DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BOULDER CANYON REPLAT A

DVEP Land, L.L.C. being the Owner of Boulder Canyon Replat A, an addition to the City of El Paso, El Paso County, Texas (the ASubdivision@) hereby covenants, agrees and declares that the Subdivision will hereinafter be subject to the covenants, conditions, restrictions, limitations and uses set forth in this Declaration of Covenants, Conditions and Restrictions (the ACovenants@) which will run with the land and will be binding upon and enure to the benefit of the Declarant, its successors and assigns, and any person or entity acquiring any right, title or interest in the property, or any part thereof, their heirs, devisees, successors and assigns from the date of recordation in the Real Property Records of El Paso County, Texas.

ARTICLE I
DEFINITIONS

Section 1.01 Definitions. The following words, when used in this Declaration (unless the context shall provide otherwise) shall have the following meanings:

a. AArchitectural Review Committee@ or "ARC" shall mean the committee designated in Article IV.

b. "Association" shall mean the Boulder Canyon Homeowners Association, Inc. and its successors and assigns.

c. "Auto Court" shall mean the vehicular access area located in the rear of all residential Lots in the Subdivision to provide vehicular and pedestrian access to the garage of each residential dwelling unit. Each residential Lot shall have a rear entry garage which can be accessed only through the Auto Court. The areas constituting the Auto Courts are designated on the Plat.

d. "Common Area" refers to the real property in the Subdivision (including improvements) owned by the Association for the common use and enjoyment of the Owners, and which includes the swimming pool area, landscaped and park areas and all areas labeled Common Open Space on the Plat. The Lots which are included in the Common Areas are Lots 1, 11, 12, 23, 27 and 44, Block 1 and Lots 1 and 17, Block 2, and any other areas that are identified on the Plat as Common Open Space.

e. "Development Period" shall mean the period in which Declarant reserves the right to facilitate the development, construction, and marketing of the Subdivision.

f. ADeclarant@ shall mean DVEP Land, L.L.C. and its successors and assigns.

g. ALot and/or Lots@ shall mean and refer to each of the Lots shown upon the

Subdivision Plat.

h. "Management Certificate" shall mean the instrument required to be recorded pursuant to Section 209.004, Texas Property Code, Texas Residential Property Owners Protection Act.

i. AOwner@ shall mean and refer to the record Owner of the fee simple title to any Lot(s) whether one or more persons or entities, but shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

j. ASubdivision@ shall mean and refer to Border Canyon Replat A and any other real property brought within the scheme of this Declaration.

k. ASubdivision Plat@ or "Plat" shall mean and refer to the map or plat of Border Canyon Replat A recorded in the Real Property Records of El Paso County, Texas.

l. ASupplemental Declaration@ shall mean and refer to any supplemental Declaration. References herein (whether specific or general) to the provisions set forth in (any or all) "Supplemental Declarations" shall be deemed to relate to the respective properties covered by such Supplemental declaration.

m. "Texas Residential Property Owners Protection Act" or "The Act" shall refer to Texas Property Code Chapter 209, as same may be amended or repealed in whole or in part.

n. "Zero Lot Line" shall refer to the location of the residential dwelling unit on certain Lots. Certain Lots shall have a residential dwelling unit which has one exterior wall located on the side Lot line of one side of the Lot, immediately adjacent to the adjoining Lot.

ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION; EASEMENTS

Section 2.01 Property Subject to Covenants. All portions of the Subdivision including all Lots shall be subject to these Covenants. Declarant shall have the right to supplement these Covenants or to add additional portions of real estate or property subject to the terms and conditions of these Covenants.

Section 2.02 Easements and Rights of Way. The Subdivision Plat dedicates, subject to the limitations set forth therein, certain access, utility, pedestrian, drainage and maintenance easements and rights of way shown thereon, and the Subdivision Plat further establishes limitations, reservations and restrictions applicable to the Subdivision. Further, Declarant and Declarant's predecessors in title may have heretofore granted, created and dedicated by recorded instruments certain other easements and related rights affecting the Subdivision. All dedications,

limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Subdivision are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to, be executed by or on behalf of Declarant conveying any part of the Subdivision.

Section 2.03 Changes and Additions. Declarant reserves the right to make changes in and additions to any easements and rights-of-way for the purpose of most efficiently and economically installing the improvements. Further, Declarant reserves the right, without the necessity of the joinder of any Owner or other person or entity, to grant, dedicate, reserve or otherwise create, at any time or from time to time, easements for public utility purposes (including, without limitation, gas, water, sanitary sewer, electricity, telephone and drainage), in favor of any person or entity furnishing or to furnish utility services to the Subdivision.

Section 2.04 Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Subdivision for ingress and egress for installing, replacing, repairing, and maintaining all utilities, including, but not limited to water, sewer, telephone, electricity, gas, cable tv, and appurtenances thereto. By virtue of this easement, it shall be expressly permissible for the utility companies and other entities supplying service to install and maintain pipes, wires, conduits, service lines, or other utility facilities or appurtenances thereto on, across and under the Subdivision within the public utility easements from time to time existing and from service lines situated within such easements to the point of service on or in any Lot or structure. Notwithstanding anything contained in this paragraph, no sewer, electrical lines, water lines, or other utilities or appurtenances thereto may be installed or relocated on the Subdivision until approved by Declarant. The utility companies furnishing service shall have the right to remove all trees situated within the utility easements shown on the Subdivision Plat and to trim the overhanging trees and shrubs located abutting such casements.

Section 2.05 Underground Electric Service. An underground electric distribution system will be installed within the Subdivision and which underground service lines shall provide service to all Lots in the Subdivision. The Owner of each Lot shall, at his own cost, furnish, install, own and maintain (all in accordance with the requirements of local government authorities) the underground service cable and appurtenances from the point of the electric company's metering on the Owner's structure to the point of attachment at such company's installed transformers or energized secondary junction boxes, such point of attachment to be made available by the electric company at a point designated by such company, at the property line of each Lot. The electric company furnishing service shall make the necessary connections at said point of attachment and at the meter. In addition, the Owner of each Lot shall, at his own cost, furnish, install, own and maintain a meter loop (in accordance with the then current standards and specifications of the electric company furnishing service) for the location and installation of the meter of such electric company for the residence constructed on such Owner's Lot.

