desert Ridge Place Homeowners Association, Inc., a New Mexico non-profit corporation and its successors.

3.10 **Gated Community Declaration** shall mean the Declaration of Restrictive and Protective Covenants for Desert Ridge Place filed January 23, 2004 in Book A71, Page 8981, as Document No. 2004009010, records of Bernalillo County, New Mexico, as the same may be amended from time to time.

3.11 **Limited Common Elements** means and includes those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units, as described in the Condominium Act and in this Declaration.

3.12 **Singular, plural, gender.** Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

3.13 **Unit** means a unit in the Condominium as defined by the Condominium Act, and as set forth herein.

3.14 **Unit Owner** means the owner of a Unit.

3.15 **Other terms** not otherwise defined shall have the meanings specified in Section 47-7A-3 of the Condominium Act.

4. **Development Plan.**

4.1 **Plat and Unit Information.**

The survey of the Property showing the location of the buildings, Units, Common Elements and other improvements on the Property as shown on the recorded plats and exhibits to prior versions of this Declaration and is sometimes referred to herein as the "Plat". The total number of Units created in the Condominium is eleven (11). A list of all Units, their identifying numbers, locations, sizes (all as shown more fully on the Plat), and the undivided percentage interest of each Unit Owner in the Common Elements and Common Expenses ("Allocated Interest") appurtenant to each Unit determined on the basis of area, are also referenced and/or attached to the original and supplemental declarations previously recorded for this Condominium and incorporated herein by reference. The area of each Unit is the total number of square feet contained therein determined by reference to the dimensions shown on the Plat. The Allocated Interest assigned to each Unit is the ratio of the area of the Unit to the area of all Units in the Condominium expressed as a decimal fraction or as a percentage of the whole. It is not the intent of this Amendment to change the boundaries of units or allocations of interest in any manner, and in the event of any perceived conflict in unit plats or allocations between this Amended and Restated Declaration and the Declaration, including Amendments, previously filed, the previously filed Declaration shall control.

4.2 **Unit Boundaries.** Each Unit consists of the space within the boundaries defined as follows:

a. Upper and Lower (horizontal) Boundaries: The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the vertical (parametric) boundaries:

1. Lower Floor: The lower floor portion of the Unit consists of the space within the following boundaries:

(a) Upper Boundary: The horizontal plane of the lower surface of the upper floor/ceiling system including the ceiling board; and

(b) Lower Boundary: The horizontal plane of the top surface of the undecorated slab.

2. Upper Floor: The upper floor portion of the Unit consists of the space within the following boundaries:

(a) Upper Boundary: The horizontal plane of the upper surface of the roof or any equipment installed thereon.

(b) Lower Boundary: The horizontal plane of the top surface of the undecorated floor.

b. Vertical (parametric) Boundaries: The vertical boundaries of the Unit shall be the vertical plane which includes the outermost surface of the exterior walls (including the interior walls of the garage immediately adjoining the Unit) and the outer surface of studs on the walls adjoining the air gap between Units. The Unit shall include all exterior window glass, window frames, doors and door frames.

4.3 **Relocating Unit Boundaries and Subdivision of Units.** The relocation of boundaries shall not be permitted and no Unit may be further subdivided to create additional Units.

5. Common Elements; Use of Units.

5.1 **Common Elements.** All portions of the Condominium other than the Units are Common Elements. Any portion of a chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture which lies within a Unit, either entirely or partially, and which serves more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements. Any portion of any fixtures serving one or more but less than all Units is a Limited Common Element allocated exclusively to such Unit or Units. Any garage, driveway, porch, patio, balcony, garage and rear yard located outside boundaries of the Unit, is a Limited Common Element allocated exclusively to the Unit or Units which it serves, and shall be so designated on the Plat. The Common Elements and Limited Common Elements shall only be used for the purposes for which

they were intended in the furnishing of services and facilities for the enjoyment of the Units to which they are allocated.

5.2 Occupancy and Use of Units and Common Elements.

(i) No immoral, improper, offensive or unlawful use may be made of the Property and the Unit Owner shall comply with and conform to all applicable laws and regulations. A violating Unit Owner shall hold the Condominium Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

(ii) Each Unit Owner shall keep his or her Unit in a good state of preservation and cleanliness. No storage of trash shall be permitted in or outside any Unit in such manner as to permit the spread of fire, odors, seepage, or encouragement of vermin.

(iii) All fixtures and equipment shall be used for the purposes for which they are designed.

(iv) No noxious, offensive, injurious or unsafe activity shall be carried on in any Unit, nor shall anything be done therein either willfully or negligently, which may be or may become an annoyance or nuisance to the other Unit Owners or Occupants. No Unit Owner or Occupant shall make or permit any disturbing noises by himself or herself, his or her family, servants, employees, agents, visitors and licensees, nor do or permit anything to be done by such persons that will interfere with the rights, comforts or convenience of other Unit Owners or Occupants.

(v) No sign, window display or advertising visible from outside the Unit shall be maintained or permitted in any part of the Unit, except with the prior permission of the Condominium Association.

(vi) The use of each Unit is restricted to that of a single-family residence and accessory uses as permitted herein. The term "single-family residence" means a single housekeeping unit, operating on a nonprofit, noncommercial basis between its occupants, cooking and eating with a common kitchen and dining area.

(vii) Nothing shall be altered or constructed in or removed from the Common Elements or Limited Common Elements except with the prior written consent of the Condominium Association.

(viii) The Common Elements shall be used only for the uses for which each was designed and is reasonably suited incident to the use and occupancy of the Units.

