

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVERS LICENSE NUMBER.**

**CERTIFICATE OF RECORDING POA DOCUMENTS  
PURSUANT TO '202.006 TEXAS PROPERTY CODE**

**INSTRUMENTS ATTACHED FOR RECORDING OR PREVIOUSLY RECORDED:**

1. Certificate of Formation of **ENCORE EL PASO HOMEOWNERS ASSOCIATION, INC.** filed in the Office of the Secretary of State of Texas on September 3, 2019 (five pages)
2. Declaration of Covenants, Conditions and Restrictions for **DESERT SPRINGS UNIT 5** Subdivision filed under Document No. 20190068648, Real Property Records of El Paso County, Texas.
3. **ENCORE EL PASO HOMEOWNERS ASSOCIATION, INC.**, Bylaws

**PROPERTY DESCRIPTION:**

**DESERT SPRINGS UNIT 5**, as described on Exhibit "A" attached hereto.

**POPULAR NAME OF DEVELOPMENT:**

**ENCORE EL PASO HOMEOWNERS ASSOCIATION, INC.**

**DECLARATION TO WHICH SUBDIVISION IS SUBJECT:**

Declaration of Covenants, Conditions and Restrictions for **DESERT SPRINGS UNIT 5** Subdivision filed under Document No. 20190068648, Real Property Records of El Paso County, Texas.

**NAME OF PROPERTY OWNERS ASSOCIATION:**

**ENCORE EL PASO HOMEOWNERS ASSOCIATION, INC.**


**CERTIFICATION & EXECUTION**

I hereby certify that I have been instructed by the Board of Directors of **ENCORE EL PASO HOMEOWNERS ASSOCIATION, INC.**, a Texas property owners association, to execute this Certificate to effect the recording of the instruments attached hereto on behalf of the

property owners association, for the purpose of complying with the requirements of Property Code Section 202.006.

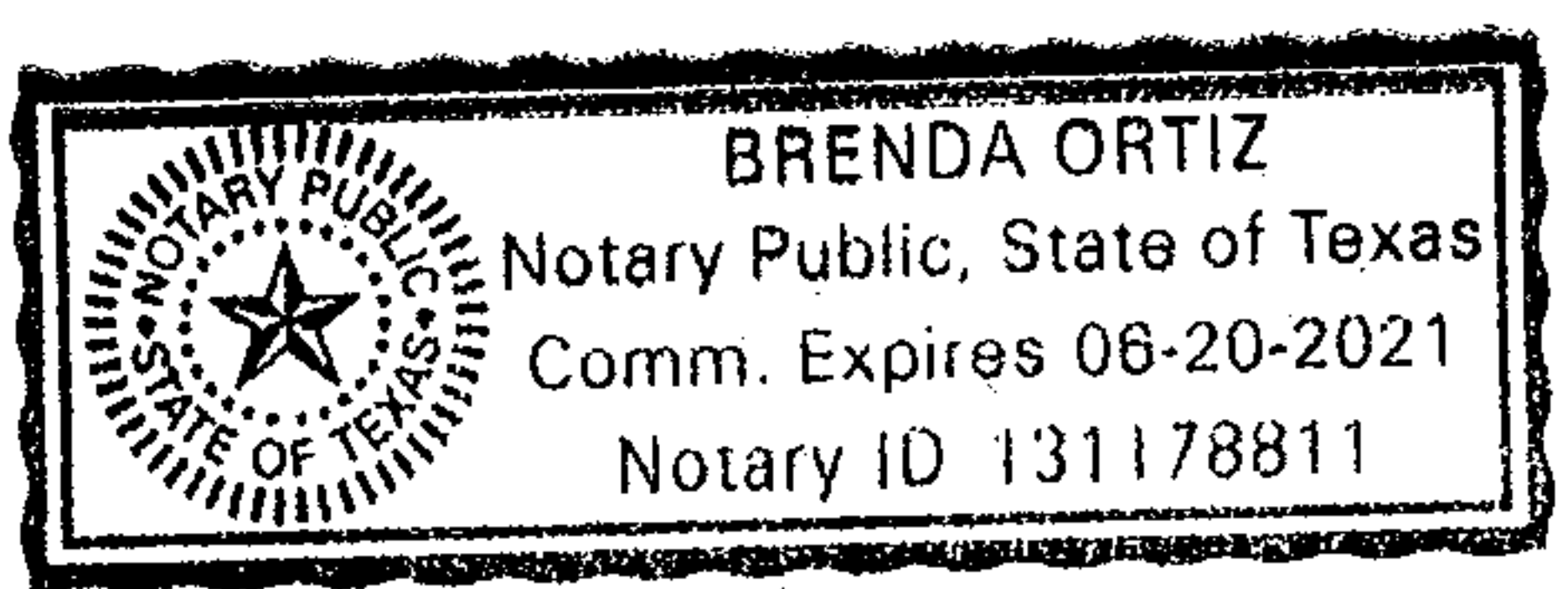
**ENCORE EL PASO HOMEOWNERS ASSOCIATION, INC.**, a Texas property owners association

By: **DANA Properties, Inc.**, its managing agent

By:   
**SHELDON WHEELER, President**

STATE OF TEXAS           §  
  §  
COUNTY OF EL PASO    §

This instrument was acknowledged before me on this 24<sup>th</sup> day of October, 2019, by **SHELDON WHEELER, President of DANA Properties, Inc.**, managing agent of **ENCORE EL PASO HOMEOWNERS ASSOCIATION, INC.**, on behalf of the association.




  
Notary Public, State of Texas

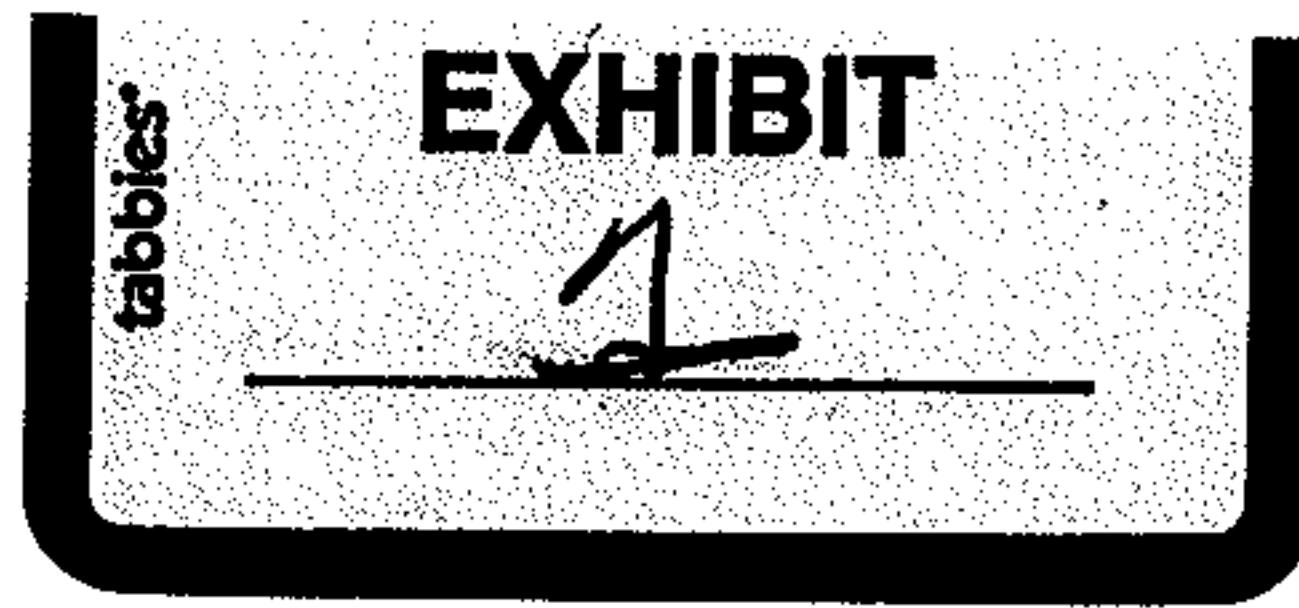
EXHIBIT "A"  
TO CERTIFICATE OF RECORDING POA DOCUMENTS  
PURSUANT TO '202.006 TEXAS PROPERTY CODE

DESCRIPTION OF SUBDIVISION

**PARCEL 1:** Lots 1 through 11, Block 19; Lots 1 through 25, Block 20; Lots 1 through 21, Block 21; and Lots 1 through 32, Block 22, DESERT SPRINGS UNIT FOUR, an addition to the City of El Paso, El Paso County, Texas, according to the Plat thereof recorded in Clerk's File No. 20160014584, Real Property Records of El Paso County, Texas.