ARTICLE III
BUILDING AND LAND USE RESTRICTIONS

Section 3.01 Land Use and Building Type. All residential Lots (excluding Lots 1, 11, 12, 23, 27 and 44, Block 1 and Lots 1 and 17, Block 2, which are dedicated as open common space, and any other Lot specified on the Plat for use other than residential) shall be used solely for residential purposes and no other use. No structure shall be erected, altered, or placed or be permitted to remain on any Lot, or any part thereof, other than one detached single-family residential dwelling not to exceed two stories in height (30 feet), together with an attached private garage. No more than one residential structure shall be erected on any Lot. No detached structure, building, storage building or accessory building shall be allowed. No Owner shall convert a garage to living quarters, offices or other uses. All garages shall be maintained solely for the purpose of parking vehicles. Appropriate nonresidential structures may be constructed and maintained on the Lots designated as Open Common Space or part of the Common Area which are to be used by all of the Owners.

Section 3.02 Location of Residential Structures. Residential structures to be located on Lots 2, 5, 8, 31, 32, 39 and 40, Block 1 shall have setbacks on both sides of the structure as provided in paragraph 3.09 hereof. All other Lots shall be Zero Lot Line Lots and one wall of the residential structure shall be located on the side Lot Line.

Section 3.03 Easement for Maintenance and Repair of Exterior Wall of Residence Located on a Zero Lot Line Lot. Declarant has granted and reserved on the Plat a permanent and perpetual non-exclusive maintenance easement being ten (10) feet in width and extending along the full length of each Lot adjacent to the adjoining Lot where a Zero Lot Line residence has been or will be constructed. This maintenance easement shall be used by the Owner of a Zero Lot Line Lot for the purpose of maintenance, repair and upkeep of the wall of the residence that is built on the Lot line. The Owner of the Lot benefitted by the easement and his representatives and contractors shall be entitled to enter upon the easement at reasonable times and at any time for emergency purposes when access becomes necessary for maintenance, repair and replacing portions of the residence located thereon. The Owner of the Lot upon which the easement exists shall be entitled to use the easement area and to have landscaping and plants located on the easement, but shall not have any use that will inhibit or prevent access to the wall of the adjoining residential.

Section 3.04 Vehicular Access. Each residence shall have a rear facing garage for at least two vehicles. All vehicular access to a Lot shall be from the rear of the Lot only by way of the Auto Court. No garage, carport, driveway or other improvement or structure shall be constructed or allowed on any Lot which will allow vehicular access to the front of a Lot or of a residence.

Section 3.05 Resubdivision Prohibited. The number of Lots is restricted to the Lots shown on the Plat of the Subdivision. No Lot shall be further divided or separated into smaller

Lots by any Owner, and no portion less than all of such Lot shall be conveyed or transferred by an Owner, provided however, this provision shall not prohibit deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments, or conveyances of less than five feet from a Lot to resolve or correct a setback or an encroachment problem.

Section 3.06 Architectural Review. No building or structure shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the building or structure have been approved by the Architectural Review Committee as to quality of workmanship and materials, harmony of external design with existing structures, compliance with these Covenants, and as to location with respect to topography and finish grade elevation. After such location with respect to topography and finish grade elevation has been approved and the finish grade of the Lot has been completed, such finish grade shall not be altered, changed or disturbed. Approval shall be as provided in Article IV.

Section 3.07 Dwelling Size. A residence constructed in the Subdivision shall be not less than 1200 square feet of living area, exclusive of open porches and garages. The Architectural Review Committee shall be empowered to grant individual waivers not to exceed 10% of the above minimum area requirements, provided the proposed dwelling shall in general reflect credit to the neighborhood. Once a residence is constructed, the size of the residence may not be expanded beyond its original living area. An Owner may remodel and rehabilitate the interior of a residence but may not expand or increase the size of a residence.

Section 3.08 Building Exterior Standards. Every residential structure shall meet the following requirements:

(a) All doors that are visible from the street in front of the Lot must be under a porch.

(b) All wall finishes, accents and special finishes must wrap around a minimum of 2 feet from front of house.

(c) All structures will have either flat roofs or pitched roofs with clay/concrete tile roofs or shingles or a combination of these products on the roof. All clay or concrete roof tile or roof shingles must be neutral colors.

(d) All visible flashing/sheet metal and vents must be painted to match the adjacent roof, accent or primary color. Prefinished gutters shall be in such colors as approved by the ARC.

(e) Each structure may utilize only one color as its primary paint color and accent colors may not exceed more than thirty percent (30%) of painted surface of the structure.

(f) No structure may be painted with any color that has not been approved by the

Architectural Review Committee.

(g) All wrought iron must be painted black, dark brown or rust brown.

Section 3.09 Building Location. No building shall be located on any Lot nearer than five (5) feet from the front Lot line or fifteen (15) feet from the rear Lot line. With respect to Lots 2, 5, 8, 31, 32, 39 and 40, Block 1, no residence shall be located nearer than five (5) feet from the side Lot line on either side of the Lot. With respect to all other Lots, which are Zero Lot Line Lots, one side of the structure shall be located on a side Lot line and the other side shall be not nearer than ten (10) feet from the side Lot line.

For the purposes of this covenant, boxed and bay windows, eaves, steps and open porches or stoops and projections of fireplaces and windows shall not be considered as a part of the building, provided however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot. Declarant has granted and reserved on the Plat a perpetual overhang easement being two feet in width and extending along the full length of each Lot adjacent to the adjoining lot where a Zero Lot Line residence has been or will be constructed. The purpose of the overhang easement is to allow any portion of the roof structure or drainage structure on the roof of a Zero Lot Line lot to encroach or extend into the adjoining lot.

Section 3.10 Building Height. The maximum height any residential building shall be not more than 30 feet measured from the ground adjacent to the foundation to the top of the roof structure for a pitched roof or to the top of parapet wall for a flat roof having a parapet. The limitation on height shall not include chimneys or vent pipes.