(ix) No Unit Owner shall enter into a lease of his or her Unit without first executing a written lease with the lessee for a term of not less than one (1) year. Such lease shall require the lessee to comply with the terms and provisions of this Declaration and the Bylaws, and further, provide that the failure of the lessee to so comply constitutes a default under the terms of the

lease. Each Unit Owner shall, promptly following execution of any such lease, forward a conformed copy thereof to the Condominium Association. Subleasing shall not be allowed, and the owner may not, directly or indirectly, offer a unit for rental or for other lodging arrangements on a term of less than one year. The foregoing provisions of this subsection shall not apply to a First Mortgagee in possession of a Unit as a result of a foreclosure or any proceedings in lieu of foreclosure, during the period of such First Mortgagee's possession.

5.3 Rules and Regulations. Reasonable Rules and Regulations concerning the use of the Property may be made and amended from time to time by the Condominium Association in the manner provided by the Articles of Incorporation and Bylaws. Copies of such regulations and amendments shall be furnished by the Condominium Association to all Unit Owners. Rules and Regulations may regulate or prohibit any subjects deemed by the Association to promote the value of the Condominiums and preserve a harmonious living condition, and the subjects of those Rules shall not be limited to those specifically set forth in the Bylaws. Rules and Regulations may also set out fines which may be imposed for violations.

5.4 Condominium Association Membership.

a. Each Unit Owner shall, by virtue of ownership of a Unit, be a member of the Condominium Association. Each Unit shall be allocated one (1) vote in the Condominium Association.

b. Each Unit Owner shall also be a member of the Gated Community Association, and be allocated one (1) vote therein.

5.5 Common Expenses. All Common Expenses of the Condominium shall be assessed against all Units in accordance with the Allocated Interests of each Unit, except a Common Expense caused by misconduct of any Unit Owner or except in the following case; if, in the opinion of Unit Owners representing not less than fifty-one percent (51%) of the voting interests in the Condominium Association, any additions, alterations, or improvements to the Condominium are exclusively or substantially exclusively for the benefit of any Unit Owner or Unit Owners requesting the same, such Common Expense shall be assessed against such Unit or Units in such proportions as such Unit Owners jointly approve or, if unable to agree, in such proportions as may be determined by the Condominium Association. Each Unit Owner's share of Common Expenses is sometimes referred to hereinafter as "Proportionate Share". Notwithstanding the above, the Common Expenses related to the Limited Common Elements, and the heating and air conditioning systems shall be paid solely by the Units benefited thereby.

6. Easements. In addition to the easements created by Sections 47-7B-14, 47-7B-16 and 47-7C-7 of the Condominium Act and by plats and documents related to the Property and filed in the real estate records of Bernalillo County, New Mexico, prior to the filing of this Declaration, the following easements are hereby granted:

6.1 Easement for Ingress and Egress Through Common Elements and Access to Units.

(a) Each Unit Owner is hereby granted a non-exclusive easement in common with each other Unit Owner appurtenant to the Unit, for ingress and egress through all Common Elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Condominium Association.

(b) The Condominium Association and other persons authorized by the Condominium Association shall have the right of access to any Unit for maintenance, repair and replacement of the Common Elements. In case of an emergency, such entry shall be immediate whether the Unit Owner is present at the time or not.

7. Maintenance, Alteration and Improvements. Responsibility for the maintenance of the Property and restrictions upon the alteration and improvement thereof, shall be as follows:

7.1 By Unit Owners. The responsibility of each Unit Owner shall be as follows:

(i) To maintain, repair and replace, at the Unit Owner's expense, all portions of the Unit including to the inner surface of studs on walls between Units and exterior walls, floor coverings, interior walls and the interior and exterior surface, and the HVAC system, but specifically excluding those portions of the Unit which are the responsibility of the Association, pursuant to Section 7.2. All maintenance, repair or replacement shall be done without disturbing the rights of other Unit Owners.

(ii) To maintain all appliances, fixtures, wall coverings and floor coverings located in the Unit.

(iii) To maintain, repair and replace all interior and exterior doors, and all glass and windows and doors of the Unit. All replacement exterior glass and maintenance, repairs and replacement of exterior doors shall be subject to the approval of the Association.

(iv) To maintain, repair and replace the Limited Common Elements appurtenant to the Unit, except to the extent said maintenance, repairs or replacements are structural. Further, all maintenance, repairs and replacements of Limited Common Elements, which are visible from the exterior of the Unit shall be subject to the prior approval of the Association.

(v) To maintain, repair and replace any other portion of the Unit which is not the responsibility of the Association as set forth in Section 7.2.

(vi) To promptly report to the Association any defect or need for repairs, the responsibility for the remedying of which is that of the Association.

7.2 By the Association. The responsibility of the Association shall be as follows:

(i) Except to the extent provided for in Section 7.1 (iv) to maintain, repair, replace and operate Common Elements, including the Limited Common Elements.

(ii) To maintain, repair and replace the walls between Units, exterior walls, exterior wall surfaces, the exterior wall insulation of the Units, all of the roof and all structural portions of the floor between the first and second stories of the Units.

(iii) To maintain, repair and replace any portion of a chute, flue, duct, wire, conduit or any other fixture within each Unit which serves more than one Unit.

7.3 Alteration and Improvement of Units. Neither a Unit Owner nor the Association shall make any alterations in the portions of a Unit which are to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do anything which would jeopardize the safety or soundness of a Unit or the Common Elements, or impair any easement, without first obtaining approval in writing of all Unit Owners impacted by such work and the approval of the Association. A copy of plans for all such work shall be filed with the Association prior to the starting of the work.