**PARCEL 2:** A 9.92 acre portion, more or less, out of NELLIE D. MUNDY SURVEY 244, City of El Paso, El Paso County, Texas, according to a resurvey made for tax purposes.

**PARCEL 3:** A 23.98 acre portion, more or less, out of NELLIE D. MUNDY SURVEY 244, City of El Paso, El Paso County, Texas, according to a resurvey made for tax purposes.



**CERTIFICATE OF FORMATION  
OF  
ENCORE EL PASO HOMEOWNERS ASSOCIATION, INC.  
A Nonprofit Corporation**

The undersigned, acting as an organizer of a nonprofit corporation under the Texas Business Organizations Code does hereby adopt the following Certificate of Formation for such nonprofit corporation.

**ARTICLE ONE  
NAME**

The name of the nonprofit corporation (hereinafter called the "Association") is ENCORE EL PASO HOMEOWNERS ASSOCIATION, INC.

**ARTICLE TWO  
STATUS**

The Association is a nonprofit corporation.

**ARTICLE THREE  
DURATION**

The period of its duration is perpetual.

**ARTICLE FOUR  
PURPOSE**

The purposes for which the Association is organized to perform charitable activities within the meaning of Internal Revenue Code, Section 501(c)(3) and applicable state law. Specifically, the purpose for which the Association is organized is to be and constitute the Association referred to in the "Declaration of Covenants, Conditions and Restrictions of Americas Estates Unit 1 Replat A" (the "Declaration") as the Tuscan Estates Home Owners Association, Inc. for the residential project within El Paso County, Texas, as recorded (and amended from time to time) in the Public Real Estate Records of El Paso County, Texas. The purposes of the Association include the operation, repair, replacement, renovation and maintenance of improvements in common areas, to levy assessments against the Association's members for expenses relating to common areas and common area improvements, to provide for an Architectural Review Committee, and to engage in such other charitable activities as may be authorized in the Declaration or as may be authorized in the by-laws of the Association. The Association shall not engage in any purpose, action or activity which is prohibited by the Texas Business Organizations Code and by other applicable law. The Association does not contemplate pecuniary gain or profit, direct or indirect, to its Members.

**ARTICLE FIVE  
MEMEBERS**

The Association shall have one or more classes of members. The designation of such class or classes, the manner of election or appointment, and the qualifications and rights of the members of



each class are set forth within the Declaration and the By-laws of the Association.

## **ARTICLE SIX RESTRICTIONS AND REQUIREMENTS**

The Association shall not pay dividends or other corporate income to its members, directors or officers or otherwise accrue distributable profits or permit the realization of private gain. The Association shall have no power to take any action prohibited by the Act.

The Association shall have no power to take any action that would be inconsistent with the requirements for a tax exemption under Internal Revenue Code Section 501(c)(3) and related regulations, rulings, and procedures. The Association shall have no power to take any action that would be inconsistent with the requirements for receiving tax deductible charitable contributions under Internal Revenue Code Section 170(c)(2) and related regulations, rulings, and procedures. Regardless of any other provision in these Articles of Incorporation or state law, the Association shall have no power to:

1. Engage in activities or use its assets in manners that are not in furtherance of one or more exempt purposes, as set forth above and defined by the Internal Revenue Code and related regulations, rulings, and procedures, except to an insubstantial degree.
2. Serve a private interest other than one that is clearly incidental to an overriding public interest.
3. Devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise, except as provided by the Internal Revenue Code and related regulations, rulings and procedures.
4. Participate in or intervene in any political campaign on behalf of any opposition to any candidate for public office. The prohibited activities include the publishing or distributing of statements and any other direct or indirect campaign activities.
5. Have objectives that characterize it as an "action organization" as defined by the Internal Revenue Code and related regulations, rulings, and procedures.
6. Distribute its assets on dissolution other than for one or more exempt purposes; on dissolution, the Association's assets shall be distributed to the state government for a public purpose, or to an organization exempt from taxes under Internal Revenue Code Section 501(c)(3) to be used to accomplish the general purposes for which the Association was organized.
7. Permit any part of the net earnings of the Association to inure to the benefit of any private shareholder or member of the Association or any private individual
8. Carry on an unrelated trade or business except as a secondary purpose related to the Association's primary, exempt purposes.

## **ARTICLE SEVEN INDEMNIFICATION**

To the full extent permitted by applicable law, no director of this Association shall be liable to this Association or its members for monetary damages for an act or omission in such director's capacity as a director of this Association, except that this Article Seven does not eliminate or limit the liability of a director of this Association for:

1. a breach of such director's duty of loyalty to this Association or its members;
2. an act or omission not in good faith or that involves intentional misconduct or a knowing violation of the law;
3. a transaction from which such director received an improper benefit, whether or not the benefit resulted from an action taken within the scope of such director's office;
4. an act or omission for which the liability of such director is expressly provided for by statute; or
5. an act related to an unlawful payment of a dividend.

Any repeal or amendment of this Article by the members of this Association shall be prospective only and shall not adversely affect any limitation on the personal liability of a director of this Association existing at the time of such repeal or amendment. In addition to the circumstances in which a director of this Association is not personally liable as set forth in the foregoing provisions of this Article Seven, a director shall not be liable to the full extent permitted by any Amendment to the Texas Business Organizations Code hereafter enacted that further limits the liability of a director.

To the full extent permitted by applicable law, the Association shall indemnify any director or officer against judgments, penalties (including excise and similar taxes) fines, settlements and reasonable expenses (including court costs and attorney's fees) actually incurred by any such person who was, is or is threatened to be made a named defendant or respondent in a proceeding because the person is or was a director or officer and shall advance to such person such reasonable expenses as are incurred by him in connection therewith. The rights of directors and officers set forth in this Article shall not be exclusive of any other right which directors or officers may have or hereafter acquire relating to the subject matter hereof. As used in this Article, the terms "director" and "officers" shall mean any person who is or was a director or officer of the Association and any person who, while a director or officer of the Association, is or was serving at the request of the Association as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic Association, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise. As used in this Article, the term "proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative, any appeal in any such action, suit or proceeding and any injury or investigation that could lead to such an action, suit or

proceeding.

**ARTICLE EIGHT  
REGISTERED OFFICER AND AGENT**

The street address of the Association's initial registered office is 6201 Escondido, El Paso, Texas 79912 and the name of its initial registered agent at such address is Sheldon Wheeler.

**ARTICLE NINE  
INITIAL DIRECTORS**

The number of directors constituting the initial Board of Directors is three (3) and the names and addresses of the person who are to serve as directors are:

Randal S. O'Leary  
7910 Gateway East #102  
El Paso, Texas 79915

Kelly O'Leary  
7910 Gateway East #102  
El Paso, Texas 79915

Patrick Woods  
7910 Gateway East #102  
El Paso, Texas 79915

**ARTICLE TEN  
ORGANIZER**

The name and address of the organizer is:

Hector Phillips  
1017 Montana Ave.  
El Paso, Texas 79902

**ARTICLE ELEVEN  
EFFECTIVE DATE OF FILING**

This document becomes effective when the document is filed by the Secretary of State.

The undersigned signs this document subject to the penalties imposed by law for submission of a materially false or fraudulent instrument.

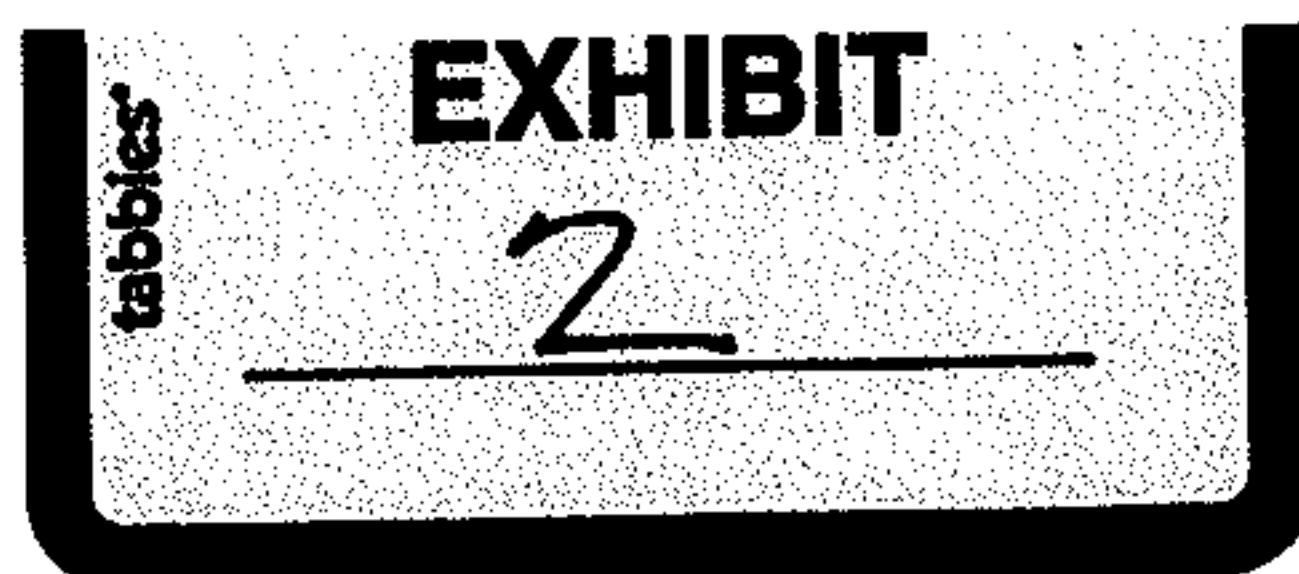
Date: August 16, 2019

ORGANIZER:

*H. Keller*



Courtesy



Doc # 20190068648

**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.

**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 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 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 WARD

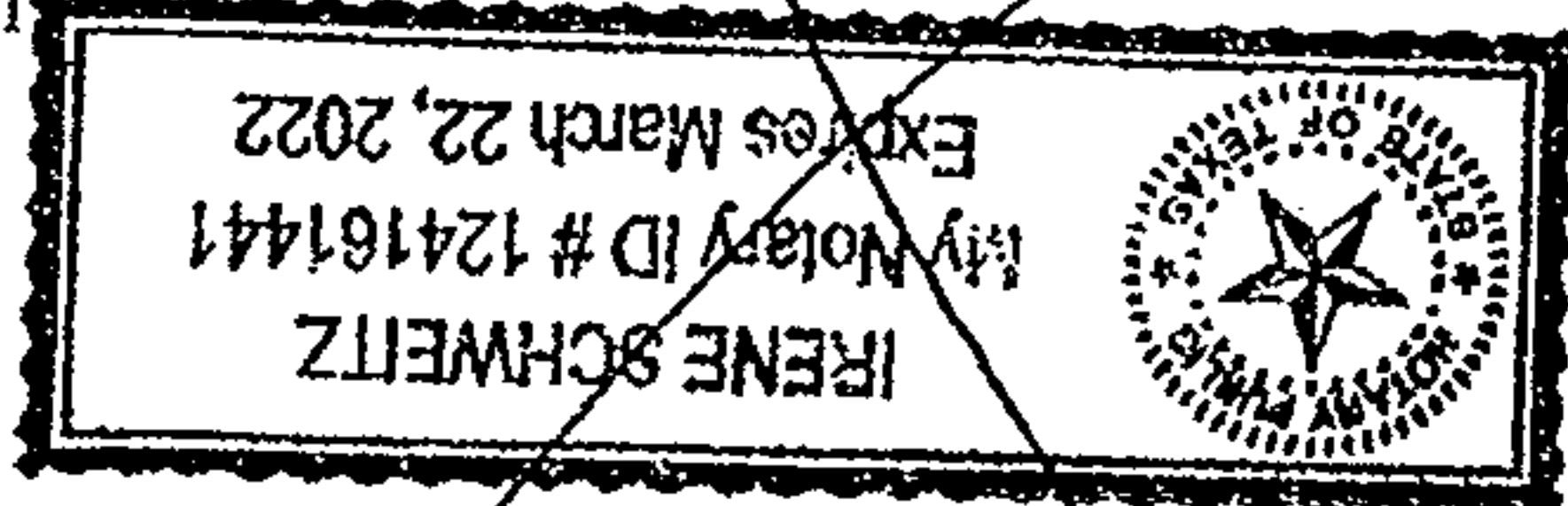
NAME: [Signature]

TITLE: Sec. V.P.

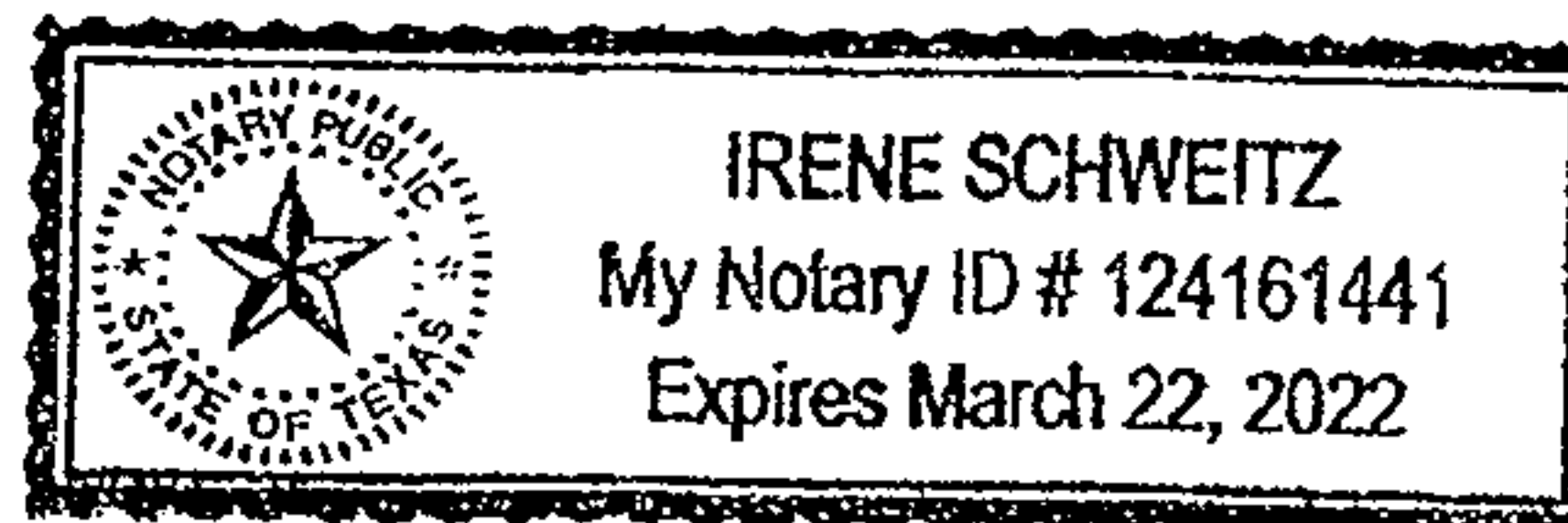
STATE OF TEXAS §  
§  
COUNTY OF EL PASO §

The foregoing was acknowledged before me on the <sup>th</sup>26 day of August, 2019, by PAT WARD, Sec. 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  
hereon 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



Courtesy



BYLAWS  
OF  
THE ENCORE EL PASO HOME OWNERS ASSOCIATION,  
INC.

ARTICLE I  
GENERAL

The Encore El Paso Home Owners Association, Inc. is the "Association" described within the "Declaration of Covenants, Conditions and Restrictions (the "Declaration") pertaining to the Desert Springs Unit 5 development in the City of El Paso, El Paso County, Texas, recorded in the Real Property Records of El Paso County, Texas and incorporated herein by reference for all purposes. For convenience, several of the provisions of the Declaration will be repeated or summarized within these Bylaws. The remaining terms and provisions of these Bylaws are intended to complement and supplement the Declaration. In the event of any conflict or ambiguity between the Declaration (on the one hand) and these Bylaws (on the other hand) and unless otherwise required by law, the terms and conditions of the Declaration shall control and govern.

ARTICLE II  
NAME, DEFINITIONS, MEMBERSHIP AND VOTING RIGHTS

**Section 1. Name.** The name of the Association shall be The Encore El Paso Home Owners Association, Inc. (herein sometimes referred to as the "Association").

**Section 2. Definitions.** Certain words used in these Bylaws shall have the same meaning as set forth in the Declaration, some of which are set forth below either in their entirety or in an abridged format:

**"Amended Declaration"** shall mean and refer to each and every instrument recorded in the Real Estate Property of El Paso County, Texas which amends, supplements, modifies, clarifies or restates some or all of the terms and provisions of the original Declaration.

**"Annual Assessment"** shall have the meaning specified in Article V of the Declaration.

**"Architectural Review Committee"** (sometimes referred to herein as the "ARC") shall mean and refer to that particular Committee which is described and explained within Article VII of the Declaration.