Section 3.11 Lot Drainage. All Lots within the Subdivision, whether vacant, with buildings under construction, or with completed buildings (occupied or unoccupied) shall be designed and constructed to provide positive Lot drainage from the rear of the Lot to street in front of the Lot or Auto Court in the rear of the Lot. This positive Lot drainage to each Lot must be maintained at all times by the Owner. Driveways, walks, patios, landscaping (including without limitation grass, bushes, trees, brick, rock, or other materials), and all other portions of each Lot shall be constructed, installed and maintained to drain away from the main building structure and sloped or slanted through the rear, side and front yards so as to drain to the street in front of the Lot or Auto Court in the rear of the Lot. If necessary, roof drainage will be collected in gutters and diverted away from the residence. Walls or other structures should not be placed along the side of any dwelling in a manner that would block or impair drainage from the Lot. Any variance from this drainage requirement shall only be made with the express written approval of the Architectural Review Committee. FAILURE BY AN OWNER TO MAINTAIN THE PROPER DRAINAGE CAN RESULT IN DAMAGE TO THE IMPROVEMENTS (FOUNDATIONS, GARDEN AND/OR RETAINING WALLS, POOLS, WALKS, ETC.) FROM SETTLING AND/OR EROSION ON THE SUBJECT LOT AND ON SURROUNDING LOTS.

Section 3.12 Vehicles and Vehicle Parking. Commercial vehicles, semi-tractors, trailers, eighteen wheelers, inoperable vehicles, dune buggies, boats, camping trailers, or recreational vehicles shall not be parked or placed in the street or Auto Court, between the street and the front of any dwelling unit, or in the side or rear yard of any Lot. No vehicle shall be left parked on any Lot in disrepair or for the purpose of repair. Temporary parking of a personal vehicle for a period of not to exceed three (3) days for maintenance is permitted. A recreational vehicle may be parked for not to exceed three (3) hours for loading and unloading. No parking of recreational vehicles or camping trailers overnight is allowed. No vehicle may be parked on any portion of the Lot except upon paved areas. No vehicle may be parked at any time in the Auto Court except for periods of not to exceed one (1) hour for loading and unloading items from the vehicle, or during move-in or move-out of a residence in which event a vehicle may be parked in the Auto Court for not to exceed six (6) hours.

Section 3.13 Prohibition of Offensive Activities. No activity, whether for profit or not, shall be conducted on any Lot which is not related to single family residential purposes, unless said activity meets the following criteria:

(a) no additional exterior sign of activity is present,

(b) it is the type of action that usually happens in a home,

(c) no additional traffic that would not be there normally is created, and

(d) nothing dangerous is present.

The Association shall have the sole and absolute discretion to determine what constitutes a nuisance or annoyance.

Section 3.14 Flags and Flagpoles. Subject to this section, Owners may display a flag of the United States of America, the flag of the State of Texas, or an official or replica flag of any branch of the United States Armed forces. The flag of the United States shall only be displayed in accordance with 4 U.S.C. Sections 5-10, which qualify the times and occasions for the flag's display, the position of the flag, and respect for it. The flag of the State of Texas shall only be displayed in accordance with Chapter 31 of the Texas Government Code. A flagpole attached to a dwelling or a freestanding pole is to be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling on the Lot. The display of the flag, and its location and construction of the supporting flagpole shall comply with appropriate ordinances, easements and setbacks of record, and a displayed flag and flagpole on which it is flown shall be maintained in good condition. Any deteriorated flag or structurally unsafe flagpole shall be repaired, replaced or removed. A flagpole attached to the dwelling on a Lot may not exceed six (6) feet in height. A freestanding flagpole shall not exceed twenty (20) feet in height, measured from the ground base to the top of the flagpole. Illumination of permitted flags must be sub-surface and not exceed 200 watts, and

positioned in a manner not directed toward and adjacent Lot. A flag displayed on a freestanding flagpole shall not be more than ten (10) feet in height, and a flag displayed on a flagpole attached to a dwelling shall be no more than three (3) by five (5) feet no more than one of each permitted flags may be displayed on a flagpole at any time. Owners may not install flagpoles or display flags in the Common Area without the express written consent of the Association.

Section 3.15 Religious Item Displays. Subject to this section, Owners may display or affix on the entry to the Owner's dwelling one or more religious items, the display of which is motivated by the Owner's or residents sincere religious belief. No religious item may individually or in combination exceed twenty-five (25) square inches, and shall not extend past the outer edge of the door frame of the dwelling. Notwithstanding the foregoing, the display or affixation of a religious item on an Owner's dwelling that threatens public health or safety, violates a law, or contains language, graphics, or any display that is patently offensive to a passerby is prohibited. This section does not authorize an Owner to use a material or color for an entry door or door frame, or make an alteration to the door or door frame of the Owner's dwelling that is not authorized by the ARC. The Association may remove an item displayed in violation of this section.

Section 3.16 Solar Energy Devices. Subject to this section, Owners may install solar energy devices on the roof of the dwelling or other permitted improvement on a Lot, or in a fenced yard or patio not taller than the fence line. As used in Section 202.010 of the Texas Property Code, "solar energy device" has the meaning assigned by Section 171.107 of the Tax Code, which defines the term as "a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar generated power". The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power. A solar energy device is not permitted anywhere on a Lot except on the roof of the residential dwelling or other permitted structure on the Lot or in a fenced yard or patio within the Lot. A solar energy device may not extend higher than the dwelling's or other permitted improvement's roofline, and shall conform to the slope of the roofline, shall have a frame, support bracket, or visible piping that is a silver, bronze, or black tone commonly available in the marketplace, and shall be located on a roof as designated by the ARC, unless an alternate location increases the estimated annual energy production of the device by more than ten percent (10%) above the energy production of the device if located in the area designated by the ARC. For determining estimated annual energy production, the parties shall use a publicly available modeling tool provided by the National Renewable Energy Laboratory. A solar energy device located in a fenced yard or patio shall not be taller than or extend above the fence enclosing the yard or patio. A solar energy device shall not be installed on a Lot in a manner that voids material warranties. A solar energy device that, as adjudicated by a court threatens the public health or safety, violates a law, or is located in the Common Area is prohibited. The ARC may not withhold approval if the guidelines of this section are met or exceeded, unless the ARC determines in writing that placement of the device as proposed constitutes a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary

sensibilities. The written approval of the proposed placement of the device by all Owners of property adjoining the Lot in question constitutes *prima facie* evidence that substantial interference does not exist. During the Development Period, Declarant may prohibit or restrict an Owner from installing a solar energy device.