7.4 Alteration and Improvement of Common Elements. After the completion of the improvements included in the Common Elements which are contemplated by this Condominium Declaration, there shall be no alteration or further improvement of Common Elements without prior approval in writing of the Association, subject, however, to the Special Declarant Rights described herein.

7.5 Delegation of Duties to Gated Community Association. The Condominium Association has delegated to the Gated Community Association responsibility for maintaining the portion of the Desert Fox Way, NE, within the Condominium, the perimeter wall and the pedestrian walkway on the western portion of the Property.

7.6 Sharing of Expenses for Common Areas within Desert Ridge Place Subdivision. As members of the Gated Community Association, Unit Owners shall be responsible for a prorata share of the expenses for maintaining the Common Areas within Desert Ridge Place Subdivision as defined by the Gated Community Declaration. Individual Unit Owners shall be subject to assessments and liens for said expenses pursuant to the Gated Community Declaration. Unit Owners shall also be subject to all rules and regulation promulgated by the Gated Community Association related to the Common Areas within Desert Ridge Place Subdivision.

8. Assessments. The making and collection of assessments against Unit Owners for Common Expenses and assessments for maintenance, repair and replacements to Limited Common Elements and Units by the Association shall be pursuant to the Bylaws and subject to the following provisions:

8.1 Share of Common Expenses. Each Unit Owner shall be liable for its Allocated Interest of the Common Expenses, and shall share in any common surplus pursuant to the Allocated Interest of each Unit. Each Unit Owner shall be liable for its proportionate share of expenses related to Limited Common Elements, together with any other Unit Owners benefited thereby. Each Unit Owner shall be responsible for all expenses (including those incurred by the Association pursuant to this Declaration and the Bylaws) related to said Unit Owner's Unit. Desert Ridge Place Condominiums-North and Desert Ridge Place Condominiums-South shall be managed together by the Association. The Board shall seek to share expenses of management and maintenance in a manner which provides cost savings to the individual Condominiums, but does not materially change the allocated obligations among the unit owners for the purpose of levying assessments

8.2 Interest; Application of Payments. Assessments and installments on such assessments paid on or before fifteen (15) days after the day when due shall not bear interest or a late charge, but all sums not paid on or before fifteen (15) days after the date when due ("Delinquency Date") shall bear a late charge of five percent (5%) of the delinquent amount and interest at the rate of 12% per annum from the Delinquency Date until paid. All payments upon account shall be first applied to late charges, interest and costs of collection and then to the assessment payment first due. The rate of interest and late charge may be increased or decreased from time to time by the Association.

8.3 Lien for Assessments. Any assessment remaining unpaid for thirty (30) days after it is due shall automatically become a lien on the Unit to which it is assessed. The lien for unpaid assessments shall also secure reasonable attorney's fees and expenses incurred by the Association incident to the collection of such assessment or enforcement of such lien. The Association may, without further consent or authorization, file a written notice of such lien. Any such lien may be foreclosed as a mortgage under New Mexico law.

9. Amendment of Declaration.

9.1 Mortgagee Consent. Other than any amendment of this Declaration by the Declarant under its reserved Special Declarant Rights, no amendment of this Declaration may be made by the Condominium Association or the Unit Owners without prior written approval of all holders of first mortgages ("First Mortgagees") encumbering the Unit or Units which are affected by such amendment, where such amendment:

(a) Changes the Allocated Interests or obligations of any Unit for the purpose of (i) levying assessments or charges or allocating the distribution of hazard insurance proceeds or condemnation awards, or (ii) determining the Allocated Interests of each Unit in the Common Elements and Common Expenses;

(b) Subdivides, partitions or relocates the boundaries of any Unit or the Common Elements or Limited Common Elements;

(c) By act or omission, seeks to abandon or terminate the Condominium;

(d) By act or omission, seeks to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this subparagraph);

(e) Uses hazard insurance proceeds for losses to any portion of the Property (whether Units or Common Elements) for other than the repair, replacement, or reconstruction of such portion of the Property;

(f) Imposes any restriction on the right of a Unit Owner to sell or transfer his or her Unit; or

(g) Changes the votes in the Condominium Association allocated by this Declaration.

A proposed amendment shall be deemed approved by a First Mortgagee if the First Mortgagee fails to object or consent to a written proposal for an amendment within thirty (30) days after receipt of the written proposal.

9.2 Vote of Unit Owners. Except as otherwise provided or reserved herein, or in the Condominium Act, this Declaration or the Bylaws may be amended by a vote of Unit Owners of Units holding at least sixty-seven percent (67%) of the votes in the Condominium Association. A proposed amendment shall be deemed approved by a Unit Owner if the Unit Owner fails to:

(i) Vote in person or by proxy at a meeting properly called for that purpose;

(ii) Fails to object or approve a written proposal for an amendment within thirty (30) days after receipt of a written proposal following such meeting.

10. Declarant's Right to Lease. So long as Declarant retained title to each Unit not sold to any purchaser. Declarant retained the right to enter into one or more leases or other rental arrangements with others for the rental of Units retained by Declarant and not sold to any purchaser.

11. Priority of Mortgages.

11.1 Mortgagee Priority. Except as specifically provided in this Declaration, no provision of the Declaration shall be construed to grant to any Unit Owner, or to any other person, any priority over the lien rights of First Mortgagees.