**"Assessable Property"** shall mean and refer to each and every lot, parcel and tract within the entire Properties which: (i) the Declaration has subjected to and imposed the payment of an Annual Assessment to the Association; (ii) may have been or will be given a separately identifiable tax or parcel number by the Central Appraisal District of El Paso County ("CAD") or a similar governmental agency; or (iii) is not designated an "open space or otherwise a portion of the Common Facilities. The Declaration intends that each residential Lot within the Subdivision constitute an Assessable Property. However, the Declarant reserves the right and discretion to include or exclude each non-residential Lot from the concept of "Assessable Property" and/or to prescribe a different assessment and/or valuation scheme(s) for any nonresidential Lot which is subjected to covenants which require the payment of assessments to the Association.

**"Association"** shall mean and refer to Encore El Paso Home Owners Association, Inc., an existing non-profit Texas corporation.



**“Board”** shall mean and refer to the Board of Directors of the Association.

**“Bylaws”** shall mean and refer to the Bylaws of the Association, as adopted and amended from time to time in accordance with the provisions of the Texas Non-Profit Corporation Act and the Declaration.

**“Covenants”** shall mean and refer to all covenants, conditions, restrictions, easements, charges and liens set forth within the Declaration.

**“Declarant”** shall mean and refer to EP Desert Springs Development, Ltd. or any successors or assigns. However, no person or entity merely purchasing one or more Lots from in the ordinary course of business shall be considered collectively the “Declarant.”

**“Declaration”** shall mean and refer to the particular instrument entitled “Declaration of Covenants, Conditions and Restrictions, for Desert Springs Unit 5 together with any and all amendments or supplements thereto.

**“Deed”** shall mean and refer to any deed, assignment, testamentary bequest, muniment of title or other instrument, or intestate inheritance and succession, conveying or transferring fee simple title or a leasehold interest or another legally recognized estate in a Lot.

**“Development Period”** shall mean a period commencing on the date of the recording of the Declaration in the public real estate records of El Paso County, Texas and continuing thereafter until and ending the later to occur of: (i) substantial completion of all development within the Subdivision, as determined by the 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 established by Declarant in Declarant\*s sole and absolute discretion (the “Conversion Date”).

**“Directors”** shall mean the persons designated to serve as the Directors of the Association, and shall also be the same persons who are referred to in the Declaration as the Trustees. All references to Directors shall also mean Trustees.

**“Dwelling Unit”** shall mean and refer to any building or portion of a building situated upon the Facilities which is designed and intended for use and occupancy as a residence by a single person, a couple, a family or a permitted family size group of persons.

**“Improvement”** shall mean any physical change to raw land or to an existing structure which alters the physical appearance, characteristics or facilities of the land or structure, including but not limited to adding or removing square footage area space to or from a structure, painting or repainting a structure, or in any way altering the size, shape or physical appearance of any land or structure.

**“Lot”** shall mean and refer to each separately identifiable portion of the Assessable Property which is platted, filed and recorded in the office of the County Clerk of El Paso County, Texas and which is assessed by any one or more of the Taxing Authorities and which is not intended to be an “open space”, or dedicated for use of the public.

**“Management Certificate”** shall mean the instrument required to be recorded pursuant to Section 209.004, Texas Property Code, being the Texas Residential Property Owners Protection Act.

**“Member”** shall mean and refer to each Owner who is in good standing with the Association and who has filed a proper statement of residency with the Association and who has complied with all directives and requirements of the Association.

**“Owner”** shall mean and refer to the holder(s) of record title to the fee simple interest of any Lot whether or not such holder(s) actually reside(s) on any part of the Lot. There shall be only one Owner for each Lot.

**“Subdivision”** shall mean and refer to Desert Springs Unit 5, in accordance with the map and plat thereof filed of record in the Map and Plat Records of El Paso County, Texas, as well as any and all revisions, modifications, corrections or clarifications thereto.

**“Texas Residential Property Owners Protection Act” or the “Act”** shall refer to Chapter 209, Texas Property Code, as the same may be amended in whole or in part.

**“Zoning Ordinance”** shall mean and refer to City of El Paso zoning ordinance, governmental regulations, and all amendments thereto.

**Section 3. Membership.** Each and every Owner of each and every Lot within the Subdivision shall automatically be, and must at all times remain, a Member of the Association in good standing. During the Development Period, the Association shall have two (2) classes of Members: Class A and Class B. The Class A Members shall include all Owners (other than the Declarant during the Development Period). The Class B Member shall be the Declarant. Upon conclusion of the Development Period, the Class B membership shall terminate and the Declarant shall become a Class A Member.

**Section 4. Voting Rights.** The Owner(s) of each Lot in good standing shall be entitled to one (1) vote per Lot. An Owner not in good standing shall not be eligible to vote. Where more than one (1) Owner owns and holds a record fee interest in a Lot, such Owner(s) may divide and cast portions of the one (1) vote as they decide, but in no event shall any one (1) Lot yield more than one (1) vote. Any Owner shall not be in “good standing” if such person or entity is: (a) in violation of any portion of the Covenants, or any rule or regulation promulgated by the Board and/or any portion of the Zoning Ordinance; or (b) delinquent in the full, complete and timely payment of any Annual Assessment, special assessment, or any other fee, charge or fine which is levied, payable or collectible pursuant to the provisions of the Declaration, these Bylaws or any rule or regulation promulgated by the Board. The Board may make such rules and regulations, consistent with the terms of the Declaration and these Bylaws, as it deems advisable for: any meeting of Members; proof of membership in the Association; the status of good standing; evidence of right to vote; the appointment and duties of examiners and inspectors of votes; the procedures for actual voting in person or by proxy; registration of Members for voting purposes; and such other matters concerning the conduct of meetings and voting as the Board shall deem fit.

### ARTICLE III MEMBERS: MEETINGS, QUORUM, VOTING, PROXIES

**Section 1. Place of Meetings.** Meetings of the Association shall be at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors.

**Section 2. Annual Meetings.** The first annual meeting of the Members, whether a regular or special meeting, shall be held on or about one (1) year from the date of incorporation of the Association. The next



annual meeting shall be set by the Board so as to occur within forty-five (45) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the Members shall be held within forty-five (45) days of the same day of the same month of each year thereafter, at a specific date and hour set by the Board.

**Section 3. Special Meeting.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by two members of the Board of Directors, or upon a petition signed by at least twenty percent (20%) of the total votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**Section 4. Notice of Meetings.** It shall be the duty of the Secretary to cause notices to be prepared concerning each annual or special meeting of the Association, stating the purpose of the special meeting, as well as the time and place where it is to be held.

**Section 5. Waiver of Notice.** Waiver of notice of any meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted there unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

**Section 6. Adjournment of Meetings.** If any meetings of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting, or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken shall be approved by at least a majority of the Members required to constitute a quorum.

**Section 7. Voting.** The voting rights of the Members shall be as set forth in the Declaration and Section 4 of Article II above.

**Section 8. Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon loss of good standing by any such Member or upon receipt of notice by the Secretary of the Board of the death or judicially declared incompetence of a Member or upon the expiration of eleven (11) months from the date of the proxy. A form of proxy or written ballot may provide an opportunity to specify approval or disapproval with respect to any proposal.

**Section 9. Majority.** As used in these Bylaws, the term majority shall mean those votes totaling more than fifty (50%) per cent of the total number of votes cast by voting Members in good standing attending any meeting (or represented by proxy) of the Association.



**Section 10. Quorum.** Except as otherwise provided in these Bylaws or in the Declaration, the presence in person or by proxy of twenty percent (20%) of the Members shall constitute a quorum at all meetings of the Association.

**Section 11. Conduct of Meetings.** The President (or, in the absence of the President, a Vice President) shall preside over all meetings of the Association, and the Secretary or an Assistant Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

**Section 12. Action Without a Meeting.** Any action which may be taken by the vote of the voting Members at a regular or special meeting may be taken without a meeting as and to the extent permitted by applicable Texas law.

#### **ARTICLE IV BOARD OF DIRECTORS: NUMBER, ELECTION, POWERS, MEETINGS**

**Section 1. Governing Body; Composition.** The affairs of the Association shall be governed by a Board of Directors. Except as provided in Section 2 of this Article, the Directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time.

**Section 2. Directors During Development Period.** During the Development Period, Directors need not be Members.

**Section 3. Number of and Voting for Directors.** Until the Conversion Date, the affairs of the Association shall be managed by a board of three (3) individuals elected by the Developer. After the Conversion Date, the affairs of the Association shall be managed by a board of not less than three nor more than seven elected by the Members. The Board, no later than 30 days prior to the annual meeting of the Members, shall file with the Declarant and distribute to the Members (by whatever means the Board may deem reasonable and economical) a certification of the Directors to be elected. The actual election of the directors shall take place in accordance with the Bylaws or, to the extent not inconsistent with the Bylaws, the directives of the then-existing Board.

