

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
DESERT SPRINGS UNIT 5
(also known as Encore El Paso)
(A Residential Subdivision)**

EP Desert Spring Development, being the Owner of Desert Springs Unit 5, an addition to El Paso County, Texas also known as Encore El Paso (the "Subdivision") 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 "Covenants") which will run with the land and will be binding upon and ensure 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
DEFINITION**

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

- a. "Association" shall mean and refer to the nonprofit corporation which the Declarant shall cause to be incorporated under the name Encore El Paso Homeowners Association, Inc., and its successors and assigns.
- b. "Common Facilities" or "Common Areas" shall mean the improvements for the use and benefit of all Owners, which shall be constructed on portions of one or more Lots or in the Subdivision. By way of illustration, it is intended as of the date of this Declaration that the "Common Facilities" will include, but not necessarily be limited to, streets, lighting, curbs, gate at entrance together with the gate mechanism, keys or other entry devices, and lighting and landscaping at the entry of the Subdivision and common open space Lot 1 block 25.
- c. "Conversion Date" shall have the meaning set forth in Section 5.05 hereof,
- d. "Lot and/or Lots" shall mean and refer to each of the Lots shown upon the Subdivision Plat.
- e. "Member" and/or "Members" shall mean and refer to all those Owners who are Members of the Association as provided in Article V hereof together with all Owners in the subdivision(s) who are Members of the Association as provided in all Supplemental Declarations.
- f. "Owner" 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.
- g. "Subdivision" shall mean and refer to Desert Springs Unit 5 and any other real property (including specifically, but not without limitations, all or portions of other subdivisions being or to be developed by Declarant, its successors, or affiliated of subsidiary entities) brought within the scheme of this Declaration.
- h. "Subdivision Plat" shall mean and refer to the map or plat of Desert Springs Unit 5 recorded in the Plat Records of El Paso County, Texas.
- i. "Supplemental 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.
- j. "Street" shall mean the private streets serving the Subdivision which are labeled as Lots 1-44, Block 24 on the Subdivision plat. These streets shall contain the gated entryway and landscape and other structures relating to the entry to the Subdivision.

Courtesy

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ARTICLE II
STREET AND COMMON FACILITY MAINTENANCE

Section 2.01 Street Maintenance. The Association will in perpetuity maintain the Streets and Common Facilities in good condition and repair and to the standards required by the City of El Paso for publicly dedicated streets. No part of any Street will be altered or removed except as necessary for maintenance, repair or replacement of the Street.

Section 2.02 Easement to City of El Paso. Declarant grants to the City of El Paso a perpetual easement for ingress and egress on and across the Streets for the purpose of inspecting the Streets.

Section 2.03 Failure to Maintain. In the event that the Association does not maintain the Streets and Common Facilities in the condition as required by Section 2.01, the Association will perform all corrective actions required to repair the Street and Common Facilities and to restore the Street and Common Facility to the condition required by Section 2.01 within a reasonable time after the discovery of the need for repair, but not less than forty-five (45) calendar days after receipt of written notice from the City of El Paso. In the event of an emergency, Declarant grants the City of El Paso the right, but not the obligation to repair the Street or Common Facility without the notice to Declarant or the Association. In the event City of El Paso performs any maintenance or repair on the Street or Common Facility, the Association will pay on demand, the reasonable costs of such work. If the City of El Paso is required to bring action to recover such costs, the City of El Paso will be entitled to recover its reasonable attorneys', costs and interest at the rate of 10% per annum.

Section 2.04 Indemnity. The Association, as owner of the Streets and appurtenances, shall release, indemnify, defend and hold harmless the City of El Paso, any other governmental entity and any public utility entity (collectively, "Indemnitees") for damages to the Streets that may be occasioned by the reasonable use of the Streets by the Indemnitees and for damages and injury (including death) arising from the condition of the Streets, out of any use of access gates or cross arms, or out of any use of the Subdivision by the Indemnitees.