11.2 Subordination. Notwithstanding any other provisions of this Declaration to the contrary, the lien of any assessment levied pursuant to this Declaration and the Bylaws upon any Unit (and any penalties, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect, the rights of First Mortgagees holding a prior first mortgage made in good faith for value received; provided that such first mortgage secures a loan initially made by an institutional

lender; and provided further, that such subordination shall apply only to assessments on a Unit which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure or to any deed or other proceeding in lieu of foreclosure, and any such sale or transfer in foreclosure or in lieu of foreclosure shall not relieve the purchaser of the Unit, including the First Mortgagee if it is the purchaser, from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

12. **Association.** The operation of the Condominium shall be by the Condominium Association, a corporation not for profit under the laws of New Mexico, which shall fulfill its functions pursuant to the Articles of Incorporation and Bylaws and the following provisions:

12.1 **Limitation Upon Liability of Association.** Notwithstanding the duty of the Condominium Association to maintain and repair parts of the Property, the Condominium Association shall not be liable to Unit Owners for injury or damage other than the cost of maintenance and repair, caused by any latent condition of the Property to be maintained and repaired by the Condominium Association, or caused by the elements of other Unit Owners or persons.

12.2 **Restraint Upon Separation.**

(a) The Allocated Interest in the Common Elements and/or Limited Common Elements which are appurtenant to a Unit shall not be separated therefrom and shall pass with the title to the Unit whether or not separately described.

(b) The Allocated Interest in the Common Elements or Limited Common Elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Unit.

(c) The Allocated Interest in the Common Elements or Limited Common Elements appurtenant to a Unit shall remain undivided and no action for partition of the Common Elements or Limited Common Elements shall lie.

12.3 **Approval or Disapproval of Matters.** Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, each decision shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the joinder of all record owners is specifically required by this Declaration.

12.4 **Powers of Association.** The Condominium Association shall have all the powers provided for in Section 47-7C-2 of the Condominium Act including but not limited to the right to assign its rights to future income (including the right to receive assessments for Common Expenses) for the purpose of securing repayment of funds borrowed or indebtedness incurred by the Condominium Association in the performance of its responsibilities.

13. **Development Rights/Special Declarant Rights.** All special rights of the Declarant have expired. Prior to the expiration of such rights, the Declarant completed all intended units. To the extent that such completion of units involved extended watering systems, some common

watering was established. The Association may pay and allocate the expenses of any commonly metered watering systems among the units as it would with other common expenses.

14. **Insurance.** Insurance covering the Condominium shall be maintained by the Condominium Association, as set forth in the Bylaws of the Condominium Association. The cost of insurance shall be apportioned among Unit Owners as Common Expenses. The Condominium Association shall not be required to insure the contents of any Unit.

15. **Prohibition Against Timeshares.** No Unit may be subdivided into timeshares, interval ownerships, use periods or any similar property interest commonly considered to fall within the general conception of timesharing.

16. **Taxes.** Each Unit comprising the Condominium together with the respective Allocated Interest in the Common Elements appurtenant thereto shall be deemed a separate parcel for the purpose of governmental assessments and taxation.

17. **Master Association/Consolidation.** Desert Ridge Place Condominiums North and Desert Ridge Place Condominiums South shall be managed by a single association which can be accomplished through merger of the associations or through a master association.

ADOPTED THIS 25th DAY OF October, 2016 by a vote of at least 67% of the Unit Owners in the Condominium originally governed by the respective Association, at a meeting duly noticed for this reason.

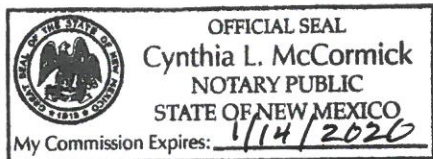
DESERT RIDGE PLACE CONDOMINIUMS
NORTH HOMEOWNERS ASSOCIATION, INC.

By: _____
President

ATTEST: Traci Lambert
Secretary

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

~~JACKNOWLEDGED BEFORE ME~~ this 26th day of October, 2016, by JANE LAURIN, as President of Desert Ridge Place Condominiums North Homeowners Association, Inc., a New Mexico nonprofit corporation, on behalf of said corporation.



Cynthia L. McCormick
NOTARY PUBLIC

My Commission Expires:
1/14/2020

**CONDOMINIUM DECLARATION
FOR
DESERT RIDGE PLACE CONDOMINIUMS - SOUTH**

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AMENDED AND RESTATED CONDOMINIUM DECLARATION

FOR

DESERT RIDGE PLACE CONDOMINIUMS - SOUTH

Introductory Provisions

A. This Condominium having been originally created by a Condominium Declaration filed July 28, 2005 as Document Number 2005108962 in the records of Bernalillo County, (the "Original Condominium Declaration") which pertained to property described with particularity as:

Parcel 2-B, Desert Ridge Place, Unit 1, Albuquerque, New Mexico, as the same is shown and designated on the plat filed in the Office of the County Clerk of Bernalillo County, New Mexico on August 30, 2004, Book 2004C, Page 263, together with all easements and rights appurtenant thereto (the "Property").

The Condominium was expanded to include additional units by subsequent amendments to that Original Condominium Declaration.

B. The original Declarant no longer owns Units in the Condominium, and all special rights of the Declarant have expired by their own terms. Those rights are listed in this document for historical purposes. The Unit Owners desire to amend the Declaration and restate it in this document. It is not the intention of this Amended and Restated Condominium Declaration to affect the allocations of interests in the Condominium created by prior declarations.

NOW, THEREFORE, the owners adopt the following Amended and Restated Declaration:

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1. **Submission of Property.** Property is subject to the provisions of Sections 47-7A-1 *et seq.* NMSA 1978, known as the New Mexico Condominium Act, (the "Condominium Act"), and a condominium regime has been created to be known as Desert Ridge Place Condominiums - South (the "Condominium").

2. **Name.** The name of the Condominium is to be identified as the Desert Ridge Place Condominiums - South.