**Section 4. Election and Term of Office.** The election process shall occur at the annual meeting of the Members, in accordance with any reasonable procedure approved by the Board. Directors shall be elected for two (2) year terms of office and shall serve until their respective successors are elected and qualified. Any vacancy which occurs in the Board, by reason of death, resignation, removal, or otherwise, may be filled at a meeting of the Board by the affirmative vote of a majority of the remaining Directors. Any Director elected to fill a vacancy shall serve as such until the expiration of the term of the Director whose position he or she was elected to fill.

**Section 5. Removal of Directors.** At any regular or special meeting or special voting process (in lieu of a meeting) of the Association duly called, where the bona-fide signatures of at least 20% of the Members appear on an appropriate petition, any one or more of the Directors may be removed, with or without cause, by a majority vote of those Members voting in person or by proxy, and a successor may then and there be elected to fill the vacancy thus created. A Director whose removal has been proposed by the Members shall be given at least five (5) days\* notice of the calling of the meeting or the special voting process (in lieu of a meeting) and the purpose thereof and shall be given an opportunity to be heard at the meeting or to communicate his position in connection with the special voting process in lieu of a meeting.

Additionally, any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than sixty (60) days, may be removed by a majority vote of the remaining Directors at a regular or special Board meeting. In the event of death or resignation of a Director, his or her successor shall be a Member selected by a majority of the remaining Members of the Board and shall serve for the unexpired term of the predecessor.

**Section 6. Voting Procedure for Directors.** At each election, the Members or their proxies may cast, with respect to each such director position, as many votes as they are entitled to exercise under the provisions of the Declaration. The person(s) receiving the largest number of votes (which may be a plurality and not a majority) shall be elected.

**Section 7. Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors, but at least four (4) such meetings shall be held during each Fiscal Year with at least one (1) meeting per quarter. Notice of the time and place of the meeting shall be posted at a prominent place within the Facilities and shall be communicated to Directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting. Advance notice of the meeting(s) at which the annual budget and/or the Annual Assessment are likely to be discussed shall be reasonably publicized.

**Section 9. Special Meetings.** Special meetings of the Board of Directors shall be held when called by written notice signed by the President, or by any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director\*s office or home who would reasonably be expected to communicate such notice promptly to the Director; or (d) by telecopy. All such notices shall be given or sent to the Director\*s business office and/or home address or telephone number(s) as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least seven (7) days before the time set for the meeting. Notices given by personal delivery, telephone, or telecopy shall be delivered, telephoned, or faxed at least seventy-two (72) hours before the time set for the meeting. Notices should be posted at a prominent place within the Facilities not less than seventy-two (72) hours prior to the scheduled time of the meeting.

**Section 10. Waiver of Notice.** The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before, or at its commencement, about the lack of adequate notice.

**Section 11. Quorum of Board of Directors.** At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.



**Section 12. Compensation.** No Director shall receive any compensation from the Association for acting as such.

**Section 13. Conduct of Meetings.** The President (or, in the President\*s absence, a Vice President), shall preside over all meetings of the Board of Directors, and the Secretary or an Assistant Secretary shall keep a minute book of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

**Section 14. Open Meetings.** All meetings of the Board (excluding workshop meetings and meetings to discuss personnel, litigation and other similar confidential matters) shall to the extent possible be open to all Members, but Members other than Directors may not participate in any discussion or deliberation except as follows in accordance with a format approved by the Directors from time to time:

- (a) the Directors shall publish a meeting agenda and permit Members a reasonable opportunity to express their opinions concerning such agenda matters prior to taking any formal action; and
- (b) the Directors shall allow an "open" or "new business" portion of the meeting in which any Member can express his/her opinion concerning any new or previously non-discussed matter.

The Directors shall at all times have the right to reasonably limit the number of speakers, the time limit for each presentation and speaker, and to adopt other rules of efficiency and decorum.

**Section 15. Executive Session and Workshops.** The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and other business of a similar confidential nature. The nature of any and all business to be considered in executive session shall first be announced in open session. The Board may also attend "workshop" meetings or sessions to discuss long-range concepts, receive educational assistance and training and the like, provided no official action of any sort is taken.

**Section 16. Action Without a Formal Meeting.** Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the Directors. An explanation of the action taken shall be posted at a prominent place or places within the Facilities within three (3) days after the written consents of all the Board members have been obtained.

**Section 17. Powers.** The Board of Directors shall be responsible for the affairs of the Association and shall have all the powers and duties necessary for the administration of the Association\*s affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these Bylaws directed to be done and exercised exclusively by the Members. The Board of Directors may delegate to one or more of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of, and/or matters directly or indirectly pertaining to the Managing Agent, if any, which might arise between meetings of the Board of Directors. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may be hereafter adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget in which there shall be established the Annual Assessment rate charge;
- (b) making assessments to defray the expenses, establishing the means and methods of

collecting such assessments, and establishing the period of any installment payments of the Annual Assessment;

- (c) providing for the operation, care, upkeep, and maintenance of any improvements in the Subdivision;
- (d) collecting the assessments, depositing the proceeds thereof in a depository which it shall approve, and using the proceeds to administer the Association;
- (e) making and amending rules and regulations;
- (f) opening of bank accounts and/or banking-type accounts on behalf of the Association and designating the signatories required;
- (g) making or contracting for the making of repairs or additions to improvements in the Subdivision in accordance with the other provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;
- (h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association;
- (i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (j) paying the cost of all services rendered to the Association or its Members; and
- (k) keeping books with reasonably detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Members and bona-fide mortgagees, their respective duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the Members; and
- (l) filing all requisite forms, documents and information with Taxing Authorities; and

**Section 18. Management Agent.** The Board of Directors may employ for the Association a professional management agent(s) or executive manager (each and all of whom will be sometimes referred to herein as the "Managing Agent") at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Managing Agent shall provide the Board and the officers with reasonable reports, prepared not less than once a month, concerning the affairs of the Association. No management contract may have a term in excess of three (3) years and, where the Declarant or an affiliate of the Declarant is the Managing Agent, the Declarant must permit termination by either party without cause and without any materially adverse termination fee upon at least ninety (90) days advance written notice of such termination.

**Section 19. Rights of the Association.** In accordance with the Declaration and to the maximum extent permitted by applicable law, the Association shall have the right to contract with any person for the



performance of various duties and functions.

## ARTICLE V OFFICERS

**Section 1. Officers.** The officers of the Association may include a President, Vice President, Secretary, Treasurer and such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as the Board shall deem desirable, such officers to have the authority and to perform the duties prescribed from time to time by the Board of Directors. Any two or more offices may be held by the same person, excepting the offices of President and Secretary. Any member of the Board, or of the Managing Agent or of the Declarant may serve as an officer.

**Section 2. Election. Term of Office and Vacancies.** The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

**Section 3. Removal.** Any officer may be removed by the affirmative vote on a majority of the Board of Directors whenever in their judgment the best interests of the Association will be served thereby.

**Section 4. Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board of Directors. The president shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the annual budget as provided for hereinabove and may delegate all or part of the preparation and notification duties to a finance committee, Managing Agent, or both.

**Section 5. Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, the president, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6. Agreements, Contracts, Deeds, Leases, Checks.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least one (1) officer or by such other person or persons as may be designated by resolution of the Board of Directors.

## ARTICLE VI COMMITTEES

**Section 1. General.** Committees to perform such tasks and to serve or such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting at which a quorum is present are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors. The Board shall appoint the chairperson for each committee who shall preside at its meetings and who shall be responsible for transmitting any and all communications to the Board of Directors.

**Section 2. Architectural Review Committee.** After the Development Period, the Board of Directors shall appoint an Architectural Control Committee consisting of at least three (3) individuals

initially selected and appointed by the Declarant to act in accordance with the provisions of the Declaration and the Design Guidelines.