Section 2.05 Owner's Easement of Enjoyment. Each Owner shall have a nonexclusive easement of ingress and egress on and across the Streets. This easement and right of use may be delegated by an Owner to the members of an Owner's family who reside with the Owner, an Owner's tenants or an Owner's invitees.

Section 2.06 Easements Run With the Land. The easement created by this Article shall run with the land and be appurtenant to and pass with the title to every Lot.

Section 2.07 Enforcement; Amendment. The City of El Paso is an intended third party beneficiary of the covenants and easement established under this Article II. Neither Declarant or the Owners will have the right to amend any portion of this Article II, without providing prior written notice of the proposed amendment to the City Attorney for the City of El Paso and the City Manager of the City of El Paso. The City Attorney shall review any amendment to the provisions in this Article, or an amendment to other provisions to this Declaration, which impact the application or interpretation of this Article. The City Attorney shall submit recommended changes to the Declarant or Owners, who shall incorporate such changes. Absence of the City Attorney approval of any amendments to this Declaration shall result in the required denial of the exception for private streets.

ARTICLE III
PROPERTY SUBJECT TO THIS DECLARATION; EASEMENTS

Section 3.01 Property Subject to Covenants. All portions of the Subdivision including all lots and Common Facilities shall be subject to these Covenants. Declarant shall have the right to supplement these Covenants and to add additional portions of real estate or property subject to the terms and conditions of these Covenants. Developer may file supplemental covenants to evidence such additional property.

Section 3.02 Existing Easements. The Subdivision Plat dedicates, subject to the limitations set forth therein, certain easements shown thereon, and such 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 easement 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 3.03 Changes and Additions. Declarant reserves the right to make changes in and additions to the above easements 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 3.04 Installation and Maintenance. There is hereby created an easement upon, across, over and under all of the Subdivision for ingress and egress in connection with 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 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 or the Association's Board of Directors. 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 easements.

Section 3.05 Underground Electric Service. An underground electric distribution system will be installed within the Subdivision and which underground service area 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 and the National Electric Code) the underground service cable and appurtenances from the point of the electric company's metering on the customer'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.

Section 3.06 Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner or to the Association

for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the vegetation as a result of any activity relating to (the construction, maintenance, operation or repair of any facility in any such easement area . In the event of an inconsistency between this provision and the terms of the easement agreement with the utility company, the easement agreement shall control.

ARTICLE IV BUILDING AND LAND USE RESTRICTIONS

Section 4.01 Land Use and Building Type. All Lots shall be used solely for residential purposes and no other use, except Lot 1, Block 2 is common open space/private park. 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 dwelling not to exceed two and one-half stories in height, together with a private garage, carport or other form of off-street parking and other accessory buildings or customary appurtenances to private dwellings. No more than one residential structure shall be erected on any Lot. An Owner shall have the right to purchase more than one Lot and construct a structure and improvements on more than one Lot.

Section 4.02 Resub division 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 Lots 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 4.03 Architectural Review. No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan 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 structures, compliance with architectural guidelines, 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 VIII.

Section 4.04 Dwelling Size. A home constructed in the Subdivision shall be not less than 2,648 square feet of living area for Plan 4, 2311 square feet of living area for Plan 3, 2009 square feet of living area for Plan 2, and 1731 square feet of living area for Plan 1 exclusive of open porches and garages. A multi-story home shall have not less than 1,500 square feet on the ground floor. 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.

Section 4.04.1 Building Colors. 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.

No structure may be painted with any color that has not been approved by the Architectural Review Committee. The following colors will be automatically approved by the Architectural Review Committee:

Dunn Edwards colors: DET624, DEW341, DE6063, DEW382, DE6369, DE6357, DE6213, DET680, DET557, DE6220, DE6369, DET413, DEW318, DE6063, DEA139

Section 4.05 Building Location. No building shall be located on any Lot nearer than 10 feet from the front Lot line with a 20 foot driveway per city zoning regulations, and 10 feet from rear Lot line, nor nearer than 10 feet from the side street lines; nor nearer than 10 feet from the side streets; nor nearer than 5 feet to interior Lot lines, provided that a distance between buildings be no nearer than 10 feet. 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.