Section 3.17 Political Signs. Owners may display on the Owner's Lot one or more signs advertising a political candidate or ballot item for an election on or after the ninetieth (90th) day before the date of the election to which the sign relates or ten (10) days after that election date. Signs shall be ground-mounted and display only one sign for each candidate or ballot item. Any sign that contains roofing material, siding, paving materials, flora, one or more balloons or lights, or any other similar building, landscaping, or nonstandard decorative components, is attached in any way to plant material, a traffic control device, a light, a trailer, a vehicle, or any other existing structure or object, includes the painting of architectural surfaces, threatens the public health or safety, is larger than four (4) feet by six (6) feet, violates a law, contains language, graphics, or any display that would be offensive to the ordinary person, or is accompanied by music or other sounds or by streamers or is otherwise distracting to motorists is prohibited. The Association may remove a sign displayed in violation of this section.

Section 3.18 Temporary Structures. No structure of a temporary character (trailer, basement, tent, shack, garage, barn or other outbuilding) shall be used on any Lot at any time as a residence, with temporarily or permanently. During the period of construction of the Subdivision and until all houses are completed, one or more construction trailers will be allowed in the Subdivision.

Section 3.19 Party Fences. All fences separating Lots shall be deemed to be party walls and shall be constructed on the Lot line, unless otherwise approved by the Architectural Review Committee. The cost of construction for all party walls shall be shared on an equal basis between Lot owners. The Lot owner first constructing a home shall initially bear the entire cost and the adjoining Lot owners shall be required to reimburse for a share of the cost of the party wall when a home is constructed on the adjoining lot. After the initial construction of the party wall, each Owner shall each be responsible for its pro rata share of the reasonable cost of maintenance and upkeep of the wall. In the event a Lot Owner, or his agents, invitees, or family causes damage to a wall, the Owner shall be liable and responsible to replace or repair the damage to the wall. This provision shall not apply to the side wall of a zero Lot line home located on the Lot line.

Masonry or rock fences only shall be permitted across the rear of any Lot, the interior Lot line of any Lot, or along the side yard of a corner Lot where such side yard abut on a side street.

Section 3.20 Completion of Structures. A structure, once commenced, shall be completed as to exterior in accordance with the provision of these restrictions in not more than twelve (12) months from the date of commencement.

Section 3.21 Sight Distance at Intersections. No fence, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot or alley pavement. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 3.22 Maintenance of Property. The Owner of each Lot shall keep all improvements and the surrounding grounds in good condition and repair, free of debris, junk, rubbish and weeds.

Section 3.23 Satellite Dishes and Antennas. No Owner shall operate or allow to be operated on any Lot any electronic transmission or receiving device or equipment which interferes with normal radio, television, telephone or other electronic transmission or receiving devices or equipment of any other Owners or residents in the Subdivision. No Owner shall erect, construct, place or permit to remain on any Lot any tower, antenna or similar structure which is higher than the highest part of the roof of the dwelling on that Lot. Any satellite receiving dish or similar structure shall not be visible from the street.

Section 3.24 Value. No Owner shall do or permit to be done any act which would tend to depreciate the value of his Lot or dwelling unit, an adjacent dwelling unit, or any structure or property in the Subdivision.

Section 3.25 Oil, Mining and Excavation. No oil or natural gas drilling, oil development operation or refining, quarrying or mining operation of any kind shall be permitted upon or on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot. No excavation shall be made on any Lot for the purpose of obtaining sand, gravel, rock, clay or dirt, either for profit or otherwise.

Section 3.26 Garbage Collection. All trash cans shall be placed on dedicated main roads for pick up by City of El Paso Sanitation Department. Trash cans shall not be placed for collection in the Auto Court. An Owner shall remove the trash cans from the dedicated road and return the trash cans to the Owner's Lot within twelve (12) hours after collection by the City of El Paso.

Section 3.27 Miscellaneous. During construction, a builder may place signs, flags and other marketing material directing potential buyers offering homes for sale. Except as required during construction, no privy shall be placed upon any Lot in said Subdivision. After construction is complete, no signboard or other visible advertisement larger than one square foot may be placed upon any Lot, other than signs pertaining to the sale of a home which may be

placed upon the Lot or as otherwise provided in these Covenants. No hog pen, stockyard or pen, or chicken pen will be allowed, whether operated for profit or otherwise. No animals, livestock, poultry or fowl of any kind shall be raised, bred or kept on any portion of the Subdivision except that dogs, cats and other customary house pets may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purpose whatsoever, and the number of pets shall not exceed an aggregate total of two (2).

ARTICLE IV
ARCHITECTURAL REVIEW

Section 4.01 Architectural Review. No building, fence, wall or other structure shall be erected, placed, altered, remodeled or renovated (including additions to any existing structure) on any of the Lots until the construction plans and specifications and a plat showing the location of the structure have been approved by the Architectural Review Committee as to quality of workmanship and materials, harmony of external design with existing and proposed structures, compliance with these Covenants, and as to location with respect to topography and finish grade elevation. The Committee shall have broad, discretionary authority to interpret and apply the standards set forth in this Declaration.

Section 4.02 Membership. The initial Architectural Review Committee is composed of Randal S. O=Leary, Kelly O=Leary and Pat Woods, all of El Paso County, Texas. A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any Member of the Committee, the remaining Members of the Committee shall have full authority to designate a successor. Neither the Members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration.

Section 4.03 Procedure. The Committee's approval or disapproval as required in this Declaration shall be in writing, and in the event the Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after final and complete plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related procedural requirement for this Declaration shall be deemed to have been fully complied with. No action shall be taken against the Declarant, its officers, directors or shareholders, the Association, its officers, trustees, or Members, or the Architectural Review Committee for any action or failure to act on matters required of them in this Declaration.

Section 4.04 Limitation of Liability. Neither Declarant, the Architectural Review Committee (nor any officer, director, trustee, member, employee or agent hereof) shall be liable in damages to anyone submitting plans and specifications for approval or to any Owner of a property or any to her person or entity because of a mistake in judgment, or negligence arising out of or in connection with the approval or disapproval of an plans submitted. Without limiting the foregoing, no approval of any plans or specifications shall be construed to represent nor is

such approval intended to imply that such plans, if followed, will result in a properly designed improvement.

