

AFTER RECORDING RETURN TO:

**JOSHUA D. BERNSTEIN, ESQ.
GREENBERG TRAUIG, LLP
300 WEST 6TH STREET, SUITE 2050
AUSTIN, TEXAS 78701**

**AMENDMENT TO
MASTER DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS**

**MONTECILLO SUBDIVISION
UNITS ONE, TWO AND THREE**

Declarant: EPT MESA DEVELOPMENT, LP, a Delaware limited partnership

Cross Reference to Master Declaration of Covenants, Conditions, and Restrictions for Montecillo Subdivision Units One, Two and Three, recorded as Document No. 20090006318 in the Official Public Records of El Paso County, Texas.

**AMENDMENT TO MASTER DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS
MONTECILLO SUBDIVISION
UNITS ONE, TWO AND THREE**

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This Amendment to the Master Declaration of Covenants, Conditions, and Restrictions Montecillo Subdivision Units One, Two and Three (the "**Amendment**") is made by **EPT MESA DEVELOPMENT, L.P.**, a Delaware limited partnership ("**Declarant**"), and is as follows:

RECITALS:

A. Pursuant to the terms of Section 9.4 of that certain Master Declaration of Covenants, Conditions, and Restrictions for Montecillo Subdivision Units One, Two and Three, recorded as Document No. 20090006318 in the Official Public Records of El Paso County, Texas (the "**Declaration**"), Declarant has reserved the absolute right, prior to the "Conversion Date" (as defined in the Declaration), and without the joinder or consent of any other person, to amend the Declaration by a Supplemental Declaration or other method, by any instrument in writing duly signed, acknowledged, and filed for record.

B. Pursuant to the terms of Section 4.4(c) of the Declaration, the "Conversion Date will occur: (i) when Declarant has sold its interest in 100% of all the residential and commercial lots subject to the Declaration to unrelated and unaffiliated third parties; or (ii) such earlier date as may be established by Declarant in a Supplemental Declaration recorded by Declarant.

C. Declarant has not yet sold its interest in 100% of all the residential and commercial lots subject to the Declaration to unrelated and unaffiliated third parties, nor recorded a Supplemental Declaration to establish an earlier date for the Conversion Date. As such, Declarant present retains, and now wishes to exercise, its right pursuant to the terms of Section 9.4 of the Declaration to unilaterally amend the Declaration.

NOW THEREFORE, Declarant hereby amends and modifies the Declaration as follows:

1. **Board of Directors.** Section 4.3 of the Declaration is hereby deleted in its entirety and replaced with the following:

4.3 **Trustees.** Except where a vote of the Members is required by law, the Association shall act by and through its Board of Directors, which shall manage the affairs of the Association. Prior to the Conversion Date, the Board shall be appointed by Declarant. Each Trustee appointed by Declarant shall serve until the Conversion Date and thereafter until his successor is duly elected and qualified.

After the Conversion Date, the Members shall elect members of the Board as provided in the Bylaws; provided, however, two Trustees shall be elected from the Class A Members by the Class A Members and two Trustees shall be elected from the Class B Members by the Class B Members.

Prior to the Conversion Date, any vacancy, from whatever cause other than removal, occurring in the Board shall be filled by appointment made by Declarant. After the Conversion Date, any vacancy, from whatever cause, shall be filled by appointment of the remaining Trustees. The person appointed by the remaining Trustees shall fill such vacancy for the remainder of the term and until the successor is duly elected and qualified.

2. **Membership Classes.** Section 4.4 of the Declaration is hereby deleted in its entirety and replaced with the following:

4.4 **Membership Classes.** The Association shall have three classes of membership:

(a) "Class A Member(s)." The Class A Members shall be all Owners of Residential Lots with exception of the Declarant. After the Conversion Date, Declarant shall become a Class A Member to the extent Declarant is the Owner of a Residential Lot.

(b) "Class B Member(s)." The Class B Members shall be all Owners of Commercial Lots with exception of the Declarant. After the Conversion Date, Declarant shall become a Class B Member to the extent Declarant is the Owner of a Commercial Lot.

(c) "Class C Member." The Class C Member shall be the Declarant. The Class C membership of Declarant shall cease and convert to Class A or Class B membership (if Declarant continues to own Lots) upon occurrence of the earlier of the following (the "Conversion Date"):

i. when Declarant has sold its interest in 100% of all of the Residential and Commercial Lots to unrelated and unaffiliated third parties. A sale to an unrelated or unaffiliated third party includes a sale to partnerships or limited liability companies that include ownership by Declarant; or

ii. such earlier date as may be established by Declarant in a Supplemental Declaration to be recorded by Declarant.

For purposes of electing the Board after the Conversion Date, and for any other matters submitted to a vote of the Members: (i) each Class A Member shall be entitled to one vote for each Residential Lot owned by such Class A Member; and (ii) each Class B Member shall be entitled to one vote per acre contained with such Class B Member's Commercial Lot, rounded to the nearest whole number (for example: a Class B Member who owns a 12.53 acre Commercial Lot would be entitled to cast 13 votes in respect of such Commercial Lot). Additionally, the Class C Member shall be at all times (prior to the Conversion Date) entitled to 4 votes for every 1 vote held by any Class A Member or Class B Member (for example: if the Class A Members and Class B Members, collectively, hold 100 votes, then the Class C Member would hold 400 votes).

3. **Miscellaneous.** Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Declaration. Unless expressly amended by this Amendment, all other terms and provisions of the Declaration remain in full force and effect as written, and are hereby ratified and confirmed.

[SIGNATURE PAGE AND ACKNOWLEDGEMENT FOLLOW]

EXECUTED to be effective as of the date this Amendment has been recorded in the Official Public Records of El Paso County, Texas.

DECLARANT:

EPT MESA DEVELOPMENT, L.P.
a Delaware limited partnership

By its General Partner

EPT Mesa Development Management, LLC
A Delaware limited liability company

By its Manager

~~EPT Land Management, LLC~~
~~A Texas limited liability company~~

By: _____

Richard Aguilar, its Manager

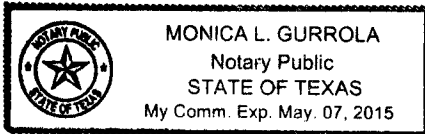
THE STATE OF TEXAS §

COUNTY OF EL PASO §

This instrument was acknowledged before me on October 17, 2014, by Richard Aguilar, Manager of EPT Land Management, LLC, a Texas limited liability company, Manager of EPT Mesa Development Management, LLC, a Delaware limited liability company, General Partner of EPT Mesa Development LP, a Delaware limited partnership, on behalf of said limited partnership and limited liability companies.

Notary Public Signature

(seal)



MONTECILLO OWNERS ASSOCIATION, INC.

**CONSENT OF DIRECTORS IN LIEU OF
ORGANIZATIONAL MEETING**

The undersigned, being all of the present members of the Board of Directors (the "Board") of Montecillo Owners Association, Inc., a Texas non-profit corporation (hereinafter referred to as the "Association"), do hereby consent, pursuant to Article 22.220(a) of the Texas Business Organizations Code, to the adoption of the following resolutions:

1. DIRECTORS

RESOLVED, that each of the undersigned, being all of the present members of appointed to the Board, does hereby accept appointment to such office and does hereby agree to serve as a director of the Association until the first annual meeting of the members and until said director's successor or successors have been duly elected and qualified or until his or her earlier death, resignation, retirement, disqualification or removal from office.

2. BYLAWS

RESOLVED, that the form of bylaws attached hereto as Exhibit "A", is approved and adopted as the Bylaws of the Association, and the Secretary of the Association is instructed to insert the original thereof in the minute book of the Association.