## ARTICLE VII ASSOCIATION RECORDS

**Section 1. Availability.** The Association shall make the books and records of the Association, including financial records, open to and reasonably available for examination by an Owner, or a person designated in a writing signed by the owner as the Owner's agent, attorney, or certified public accountant, in accordance with this section. An Owner is entitled to obtain from the Association copies of information contained in the books and records. Association attorney's files and records, excluding invoices requested by an Owner are not records of the Association and are not subject to inspection by the Owner or production in a legal proceeding. If a document in an attorney's files and records relating to the Association would be responsive to a legally authorized request to inspect or copy association documents, the document shall be produced by using the copy from the attorney's files and records if the Association has not maintained a separate copy of the document. This Article does not require production of a document that constitutes attorney work product or that is privileged as an attorney-client communication. An Owner or the Owner's authorized representative must submit a written request for access or information by certified mail, with sufficient detail describing the Association's books and records requested, to the mailing address of the Association or authorized representative as reflected on the most current Management Certificate. The request must contain an election either to inspect the books and records before obtaining copies or to have the Association forward copies of the requested books and records and if an inspection is requested, the Association, on or before the tenth (10<sup>th</sup>) business day after the date the Association receives the request, shall send written notice of dates during normal business hours that the Owner may inspect the requested books and records to the extent those books and records are in the possession, custody, or control of the Association, or if copies of identified books and records are requested, the Association shall, to the extent those books and records are in the possession, custody, or control of the Association, produce the requested books and records for the requesting party on or before the tenth (10<sup>th</sup>) business day after the date the Association receives the request. If the Association is unable to produce the books or records requested on or before the tenth (10<sup>th</sup>) business day after the date the Association receives the request, the Association must provide to the requestor written notice that informs the requestor that the Association is unable to produce the information on or before the tenth (10<sup>th</sup>) business day after the date the Association received the request, and states a date by which the information will be sent or made available for inspection to the requesting party that is not later than the fifteenth (15<sup>th</sup>) business day after the date notice under this Article is given. The Association may produce books and records requested under this section in hard copy, electronic, or other format reasonably available to the Association.

**Section 2. Open Records Policy.** The Association has a Records Production and Copying Policy that prescribes the costs the Association will charge for the compilation, production, and reproduction of information requested under this section. The prescribed charges may include all reasonable costs of materials, labor. The Association may not charge an Owner for the compilation, production, or reproduction of information requested under this section unless the policy prescribing those costs has been recorded as required by this subsection. An Owner is responsible for costs related to the compilation, production, and reproduction of the requested information in the amounts prescribed by the policy adopted under this section. The Association may require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. If the estimated costs are lesser or greater than the actual costs, the Association shall submit a final invoice to the Owner on or before



the thirtieth (30th) business day after the date the information is delivered. If the final invoice includes additional amounts due from the owner, the additional amounts, if not reimbursed to the Association before the thirtieth (30<sup>th</sup>) business day after the date the invoice is sent to the Owner, may be added to the Owner's account as an assessment. If the estimated costs exceeded the final invoice amount the owner is entitled to a refund, and the refund shall be issued to the owner not later than the thirtieth (30th) business day after the date the invoice is sent to the Owner.

**Section 3. Records Retention.** In accordance with Section 209.005(m) of the Act, the Document Retention Policy which shall be recorded in the Official Public Records of Real Property of El Paso County, Texas.

## ARTICLE VIII MISCELLANEOUS

**Section 1. Fiscal Year.** The fiscal year of the Association shall be the calendar year.

**Section 2. Parliamentary Rules.** Except as may be modified by Board resolution establishing modified procedures, Robert's Rules of Order (current edition) shall govern the conduct of the Association proceedings when not in conflict with Texas law, the Articles of Incorporation, the Declaration, or these Bylaws.

**Section 3. Conflicts.** If there are conflicts or inconsistencies between the provisions of Texas law, the Articles of Incorporation, the Declaration, and these Bylaws, then the provisions of Texas law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail.

**Section 4. Rules and Regulations.** The Board shall have the right to establish and amend, from time to time, reasonable rules and regulations for: (i) the administration of the Association and the governing documents, (ii) the maintenance, management, operation, use, conservation and beautification of the subdivision, and (iii) the health, comfort and general welfare of the residents; provided however, that such rules may not be in conflict with law or the governing documents. The Board shall, at all times, maintain the then current and complete rules in written form which can be copied and distributed to the members and may be recorded in the Real Property Records of El Paso County, Texas.


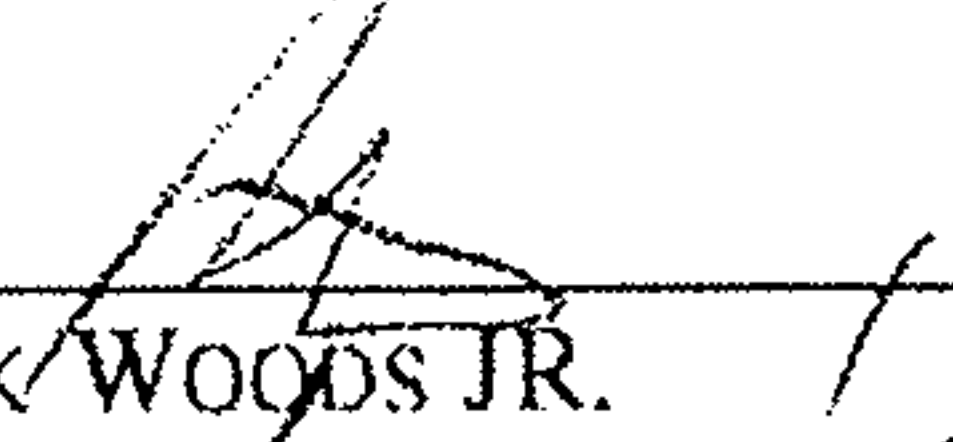
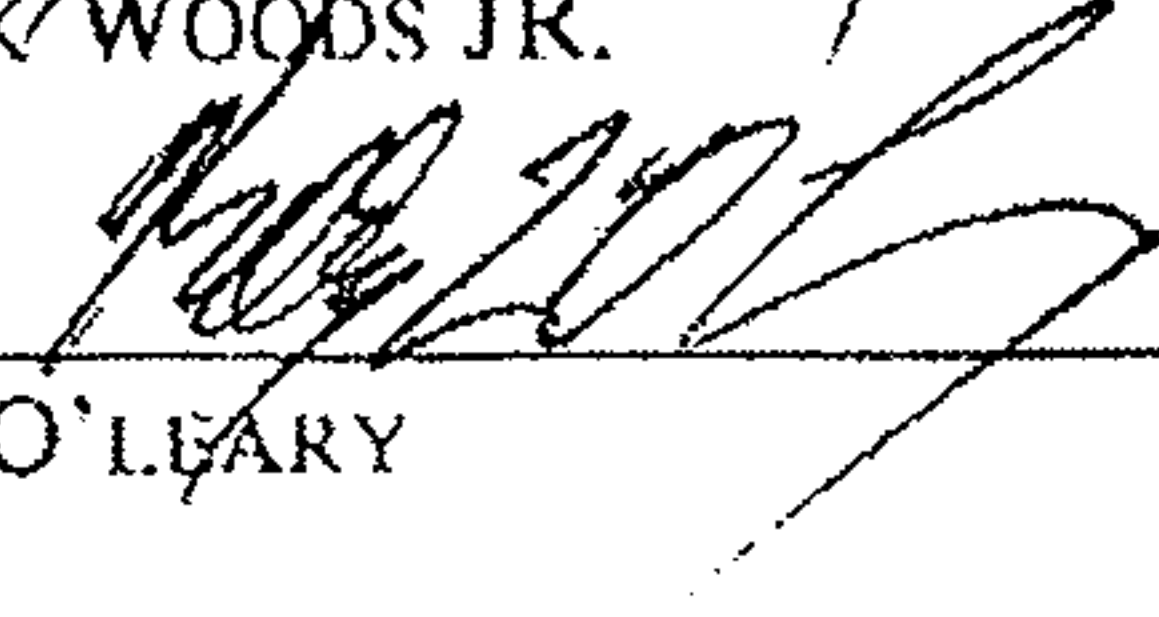
**Section 5. Conflict of Interest.** A contract or transaction between the Association and one more directors, officers or members which have a financial interest is valid and enforceable notwithstanding such relationship or interest only if the material facts as to the relationship or interest as to the contract or transaction are disclosed to or known by the Association's Board of Directors or the members. In the event the Board considers a contract or transaction which would create a conflict of interest or in which a director, officer or member has a financial interest, the Board may authorize the contract or transaction by the affirmative vote of a majority of the disinterested directors. Alternatively, the contract or transaction may be submitted to the members for review and approval. The person who is a director, officer or member who has a financial interest or conflict of interest may not participate in the voting or deliberation but may be present and may answer any questions or make any statements that the person deems appropriate.

**Section 6. Amendments.** The power and authority to alter, amend or repeal the Bylaws, or to adopt new Bylaws, is retained by the Board of Directors.

**Section 7. Governing Law.** The enforcement of these Bylaws and interpretation of any provisions of the Bylaws, rules and regulations, or any matter relating to the conduct and affairs of the Association shall be governed by the law of the State of Texas as that law currently exists or may hereafter be amended.