Section 4.06 Building Height. The maximum height any residential building shall be not more than 35 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. No other roof structure shall be allowed to extend higher than 35 feet, including air conditioning or other units placed on the roof. No air conditioning or HVAC unit shall be visible from the street.

Section 4.07 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. This positive Lot drainage to the street in front of 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. If necessary, roof drainage will be collected in gutters and diverted toward the front of the Lot. 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 rear of the Lot to the street. 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 4.08 Slope Control. Some Lots may have a designed sloped area within the Lot located at the side or rear of the Lots. Soil conditions and/or storm drainage requirements may dictate that the sloped areas be secured by a slope stabilization treatment and/or retaining walls. IT SHALL BE THE SOLE RESPONSIBILITY OF THE LOT OWNER WHOSE PROPERTY INCLUDES A SLOPED AREA(S) TO MAINTAIN AND/OR STABILIZE THE SLOPED AREA(S). Drainage of sloped areas shall typically be controlled within the Lot and drain to the street in front of the Lot. However, if rear or side yard drainage easements are provided across adjoining Lots connecting to subdivision streets or drainage rights of way, then the slope drainage may be diverted to flow through the easements to a connecting street or drainage right of way. Each property Owner shall be responsible for maintenance of that portion of any private drainage easement within their property. FAILURE BY THE OWNER TO MAINTAIN OR STABILIZE THE SLOPE AND/OR DRAINAGE EASEMENT, IF ANY, FOR PROPER DRAINAGE MAY RESULT IN DAMAGE TO IMPROVEMENTS (FOUNDATIONS, GARDEN AND/OR RETAINING WALLS, POOLS, WALKS, ETC.) ON THE SUBJECT LOT AND ON SURROUNDING LOTS. Storm drainage, landscape irrigation, swimming pool drainage or overflow, or any other waterflow on or over the Lots SHALL FLOW TO THE STREET ONLY AND NOT OVER SIDE OR REAR SLOPED AREAS WHETHER SAID SLOPES ARE WITHIN THE PROPERTY LINES OF THE LOT OR NOT. All surface drainage of the flat buildable areas of the Lot shall be controlled and maintained as provided in paragraphs 3.07 and 3.08 herein.

Section 4.09 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

Section 4.10 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 4.11 Fences and Garden Walls. No fence or garden wall shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback lines, except that on corner Lots a fence may be placed or erected along the rear Lot line from the interior Lot line to the side street Lot line, and forward along the side street Lot line not farther than within 10 feet of the front of the dwelling. This provision shall not preclude any necessary retaining walls. Rock walls 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. All return walls to be no closer or further than 5' from front of dwelling.

Section 4.12 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 4.13 Sidewalk. Every person constructing a residence on any Lot in the Subdivision shall also place a sidewalk across the front of the Lot. Sidewalks shall be placed alongside yards of corner Lots.

Section 4.14 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 4.15 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, weeds and maintain landscape areas to include up keep of grass, shrubs, trees and all other vegetation..

Section 4.16 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 4.17 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 4.18 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 4.19 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, 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 for a period of not to exceed three (3) days for maintenance is permitted. Recreational equipment such as boats, camping trailers and recreational vehicles may be kept on a Lot so long as all are kept in an enclosed building or garage which is otherwise in conformance with the terms of these Covenants.

Section 4.20 Miscellaneous. Except as required during construction, no privy shall be placed upon any Lot in said Subdivision. 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 Lots or the builder's signs which may be placed upon the premises during the construction of improvements and sales of the property. Marketing and directional signs pertaining to the sale of houses may also be placed on Lots other than those on which houses are being constructed. 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 five (5). No home or any other building within the Subdivision shall be rented for less than 30 days.