Section 4.05 No Waiver of Future Approvals. The approval of the Architectural Review Committee of any proposals, plans, specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 4.06 Inspection; Correction of Defects. Inspection of work and correction of defects therein shall proceed as follows:

a. Right to Inspect. The Architectural Review Committee or its duly appointed representative may at any time inspect any improvement for which approval of plans is required hereunder. However, the Architectural Review Committee's right of inspection of improvements for which plans have been submitted and approved shall terminate sixty (60) days after the work or improvement has been completed and the respective Owner has given a notice of completion to the Architectural Review Committee. The Architectural Review Committee's right of inspection shall not terminate pursuant to this paragraph if plans for the work or improvement have not previously been submitted to and approved (or determined exempt) by the Architectural Review Committee. If, as a result of such inspection, the Architectural Review Committee believes that such improvement was done without obtaining approval of the plans therefor or was not done in substantial compliance with the plans approved by the Architectural Review Committee, it shall notify the Owner in writing of failure to comply within thirty (30) days from the inspection, specifying the particulars of non-compliance. The Architectural Review Committee shall have the authority to require the Owner to take such action, at Owner's sole cost and expense, as may be necessary to remedy the noncompliance.

b. Remedies for Noncompliance. Prior to the expiration of thirty (30) days from the date of such notification of noncompliance, upon the request of the Owner, the Architectural Review Committee may (but is not required to) set a time and date for a hearing before the Architectural Review Committee. If a hearing is conducted, the Architectural Review Committee shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. Alternatively, the Architectural Review Committee may make any determination required by these Covenants without the necessity of a formal hearing or meeting. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date that notice of the Architectural Review Committee ruling is given to the Owner. If the Owner does not comply with the Architectural Review Committee ruling within that period, Declarant, at its option, may record a notice of noncompliance and may peacefully remedy the noncompliance, and the Owner shall reimburse Declarant, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner, Declarant shall have all remedies available

at law for the collection of such indebtedness. The right of the Declarant to remove a noncomplying Improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which Declarant may have at law or in equity, including injunctive relief Declarant will be entitled to injunctive relief as a matter of right restraining any Owner from violating the terms of this Declaration, without the necessity of proving actual damages or posting a bond, cash or otherwise.

c. Failure to Provide Notice. If for any reason the Architectural Review Committee fails to notify the Owner of any noncompliance with the Owner's previously submitted and approved plans within sixty (60) days after receipt of notice of completion from the Owner, the Improvement shall be deemed to be in accordance with such approved plans.

d. Owner to Diligently Complete Construction. All construction, alteration or other work shall be performed promptly diligently, in a workmanlike manner, in accordance with all governmental restrictions or regulations and shall be completed within one (1) year after the date on which the work commenced.

Section 4.07 Variances. The Architectural Review Committee may grant variances from compliance with any of the provisions of this Article under the following circumstances:

a. There are special circumstances or conditions not created by or arising out of action or inaction of an Owner or Declarant applying to a Lot or improvement for which the variance is sought which are peculiar to the Lot or improvement and do not generally apply to all Lots; or

b. There has been a bona fide mistake or error in construction (whether during construction or after the completion of construction) despite the use of qualified contractors or professionals; and

c. In the reasonable judgment of the Architectural Control Committee, the granting of the variance will not be detrimental to neighboring properties; and

d. In the reasonable judgment of the Architectural Control Committee, the granting of the variance is necessary for the reasonable use of the land and to prevent undue hardship or unreasonable expense.

Any variance must be evidenced in writing, and shall become effective upon recordation. If a variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular portion of the Property and particular provision hereof covered by the variance, nor shall it affect in any way the Owner's obligation to comply with all governmental laws and regulations affecting the use of

the Property. Declarant may from time to time adopt rules regulating the nature and extent of permissible variances.

ARTICLE V
THE ASSOCIATION

Section 5.01 Organization. The Declarant has organized or will organize the Association as a non-profit corporation under the laws of the State of Texas.

Section 5.02. Purpose. The purpose of the Association, in general, shall be:

a. to provide for and promote the health, safety, and welfare of the Members,

b. to collect the regular and any special assessments,

c. to administer the funds collected to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Area, including the swimming pool, any parks or open common space,

d. to maintain all landscaped areas, including landscaped areas between the front of an Owner's home and the parkway, all landscaped areas adjacent to or located on a pedestrian access easement,

e. maintain and upkeep the Common Area located within or serving the Subdivision, and

f. such other purposes as stated in Articles of Incorporation or By-laws consistent with the provisions of the Declaration for the Subdivision and any supplemental declarations.

Section 5.03 Directors. The Association shall act through a Board of Directors as provided in the Articles of Incorporation and By-laws, who shall manage the affairs of the Association. Prior to the Conversion Date (as defined in the By-laws), all members of the Board of Directors shall be appointed by the Declarant. Each Director shall continue to serve until such time as his or her successor is elected and qualified. After the Conversion Date, the Directors shall be elected by the Members in accordance with the terms of the Bylaws and shall serve a term of office as provided in the bylaws.

Section 5.04 Members. Each Owner, whether one or more persons or entities, of a Lot shall upon and by virtue of becoming such Owner become a Member of the Association and shall remain a Member thereof until such time as his Ownership ceases for any reason, at which time his Membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and automatically follow the legal Ownership of each Lot and may not be separated from such Ownership whenever the legal Ownership of any Lot passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for

the transfer of Membership in the Association, and no certificate of Membership will be issued. The Association shall not be a voting Member of the Association by virtue of its Ownership of any Lot or portion thereof.

Section 5.05 Classes of Membership. The Association shall have two classes of membership as follows:

(a) Class A. Class A Members shall be all Lot owners with the exception of the Class B member.

(b) Class B. Class B Members shall be Declarant and any successor of Declarant who takes title for the purposes of development and sale of Lots in the Subdivision.

Section 5.06 Voting. Class "A" Members shall be entitled to one (1) vote for each Lot of which they are record Owner. Class "B" Members shall be entitled to ten (10) votes per Lot owned. The Class "B" membership shall terminate and be converted to Class "A" on or before the 20th day after the date seventy-five percent (75%) of the Lots that may be made subject to this Declaration are conveyed to Class "A" Members.

Section 5.07 Appointment of Board of Directors. During the Declarant Control Period, the Class "B" Member is entitled to appoint and remove the members of the Board of Directors and the officers of the Association. Notwithstanding, at least one-third (1/3) of the members of the Board shall be elected by the Owners other than the Declarant not later than the tenth (10th) anniversary after this Declaration was recorded in the Official Public Records of Real Property, El Paso County, Texas.