3. OFFICERS

RESOLVED, that each of the following-named persons be and they hereby are elected as officers of the Association for the office or offices set forth below opposite his or her name, and to hold any such office to which elected until the first annual meeting of the Board of Directors of the Association and until his or her successor should be chosen and qualified in his or her stead, or until his or her earlier death, resignation, retirement, disqualification or removal from office:

Richard E. Aguilar	-	President
David Bogas	-	Secretary/Treasurer

4. REGISTERED OFFICE; REGISTERED AGENT

RESOLVED, that the registered office of the Association be established and maintained at 444 Executive Center #238, El Paso, Texas 79902, and that EPT Mesa Development, LP, a Delaware limited partnership, is hereby appointed as registered agent of the corporation in said office.

5. BOOKS AND RECORDS

RESOLVED, that the Secretary of the Association be and hereby is authorized and directed to procure all necessary books and records of the Association.

MONTECILLO OWNERS ASSOCIATION, INC.
ORGANIZATIONAL CONSENT

6. ORGANIZATIONAL EXPENSES

RESOLVED, that the President of the Association or other officer be and hereby is authorized and directed to pay all fees, expenses and costs incident to or necessary for the incorporation and organization of the Association and to reimburse any person who may have paid any of such fees, expenses and costs.

7. CORPORATE SEAL

RESOLVED, that a corporate seal is not adopted at this time and that no impression of a corporate seal is required on any Association document.

8. DEPOSITORY RESOLUTIONS

RESOLVED, that an account shall be established in the name of the Association with a financial institution to be determined by the Board (the "Bank"), under the rules and regulations as prescribed by said Bank wherein may be deposited any of the funds of this Association, whether represented by cash, checks, notes or other evidences of debt, and from which deposit withdrawals are hereby authorized in the name of the Association by any one of the following persons:

Richard E. Aguilar
David Bogas

BE IT FURTHER RESOLVED, that the Bank is hereby authorized to honor any and all withdrawal items against the Association's funds, although payable to the officer or agent signing or countersigning the same and whether presented for encashment or for credit to the personal account of such officer or agent or any other person, and said Bank need make no inquiry concerning such items and/or the disposition of the money, items, or credit given therefor.

9. RATIFICATION OF PAST ACTS

RESOLVED, that all past decisions, conduct and actions, whether or not reflected in the minute book of the Association, of the Board and of each and every officer of the Association from and after the date of its formation, up to and including the present date, are hereby ratified, confirmed and approved.

[SIGNATURE PAGE FOLLOWS]

MONTECILLO OWNERS ASSOCIATION, INC.
ORGANIZATIONAL CONSENT

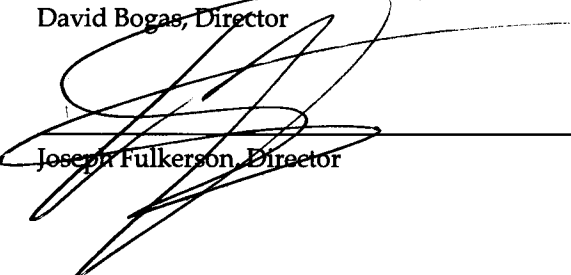
IN WITNESS WHEREOF, the undersigned have executed this instrument as of and effective the _____ day of _____, 2014.



Richard E. Aguilar, Director



David Bogas, Director



Joseph Fulkerson, Director

MONTECILLO OWNERS ASSOCIATION, INC.
ORGANIZATIONAL CONSENT

EXHIBIT "A"

BYLAWS

MONTECILLO OWNERS ASSOCIATION, INC.
ORGANIZATIONAL CONSENT

AFTER RECORDING, RETURN TO:

JOSHUA D. BERNSTEIN, ESQ.
GREENBERG TRAURIG, LLP
300 WEST 6TH STREET, SUITE 2050
AUSTIN, TEXAS 78701

**MONTECILLO OWNERS ASSOCIATION, INC.
NOTICE OF DEDICATORY INSTRUMENTS
AND POLICY MANUAL**

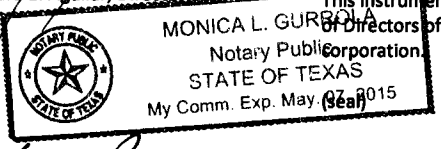
Montecillo, a mixed-use community located in El Paso County, Texas (the "Community"), is subject to the Master Declaration of Covenants, Conditions and Restrictions for Montecillo Subdivision Units One, Two and Three, recorded as Document No. 20090006318, Official Public Records of El Paso County, Texas, (the "Master Declaration"). Montecillo Owners Association, Inc., a Texas non-profit corporation (the "Association"), is the homeowners association established pursuant to the terms of the Declaration. This instrument, which is hereby adopted and approved by the Board of Directors of the Association: (1) causes previously unrecorded dedicatory instruments of the Association to be recorded as required by Section 202.006 of the Texas Property Code; and (2) sets forth certain policies and guidelines adopted by the Board in accordance with the requirements of applicable law and its authority under the Declaration, and causes such policies and guidelines to be recorded as required by Section 202.006 of the Code. Capitalized terms used but not defined herein have the meanings ascribed to such terms in the Declaration.

MONTECILLO OWNERS ASSOCIATION, INC., a Texas non-profit corporation

[Signature]
By: Richard E. Aguilar, Director

THE STATE OF TEXAS §
COUNTY OF EL PASO §

This instrument was acknowledged before me on Oct. 17, 2014, by Richard E. Aguilar, member of the Board of Directors of the Montecillo Owners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.



[Signature]
Notary Public Signature

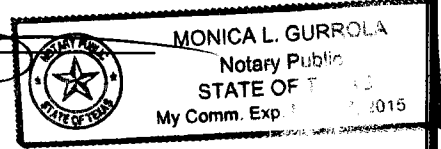
[Signature]
By: David Bogas, Director

THE STATE OF TEXAS §
COUNTY OF EL PASO §

This instrument was acknowledged before me on Oct. 17, 2014, by David Bogas, member of the Board of Directors of the Montecillo Owners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.

(seal)

[Signature]
Notary Public Signature



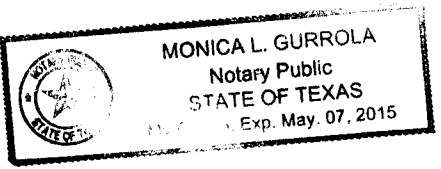
[Signature]
By: Joseph Fulkerson, Director

THE STATE OF TEXAS §
COUNTY OF EL PASO §

This instrument was acknowledged before me on Oct. 17, 2014, by Joseph Fulkerson, member of the Board of Directors of the Montecillo Owners Association, Inc., a Texas non-profit corporation, on behalf of said non-profit corporation.