We, the undersigned, being all the existing Directors of the Association, do hereby certify that we hereby assent to the foregoing Bylaws and hereby adopt the same as the Bylaws of said Association.

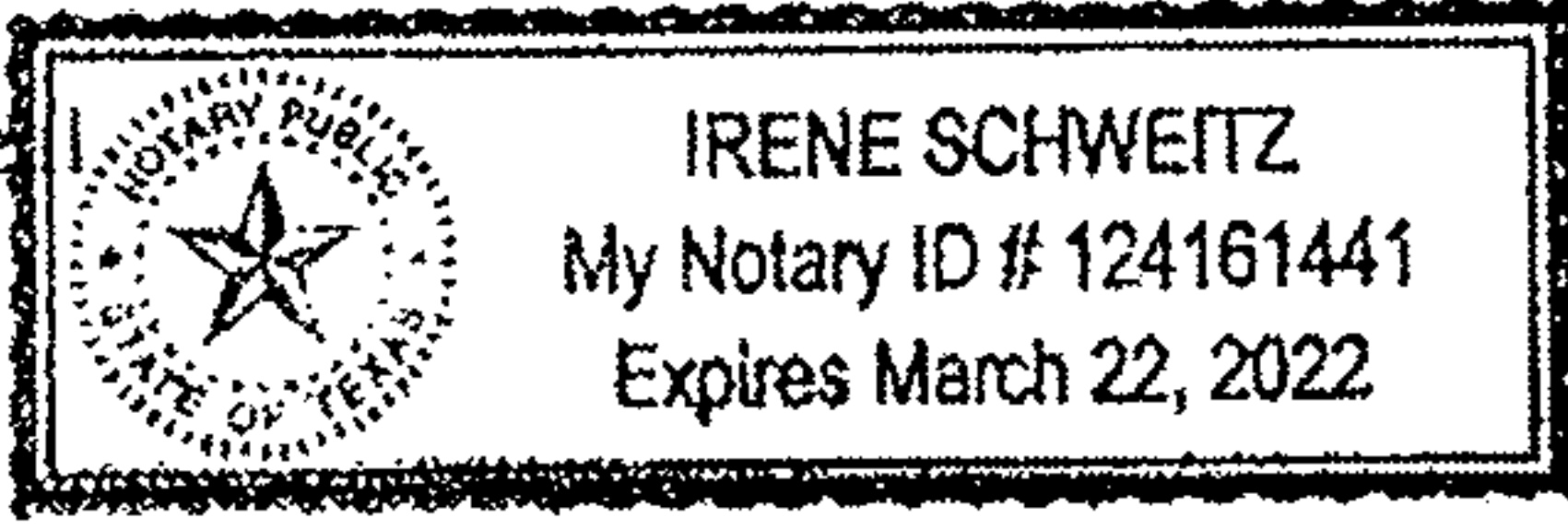
IN WITNESS WHEREOF, we have hereunto subscribed our names as of the 4 day of September, 2019.

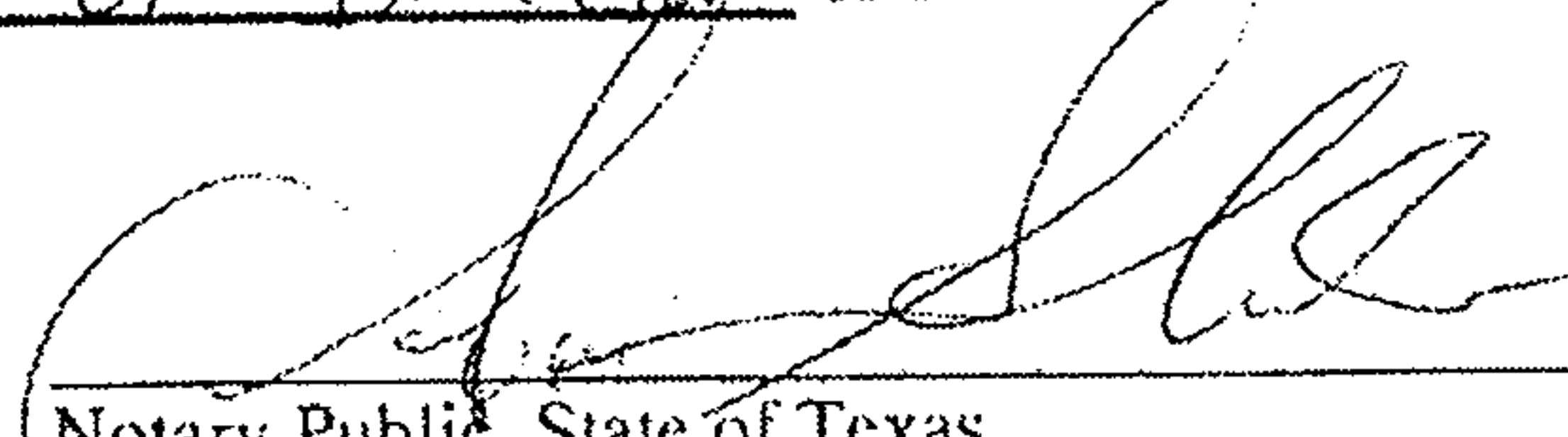
  
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§  
COUNTY OF EL PASO §

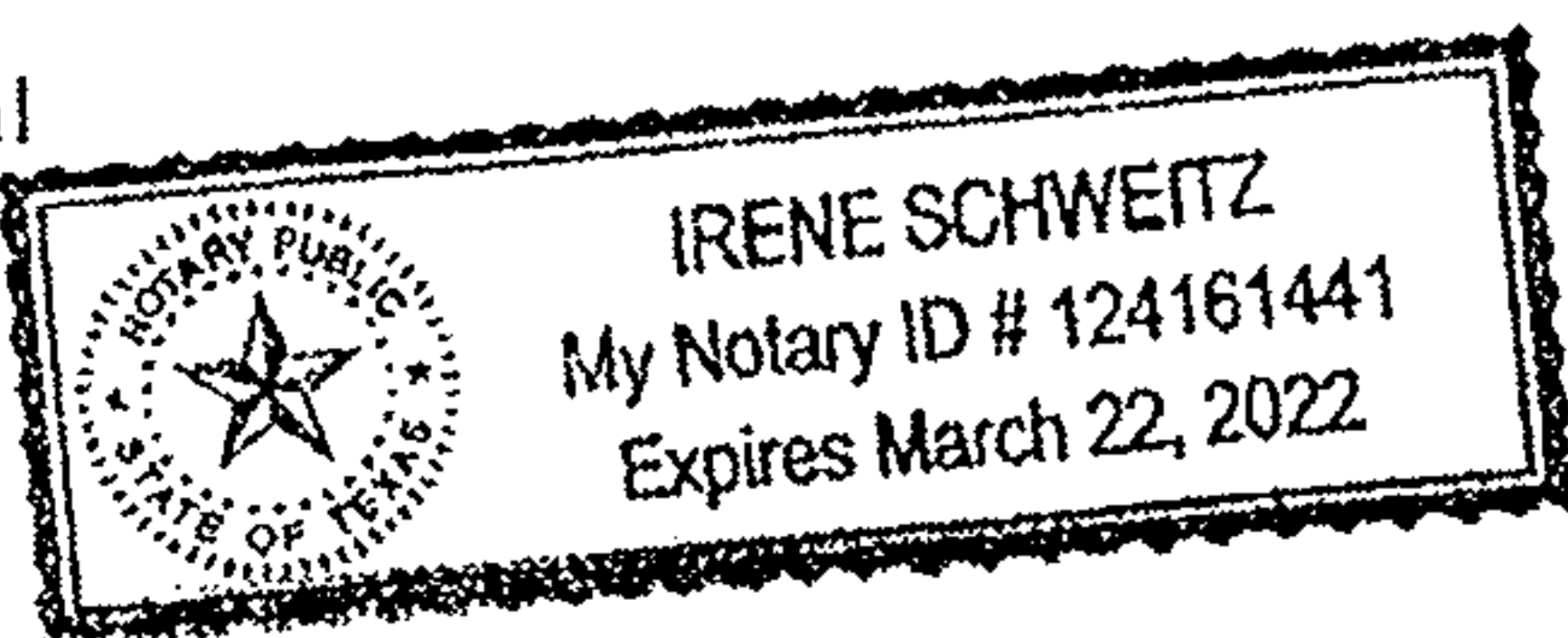
The foregoing was acknowledged before me on the 4 day of September, 2019, by Danny Andrus, Board of Directors of The Encore El Paso Home Owners Association on behalf of said entity.