ARTICLE VI
ASSESSMENTS AND LIENS

Section 6.01 Purpose of Assessment. The assessments levied hereunder by the Association shall be used exclusively for the purposes of the Association including, without limitations, the following:

a. to provide for and promote the health, safety, and welfare of the Members,

b. to collect the regular and any special assessments, and

c. to administer the funds collected to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Area, including the swimming pool, any parks or open common space,

d. to maintain all landscaped areas, including landscaped areas between the front of an Owner's home and the parkway, all landscaped areas adjacent to or located on a pedestrian

access easement,

e. maintain and upkeep the Common Area located within or serving the Subdivision,

f. any management or supervisory services, fees for performing services to the Association, costs of any labor and equipment needed by the Association,

g. the carrying out of the duties of the Board of Directors as provided in the bylaws and Articles of Incorporation of the Association and in this Declaration,

h. the carrying out of the purposes of the Association as stated herein and in its Declaration and Articles of Incorporation, and

i. the carrying out of all other matter set forth or contemplated in the Declaration or allowed by the laws for Texas Non-Profit Corporations.

Section 6.02 Annual Budget and Regular Annual Assessments. Each fiscal year while the Declaration is in force, the Board shall adopt an annual budget and Regular Annual Assessment to be levied for the next year. All Regular Annual Assessments will be made in accordance with the Bylaws of the Association and determined no later than 15 days before the beginning of the fiscal year. Each Lot's pro rata share of the Regular Annual Assessment shall be determined by dividing the total Assessment by the number of Lots in the subdivision subject to Assessment. The Board as its discretion may adjust the pro rate share due for unimproved Lots.

Section 6.03 Payment of Regular Assessments. The Regular Annual Assessment provided for herein, shall commence on a date fixed by the board and thereafter be due and payable in annual installments in advance no later than 30 days after the beginning of the fiscal year. At no time may the assessments increase in excess of 20% per year except in an emergency determined by the Board.

Section 6.04 Special Assessments. In addition to the Regular Assessments provided herein. Special Assessments may be levied as provided for in the bylaws of the Association, subject to the limitation in Section 6.03.

Section 6.05 Enforcement and Personal Obligation of Owners. The Regular Annual Assessments and Special Assessments provided for herein shall be the personal and individual debt of the Owner of a Lot or portion thereof covered by such assessments. No Owner may, for any reason, except itself from liability for such Assessments levied in accordance with the provisions of this Declaration. In the event that any Assessment or installment thereof is not paid when due and remains unpaid for a period of (30) days thereafter, then the unpaid amount shall become delinquent and shall together with interest thereon and cost of collection become a personal obligation and debt of the nonpaying Owner (Member) secured by a self-executing lien

on the Lot or portion thereof including all improvements thereon. The Association, at its sole discretion, may elect to accept a partial payment without waiving any rights with respect to the remaining balance due.

The obligation of an Owner to pay an assessment on a Lot during such Owners period of ownership shall remain its personal obligation, and a sale or other transfer of title to such Lots shall not release the former Owner from said liability. The lien for any unpaid Assessment shall be unaffected by the sale or transfer of full or partial interest in a Lot. In the event of a full or partial sale of a Lot, it is the sole responsibility of the Owner, and not the Association, to disclose to the buyer or transferee that an unpaid Assessment against the Ownership interest exist. A copy of the notice shall be sent to the Association at the time notification is given and upon written request, the Association shall provide Owner with a statement reflecting the amount of any unpaid or delinquent Assessments with respect to the Lot (s) owned by said Owner.

The unpaid amount of any Assessment shall bear interest at eighteen percent (18%) per annum or the maximum legal rate of interest then prevailing, whichever is less. In addition, the Board may elect to retain the services of any attorney of its choice for the purposes of collecting any unpaid Assessment and interest charges thereon, and/or to foreclose the lien against the property, or to pursue any other legal or equitable remedy which the Association may have. The cost of collection shall be added to the unpaid and/or delinquent amount due the Association.

Section 6.06 Alternative Payment Schedule. Pursuant to Section 209.062 of the Act, the Association shall adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments for delinquent regular or special assessments or any other amount owed without incurring additional penalties. The Association shall adopt the following guidelines with regard to alternative payment schedules for delinquent assessments and other amounts owed by an Owner:

(a) Term: The minimum term for a payment agreement shall be (3) three months and the maximum shall be (18) eighteen months from the date of the Owner's request for a payment plan. Subject to such minimum and maximum terms, the Association shall determine the appropriate term of the payment plan in its sole discretion.

(b) Form: Any and all alternative payment agreements shall be in writing and signed by the Owner and a duly authorized member of the Board of the Association.

(c) Additional Monetary Expense: So long as an Owner is not in default under the terms of the payment agreement, the Owner shall not incur additional monetary expenses; however, the Owner shall be responsible for all interest accruing during the term of the payment plan as well as reasonable costs associated with administering the payment plan or interest.

(d) Application of Payments: If at the time the Association receives a payment, the Owner is not in default under an alternative payment agreement, the Association shall apply the payment to the Owner's debt in the following order of priority: (a) any delinquent assessment; (b) any current assessment; (c) any attorney's fees or third party collection costs incurred by the Association associated solely with assessments or any other charge that could provide the basis for foreclosure; (d) any attorney's fees incurred by the Association that are not subject to subsection (c); (e) any fees assessed by the Association; and (f) any other amounts owed to the Association.

(e) Default: If the Owner defaults under a payment plan agreement, the account may immediately be turned over to the Association's attorney for collection. The Association shall not be required to enter into an alternative payment agreement with an Owner who failed to honor the terms of a previous payment agreement during the two (2) years following the Owner's default under the previous alternative payment agreement. At the discretion of the Association, an Owner who failed to honor the terms of a previous payment agreement may be required to waive Expedited Foreclosure Proceedings under Section 209.0092 of the Act as a condition to an additional alternative payment agreement. If, at any time the Association receives a payment from an Owner who is in default of an alternative payment agreement, the Association is not required to apply the payment in the order of priority specified by Paragraph 4, Sections (a) through (f) above.