(seal)

[Signature]
Notary Public Signature



**NOTARY SEAL/STAMP
NOT THOROUGH
WILL NOT IMAGE PROPERLY**

**NOTARY SEAL/STAMP
NOT THOROUGH
WILL NOT IMAGE PROPERLY**

TABLE OF CONTENTS

ATTACHMENT 1	CERTIFICATE OF FORMATION
ATTACHMENT 2	BYLAWS
ATTACHMENT 3	POLICY REGARDING DISPLAY AND INSTALLATION OF FLAGS AND FLAGPOLES
ATTACHMENT 4	POLICY REGARDING DISPLAY OF CERTAIN RELIGIOUS ITEMS
ATTACHMENT 5	POLICY REGARDING INSTALLATION AND USE OF RAINWATER HARVESTING SYSTEMS
ATTACHMENT 6	POLICY REGARDING INSTALLATION AND USE OF SOLAR ENERGY DEVICES AND ENERGY EFFICIENT ROOFING MATERIALS
ATTACHMENT 7	PAYMENT PLAN GUIDELINES AND APPLICATION OF PAYMENTS SCHEDULE
ATTACHMENT 8	RECORDS PRODUCTION AND COPYING POLICY
ATTACHMENT 9	DOCUMENT RETENTION POLICY
ATTACHMENT 10	STATUTORY COMPLIANCE POLICY

ATTACHMENT 1

FILED
In the Office of the
Secretary of State of Texas

JAN 16 2009

**ARTICLES OF ASSOCIATION
OF
MONTECILLO OWNERS ASSOCIATION, INC. Corporations Section**

These Articles of Association pertain to Montecillo Subdivision (the "Real Property"), a mixed use community and an addition to the City of El Paso, Texas, which is subject to the Master Declaration of Covenants, Conditions, and Restrictions for Montecillo Subdivision recorded in the Real Property Records, El Paso County, Texas, as amended, supplemented, and restated from time to time (the "Master Declaration").

ARTICLE 1. NAME & TYPE.

The filing entity being formed is a nonprofit corporation. The name of the entity is MONTECILLO OWNERS ASSOCIATION, INC. (hereafter, the "Association"). This entity is the mandatory nonprofit property owners association created by the Master Declaration to govern the above-referenced Real Property.

ARTICLE 2. REGISTERED AGENT & ADDRESS.

The initial registered agent is an organization by the name of EPT MESA DEVELOPMENT, LP. The business address of the registered agent and the registered office address is:

EPT MESA DEVELOPMENT, LP
444 Executive Center #238
El Paso, TX 79902

ARTICLE 3. MANAGEMENT BY BOARD.

The management of the affairs of the corporation is vested in the Board of Trustees (the "Board"). The Board shall consist, at all times, of no less than three (3) Members. The initial Board consists of three Trustees who serve at the pleasure of Declarant during the period prior to the Conversion Date (as defined in the Master Declaration), which shall be referred to herein as the "Declarant Control Period", and who will serve as Trustees until the earlier of (1) their successors appointment by Declarant, or (2) their successors election by the Members of the Association after the Declarant Control Period. Subject to the foregoing required minimum number of Trustees, the Board, after the Declarant Control Period, shall be determined by the Bylaws and may be changed from time to time by amendment of the Bylaws. The name and address of each initial Trustee are as follows:

TRUSTEE	ADDRESS:
Doug Borrett	444 Executive Center #238

El Paso, TX 79902

David Bogas

444 Executive Center #238
El Paso, TX 79902

Tony Conde

444 Executive Center #238
El Paso, TX 79902

ARTICLE 4. MEMBERSHIP.

The Association is a nonstock Membership organization - the owners of lots in Montecillo being the Members of the Association. The Master Declaration and/or Bylaws will determine the number and qualifications of Members of the Association; the classes of Membership; the voting rights and other privileges of Membership; and the obligations and liabilities of Members. Cumulative voting by the Members as to each class is allowed.

ARTICLE 5. PURPOSES.

The general purposes for which the Association are formed are (1) to exercise the rights and powers and to perform the duties and obligations of a Texas property owners association, in accordance with the Master Declaration, the Articles, Bylaws, Design Guidelines and Association Rules, as may be amended from time to time (the "Governing Documents") and applicable law, as each may be amended from time to time, and (2) for any lawful purpose not expressly prohibited under Chapters 2 or 22 of the Texas Business Organizations Code (the "Code"), including any purpose described by Section 2.002 of the Code.

ARTICLE 6. MANNER OF DISTRIBUTION.

The Association is authorized on its winding up to distribute its assets in a manner other than as provided by Section 22.304 of the Code. The manner of distribution is as follows. In the event of winding up, the assets of the Association will belong to the Members of the Association at the time of winding up and will be distributed, liquidated, or conveyed in accordance with the terms of a termination agreement, which must be approved by seventy five percent (75%) or more of the votes of Each Member Entitled To Vote (as defined in Section 18.3) in the Association.

ARTICLE 7. DURATION.

The duration of the Association is perpetual.

ARTICLE 8. POWERS.

In furtherance of its purposes, the Association has the following powers which, unless indicated otherwise by the Governing Documents or applicable law, may be exercised by the Board of Trustees: (1) all rights and powers conferred on nonprofit entities by law in effect from time to time; (2) all rights and powers conferred on property owners associations by law, as in effect from time to time; (3) all powers necessary, appropriate, or advisable to perform any purpose or duty of the Association as set out in

the Governing Documents or applicable law.

ARTICLE 9. MEETING LOCATION.

Unless the Master Declaration or Bylaws provides otherwise, meetings of Members of the Association will be held at a suitable place convenient to the Members, as determined by the Board.

ARTICLE 10. LIMITATIONS ON LIABILITY.

A Trustee of the Association is not liable to the Association or its Members for monetary damages for acts or omissions that occur in the person's capacity as a Trustee, except to the extent that person is found liable for (1) a breach of the Trustee's duty of loyalty to the Association or its Members; (2) an act or omission not in good faith that constitutes a breach of duty of the Trustee to the Association; (3) an act or omission that involves intentional misconduct or a knowing violation of the law; (4) a transaction from which the Trustee receives an improper benefit, whether or not the benefit resulted from an action taken within the scope of that person's office; or (5) an act or omission for which the liability of a Trustee is expressly provided by an applicable statute. If the Trustee is a Member of the Association, this limitation on liability does not eliminate or modify that person's pro rata share of the Association's liability as a Member of the Association.

ARTICLE 11. INDEMNIFICATION.

As provided by the Bylaws, the Association will indemnify a 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 Trustee, officer, committee chair, or committee member (including a member of the Architectural Control Committee as provided in the Master Declaration) serving on behalf of the Association. Additionally, the Association may indemnify a person who is or was an employee, trustee, agent, or attorney of the Association, against any liability asserted against him and incurred by him in that capacity and arising out of that capacity.

ARTICLE 12. IMMUNITY FOR VOLUNTEERS.

To preserve the protections for Association volunteers afforded by the Charitable Immunity and Liability Act of 1987 (Chapter 84, Texas Civil Practice & Remedies Code), the Association will operate in a manner that preserves the Association's status as a homeowners association as defined by Section 528(c) of the Internal Revenue Code of 1986, as amended.

ARTICLE 13. AMENDMENT OF ARTICLES.

These Articles may be amended, supplemented, or restated subject to the following:

Section 13.1. General Provisions. (1) An amendment may not conflict with the Governing Documents or applicable law. (2) An amendment may not impair or dilute a right granted to a Member by the Master Declaration, without that person's written consent. (3) If the Association is incorporated by the State of Texas at the time of amendment, supplement, or restatement, the amendment, supplement, or restatement must be in accordance with applicable provisions of the Code.

Section 13.2. Amendment by Board. The Board of Trustees may unilaterally amend or restate these Articles, without a vote of the Members, for the following limited purposes: (1) to delete the names and addresses of the initial Trustees, (2) to delete the name and address of the initial registered agent or office, provided a statement of change is on file with the Secretary of State, and (3) to change the name of the Association with the Secretary of State by adding, deleting, or changing a geographical attribute to the name.

Section 13.3. Amendment by Members. For all other purposes, an amendment must be approved by the Board and by at least seventy five percent (75%) of the votes or voting interests present, in person or by proxy, of Each Member Entitled To Vote (as defined in Section 18.3) at a properly called meeting of the Association for which a quorum is obtained.

ARTICLE 14. AMENDMENT OF BYLAWS.

The Bylaws of the Association may be amended, supplemented, or repealed according to the amendment provision of the Bylaws.

ARTICLE 15. ACTION WITHOUT MEETING.