3. **Definitions.** The terms used herein shall have the meanings stated in the Condominium Act, unless otherwise defined or unless the context otherwise requires:

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3.2 **Bylaws** means the Bylaws of the Condominium Association, including any amendments thereto, whether or not filed with the New Mexico Public Regulation Commission, as from time to time amended.

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3.4 **Common Expenses** include (a) expenses of administration, insurance, maintenance, operation, repair or replacement of the Common Elements, and of the portions of Units to be maintained by the Condominium Association; (b) expenses declared common expenses by provisions of this Declaration or the Bylaws; and (c) any valid charge against the Condominium as a whole.

3.5 **Condominium** means all of the Property as a whole when the context so permits, as well as the meaning stated in the Condominium Act.

3.6 **Condominium Association** means Desert Ridge Place Condominiums Homeowners Association, Inc., a New Mexico non-profit corporation and its successors.

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Unit 1, Desert Ridge Place, as the same is shown and designated on the Plat of said subdivision filed in the office of the County Clerk of Bernalillo County, New Mexico on November 4, 2002, in Book 2002C, Page 355.

and

Unit 2, Desert Ridge Place, as the same is shown and designated on the Plat of said subdivision filed in the office of the County Clerk of Bernalillo County, New Mexico on May 23, 2003, in Book 2003C, Page 150.

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3.10 **Gated Community Declaration** shall mean the Declaration of Restrictive and Protective Covenants for Desert Ridge Place filed January 23, 2004 in Book A71, Page 8981, as Document No. 2004009010, records of Bernalillo County, New Mexico, as the same may be amended from time to time.

3.11 **Limited Common Elements** means and includes those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units, as described in the Condominium Act and in this Declaration.

3.12 **Singular, plural, gender.** Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and the use of any gender shall be deemed to include all genders.

3.13 **Unit** means a unit in the Condominium as defined by the Condominium Act, and as set forth herein.

3.14 **Unit Owner** means the owner of a Unit.

3.15 **Other terms** not otherwise defined shall have the meanings specified in Section 47-7A-3 of the Condominium Act.

4. **Development Plan.**

4.1 **Plat and Unit Information.**

The survey of the Property showing the location of the buildings, Units, Common Elements and other improvements on the Property as shown on the recorded plats and exhibits to prior versions of this Declaration and is sometimes referred to herein as the "Plat". The total number of Units created in the Condominium is eleven (11). A list of all Units, their identifying numbers, locations, sizes (all as shown more fully on the Plat), and the undivided percentage interest of each Unit Owner in the Common Elements and Common Expenses ("Allocated Interest") appurtenant to each Unit determined on the basis of area, are also referenced and/or attached to the original and supplemental declarations previously recorded for this Condominium and incorporated herein by reference. The area of each Unit is the total number of square feet contained therein determined by reference to the dimensions shown on the Plat. The Allocated Interest assigned to each Unit is the ratio of the area of the Unit to the area of all Units in the Condominium expressed as a decimal fraction or as a percentage of the whole. It is not the intent of this amendment to change the boundaries of units or allocations of interest in any manner, and in the event of any perceived conflict in unit plats or allocations between this amended and restated declaration and the Declaration, including amendments, previously filed, the previously filed Declaration shall control.

4.2 **Unit Boundaries.** Each Unit consists of the space within the boundaries defined as follows:

a. Upper and Lower (horizontal) Boundaries: The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the vertical (parametric) boundaries:

1. Lower Floor: The lower floor portion of the Unit consists of the space within the following boundaries:
 - (a) Upper Boundary: The horizontal plane of the lower surface of the upper floor/ceiling system including the ceiling board; and
 - (b) Lower Boundary: The horizontal plane of the top surface of the undecorated slab.
2. Upper Floor: The upper floor portion of the Unit consists of the space within the following boundaries:
 - (a) Upper Boundary: The horizontal plane of the upper surface of the roof or any equipment installed thereon.
 - (b) Lower Boundary: The horizontal plane of the top surface of the undecorated floor.

b. Vertical (parametric) Boundaries: The vertical boundaries of the Unit shall be the vertical plane which includes the outermost surface of the exterior walls (including the interior walls of the garage immediately adjoining the Unit) and the outer surface of studs on the walls adjoining the air gap between Units. The Unit shall include all exterior window glass, window frames, doors and door frames.

4.3 **Relocating Unit Boundaries and Subdivision of Units.** The relocation of boundaries shall not be permitted and no Unit may be further subdivided to create additional Units.

5. Common Elements; Use of Units.

5.1 **Common Elements.** All portions of the Condominium other than the Units are Common Elements. Any portion of a chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture which lies within a Unit, either entirely or partially, and which serves more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements. Any portion of any fixtures serving one or more but less than all Units is a Limited Common Element allocated exclusively to such Unit or Units. Any garage, driveway, porch, patio, balcony, garage and rear yard located outside boundaries of the Unit, is a Limited Common Element allocated exclusively to the Unit or Units which it serves, and shall be so designated on the Plat. The Common Elements and Limited Common Elements shall only be used for the

purposes for which they were intended in the furnishing of services and facilities for the enjoyment of the Units to which they are allocated.

5.2 Occupancy and Use of Units and Common Elements.

(i) No immoral, improper, offensive or unlawful use may be made of the Property and the Unit Owner shall comply with and conform to all applicable laws and regulations. A violating Unit Owner shall hold the Condominium Association and other Unit Owners harmless from all fines, penalties, costs and prosecutions for the violation thereof or noncompliance therewith.

(ii) Each Unit Owner shall keep his or her Unit in a good state of preservation and cleanliness. No storage of trash shall be permitted in or outside any Unit in such manner as to permit the spread of fire, odors, seepage, or encouragement of vermin.

