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23 Pages

**COURTESY RECORDING
NO TITLE LIABILITY**

Doc# 20080045350

**SECOND AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

This Second Amended and Restated Declaration is made on the date last entered by WILDWOOD DEVELOPERS, L.L.C., a Texas limited liability company ("Declarant"), and is as follows:

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property located in El Paso, El Paso County, Texas, and more particularly described as follows:

The Park at Wildwood, an addition to the City of El Paso, El Paso County, Texas according to the plat on file in Book 80, Page 53, Plat Records of El Paso County, Texas as amended by Amending Plat One which appears of record under Clerk's File No. 20070033954, Real Property Records of El Paso County, Texas; Amending Plat Two which appears of record under Clerk's File No. 20070033977, Real Property Records of El Paso County, Texas; Amending Plat Three which appears of record under Clerk's File No. 20070033980, Real Property Records of El Paso County, Texas; Amending Plat Four which appears of record under Clerk's File No. 20070033984, Real Property Records of El Paso County, Texas; and Amending Plat Five which appears of record under Clerk's File No. 20070033974, Real Property Records of El Paso County, Texas (the "Property");

Declarant filed a Declaration of Covenants, Conditions and Restrictions with respect to the Property which has been recorded under Clerk's File No. 20050048352, Real Property Records of El Paso County, Texas, and filed a First Amended Declaration of Covenants, Conditions and Restrictions with respect to the Property which has been recorded under Clerk's File No. 20070036219, Real Property Records of El Paso County, Texas, and desires to amend and restate such Declarations as provided herein;

NOW THEREFORE, Declarant hereby declares that all of the Property shall be held, sold, transferred, and conveyed and occupied subject to the following easements,

restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Lot Owner thereof.

ARTICLE I.
DEFINITIONS

Section 1. **"Architectural Standards"** shall mean those standards set forth on Exhibit A attached hereto and made part hereof.

Section 2. **"Assessments"** shall mean Annual and/or Special Assessment levied by the Association as provided herein and in the Bylaws adopted by the Board of Directors of the Association.

Section 3. **"Association"** shall mean and refer to THE PARK AT WILDWOOD HOME OWNERS ASSOCIATION, a Texas nonprofit corporation, its successors and assigns.

Section 4. **"Board of Directors"** or "Board" shall mean the Directors named in the Articles of Incorporation of the Association and their duly elected successors.

Section 5. **"Builder"** shall mean any person or entity, including an Owner, who constructs a Residence or any other improvement on a Lot, or who remodels by adding to or subtracting from an existing residence or other improvement, for either personal use, profit, or for the assistance of another party. No distinction shall exist between construction performed under a contract or performed for the purpose of speculation.

Section 6. **"Parkways"** shall mean those areas adjacent to Lots, which are located between the sidewalk and the curb, and which are part of the street rights of way in the Subdivision.

Section 7. **"Declarant"** shall mean and refer to WILDWOOD DEVELOPERS, L.L.C., its successors and assigns.

Section 8. **"Declaration"** shall mean this First Amended and Restated Declaration of Covenants, Conditions.

Section 9. **"Monument Sign"** shall mean the permanent sign with the name of the subdivision which is located on the south side of the entrance to the Subdivision at Westwind Drive into Snowheights Drive, El Paso, Texas, in the Private Landscape

Easement recorded as Amending Plat No. 5 under Clerk's File No. 20070033974, Real Property Records of El Paso County, Texas.

Section 10. "Lot" shall mean those plots of land numbered 1 through 27, 29 through 32, and 34 through 52, Block 1, Lots 2 through 17, Block 2 and Lots 1 through 7, Block 3 on the recorded subdivision map and the amending plats referenced above. Lots 28 and 33, Block 1, and Lot 1, Block 2 are not for residential construction but are drainage Rights of Way and have been dedicated by plat to the City of El Paso.

Section 11. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot in the Subdivision, including any purchaser under Contract of Sale, but excluding those having such interest merely as security for the performance of an obligation.