Section 4.21 Building Code. The Subdivision is located within the City of El Paso, all construction on all Lots in the Subdivision shall be in compliance with the Building Code of the City of El Paso. Each Owner of a Lot constructing a home or conducting remodeling, renovation or expansion of a home shall construct the home, expansion, remodeling or expansion in compliance with the City of El Paso Building Code, as it currently exists or may hereafter be amended. Each Owner shall retain an independent third-party inspector to provide inspections to assure compliance with the City of El Paso Building Code. The inspector shall provide to the Architectural Review Committee confirmation in writing that the home or any remodeling, renovation or expansion is completed in accordance with City of El Paso Building Codes

Section 4.22 Party Walls. All walls 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, the Owners 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.

ARTICLE V THE ASSOCIATION

Section 5.01 Organization. The Declarant shall cause the Association to be organized and formed 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 to provide for and promote the health, safety, and welfare of the Members, to collect the regular and any special assessments, and to administer the funds collected to provide for the maintenance, repair, preservation, upkeep, and protection of the Common Facilities in the Subdivision and such other purposes as stated in Articles of Incorporation consistent with the provisions of this Declaration and all Supplemental Declarations.

Section 5.03 Directors. The Association shall initially act through a three Member Board of Directors, selected by the Declarant, who shall manage the affairs of the Association. Prior to the Conversion Date, all members of the Board of Directors shall be appointed by the Declarant. Each Director shall serve for a term as provided in the Bylaws of the Association and thereafter until such time as his or her successors are elected and qualified. After the Conversion Date, the Directors shall be elected by the owners 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.

Section 5.05 Voting Rights. Until the Conversion Date, the Declarant shall have the sole right to vote in matters concerning the Association. The Conversion Date shall be the date on which the later of the following occur: (i) Substantial completion of all development within the Subdivision, as determined by Declarant, or (ii) Declarant's recordation in the Real Property Records of El Paso County, Texas of an instrument specifying the end of the development period and turning over control of the Association and the common facilities to the Association.

From and after the Conversion Date, each Member shall be entitled to one (1) vote for each Lot to which it holds the interest required for Association Membership. Where more than one person or entity holds such interest in any Lot, or portion thereof, all such persons or entities shall be a single Member and the vote for each Member shall be exercised as the parties shall determine among themselves, provided however, that in the aggregate, no more than one (1) vote shall be cast with respect to each Lot.

The Association shall not be a voting Member of the Association by virtue of its Ownership of any Lot or portion thereof.

Section 5.06 Title to Common Facilities. To the extent permitted by law, Declarant shall retain legal title to the Common Facilities in the subdivision until such time as it has completed or caused to be completed the improvements therein and may thereafter convey such title to the Association for management and maintenance.

Section 5.07 Private Streets. The streets and any entry gates within the Subdivision are "private" and constitute a portion of the Common Facilities which are subject to the jurisdiction or administration by the Association. The Board of Directors of the Association is specifically authorized to recommend, adopt, implement and enforce rules, regulations, mechanisms and procedures governing use of the streets and entry gates to include:

- a. identification and entry programs for Owners, their respective immediate families, their guests and vehicles owned or driven by any of them;
- b. speed limits, designated parking areas, restricted parking areas and no parking areas;
- c. signs and graphics to provide announcements to unauthorized personnel concerning potential criminal trespass matters;
- d. a "fines" system through which the Association can levy and collect fines for violations of the applicable rules and regulations; and
- e. disclaimers of liability for any and all matters or occurrences on or related to the Common Facilities.

Section 5.08 Community Services Arrangements. Declarant and the Association may arrange for the employment and the utilization of a mechanical gate, and/or unarmed community services personnel. The Declarant and the Association intend that the gate and private streets concept will discourage unauthorized vehicular traffic within the Subdivision and foster a higher degree of peace and tranquility. The gate is not designed to restrict or impede pedestrian traffic into, within or out of the Subdivision, and will be left opened during construction of dwellings and during development of the Subdivision.

Although the Declarant and the Association reasonably believe that the existence and visibility of community services personnel and controlled access points may discourage the commission of criminal acts (e.g. burglary, theft) within the Subdivision, nevertheless neither the Declarant nor the Association warrant or guarantee that:

- a. the community services personnel and/or gate arrangements are sufficient and adequate to diminish or eliminate the commission of crimes against persons or property;
- b. such acts will not be attempted or actually occur within the Subdivision,

These community services arrangements are not designed or intended to replace the conventional policy and fire protection and paramedical services available from governmental authorities.