(iii) All fixtures and equipment shall be used for the purposes for which they are designed.

(iv) No noxious, offensive, injurious or unsafe activity shall be carried on in any Unit, nor shall anything be done therein either willfully or negligently, which may be or may become an annoyance or nuisance to the other Unit Owners or Occupants. No Unit Owner or Occupant shall make or permit any disturbing noises by himself or herself, his or her family, servants, employees, agents, visitors and licensees, nor do or permit anything to be done by such persons that will interfere with the rights, comforts or convenience of other Unit Owners or Occupants.

(v) No sign, window display or advertising visible from outside the Unit shall be maintained or permitted in any part of the Unit, except with the prior permission of the Condominium Association.

(vi) The use of each Unit is restricted to that of a single-family residence and accessory uses as permitted herein. The term "single-family residence" means a single housekeeping unit, operating on a nonprofit, noncommercial basis between its occupants, cooking and eating with a common kitchen and dining area.

(vii) Nothing shall be altered or constructed in or removed from the Common Elements or Limited Common Elements except with the prior written consent of the Condominium Association.

(viii) The Common Elements shall be used only for the uses for which each was designed and is reasonably suited incident to the use and occupancy of the Units.

(ix) No Unit Owner shall enter into a lease of his or her Unit without first executing a written lease with the lessee for a term of not less than one (1) year. Such lease shall require the lessee to comply with the terms and provisions of this Declaration and the Bylaws,

and further, provide that the failure of the lessee to so comply constitutes a default under the terms of the lease. Each Unit Owner shall, promptly following execution of any such lease, forward a conformed copy thereof to the Condominium Association. Subleasing shall not be allowed, and the owner may not, directly or indirectly, offer a unit for rental or for other lodging arrangements on a term of less than one year. The foregoing provisions of this subsection shall not apply to a First Mortgagee in possession of a Unit as a result of a foreclosure or any proceedings in lieu of foreclosure, during the period of such First Mortgagee's possession.

5.3 Rules and Regulations. Reasonable rules and regulations concerning the use of the Property may be made and amended from time to time by the Condominium Association in the manner provided by the Articles of Incorporation and Bylaws. Copies of such regulations and amendments shall be furnished by the Condominium Association to all Unit Owners. Rules and Regulations may regulate or prohibit any subjects deemed by the Association to promote the value of the condominiums and preserve a harmonious living condition, and the subjects of those rules shall not be limited to those specifically set forth in the Bylaws. Rules and Regulations may also set out fines which may be imposed for violations.

5.4 Condominium Association Membership.

a. Each Unit Owner shall, by virtue of ownership of a Unit, be a member of the Condominium Association. Each Unit shall be allocated one (1) vote in the Condominium Association.

b. Each Unit Owner shall also be a member of the Gated Community Association, and be allocated one (1) vote therein.

5.5 Common Expenses. All Common Expenses of the Condominium shall be assessed against all Units in accordance with the Allocated Interests of each Unit, except a Common Expense caused by misconduct of any Unit Owner or except in the following case; if, in the opinion of Unit Owners representing not less than fifty-one percent (51%) of the voting interests in the Condominium Association, any additions, alterations, or improvements to the Condominium are exclusively or substantially exclusively for the benefit of any Unit Owner or Unit Owners requesting the same, such Common Expense shall be assessed against such Unit or Units in such proportions as such Unit Owners jointly approve or, if unable to agree, in such proportions as may be determined by the Condominium Association. Each Unit Owner's share of Common Expenses is sometimes referred to hereinafter as "Proportionate Share". Notwithstanding the above, the Common Expenses related to the Limited Common Elements, and the heating and air conditioning systems shall be paid solely by the Units benefited thereby.

6. Easements. In addition to the easements created by Sections 47-7B-14, 47-7B-16 and 47-7C-7 of the Condominium Act and by plats and documents related to the Property and filed in the real estate records of Bernalillo County, New Mexico, prior to the filing of this Declaration, the following easements are hereby granted:

6.1 Easement for Ingress and Egress Through Common Elements and Access to Units.

(a) Each Unit Owner is hereby granted a non-exclusive easement in common with each other Unit Owner appurtenant to the Unit, for ingress and egress through all Common Elements, subject to such reasonable rules, regulations and restrictions as may be imposed by the Condominium Association.

(b) The Condominium Association and other persons authorized by the Condominium Association shall have the right of access to any Unit for maintenance, repair and replacement of the Common Elements. In case of an emergency, such entry shall be immediate whether the Unit Owner is present at the time or not.

7. Maintenance, Alteration and Improvements. Responsibility for the maintenance of the Property and restrictions upon the alteration and improvement thereof, shall be as follows:

7.1 By Unit Owners. The responsibility of each Unit Owner shall be as follows:

(i) To maintain, repair and replace, at the Unit Owner's expense, all portions of the Unit including to the inner surface of studs on walls between Units and exterior walls, floor coverings, interior walls and the interior and exterior surface and skylights, and the HVAC system, but specifically excluding those portions of the Unit which are the responsibility of the Association, pursuant to Section 7.2. All maintenance, repair or replacement shall be done without disturbing the rights of other Unit Owners.

(ii) To maintain all appliances, fixtures, wall coverings and floor coverings located in the Unit.

(iii) To maintain, repair and replace all interior and exterior doors, and all glass and windows and doors of the Unit. All replacement exterior glass and maintenance, repairs and replacement of exterior doors shall be subject to the approval of the Association.

(iv) To maintain, repair and replace the Limited Common Elements appurtenant to the Unit, except to the extent said maintenance, repairs or replacements are structural. Further, all maintenance, repairs and replacements of Limited Common Elements, which are visible from the exterior of the Unit shall be subject to the prior approval of the Association.