Subject to the additional requirements of Code Section 6.202, any action required by the Code or by the Governing Documents to be taken at a meeting of Members or owners may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by a sufficient number of Members or owners as would be necessary to take that action at a meeting at which the required number of owners or Members were present and voted.

ARTICLE 16. DECLARANT CONTROL PERIOD.

The Master Declaration provides for a Declarant Control Period during which the Declarant determines the number and qualification of officers and Trustees, who serve at the pleasure of Declarant, and Declarant is empowered by the Master Declaration to appoint, remove, and replace the officers and Trustees of the Association during the Declarant Control Period. The Master Declaration also determines the weight or numbers of votes allocated to lots owned by Declarant. Because Declarant has powers, rights, and duties in addition to those of other Members, Declarant constitutes a Membership "class" as described by the Code.

ARTICLE 17. CHANGE OF STATUS.

The continuing existence of the Association as described in its Governing Documents is vested in its Members, not in its corporate status, its name, or its filing number. During any period in which the Association is not incorporated, it will be subject to the Texas Uniform Unincorporated Nonprofit Association Act (Chapter 252 of the Code), and these Articles of Association will continue to be effective as a Governing Document of the Association.

ARTICLE 18. TERMINOLOGY.

Any capitalized terms used in these Articles that are not otherwise defined herein have the same meanings as defined in the Master Declaration or by the Code. As applied to this Association, the following terms which are defined or used in the Code are construed as follows:

Section 18.1. "Code" shall mean the Texas Business Organization Code, as may be amended from time to time.

Section 18.2. "Governing Documents," is construed to mean the Master Declaration, the Articles, Bylaws, Design Guidelines and Association Rules as defined by the Master Declaration, even though Governing Documents may have been initially adopted by the Declarant of the Real Property for the benefit and use of the Members of the Association, rather than having been adopted by the Association, as indicated by the Code's definition of Governing Documents.

Section 18.3. "Each Member Entitled To Vote," shall be construed in accordance with Article 4 of the Master Declaration.

ARTICLE 19. EFFECTIVENESS OF FILING.

This document becomes effective as a Certificate of Formation for a nonprofit corporation when the document is filed by the Secretary of State.

EXECUTION

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

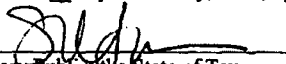
SIGNED this 8th day of January, 2009.



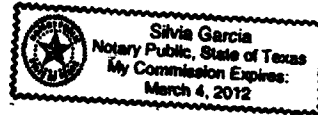
David Bogas, Organizer
444 Executive Center #238
El Paso, TX 79902

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this 8th day of January, 2009, by David Bogas.



Notary Public, the State of Texas



ATTACHMENT 2

BYLAWS

ATTACHMENT 3

POLICY REGARDING DISPLAY AND INSTALLATION OF FLAGS AND FLAGPOLES

The purpose of this policy is to set forth certain requirements with which owners and residents must comply concerning any flags or flagpoles installed by them. To the extent that any provisions of this policy are held to be invalid, illegal, unenforceable or in conflict with any provision of applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

An owner or resident wishing to install (1) the flag of the United States of America; (2) the flag of the State of Texas; or (3) an official or replica flag of any branch of the United States armed forces (collectively, the "Permitted Flags") need not secure approval by the architectural review authority established under the Declaration (the "Architectural Reviewer"), provided that such owner or resident fully complies with all of the requirements set forth herein. An owner or resident wishing to install any flag other than a Permitted Flag, or to install a flag or flagpole, including a Permitted Flag, in a manner which deviates from the requirements set forth herein, may not do so unless and until the owner or resident has secured the prior written approval of the Architectural Reviewer.

Except as otherwise approved in writing by the Architectural Reviewer, the following requirements shall apply with respect to the installation of flags and flagpoles by owners and residents:

(1) Flags and flagpoles may be installed by an owner or resident only on the owner's Lot or other property owned or exclusively controlled by such owner or resident.

(2) No more than one (1) flagpole may be installed per owner/resident, which flagpole shall not exceed twenty feet (20') in height nor five feet (5') in length.

(3) No flag displayed on any flagpole may be more than three feet (3') in height by five feet (5') in width (3'x5').

(4) The flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code.

(5) Any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling.

(6) The display of a flag, or the location and construction of the supporting flagpole, must comply with all applicable zoning ordinances, easements and setbacks of record.

(7) A displayed flag and the flagpole on which it is flown must be maintained in good condition. Any deteriorated flag or deteriorated or structurally unsafe flagpole must be promptly repaired, replaced, or removed.

(8) Any flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property.

(9) Any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

ATTACHMENT 4

POLICY REGARDING DISPLAY OF CERTAIN RELIGIOUS ITEMS

The purpose of this policy is to set forth certain requirements with which owners and residents must comply concerning religious items displayed or affixed by the owner or resident to the entry to the owner's or resident's dwelling. To the extent that any provisions of this policy are held to be invalid, illegal, unenforceable or in conflict with any provision of applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

An owner or resident is permitted to display or affix to the entry door or door frame of the owner's or resident's dwelling one or more religious items, the display of which is motivated by the owner's or resident's sincere religious belief (collectively, "**Religious Displays**").

Except as otherwise approved in writing by the architectural review authority established under the Declaration, the requirements set forth below shall apply with respect to Religious Displays.

(1) The following Religious Displays shall be prohibited:

(a) a Religious Display which violates applicable law, contains language, graphics, or any display that is patently offensive to a passerby;

(b) a Religious Display which, in the reasonable opinion of the Association's Board of Directors, or any property manager or other third-party acting by or on behalf of the Association, threatens the public health or safety;

(c) a Religious Display which is installed in a location other than the entry door or door frame or which extends past the outer edge of the door frame of the owner's or resident's dwelling; or

(d) a Religious Display which, individually or in combination with each other Religious Display displayed or affixed to the entry door or door frame of the owner's or resident's dwelling, has a total size of greater than twenty-five (25) square inches.

(2) Nothing in this policy may be construed in any manner to authorize an owner or resident to use a material or color for the entry door or door frame of the owner's dwelling, or make an alteration to the entry door or door frame, that is not otherwise permitted pursuant to the Association's governing documents.

(3) The Association shall be permitted to remove any Religious Display which is in violation of the terms and provisions of this policy.

ATTACHMENT 5

POLICY REGARDING INSTALLATION AND USE OF RAINWATER HARVESTING SYSTEMS

The purpose of this policy is to set forth certain requirements with which owners and residents must comply concerning installation and use of rain barrels and rainwater harvesting systems and any related appurtenances (collectively, "Rainwater Systems") on any property owned or exclusively controlled by an owner or resident. To the extent that any provisions of this policy are held to be invalid, illegal, unenforceable or in conflict with any provision of applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Except as otherwise approved in writing by the architectural review authority established under the Declaration (the "Architectural Reviewer"), the following Rainwater Systems shall be prohibited:

- (1) a Rainwater System installed in or on any property owned by the Association or any property owned in common by the members of the Association;
- (2) a Rainwater System located between the front of the owner or resident's home and an adjoining or adjacent street;
- (3) a Rainwater System that is of a color other than a color consistent with the color scheme of the owner's or resident's home; or
- (4) a Rainwater System that displays any language or other content that is not typically displayed by such Rainwater System as it is manufactured.

The prior written approval of the Architectural Review shall be required for an owner or resident to install any Rainwater System on the side of the owner's or resident's house, or at any other location that is visible from a street, another owner's or resident's property, or a common area (each, a "Visible Rainwater System"). In considering any Visible Rainwater System for approval, the Architectural Reviewer may regulate the size, type, shielding of, and materials used in the construction of the Visible Rainwater System; provided, however, that in no event may the Architectural Reviewer prohibit the economic installation of a Visible Rainwater System if there is reasonably sufficient area on the owner's or resident's property in which to install the Visible Rainwater System.