The Association will seek to carry public liability insurance generally covering bodily injury and property damage arising out of negligent acts by employees, Members or authorized representatives of the Association. The Association will not carry any insurance pertaining to nor does it assume any liability or

responsibility for the real or personal property of the Owners and Members (and their respective family members and guests)

Each Owner and Member expressly understands, covenants and agrees with Declarant and the Association that:

- a. neither Declarant nor the Association has any responsibility or liability of any kind or character whatsoever regarding or pertaining to the real and personal property of each owner and Member;
- b. each Owner and Member shall from time to time and at various times consult with reputable insurance industry representatives of each Owner's and Member's own selection to select, purchase, obtain and maintain appropriate insurance providing the amount, type and kind of insurance deemed satisfactory to each Owner and Member covering his or her real and personal property;
- c. each Owner and Member releases and holds Declarant, the Association, and their respective officers, directors and agents, harmless from any uninsured liability, claims, causes of action or damages of any kind or character whatsoever, arising out of, or related directly or indirectly, to any and all aspects of the community services system and private streets within the Subdivision, including, without limitation:
 - (1) the interviewing, hiring, training, licensing (if any), bonding (if any) and employment of community services personnel;
 - (2) the instructions, directions and guidelines issued to or by the community services personnel;
 - (3) the duties, performance, actions, inactions, or omission of or by the community services personnel;
 - (4) the functioning of the mechanical gate access devices;
- d. each Owner and Member will cooperate with Declarant, the Association and the Architectural Control Committee in connection with the establishment, evolution and maintenance of reasonable controls on the pedestrian and vehicular traffic into and within the Subdivision and abide by any and all rules and regulations of the Association, as adopted and promulgated from time to time, related to the entry upon and use of any private streets and other common areas within the Subdivision.

ARTICLE VI PROPERTY RIGHTS IN THE COMMON FACILITIES

Section 6.01 Members Enjoyment of Common Facilities. Every Member shall have a common right and easement of enjoyment in and to the Common Facilities in the Subdivision, and such right and easement shall be appurtenant to and pass with the title to each Lot in the Subdivision.

Section 6.02 Common Facilities Planned. Until such time, if ever, that the Association designates Additional Common Facilities, the only Common Facilities shall be as enumerated in Section 1.01.

Section 6.03 Delegation of Use. Any Member may delegate his right of use and enjoyment of the Common Facilities in the Subdivision, together with all easement rights granted to Members in this Declaration and all Supplemental Declarations, to the Members of his family, his tenants, or contract purchasers who reside on his Lot. The term "Member" is further defined to include and refer to the executors, personal representatives and administrators of any Member, and all other persons, firms, or corporations acquiring or succeeding to the title of the Member by sale, grant, will, foreclosure, execution, or by any legal process, or by operation of law, or in any legal manner.

Section 6.04 Alienation or Hypothecation. Except as herein otherwise specifically provided, no portion of the Common Facilities may be alienated, released, transferred, hypothecated, or otherwise encumbered without the approval of Members present at any annual meeting (or special meeting called for such purpose) holding two-thirds (2/3) of the voting rights at which a quorum (as defined in the Bylaws) is present.

ARTICLE VII ASSESSMENTS AND LIENS

Section 7.01 Purpose of Assessment. The assessments levied hereunder by the Association shall be used exclusively for the purpose of maintaining the Common Facilities and promoting the comfort, collective mutual enjoyment, safety, health and welfare of the Owners of the property, including but not limited to the following:

- a. The maintenance, repair or replacement of the gate, sign, lighting, street, landscaping and the improvements therein or any other Common Facilities that may be designated by the Association along with the cost of any associated management or supervisory services, fees, labor and equipment.
- b. Water and electricity necessary to maintain the streets and front gate operating including landscaping, but not the individual Lot landscaping. The water and electricity needed to maintain the front yard landscaping of each Lot shall be solely the responsibility of each Member.
- c. The design, purchase and installation of any Common Facilities.
- d. The purchase of insurance coverage (as needed) related to the Common Facilities and other property of the Association.
- e. 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.
- f. The carrying out of the purposes of the Association as stated herein and in its Declaration and Articles of Incorporation, and:
- g. The carrying out of all other matter set forth or contemplated in the Declaration or allowed by the laws for the Texas Non-Profit Corporation.