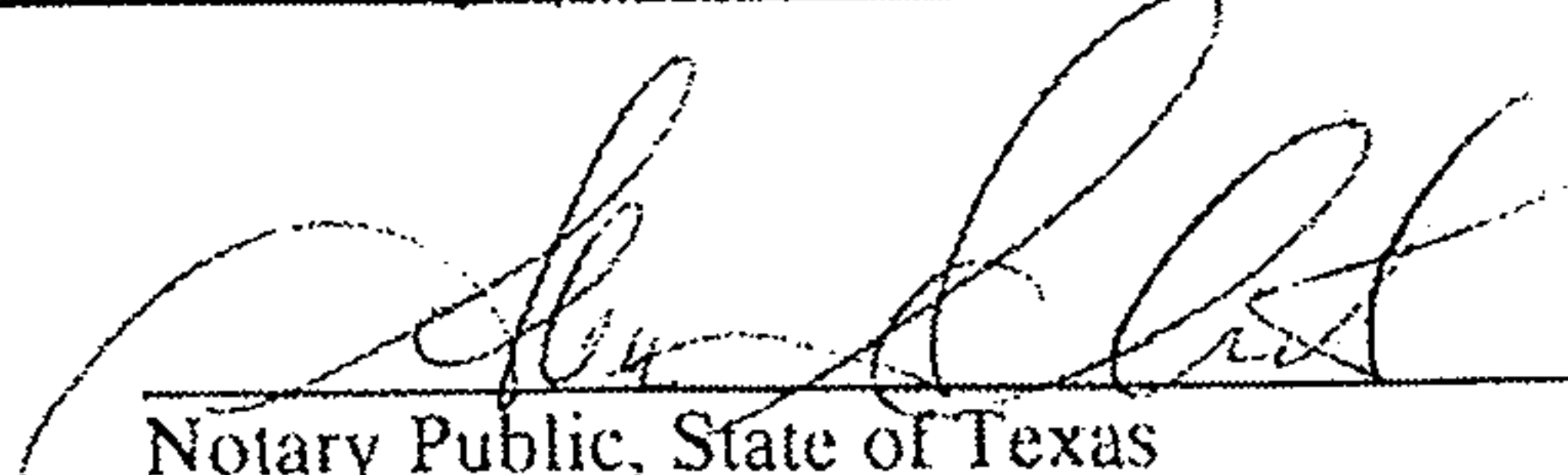
Seal  IRENE SCHWEITZ  
My Notary ID # 124161441  
Expires March 22, 2022

  
\_\_\_\_\_  
Notary Public, State of Texas

STATE OF TEXAS §  
§  
COUNTY OF EL PASO §

The foregoing was acknowledged before me on the 4 day of September, 2019, by Kelly O'Leary, Board of Directors of EP Desert Spring Development on behalf of said entity.

Seal  IRENE SCHWEITZ  
My Notary ID # 124161441  
Expires March 22, 2022

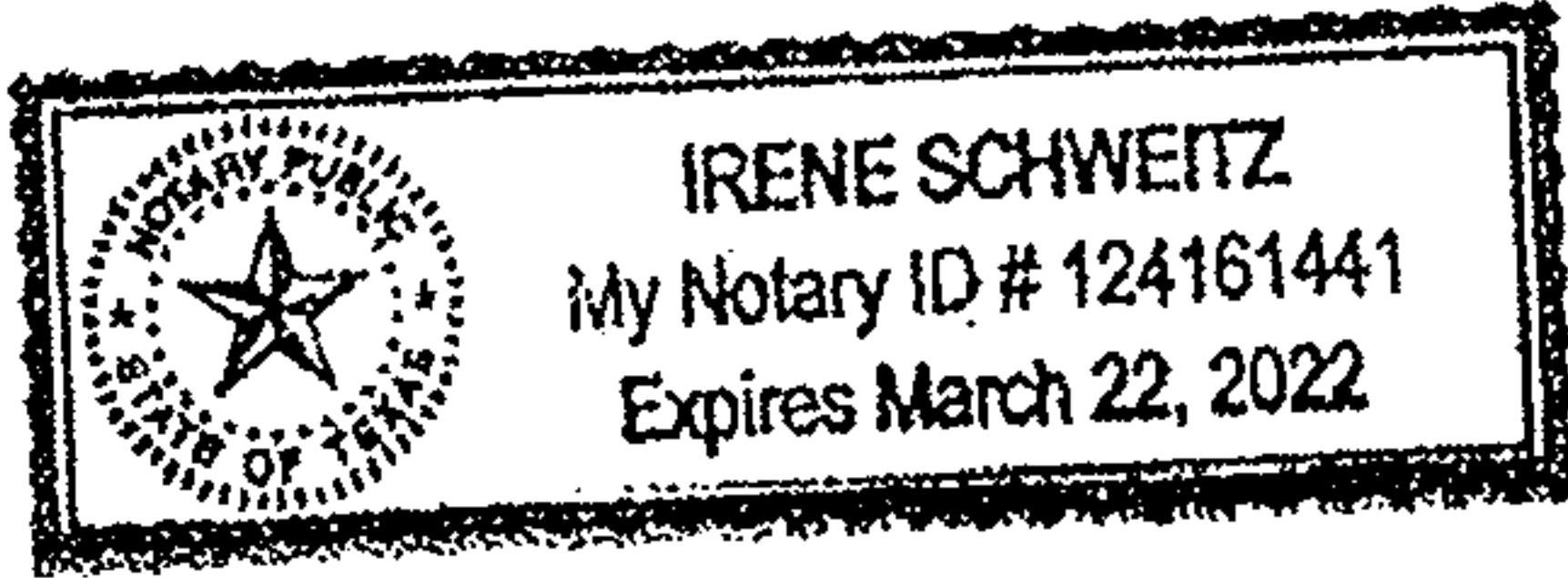
  
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Notary Public, State of Texas

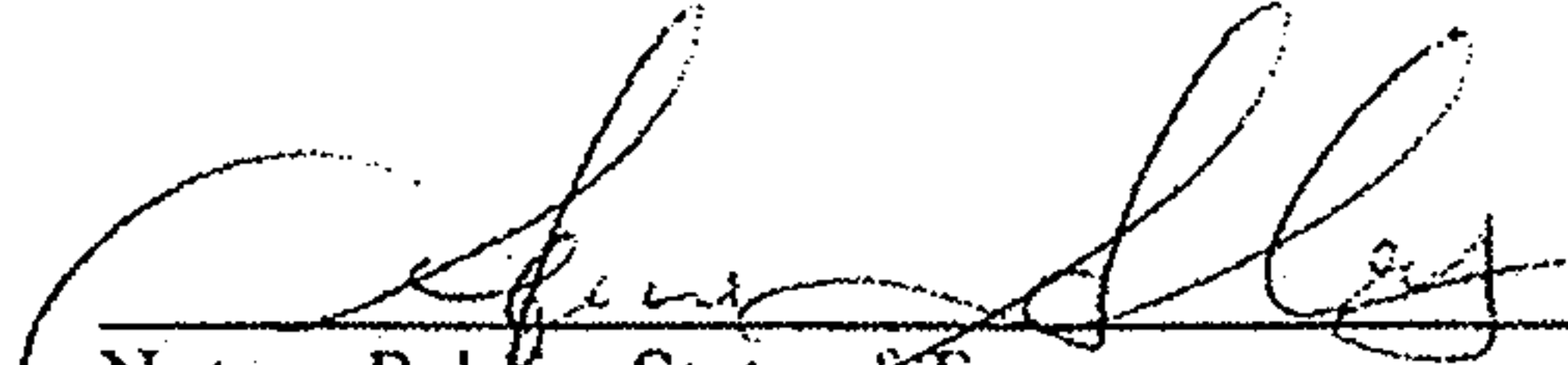


STATE OF TEXAS §  
§  
COUNTY OF EL PASO §

The foregoing was acknowledged before me on the 1<sup>st</sup> day of September, 2019, by Patrick Woods, Board of Directors of EP Desert Spring Development on behalf of said entity.

Seal



  
\_\_\_\_\_  
Notary Public, State of Texas

Doc # 20190069050  
#Pages 13 #NFPages 1  
09/09/2019 09:11 AM  
Filed & Recorded in  
Official Records of  
El Paso County  
Delia Briones  
County Clerk  
Fees \$74.00

eRecorded

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.



EL PASO COUNTY, TEXAS

*Delia Briones*



Doc # 20190082090  
#Pages 37 #NFPages 1  
10/24/2019 03:42 PM  
Filed & Recorded in  
Official Records of  
El Paso County  
Delia Briones  
County Clerk  
Fees \$170.00

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