Section 12. "Plat" shall mean the subdivision plat of The Park at Wildwood filed in the Plat Records of El Paso County, Texas and shall include the amending plats referenced above in the Property description.

Section 13. "Residence" shall mean an improvement on a Lot which is designed to be used for single family residence and related improvements, but shall not include recreational vehicles, motor homes, trailers or prefabricated homes, manufactured homes or mobile homes, whether with or without permanent foundations.

Section 14. "Subdivision" shall mean The Park at Wildwood.

Section 15. "Subdivision Improvement Plans" shall mean those plans required by the El Paso Subdivision Ordinance, which have been prepared by Declarant and approved by the City Engineer in connection with the development of the Subdivision. The Subdivision Improvement Plans generally consist of Street, Grading, and Drainage Plans.

Section 16. "Variance" shall mean and refer to any duly authorized written determination of the Architectural Review Committee which modifies the Architectural Standards.

ARTICLE II

ASSOCIATION RIGHTS AND OBLIGATIONS

Section 1. **Association Rights.** Every Owner shall take title to his/her Lot, subject to the following provisions:

- a. The Association has the right to levy Annual and Special Assessments against each Owner as provided herein and to collect such assessment as provided in Article IV.

b. The Association has the primary right and obligation to enforce this Declaration after the Board is notified of or otherwise discovers a violation of its terms; provided, however, nothing herein shall be construed to prevent any Owner of a Lot from enforcing this Declaration if the Association fails or refuses to do so after being served with not less than 30 days prior written notice of a violation.

c. The Board, the Architectural Review Committee, and their engineers or contractors have the right to enter upon a Lot, without committing a trespass, to evaluate whether slopes on a Lot, or the drainage on a Lot, or the condition of the landscaping in the Parkways abutting the Lot, or the condition of the Residence on a Lot, comply with this Declaration. Entry shall be only after the Owner of the Lot has been given three days prior written notice. Entry upon a Lot after notice shall be during normal business hours Monday through Friday. The Board and the Architectural Review Committee shall have the right to exercise its right to ingress and egress at any time, without prior notice, in the event an emergency arises that requires immediate attention.

Section 2. **Association Obligations.** The Association shall be obligated to repair and/or maintain the following:

a. All landscaping on the Private Landscape Easement on Lot 1, Block 1 of the Plat.

b. The Monument Sign located on the Private Landscape Easement on Lot 1, Block 1 of the Plat.

c. The Monument Sign located on street right of way adjacent to Lot 1, Block 2 of the Plat.

d. The Parkways situated on the north side of Snowheights that abut Lots 7 through 17, Block 2, the Parkway that abuts the east side of Lot 17, Block 2, the Parkway that abuts the west side of Lot 1, Block 3, the Parkway that abuts the east side of Lot 7, Block 3, and the Parkways situated on the south side of Wildwood Court that abut Lots 1 through 7, Block 3.

e. Parkways that an Owner fails to maintain after notice of default as provided in Section 3, Article VIII.

f. Any Lot or Residence that an Owner fails to maintain after notice of default as provided in Section 3, Article VIII.

g. The landscaping on that part of the Westwind right of way that is not paved and is situated between the rock wall on the boundary line of Lot 1, Block 2 and the pavement of Westwind Drive.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS AND GOVERNANCE

Section 1. Initial Members. The Declarant has organized the Association. The initial members of the Association's Board of Directors are Arnold B. Peinado, Jr, Gustavo C. Quintana and David A. Carmona. The Board of Directors has adopted Bylaws. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2. **Membership Classes.** The Association shall have two classes of voting membership:

- a. Class A. Class A members shall be Owners with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lots shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.
- b. Class B. The Class B member shall be the Declarant and it shall be entitled to five (5) votes for each Lot owned. Class B membership shall cease and be converted to Class A membership when the Declarant owns no more than four (4) Lots in the Subdivision.

Section 3. **Board Size.** The Board may increase its size to five (5) members by resolution as provided in the Bylaws. Board members shall be elected by the Lot Owners and perform their duties as provided in the Bylaws. So long as Declarant owns more than four (4) Lots in the Subdivision, any amendment to the Bylaws shall require Declarant's prior written consent before it can become effective.