ATTACHMENT 6

POLICY REGARDING INSTALLATION AND USE OF SOLAR ENERGY DEVICES AND ENERGY EFFICIENT ROOFING MATERIALS

The purpose of this policy is to set forth certain requirements with which owners and residents must comply concerning installation and use of "Solar Energy Devices" and "Energy Efficient Roofing Materials," as each such term is defined below. To the extent that any provisions of this policy are held to be invalid, illegal, unenforceable or in conflict with any provision of applicable law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

For purposes of this policy: (i) a Solar Energy Device means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy, and includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power; and (ii) Energy Efficient Roofing Materials, for purposes of this policy, means shingles that are designed primarily to: (a) be wind and hail resistant; (b) provide heating and cooling efficiencies greater than those provided by customary composite shingles; or (c) provide solar generation capabilities.

SOLAR ENERGY DEVICES

The prior written approval of the architectural review authority established under the Declaration (the "Architectural Reviewer") shall be required for an owner or resident to install any Solar Energy Device. Any application to the Architectural Reviewer for installation of a Solar Energy Device must state the proposed installation location of the Solar Energy Device and include a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction, together with such other information as the Architectural Reviewer may reasonably request. The Architectural Reviewer must act provide its decision regarding the proposed installation within a reasonable period or within the period specified in the Declaration or other applicable governing document. The Architectural Reviewer may not withhold approval for installation of a Solar Energy Device UNLESS the Architectural Reviewer makes a determination that placement of the Solar Energy Device will create a condition that substantially interferes with the use and enjoyment of the property within the community by causing unreasonable discomfort or annoyance to persons of ordinary sensibilities. The foregoing right of the Architectural Reviewer to make such a determination is negated if all owners of property immediately adjacent to the owner/applicant provide written approval of the proposed placement.

Without limitation on the foregoing, except as otherwise approved in writing by the Architectural Reviewer, the Solar Energy Devices set forth below shall be prohibited.

- (1) A Solar Energy Device that, as adjudicated by a court, threatens the public health or safety, violates a law.
- (2) A Solar Energy Device that is located on property owned or maintained by the Association.
- (3) A Solar Energy Device that is located on property owned in common by the members of the Association.
- (4) A Solar Energy Device that is located in an area on the owner's or resident's property other than (a) on the roof of the home or of another structure allowed under the Declaration and/or the governing documents of the community; or (b) in a fenced yard or patio owned and maintained by the owner or resident.

(5) A Solar Energy Device, if mounted on the roof of the home, that (a) extends higher than or beyond the roofline or (b) is located in an area other than an area designated by the Architectural Reviewer, unless the alternate location increases the estimated annual energy production of the Solar Energy Device by more than ten percent (10%) above the energy production of the Solar Energy Device if located in an area designated by the Architectural Reviewer (such determination to be made by using a publicly available modeling tool provided by the National Renewable Energy Laboratory).

(6) A Solar Energy Device that does not conform to the slope of the roof and has a top edge that is not parallel to the roofline.

(7) A Solar Energy Device that has a frame, a support bracket, or visible piping or wiring that is not in a silver, bronze, or black tone commonly available in the marketplace.

(8) A Solar Energy Device, if located in a fenced yard or patio, that is taller than the fence line.

(9) A Solar Energy Device that, as installed, voids material warranties.

During any "declarant control period," "development period," or other period provided for in the Declaration during which in which the developer of the project has reserved a right to facilitate the development, construction, and marketing of the project, and to direct the size, shape, and composition of the project (each, a "Development Period"), the developer may prohibit or restrict an owner or resident from installing a Solar Energy Device. **Accordingly, and notwithstanding any provision in this policy to the contrary, during any applicable Development Period, the Architectural Reviewer may approve, deny, or further restrict the installation of a Solar Energy Device in any manner.**

ENERGY EFFICIENT ROOFING MATERIALS

While an owner or resident desiring to install Energy Efficient Roofing Materials will be required to comply with all applicable architectural review procedures set forth in the Declaration and governing documents of the community, notwithstanding any provision to the contrary in the Declaration or other governing documents of the community, the Architectural Reviewer may not prohibit an owner or resident from installing Energy Efficient Roofing Materials, provided that the Energy Efficient Roofing Materials: (i) resemble the shingles used or otherwise authorized for use within the community; (ii) are more durable than, and are of equal or superior quality to, the shingles used or otherwise authorized for use within the community; and (iii) match the aesthetics of adjacent property.

ATTACHMENT 7

PAYMENT PLAN GUIDELINES AND APPLICATION OF PAYMENTS SCHEDULE

Payment Plan Guidelines

1. A member of the Association who is delinquent in the payment of any regular or special assessments, or any other amounts owed to the Association (collectively, "Delinquent Payments"), shall be entitled to enter into a payment plan with the Association providing for an alternative payment schedule by which the member may make partial payments to the Association for Delinquent Payments (each, a "Payment Plan"). Each such Payment Plan shall be in accordance with terms of these Payment Plan Guidelines and the requirements of Section 209.0062 of the Texas Property Code (the "Code"). Notwithstanding the foregoing, or any provision herein to the contrary, the Board of Directors of the Association, in its discretion, may elect not to allow a Payment Plan for any member of the Association who has failed to honor the terms of a previous payment plan with the Association during the two (2) years following the member's default under the previous Payment Plan.

2. There shall be three (3) Payment Plans available as follows:

(a) Members owing Delinquent Payments to the Association totaling \$600 or less shall be entitled to pay all Delinquent Payments and any "Payment Plan Administrative Charges" (as defined below) owed in equal monthly installments over a period of six (6) months.

(b) Members owing Delinquent Payments to the Association totaling \$601-\$1200 shall be entitled to pay all Delinquent Payments and any "Payment Plan Administrative Charges" (as defined below) owed in equal monthly installments over a period of twelve (12) months.

(c) Members owing Delinquent Payments to the Association totaling \$1201 or more shall be entitled to pay all Delinquent Payments and any "Payment Plan Administrative Charges" (as defined below) owed in equal monthly installments over a period of eighteen (18) months.

3. Under any Payment Plan, in addition to the Delinquent Payments due and payable thereunder, the Association shall also be entitled to recover all interest due and payable on the member's Delinquent Payments (which interest shall continue to accrue on all Delinquent Payments in accordance with applicable provisions of the Association's governing documents), as well as the Association's reasonable costs associated with administering the Payment Plan (collectively, the "Payment Plan Administrative Charges").

4. Each Payment Plan shall be evidenced in writing by an agreement executed by both the member and an authorized representative of the Association. Such writing shall specify the total amount of Delinquent Payments owed, the total amount of Payment Plan Administrative Charges, and the period of repayment under the Payment Plan.

5. Each payment due under any Payment Plan shall be due on or before the first (1st) day of each month during the pendency of the Payment Plan.

6. Any payment made pursuant to a Payment Plan which is returned for insufficient funds, and any payment which is received after the due day thereof, shall constitute a material breach of the Payment Plan, in which event the Payment Plan shall terminate, and all unpaid amounts subject to the Payment Plan shall immediately become due and payable in full.

Application of Payments Schedule

1. In accordance with the terms of Section 209.0063 of the Code, except for payments made to the Association by members who are in default under any Payment Plan with the Association, a payment received by the Association from a member shall be applied to the member's debt in the following order of priority: (1) any

delinquent assessment; (2) any current assessment; (3) any attorney's fees or third party collection costs incurred by the Association associated solely with assessments or any other charge that could provide the basis for foreclosure; (4) any attorney's fees incurred by the Association that are not subject to subparagraph (3); (5) any fines assessed by the Association; and (6) any other amount owed to the Association.