Section 7.02 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 7.03 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 monthly installments in advance no later than 30 days after the beginning of the fiscal year.

Section 7.04 Special Assessments. In addition to the Regular Assessments provided herein, Special Assessments may be levied as provided for in the bylaws of the Association.

Section 7.05 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 of Bylaws. 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 non paying 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 7.06 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 7.05 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 7.07 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 first vendor's lien and 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 7.08 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 bylaws or liens due the Association.

ARTICLE VIII ARCHITECTURAL REVIEW

Section 8.01 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 Architectural Guidelines, 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 8.02 Membership. The initial Architectural Review Committee is composed of Randal S. O'Leary, Kelly O'Leary and Patrick 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 8.03 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 8.04 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 a 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 8.05 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 8.06 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 will set a time and date for a hearing before the Architectural Review Committee. At the hearing, 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. 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 or the Association, at its option, may record a notice of noncompliance and may peacefully remedy the noncompliance, and the Owner shall reimburse Declarant or the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner, Declarant or the Association shall have all remedies available at law for the collection of such indebtedness. The right of the Declarant or the Association to remove a noncomplying Improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which Declarant or the Association may have at law or in equity, including injunctive relief Declarant or the Association will be entitled to injunctive relief as a matter of right restraining any Owner from violating the terms of this Declaration or the Association, 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 8.07 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 the property or improvement for which the variance is sought which are peculiar to the property or improvement and do not generally apply to the Lot; 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 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.

Section 8.08 Architectural Guidelines. Declarant has promulgated Architectural Guidelines which set forth in greater specificity the requirements for construction standards in the Subdivision. The Architectural Guidelines may be modified from time to time by the Architectural Control Committee, provided however, any change or modification in the Architectural Guidelines shall not affect a structure that is previously been approved by the Architectural Control Committee. Any change or modification in the Architectural Guidelines shall be prospective only.

**ARTICLE IX
GENERAL PROVISIONS**

Section 9.01 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 Association or 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 75% of all Lots in the subdivision.

Section 9.02 Enforcement. The Association 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 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. The prevailing party in any enforcement action shall be entitled to recover his cost., including reasonable attorney's fees.

Section 9.03 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 the Conversion Date.

Section 9.04 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 9.05 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.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, have executed this Declaration to be effective on this 26 day of August, 2019.

DECLARANT:

EP Desert Spring Development

BY: PAT WOODS

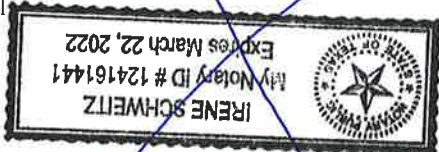
NAME: [Signature]

TITLE: Sr. V.P.

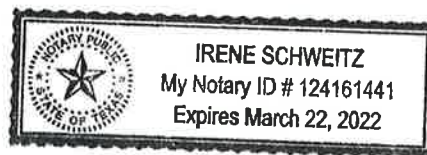
STATE OF TEXAS §
§
COUNTY OF EL PASO §

The foregoing was acknowledged before me on the 26 day of August, 2019, by PAT WOODS Sr. V.P. of EP Desert Spring Development on behalf of said entity.

Seal



[Signature]
Notary Public, State of Texas



Doc # 20190068648
#Pages 14 #NFPages 1
09/06/2019 10:16 AM
Filed & Recorded in
Official Records of
El Paso County
Delia Briones
County Clerk
Fees \$78.00

eRecorded

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



Delia Briones

EL PASO COUNTY, TEXAS