ARTICLE IV
COVENANT FOR ASSESSMENTS

Section 1. **Personal Obligation to pay Assessments.** The Declarant, for each Lot owned within the Subdivision, hereby covenants, and each Owner of any Lot by acceptance of a deed to such Lot, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (a) Annual Assessments; and (b) Special Assessments, such Assessments to be levied and collected as hereinafter provided. Annual and Special Assessments, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the Owner of such Lot at the time when the Assessment is levied. The personal obligation of an Owner for delinquent Assessments shall not pass to his grantee unless expressly assumed by such grantee.

Section 2. **Purpose of Annual Assessments.** The Annual Assessments levied by the Association shall be used exclusively for the cost of maintaining and replacing the landscaping on any Parkways that require such work after default by the Owner of the Lot abutting such Parkways, the cost of maintaining and replacing the

landscaping on the private landscape easement on Lot 1, Block 1, the cost of premiums for general liability insurance for the Association, real and personal property taxes assessed against the area covered by the private landscape easement on Lot 1, Block 1 and any real and personal property owned by the Association, the cost of maintaining and repairing the Entrance Monument Signs and maintaining the real property on which the Monument Signs are located, the cost of utilities (electricity and water) that serve the areas maintained by the Association, including the Entrance Monument Signs, the cost of maintaining and replacing the landscaping on that part of the Westwind right of way that is not paved and is situated between the rock wall on the boundary line of Lot 1, Block 2 and the pavement of Westwind Drive, fees charged by the City of El Paso for a franchise agreement to place a monument sign on street right of way adjacent to Lot 1, Block 2; costs incurred by the Architectural Review Committee to implement and enforce the Declaration and the Architectural Standards, property management fees, security company fees, costs incurred by the Board of Directors to administer the Declaration, including attorneys' and accounting fees, costs of collecting assessments, and any other costs that are not specifically identified herein but which are incidental to the administration of the Declaration.

Section 3. **Maximum Annual Assessment.** During 2008, the maximum Annual Assessment shall be **two hundred forty and 00/100 Dollars** (\$ 240.00) per Lot. After January 1, 2009, the maximum Annual Assessment may be increased by the Board of Directors each year up to but not more than ten percent (10%) above the maximum Assessment for the previous year without a vote of the membership. After January 1, 2009, the maximum Annual Assessment may be increased by more than 10 percent (10%) above the maximum Assessment for the previous year only by an affirmative vote of two-thirds (2/3) of the Class A members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 4. **Purpose of Special Assessments.** In addition to the Annual Assessments authorized above, the Association may levy, during any calendar year, a Special Assessment applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of the landscaping required to be maintained or replaced by the Association, the cost to implement Article VIII herein, and the cost to repair or replace the Monument Signs, provided that any such Assessment shall have the affirmative vote of two-thirds (2/3) of the votes of each class of member who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. **Notice and Quorum for any Action Authorized Under Sections 3 and 4.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 of this Article shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. All decisions and notices shall be delivered as indicated in Section 2, Notices, of Article X. At the first such meeting called, the presence of Owners entitled to cast fifty one percent (51%) of all votes shall constitute a quorum. An Owner's right to vote is subject to suspension as provided in Section 7 of this Article.

Section 6. Date of Commencement of Annual Assessments and Due

Dates. The Annual Assessments shall commence on January 1 of each year subject to the following provisions. As each Lot is sold, the Annual Assessment, and any Special Assessment, shall be prorated over the number of months remaining in the calendar year. The Board of Directors shall levy the amount of the Annual Assessment against each Owner not later than January 31 each calendar year and such levy shall relate back to January 1 regardless of when the levy was made. Written notice of the Annual Assessment shall be sent to every Owner subject thereto. All decisions and notices shall be delivered as indicated in Section 2, Notices, of Article X. The due date for the payment of the Annual Assessment shall be established by resolution of the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Annual Assessments and any Special Assessment pertaining to a Lot have been paid. The Association shall also be entitled to collect a late charge in such amounts and upon such conditions as the Board of Directors may from time to time determine. During any calendar year, the Declarant shall not be obligated to pay the Annual Assessment for the Lots that it owns so long as the Declarant pays the difference between the total costs of operating the Association and amounts collected from other Owners. The Declarant may, upon thirty (30) days prior written notice, notify the Association that it will no longer pay the difference between costs and collected Annual Assessment as described in the preceding sentence and will commence paying the Annual Assessment for each Lot it owns. The Declarant shall remain liable for the difference between costs incurred and collected Annual Assessments prior to the effective date of the notice.