2. Any payments received by the Association from a member of the Association who is in default under any Payment Plan with the Association shall be applied to the member's debt in the following alternative order of priority: (1) any attorney's fees or third party collection costs incurred by the Association in connection with collection of the member's debt; (2) any other fees and expenses reimbursable to the Association in connection with collection of the member's debt; (3) late charges and interest due by the member; (4) any delinquent assessment; (5) any current assessment; (6) any other amount owned to the Association (excluding fines); and (7) any fines assessed by the Association.

ATTACHMENT 8

RECORDS PRODUCTION AND COPYING POLICY

1. **Member Responsibility for Records Production and Copying Charges.** Upon receipt of a proper request for information, by a proper party pursuant to Section 209.005(c) of the Texas Property Code (the "Code"), the Association shall make the records described by Section 209.005 of the Code available pursuant to the terms thereof, within the time allotted therein, and shall otherwise comply with such provisions of Section 209.005 of the Code, including the withholding of certain information described therein. A member of the Association who requests any items from the Association in accordance with the terms of Section 209.005 of the Code shall be responsible for the costs, expenses and charges of the Association incurred in responding to such request in accordance with the terms of this Records Production and Copying Policy. The Association may, but shall not be required to, require advance payment of the estimated costs of compilation, production, and reproduction of the requested information. Reconciliation of any advance payment of estimated costs to actual costs shall be made in accordance with the procedures set forth in Section 209.005 of the Code.

2. **Personal Information.** In accordance with the provisions of Section 209.005(k) of the Code, and except as otherwise authorized or required pursuant to Section 209.005(l) of the Code, the Association shall not release or allow inspection of any books or records that identify the dedicatory instrument violation history of an individual owner, an owner's personal financial information, including records of payment or nonpayment of amounts due to the Association, an owner's contact information, other than the owner's address, or information related to an employee of the Association, including personnel files.

3. **Copy Charges.**

(a) **Standard paper copy.** The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page.

(b) **Nonstandard copy.** The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may be associated with a particular request. The charges for nonstandard copies are:

(1)	diskette:	\$1.00;
(2)	magnetic tape:	actual cost
(3)	data cartridge:	actual cost
(4)	tape cartridge:	actual cost
(5)	CD:	\$1.00;
(6)	DVD:	\$3.00;
(7)	JAZ drive:	actual cost
(8)	other electronic media:	actual cost;
(9)	VHS video cassette:	\$2.50;
(10)	audio cassette:	\$1.00;
(11)	oversize paper copy:	\$.50;
(12)	specialty paper:	actual cost.

4. **Labor Charges.** The charge for labor costs incurred in processing a request for public information is \$15 an hour. The labor charge includes the actual time to locate, compile, manipulate data, and reproduce the requested information.

5. **Overhead Charge.** Whenever any labor charge is applicable to a request, the Association may include in the charges direct and indirect costs, in addition to the specific labor charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative

overhead. The overhead charge shall be computed at 20% of the charge made to cover any labor costs associated with a particular request. Example: if one hour of labor is used for a particular request, the formula would be as follows: labor charge for locating, compiling, and reproducing, \$15.00 x .20 = \$3.00. An overhead charge shall not be made for requests for copies of 50 or fewer pages of standard paper records.

6. Remote Document Retrieval Charge. If the Association has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional labor charge shall be factored in for time spent locating documents at the storage location by the private company's personnel. If after delivery to the Association, the boxes must still be searched for records that are responsive to the request, a labor charge may be charged as provided above.

7. Miscellaneous Supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information, may be added to the total charge for public information.

8. Postal and Shipping Charges. The Association may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

ATTACHMENT 9

DOCUMENT RETENTION POLICY

SECTION 1

Introduction

1.1 Scope

This Document Retention and Destruction Policy (this "Policy") applies to the Montecillo Owners' Association, Inc., a Texas non-profit corporation (the "Association"), the Association's manager (the "Manager"), the Association's employees and the Association's Board of Directors (the "Board").

The documents maintained by the Association's legal counsel are not subject to this Policy.

1.2 Purpose

This Policy is created to establish guidelines for identifying, retaining, storing, protecting and disposing of the Association's books, records and other documents in the Association's and to ensure that the Association adheres to legal and business requirements in an efficient and cost-effective manner. For purposes of this Policy, the term "Documents" means any documentary material which is generated or received by the Association in connection with transacting its business or is related to the Association's legal obligations. The Documents include, among others, writings, drawings, graphs, charts, photographs, tape, disc, audio recordings, microforms, and other electronic documents from which information can be obtained or translated such as electronic mail, voice mail, floppy disks, hard discs and CD ROM.

1.3 Policy

- A. It is the Association's policy to maintain complete and accurate copies of the Documents. The Documents are to be retained for the period of their immediate use, unless longer retention is required for historical reference, contractual or legal requirements, or for other purposes as set forth in this Policy.
- B. Documents that are no longer required, or have satisfied their recommended period of retention, are to be destroyed in an appropriate manner.
- C. Unless otherwise directed by legal counsel, Documents may be scanned and maintained in an electronic format.
- D. The Manager, or in the event there is no Manager, the Secretary, is responsible for ensuring that the Documents are identified, retained, stored, protected and subsequently disposed of, in accordance with the guidelines set forth in this Policy.

1.4 Board Members

The Association does not require Board members to maintain any Documents that were generated by the Association. However, if a Board member receives Documents relating to the Association, which were not generated by the Association, or not received through the Association, Board members must send the originals of such Documents to the Manager to be maintained in the Association's records.

When a Board member ceases to be a Board member, such Board member shall turn over to the Manager or the Secretary of the Association, all Documents and files relating to the business of the Association, which are not otherwise in the Association's records.

1.5 Annual Purge of Files

The Manager shall conduct an annual purge of files. The annual purge of files is to be conducted during the first quarter of each calendar year.

1.6 Destruction Procedure

If the Documents to be destroyed are of public record, it is recommended that they be recycled. If recycling is not possible, the Documents may be placed in a trash receptacle.

If the Documents to be destroyed are not of public record, they should only be recycled if their confidentiality can be protected; otherwise, the Documents should be destroyed in a manner that ensures the information contained thereon remains confidential.

1.7 Miscellaneous

Copies of any Document may be destroyed, provided that an original is maintained in the Association's records or is otherwise not required to be maintained pursuant to this Policy.

1.8 Onset of Litigation

At the onset of litigation, or if it is reasonably foreseeable that litigation may be imminent, all Documents potentially relevant to the dispute must be preserved.

At the direction of legal counsel, the Manager will advise the Board, and any other person who may be in possession of Documents, of the matter and instruct them that all Documents potentially relevant to such litigation must not be destroyed. At the conclusion of the litigation, as determined by legal counsel, the "hold" period will cease and the time periods otherwise provided in this Policy will recommence.

SECTION 2

Document Retention Periods

Set forth below is a chart detailing the required retention periods for the Documents. The Documents are grouped into five functional categories as set forth below. For purposes of this Policy, the term "Permanent" means that the retention period for that Document is for the life of the Association, and the term "Termination" means expiration of the term of the applicable Document. For example: "Termination + 4 years" means four (4) years beyond expiration of the term of such Document.