The Association may reduce or waive some or all of the charges addressed by this policy on an *ad hoc* basis without waiving the right to charge such fees on future requests

Section 6.07. Lien and Foreclosure. All sums assessed in the manner provided in this Declaration or in the Bylaws, together with all interest and collection cost as herein provided shall be secured by the lien provided for in section 6.05 above. The Association, at its sole discretion, may elect to proceed with any and all legal remedies, including but not limited to foreclosure, for the collection of the delinquent amount. The Association shall have the right to bid on the property being foreclosed.

Section 6.08. Lien Subordination. Any lien established as herein provided in this Declaration or the Bylaws shall be subordinate and inferior to any Purchase Money Mortgage or Deed of Trust in favor of any Bank, Mortgage Company or other lender. Provided however that such subordination shall apply only to Assessments which have become due and payable prior to a foreclosure by any lender under the terms and conditions any such Mortgage or Deed of Trust. Such foreclosure shall not relieve any new Owner from the liability of any new Assessments thereafter becoming due or from any lien arising out of any such subsequent Assessments. Notwithstanding anything to the contrary herein, a lien for Assessments shall be unaffected by a foreclosure of other than a first lien created by a Deed of Trust or Mortgage.

Section 6.09 Notice and Opportunity to Cure for Certain Other Lienholders. The Association may not foreclose its assessment lien by Expedited Foreclosure Proceedings or judicially unless it has provided written notice by certified mail, return receipt requested, of the total amount of the delinquency to any other holder of a lien that is inferior or subordinate to the Association's lien and is evidenced by a deed of trust; and provided the recipient of the notice an opportunity to cure within sixty-one (61) days from the receipt of the notice.

Section 6.10 Foreclosure Sale Prohibited in Certain Circumstances. The Association may not foreclose its assessment lien for debts consisting solely of fines or attorneys' fees associated with the fines assessed, or for copy charges under its Open Records Policy, pursuant to ' 209.005 of the Act.

Section 6.11 Assessment Lien Filing. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim of lien against the Lot of the delinquent Owner by recording a Notice of Lien setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have accrued thereon, (d) the legal description and street address of the Lot against which the lien is claimed and (e) the name of the Owner. The Notice of Lien shall be recorded in the Official Public Records of Real Property of El Paso County, Texas, and is a legal instrument affecting title to a Lot, and shall be prepared by the Association's attorney. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice of satisfaction of the delinquent assessment upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such instrument.

Section 6.12 Attorney's Fees. All attorney's fees, costs, and other amounts collected from an Owner shall be deposited into an account maintained at a financial institution in the name of the Association or its Managing Agent. Only Board members or the Association's Managing Agent or employees of its Managing Agent may be signatories on the account. On written request from the Owner, the Association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the Association seeks reimbursement of fees and costs.

Section 6.13 Notice After Foreclosure Sale. After the Association conducts a foreclosure sale of an Owner's Lot, the Association must send to the Owner and to each lienholder of record, not later than the thirtieth (30th) day after the date of the foreclosure sale, a written notice stating the date and time the sale occurred and informing the Lot Owner and each lienholder of record of the right of the Lot owner and lienholder to redeem the property. The notice must be sent by certified mail, return receipt requested, to the Lot Owner's last known mailing address, as reflected in the records of the Association, the address of each holder of a lien on the Lot subject to foreclosure evidenced by the most recent deed of trust filed of record in the real property records of the county in which the property is located, and the address of

each transferee or assignee of a deed of trust who has provided notice to the Association of such assignment or transfer. Notice provided by a transferee or assignee to the Association shall be in writing, shall contain the mailing address of the transferee or assignee, and shall be mailed by certified mail, return receipt requested, or United States mail with signature confirmation to the Association according to the mailing address of the Association pursuant to the most recent Management Certificate filed of record. If a recorded instrument does not include an address for the lienholder, the Association does not have a duty to notify the lienholder as provided by this section. For purposes of this section, the Lot Owner is deemed to have given approval for the Association to notify the lienholder. Not later than the thirtieth (30th) day after the date the Association sends the notice, the Association must record an affidavit in the Real Property Records, stating the date on which the notice was sent and containing a legal description of the Lot. Any person is entitled to rely conclusively on the information contained in the recorded affidavit. The notice requirements of this section also apply to the sale of an Owner's Lot by a sheriff or constable conducted as provided by a judgment obtained by the Association.

Section 6.14 Right of Redemption After Foreclosure. The Owner of a Lot in the Subdivision or a lienholder of record may redeem the property from any purchaser at a sale foreclosing a the Association's assessment lien not later than the one hundred eightieth (180th) day after the date the Association mails written notice of the sale to the Owner and the lienholder under Sections 209.010 and 209.011 of the Act. A lienholder of record may not redeem the Lot as provided herein before ninety (90) days after the date the Association mails written notice of the sale to the Lot Owner and the lienholder under the Act, and only if the Lot Owner has not previously redeemed. A person who purchases a Lot at a sale foreclosing the Association's assessment lien may not transfer ownership of the Lot to a person other than a redeeming Lot Owner during the redemption period.

Section 6.15 Removal of Foreclosure Authority. The right to foreclose the lien on real property for unpaid amounts due to the Association may be removed by a vote of at least sixty-seven percent (67%) of the total votes allocated in the Association. Owners holding at least ten percent (10%) of all voting interests may petition the Association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section. This section is required pursuant to '209.0093 of the Act, and should this provision be amended or repealed in any form, this section shall be deemed to be automatically amended or repealed in accordance therewith.

Section 6.16 Duty to Provide Notice Before Enforcement Action. Before the Association may suspend an Owner's right to use the Common Area, file a suit against an Owner other than a suit to collect a Maintenance Charge, or a Regular or Special Assessment or foreclose under the Association's lien, charge an Owner for property damage, or levy a fine for a violation of the Declaration, Bylaws, Design Guidelines, or Rules and Regulations, the Association or its Managing Agent must give written notice to the Owner by certified mail, return receipt requested. The notice must describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the Association from the

Owner and inform the Owner that the Owner is entitled to a reasonable period to cure the violation and avoid the fine or suspension (unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months), may request a hearing under Section 209.007 of the Act on or before the thirtieth (30^{th}) day after the date the Owner receives the notice, and may have special rights or relief related to the enforcement action under federal law, including the Service Members Civil Relief Act (50 U.S.C. app. Section 501 et seq.), if the Owner is serving on active military duty.