(v) To maintain, repair and replace any other portion of the Unit which is not the responsibility of the Association as set forth in Section 7.2.

(vi) To promptly report to the Association any defect or need for repairs, the responsibility for the remedying of which is that of the Association.

7.2 By the Association. The responsibility of the Association shall be as follows:

(i) Except to the extent provided for in Section 7.1 (iv) to maintain, repair, replace and operate Common Elements, including the Limited Common Elements.

(ii) To maintain, repair and replace the walls between Units, exterior walls, exterior wall surfaces, the exterior wall insulation of the Units, all of the roof and all structural portions of the floor between the first and second stories of the Units.

(iii) To maintain, repair and replace any portion of a chute, flue, duct, wire, conduit or any other fixture within each Unit which serves more than one Unit.

7.3 Alteration and Improvement of Units. Neither a Unit Owner nor the Association shall make any alterations in the portions of a Unit which are to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do anything which would jeopardize the safety or soundness of a Unit or the Common Elements, or impair any easement, without first obtaining approval in writing of all Unit Owners impacted by such work and the approval of the Association. A copy of plans for all such work shall be filed with the Association prior to the starting of the work.

7.4 Alteration and Improvement of Common Elements. After the completion of the improvements included in the Common Elements which are contemplated by this Condominium Declaration, there shall be no alteration or further improvement of Common Elements without prior approval in writing of the Association, subject, however, to the Special Declarant Rights described herein.

7.5 Delegation of Duties to Gated Community Association. The Condominium Association has delegated to the Gated Community Association responsibility for maintaining the portion of the Desert Fox Way, NE, within the Condominium, the perimeter wall and the pedestrian walkway on the western portion of the Property.

7.6 Sharing of Expenses for Common Areas within Desert Ridge Place Subdivision. As members of the Gated Community Association, Unit Owners shall be responsible for a prorata share of the expenses for maintaining the Common Areas within Desert Ridge Place Subdivision as defined by the Gated Community Declaration. Individual Unit Owners shall be subject to assessments and liens for said expenses pursuant to the Gated Community Declaration. Unit Owners shall also be subject to all rules and regulation promulgated by the Gated Community Association related to the Common Areas within Desert Ridge Place Subdivision.

8. Assessments. The making and collection of assessments against Unit Owners for Common Expenses and assessments for maintenance, repair and replacements to Limited Common Elements and Units by the Association shall be pursuant to the Bylaws and subject to the following provisions:

8.1 Share of Common Expenses. Each Unit Owner shall be liable for its Allocated Interest of the Common Expenses, and shall share in any common surplus pursuant to the Allocated Interest of each Unit. Each Unit Owner shall be liable for its proportionate share

of expenses related to Limited Common Elements, together with any other Unit Owners benefited thereby. Each Unit Owner shall be responsible for all expenses (including those incurred by the Association pursuant to this Declaration and the Bylaws) related to said Unit Owner's Unit. Desert Ridge Place Condominiums-North and Desert Ridge Place Condominiums-South shall be managed together by the Association. The Board shall seek to share expenses of management and maintenance in a manner which provides cost savings to the individual Condominiums, but does not materially change the allocated obligations among the unit owners for the purpose of levying assessments

8.2 Interest; Application of Payments. Assessments and installments on such assessments paid on or before fifteen (15) days after the day when due shall not bear interest or a late charge, but all sums not paid on or before fifteen (15) days after the date when due ("Delinquency Date") shall bear a late charge of five percent (5%) of the delinquent amount and interest at the rate of 12% per annum from the Delinquency Date until paid. All payments upon account shall be first applied to late charges, interest and costs of collection and then to the assessment payment first due. The rate of interest and late charge may be increased or decreased from time to time by the Association.

8.3 Lien for Assessments. Any assessment remaining unpaid for thirty (30) days after it is due shall automatically become a lien on the Unit to which it is assessed. The lien for unpaid assessments shall also secure reasonable attorney's fees and expenses incurred by the Association incident to the collection of such assessment or enforcement of such lien. The Association may, without further consent or authorization, file a written notice of such lien. Any such lien may be foreclosed as a mortgage under New Mexico law.

9. Amendment of Declaration.

9.1 Mortgagee Consent. Other than any amendment of this Declaration by the Declarant under its reserved Special Declarant Rights, no amendment of this Declaration may be made by the Condominium Association or the Unit Owners without prior written approval of all holders of first mortgages ("First Mortgagees") encumbering the Unit or Units which are affected by such amendment, where such amendment:

(a) Changes the Allocated Interests or obligations of any Unit for the purpose of (i) levying assessments or charges or allocating the distribution of hazard insurance proceeds or condemnation awards, or (ii) determining the Allocated Interests of each Unit in the Common Elements and Common Expenses;

(b) Subdivides, partitions or relocates the boundaries of any Unit or the Common Elements or Limited Common Elements;

(c) By act or omission, seeks to abandon or terminate the Condominium;

(d) By act or omission, seeks to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements. (The granting of easements for public utilities or for other public purposes

consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this subparagraph);

(e) Uses hazard insurance proceeds for losses to any portion of the Property (whether Units or Common Elements) for other than the repair, replacement, or reconstruction of such portion of the Property;

(f) Imposes any restriction on the right of a Unit Owner to sell or transfer his or her Unit; or

(g) Changes the votes in the Condominium Association allocated by this Declaration.

A proposed amendment shall be deemed approved by a First Mortgagee if the First Mortgagee fails to object or consent to a written proposal for an amendment within thirty (30) days after receipt of the written proposal.