1.	<u>Accounting Records</u>	<u>Retention Period</u>
	Audit Reports	Permanent
	Chart of Accounts	Permanent
	Fixed Asset Purchases	Permanent
	General Ledger	Permanent
	Accounts Payable	7 yrs
	Account Receivable	7 yrs
	Expense Records	7 yrs
	Financial Statements (Annual)	7 yrs
	Inventory Records	7 yrs
	Loan Payment Schedules	7 yrs
	Tax Returns	7 yrs
2.	<u>Bank Records</u>	<u>Retention Period</u>
	Bank Reconciliations	7 Yrs
	Bank Statements	7 Yrs
	Cancelled Checks	7 Yrs

	Electronic Payment Records	7 Yrs
3.	<u>Governing Documents and Corporate Records</u>	<u>Retention Period</u>
	Articles or Certification of Incorporation, Bylaws, Declaration and other Restrictive Covenants, including any amendments	Permanent
	Rules and Regulations	Permanent
	Policies and Guidelines	Permanent
	Record of Actions of Board or Members taken by Written Ballot or Written Consent in Lieu of a Meeting	Permanent
	Record Meeting Notice Waivers	Permanent
	Business Licenses	Permanent
	Contracts – Major	Permanent
	Correspondence from Legal Counsel	Permanent
	Leases/Mortgages	Permanent
	Board Minutes and Resolutions	7 Yrs
	Committee Minutes	7 Yrs
	Member Meeting Minutes	7 Yrs
	Contracts - Minor	Termination + 4 Yrs
	Insurance Policies	Termination + 4 Yrs
	Account Records of Current Association Members	5 Yrs
4.	<u>Employee Records</u>	<u>Retention Period</u>
	Benefit Plans	Permanent
	Pension/Profit Sharing Plans	Permanent
	Employee Files (ex-employees)	7 Yrs
	Employment Taxes	7 Yrs
	Payroll Records	7 Yrs
	Employment Applications, Resumes, Ads, or Notices for Job Opportunities	3 Yrs
5.	<u>Real Property Records</u>	<u>Retention Period</u>
	Construction Records	Permanent
	Warranties	Permanent
	Leasehold Improvements	Permanent
	Real Estate Purchases	Permanent
	Lease Payment Records	7 Yrs

ATTACHMENT 10

STATUTORY COMPLIANCE POLICY

In its 2011 regular legislative session, the Texas legislature adopted, and the governor signed into law, numerous new statutes and changes to existing statutes affecting homeowners associations (such changes, collectively, the "2011 HOA Legislation"). These changes in law, which were incorporated into Chapter 209 of the Texas Property Code (the "Code"), affect and govern the manner in which the Association may conduct member meetings, the methods by which members of the Association may vote at such meetings, and the procedures and requirements for holding meetings of the Association's Board of Directors (the "Board"). The requirements of the 2011 HOA Legislation are mandatory and control over otherwise applicable provisions which may be contained in the Association's bylaws and other governing documents (collectively, the "Governing Documents").

The purpose of this Statutory Compliance Policy is to summarize those provisions of the 2011 HOA Legislation which concern the Association's member meetings, voting procedures and Board governance, and to confirm that the Association, its members, and the Board will be bound by the 2011 HOA Legislation. As the 2011 HOA Legislation takes precedence over any contrary provisions in the Governing Documents, to the extent of any conflict between the terms and provisions of the 2011 HOA Legislation and the terms and provisions contained in the Governing Documents, the terms and provisions of the 2011 HOA Legislation, as summarized in this Statutory Compliance Policy, shall prevail.

REQUIREMENTS FOR MEMBER MEETINGS, VOTING, AND ELECTIONS

1. **Annual Meetings Mandatory.** As set forth in Section 209.014 of the Code, the Board is required to call an annual meeting of the members of the Association.

2. **Notice of Election or Association Vote.** As set forth in Section 209.0056 of the Code, not later than the tenth (10th) day or earlier than the sixtieth (60th) day before the date of an election or vote, the Association must give written notice of the election or vote to: (i) each owner of property in the Association, for purposes of an Association-wide election or vote; or (ii) each owner of property in the Association entitled to vote under the Governing Documents in a particular representative election, for purposes of a vote that involves election of representatives in the association which are vested under the Governing Documents with the authority to elect or appoint members of the Board.

3. **Vacancies in the Board; Replacement.** As set forth in Section 209.00593 of the Code, except during any applicable "Development Period" (as defined below), any member of the Board whose term has expired must be elected by owners who are members of the Association. A member of the Board may be appointed by the Board only to fill a vacancy caused by a resignation, death, or disability. A member of the Board appointed to fill a vacant position shall serve the unexpired term of the predecessor Board member. The foregoing requirements do not apply to a representative board whose members or delegates are elected or appointed by representatives of a property owners' association who are elected by owner members of such association. For purposes of this Compliance Policy, the term Development Period means a period stated in the Declaration during which the developer has reserved: (i) a right to facilitate the development, construction, and marketing of the community; and (ii) a right to direct the size, shape, and composition of the community.

4. **Eligibility for Board Membership.** As set forth in Section 209.00591 of the Code, except during any applicable Development Period, the Association may not restrict an owner's right to run for a position on the Board. If the Board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a member of the Board has been convicted of a felony or crime involving moral turpitude, the member of the Board is then immediately ineligible to serve on the Board, automatically considered removed from the Board, and prohibited from future service on the Board.

5. **Right to Vote.** As set forth in Section 209.0059 of the Code, any provision in the Governing documents that would disqualify an owner from voting in an Association election of Board members or on any matter concerning the rights or responsibilities of the owner is void.

6. **Voting; Quorum.** As set forth in Section 209.00592 of the Code, The voting rights of an owner may be cast or given: (i) in person or by proxy at a meeting of the Association; (ii) by absentee ballot; (ii) by "Electronic Ballot" (as defined below); or (iv) by any method of representative or delegated voting provided by the Association's governing documents. As defined in Section 209.00592 of the Code, Electronic Ballot means a ballot: (i) given by email, facsimile, or posting on an Internet website; (ii) for which the identity of the property owner submitting the ballot can be confirmed; and (iii) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner's ballot.

7. **Written Ballots.** As set forth in Section 209.0058 of the Code, any vote cast in an election or vote by a member of the Association must be in writing and signed by the member. Electronic votes constitute written and signed ballots. In an Association-wide election, written and signed ballots are not required for uncontested races.

8. **Absentee or Electronic Ballots.** As set forth in Section 209.00592(b) of the Code, an absentee or Electronic Ballot: (i) may be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot; (ii) may not be counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by an owner supersedes any vote submitted by absentee or Electronic Ballot previously submitted for that proposal; and (iii) may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or Electronic Ballot.

9. **Solicitation for Votes by Absentee Ballot.** As set forth in Section 209.00592(c) of the Code, any solicitation for votes by absentee ballot must include: (i) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action; (ii) instructions for delivery of the completed absentee ballot, including the delivery location; and (iii) the following language: *"By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail."*

10. **Tabulation of and Access to Ballots.** As set forth in Section 209.00594 of the Code, a person who is a candidate in an Association election or who is otherwise the subject of an Association vote, or a person related to that person within the third degree by consanguinity or affinity, may not tabulate or otherwise be given access to the ballots cast in that election or vote. A person tabulating votes in an Association election or vote may not disclose to any other person how an individual voted.

11. **Recount of Votes.** As set forth in Section 209.0057 of the Code, any owner may, not later than the fifteenth (15th) day after the date of the meeting at which the election was held, require a recount of the votes. A demand for a recount must be submitted in writing either: (i) by certified mail, return receipt requested, or by delivery by the U.S. Postal Service with signature confirmation service to the Association's mailing address as reflected on the latest management certificate; or (ii) in person to the Association's managing agent as reflected on the latest management certificate or to the address to which absentee and proxy ballots are mailed. The owner requesting the recount will be required to pay, in advance, expenses associated with the recount as estimated by the Association. Any recount must be performed on or before the thirtieth (30th) day after the date of receipt of a request and payment for a recount is submitted to the Association for a vote tabulator as set forth below.