Section 6.17 Hearing Before Board; Alternative Dispute Resolution. If the Owner is entitled to an opportunity to cure the violation, the Owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the Board or before the Board of Directors if a committee is not appointed. If a hearing is to be held before a committee, the notice prescribed by Section 209.006 of the Act must state that the Owner has the right to appeal the committee's decision to the Board by written notice. The Association shall hold a hearing under this section not later than the thirtieth (30^{th}) day after the date the Board receives the Owner's request for a hearing and shall notify the Owner of the date, time, and place of the hearing not later than the tenth (10^{th}) day before the date of the hearing. The Board or the owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. The Owner or the Association may make an audio recording of the meeting. The Association shall hold a hearing under this section not later than the thirtieth (30^{th}) day after the date the Board receives the Owner's request for a hearing and shall notify the Owner of the date, time, and place of the hearing not later than the tenth (10^{th}) day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. The Owner or the Association may make an audio recording of the meeting and may use alternative dispute resolution services. The Owner's presence is not required to hold a hearing.

Section 6.18. Collection and Enforcement. Each Member, by his assertion to title or claim of Ownership, or by his acceptance of a deed to a Lot, whether or not recited in such deed, shall be conclusively deemed to have an expressly vested interest in the Association. The Association, through its officers and agents shall have the right and authority to take all action which the Association deems proper for the collection of Assessments and/or the enforcement of the by-laws or liens due the Association.

ARTICLE VII
GENERAL PROVISIONS

Section 7.01 Duration. These Covenants are to run with the land and shall be binding on all parties or persons claiming an interest in any portion of the Subdivision and shall inure to the benefit and be enforceable by the Owner of any Lot subject to this Declaration or any Supplemental Declaration, and shall run with the land for a period of forty (40) years from the date these covenants are recorded after which time said covenants shall automatically extend for

successive periods of ten (10) years unless changed by amendment as provided below. The covenants, conditions, and restrictions of this Declaration may be changed or terminated only by an instrument duly executed and recorded by the then Owners of seventy-five percent (75%) of all Lots in the subdivision.

Section 7.02 Enforcement. The Declarant, the Association and any Owner shall have the right to enforce all restrictions, covenants, condition, reservation, liens or assessments and provisions set out in the Declaration pursuant to but not limited to Texas Property Code ' 202.004. Failure of the Declarant, the Association or any Owner to take action upon any breach or default with respect to any of the foregoing shall not be deemed a waiver of their right to enforce.

Section 7.03 Attorney's Fees. The Association may collect reimbursement of reasonable attorney's fees and other reasonable costs incurred by the Association relating to collecting amounts, including damages, due the Association for enforcing restrictions contained in its dedicatory instruments only if the Owner is provided a written notice that attorney's fees and costs will be charged to the Owner if the delinquency or violation continues after a date certain. An Owner is not liable for attorney's fees incurred by the Association relating to a matter described by the notice under this section if the attorney's fees are incurred before the conclusion of the hearing; or, if the Owner does not request a hearing, before the date by which the Owner must request a hearing. All attorney's fees, costs, and other amounts collected from an Owner shall be deposited into an account maintained at a financial institution in the name of the Association or its Managing Agent. Only Board members or the Association's Managing Agent or employees of its Managing Agent may be signatories on the account. On written request from the Owner, the Association shall provide copies of invoices for attorney's fees and other costs relating only to the matter for which the Association seeks reimbursement of fees and costs.

Section 7.04 Amendments by Declarant. The Declarant shall have, and reserves the right at any time, without the joinder or consent of any other party, to amend this Declaration by any instrument in writing, duly executed and filed of record at any time prior to sale of all Lots in the Subdivision, provided however, any amendment by the Declarant shall not affect the rights of any Owner who has purchased a Lot prior to the amendment by Declarant.

Section 7.05 Duty to Prepare and Record Management Certificates. The Association shall record in the Official Public Records of Real Property of El Paso County a Management Certificate, signed by an officer of the Association, or the Managing Agent stating the name of the Subdivision, the name of the Association, the recording data of the Subdivision, the recording data of this Declaration, the name and mailing address of the Association, the name and mailing address of the Association's Managing Agent or designated representative, and other information the Association considers appropriate. The Association shall record an amended Management Certificate not later than the thirtieth (30^{th}) day after the Association has a change in any information required herein. The Association, and its officers, Directors, employees, and agents are not subject to liability to any person for a delay in

recording, or a failure to record the Management Certificate, unless the delay or failure is caused by gross negligence.

Section 7.06 Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed certified, return receipt requested, to the last known address of the person who appears as Member or Owner in the records of the Association at the time of such mailing.

Section 7.07 Severability. Invalidation of any one or more of the covenants, restrictions, conditions, or provisions contained in this declaration, or any part thereof shall in no manner affect any of the other covenants, restrictions, conditions or provisions herein, which shall remain in full force and effect.

Section 7.08 Enforcement by City. The City of El Paso (the "City") shall have the right to enforce, by any proceeding at law or in equity, Article III of these Covenants. Any amendment to Article III shall require approval of the City of El Paso Development Services Department to determine if additional parkland fees or dedication is required and such residential development shall not be allowed until such fees are paid. Failure or delay to enforce any provision herein shall in no event be deemed a waiver of the right to do so thereafter. Except as set forth above, these Covenants may be amended without approval of the City.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have executed this Declaration to be effective on this 22 day of July, 2014.

DECLARANT:

DVEP LAND, L.L.C.

BY: _____

THE STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the 22 day of July, 2014 by Teresa Kemp, _____ of DVEP LAND, L.L.C., a Texas Limited Liability Company, on behalf of said company.

SEAL: NOTARY PUBLIC STATE OF TEXAS — KIMBERLY A RAMIREZ My Commission Expires March 22, 2017

_____
NOTARY PUBLIC, STATE OF TEXAS

DVH/BOULDERCANYON.COVENANTS.BOULDERCANYON.CLEAN.2.63013

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#Pages 23 #NFPages 1
7/28/2014 10:23:04 AM
Filed & Recorded in
Official Records of
El Paso County
Delia Briones
County Clerk
Fees $114.00

24 DL

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded by document number in the Official Public Records of Real Property in El Paso County.

COUNTY CLERK OF EL PASO COUNTY TEXAS

EL PASO COUNTY, TEXAS

Delia Briones