9.2 Vote of Unit Owners. Except as otherwise provided or reserved herein, or in the Condominium Act, this Declaration or the Bylaws may be amended by a vote of Unit Owners of Units holding at least sixty-seven percent (67%) of the votes in the Condominium Association. A proposed amendment shall be deemed approved by a Unit Owner if the Unit Owner fails to:

(i) Vote in person or by proxy at a meeting properly called for that purpose;

(ii) Fails to object or approve a written proposal for an amendment within thirty (30) days after receipt of a written proposal following such meeting.

10. Declarant's Right to Lease. So long as Declarant retained title to each Unit not sold to any purchaser. Declarant retained the right to enter into one or more leases or other rental arrangements with others for the rental of Units retained by Declarant and not sold to any purchaser.

11. Priority of Mortgages.

11.1 Mortgagee Priority. Except as specifically provided in this Declaration, no provision of the Declaration shall be construed to grant to any Unit Owner, or to any other person, any priority over the lien rights of First Mortgagees.

11.2 Subordination. Notwithstanding any other provisions of this Declaration to the contrary, the lien of any assessment levied pursuant to this Declaration and the Bylaws upon any Unit (and any penalties, interest on assessments, late charges or the like) shall be subordinate to, and shall in no way affect, the rights of First Mortgagees holding a prior first mortgage made in good faith for value received; provided that such first mortgage secures a loan initially made by an institutional lender; and provided further, that such subordination shall apply only to

assessments on a Unit which have become due and payable prior to a sale or transfer of such Unit pursuant to a decree of foreclosure or to any deed or other proceeding in lieu of foreclosure, and any such sale or transfer in foreclosure or in lieu of foreclosure shall not relieve the purchaser of the Unit, including the First Mortgagee if it is the purchaser, from liability for any assessment thereafter becoming due, nor from the lien of any such subsequent assessment.

12. **Association.** The operation of the Condominium shall be by the Condominium Association, a corporation not for profit under the laws of New Mexico, which shall fulfill its functions pursuant to the Articles of Incorporation and Bylaws and the following provisions:

12.1 **Limitation Upon Liability of Association.** Notwithstanding the duty of the Condominium Association to maintain and repair parts of the Property, the Condominium Association shall not be liable to Unit Owners for injury or damage other than the cost of maintenance and repair, caused by any latent condition of the Property to be maintained and repaired by the Condominium Association, or caused by the elements of other Unit Owners or persons.

12.2 **Restraint Upon Separation.**

(a) The Allocated Interest in the Common Elements and/or Limited Common Elements which are appurtenant to a Unit shall not be separated therefrom and shall pass with the title to the Unit whether or not separately described.

(b) The Allocated Interest in the Common Elements or Limited Common Elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Unit.

(c) The Allocated Interest in the Common Elements or Limited Common Elements appurtenant to a Unit shall remain undivided and no action for partition of the Common Elements or Limited Common Elements shall lie.

12.3 **Approval or Disapproval of Matters.** Whenever the decision of a Unit Owner is required upon any matter, whether or not the subject of an Association meeting, each decision shall be expressed by the same person who would cast the vote of such owner if in an Association meeting, unless the joinder of all record owners is specifically required by this Declaration.

12.4 **Powers of Association.** The Condominium Association shall have all the powers provided for in Section 47-7C-2 of the Condominium Act including but not limited to the right to assign its rights to future income (including the right to receive assessments for Common Expenses) for the purpose of securing repayment of funds borrowed or indebtedness incurred by the Condominium Association in the performance of its responsibilities.

13. **Development Rights/Special Declarant Rights.** All special rights of the Declarant have expired. Prior to the expiration of such rights, the Declarant completed all intended units. To the extent that such completion of units involved extended watering systems,

some common watering was established. The Association may pay and allocate the expenses of any commonly metered watering systems among the units as it would with other common expenses.

14. **Insurance.** Insurance covering the Condominium shall be maintained by the Condominium Association, as set forth in the Bylaws of the Condominium Association. The cost of insurance shall be apportioned among Unit Owners as Common Expenses. The Condominium Association shall not be required to insure the contents of any Unit.

15. **Prohibition Against Timeshares.** No Unit may be subdivided into timeshares, interval ownerships, use periods or any similar property interest commonly considered to fall within the general conception of timesharing.

16. **Taxes.** Each Unit comprising the Condominium together with the respective Allocated Interest in the Common Elements appurtenant thereto shall be deemed a separate parcel for the purpose of governmental assessments and taxation.

17. **Master Association/Consolidation.** Desert Ridge Place Condominiums North and Desert Ridge Place Condominiums South shall be managed by a single association which can be accomplished through merger of the associations or through a master association.

ADOPTED THIS 25th DAY OF October 2016 by a vote of at least 67% of the Unit Owners in the Condominium originally governed by the respective Association, at a meeting duly noticed for this reason.

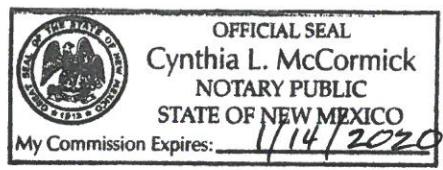
DESERT RIDGE PLACE CONDOMINIUMS
SOUTH HOMEOWNERS ASSOCIATION, INC.

By: [Signature]
President

ATTEST: [Signature]
Secretary

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

ACKNOWLEDGED BEFORE ME this 26th day of October, 2016,
by GAIL HOWELLS, as President of Desert Ridge Place
Condominiums South Homeowners Association, Inc. , a New Mexico nonprofit corporation, on
behalf of said corporation.



[Signature]
NOTARY PUBLIC

My Commission Expires:
1/14/2020