At the expense of the owner requesting the recount, the Association shall retain for the purpose of performing the recount, the services of a person qualified to tabulate votes. The Association shall enter into a contract for the services of a person who: (i) is not a Member of the Association or related to a member of the

Board within the third degree by consanguinity or affinity; and (ii) is either a person agreed on by the Association and any person requesting a recount or is a current or former county judge, county elections administrator, justice of the peace or county voter registrar.

If the recount changes the results of the election, the Association must reimburse the requesting owner for the cost of the recount to the extent such costs were previously paid by the owner to the Association. The Association must provide the results of the recount to each owner who requested the recount.

Any action taken by the Board in the period between the initial election vote tally and the completion of the recount is not affected by any recount.

REQUIREMENTS FOR BOARD MEETINGS AND ACTION TAKEN BY THE BOARD OF DIRECTORS

1. **Requirements Applicable to "Board Meetings"**. The 2011 HOA Legislation sets forth various new requirements intended to make meetings of the Board open to and accessible by the Association's members; however, the 2011 HOA Legislation set forth a very specific definition of "Board Meeting," and these new requirements apply only to meetings of the Board which constitute Board Meetings as defined in Section 209.0051 of the Code. That section defined Board Meeting to mean a deliberation between a quorum of the Board, or between a quorum of the Board and another person, during which Association business is considered and the Board takes formal action. A Board Meeting does not include any gathering of a quorum of the Board at a social function unrelated to the business of the Association or the attendance by a quorum of the Board at a regional, state, or national convention, ceremonial event, or press conference, if formal action is not taken and any discussion of Association business is incidental to the social function, convention, ceremonial event, or press conference.

2. **Board Meetings During Development Period**. As set forth in Section 209.0051(i) of the Code, the requirements of the 2011 HOA Legislation with respect to open Board Meetings do not apply to Board Meetings during any applicable Development Period unless the Board Meeting is conducted for the purpose of: (i) adopting or amending the Governing Documents; (ii) increasing the amount of regular assessments of the Association or adopting or increasing a special assessment; (iii) electing non-developer Board members or establishing a process by which those Board members are elected; or (iv) changing the voting rights of members of the Association. Given this, the following provisions of this Compliance Policy apply to Board Meetings only if the action taken at such Board Meeting involves any of items (i) through (iv) set forth in this paragraph.

3. **Open Board Meetings**. As set forth in Section 209.0051(c) of the Code, all regular and special Board Meetings must be open to owners. However, the Board has the right to adjourn a meeting and reconvene in closed executive session to consider actions involving: (i) personnel; (ii) pending or threatened litigation; (iii) contract negotiations; (iv) enforcement actions; (v) confidential communications with the Association's attorney; and (vi) matters involving the invasion of privacy of individual owners, or matters that are to remain confidential by request of the affected parties and agreement of the Board. Following an executive session, any decision made by the Board in executive session must be summarized orally in general terms and placed in the minutes, without breaching the privacy of individual owners, violating any privilege, or disclosing information that was to remain confidential at the request of the affected parties. The oral summary must include a general explanation of expenditures approved in executive session.

4. **Location of Board Meeting**. As set forth in Section 209.0051(c-1) of the Code, except for a Board Meeting held by electronic or telephonic means as permitted by Section 209.0051(h) of the Code (as described in Section 8 below), a Board Meeting must be held in the county in which all or a party of the property in the subdivision is located or in a county adjacent to that county, as determined in the discretion of the Board.

5. **Record; Minutes of Board Meeting**. As set forth in Section 209.0051(d) of the Code, the Board must keep a record of each regular or special Board Meeting in the form of written minutes of the Board Meeting. The Board must make meeting records, including approved minutes, available to a the Association's members for

inspection and copying on written request to the Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the Board.

6. **Notice of Board Meeting.** As set forth in Section 209.0051(e) of the Code, members of the Association must be given notice of the date, hour, place, and general subject of a regular or special Board Meeting, including a general description of any matter to be brought up for deliberation in executive session. The notice must be: (i) mailed to each property owner not later than the tenth (10th) day or earlier than the sixtieth (60th) day before the date of the meeting; or (ii) provided at least seventy-two (72) hours before the start of the meeting by: (a) posting the notice in a conspicuous manner reasonably designed to provide notice to Association members in a place located on the Association's common area property or on any website maintained by the Association; and (b) sending the notice by e-mail to each owner who has registered an e-mail address with the Association. It is an owner's duty to keep an updated e-mail address registered with the Association.

7. **Recessing and Reconvening Board Meeting.** As set forth in Section 209.0051(g) of the Code, if the Board recesses a regular or special Board Meeting to continue the following regular business day, the Board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special Board Meeting is continued to the following regular business day, and on that following day the Board continues the Board Meeting to another day, the Board shall give notice of the continuation in at least one manner as set forth above within two (2) hours after adjourning the meeting being continued.

8. **Board Meeting without Prior Notice.** As set forth in Section 209.0051(h) of the Code, A Board may meet by any method of communication, including electronic and telephonic, without prior notice to owners if each director may hear and be heard and may take action by unanimous written consent to consider routine and administrative matters or a reasonably unforeseen emergency or urgent necessity that requires immediate Board action. Any action taken without notice to owners must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes of the next regular or special Board meeting.

Notwithstanding the foregoing, the Board may not, without prior notice to owners under Section 6 above, consider or vote on: (i) fines; (ii) damage assessments; (iii) initiation of foreclosure actions; (iv) initiation of enforcement actions, excluding temporary restraining orders or violations involving a threat to health or safety; (v) increases in assessments; (vi) levying of special assessments; (vii) appeals from a denial of architectural control approval; or (viii) a suspension of a right of a particular owner before the owner has an opportunity to attend a Board meeting to present the owner's position, including any defense, on the issue.

MONTECILLO OWNERS ASSOCIATION, INC.

DECLARANT APPOINTMENT OF DIRECTORS

EPT MESA DEVELOPMENT, L.P., a Delaware limited partnership, is the current "Declarant" under the terms and provisions of that certain Master Declaration of Covenants, Conditions and Restrictions for Montecillo Subdivision Units One, Two and Three, recorded as Document No. 20090006318, Official Public Records of El Paso County, Texas (the "Master Declaration").

Pursuant to Sections 4.3 and 4.4 of the Master Declaration, Declarant presently has the right to appoint and remove all members of the Board of Directors of the Montecillo Owners Association, Inc., a Texas non-profit corporation (the "Association").

The Board of Directors of the Association (the "Board") consists of three (3) members. In accordance with the foregoing authority, Declarant hereby appoints the following individuals to serve on the Board:

Richard E. Aguilar
David Bogas
Joseph Fulkerson

All prior appointments of directors to the Board are hereby revoked as of the effective date of this appointment.

EXECUTED TO BE EFFECTIVE as of the 17th day of October, 2014.

DECLARANT:

EPT MESA DEVELOPMENT, L.P.
a Delaware limited partnership

By its General Partner

EPT Mesa Development Management, LLC
A Delaware limited liability company

By its Manager

~~EPT Land Management, LLC
A Texas limited liability company~~

By: _____

~~Richard Aguilar, its Manager~~

Doc# 20150017323
#Pages 35 #FPages 1
3/18/2015 8:46:37 AM
Filed & Recorded in
Official Records of
El Paso County
Dalia Briones
County Clerk
Fees \$162.00

36
RC

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.



Dalia Briones

EL PASO COUNTY, TEXAS