Section 7. Effect of Nonpayment of Annual or Special Assessments:

Remedies of the Association. Assessments that are not paid when due shall be delinquent. If an Assessment is not paid within thirty (30) days after the due date, the Assessment shall bear interest from the date of delinquency at the prime rate quoted in the Wall Street Journal on the date of delinquency plus one percent (1%) and shall constitute a lien or charge against the Owner's Lot. In no event shall the interest charged on a delinquent account exceed the maximum rate provided by law. The Association may bring an action of law against the Owner personally obligated to pay the same, or foreclose the lien against such Owner's Lot. Interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such Assessment. Each Owner, by his acceptance of a deed to a Lot, hereby expressly vests in the Association and its attorneys the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as provided in a deed of trust with power of sale and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association, acting on behalf of the Lot Owners, shall have the power to bid in the interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein by abandonment of his

Lot. At the time of closing of the sale of a Lot by a Lot Owner any pending liens shall be paid to the Association by the Title Company. Any Owner who is delinquent in the payment of an Assessment shall not be entitled to vote at any regular or special meeting of the members of the Association so long as such Owner remains delinquent.

Section 8. Subordination of the Lien to Mortgages. The lien for Assessments provided for herein shall be subordinate to any purchase money first Deed of Trust lien on a Lot. Sale or transfer of any Lot shall not affect the Assessment lien. However, the exercise of a power of sale in purchase money Deed of Trust by a trustee shall extinguish the lien for Assessments which became due prior to such sale or transfer. Otherwise, no sale or transfer shall extinguish the lien securing unpaid delinquent Assessments.

Section 9. Exempt Property. All properties dedicated to and accepted for maintenance by the City of El Paso or any other governmental entity authority, including the Lots designated on the Plat of the Subdivision as Drainage Rights of Way, shall be exempt from the Assessments created herein.

Section 10. Management Agreements. Each Owner of a Lot hereby agrees to be bound by the terms and conditions of property management agreements entered into by the Association. A copy of all such agreements shall be available to each Owner. Any and all management agreements entered into by the Association shall provide that said management agreement may be canceled by an affirmative vote by Owners holding a majority of votes at a meeting at which a quorum is present. In no event shall an existing management agreement be canceled prior to entering into a new management agreement that will become operative immediately upon the cancellation of the existing management agreement. The Association shall be obligated to contract with a property management company that is competent and qualified to manage the affairs of the Association.

Section 11. Insurance. The Board of Directors or its duly authorized agent shall obtain a public liability insurance policy covering the Association, in amounts of not less than \$1,000,000 per occurrence for injury or death to persons and \$100,000 for damage to property. Said insurance shall include coverage against malicious mischief and vandalism. The insurance policy shall be in the name of the Association.

Section 12. Indemnification. The Association shall indemnify every officer, director, Architectural Review Committee member and committee member against all expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, Architectural Review Committee members and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The

officers, directors and Architectural Review Committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association. The Association shall indemnify and forever hold each such officer, director, Architectural Review Committee members and committee members harmless from any and all liability to others on account of any such contract, commitment or action. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall procure a policy of directors' liability insurance to fund this obligation.

Section 13. Security. The Association may, but shall not be obligated to, contract with a security services company to provide security services for the benefit of the Owners. NEITHER THE ASSOCIATION, ITS DIRECTORS AND OFFICERS, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PARK AT WILDWOOD, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE SECURITY SERVICES OR BY REASON OF THE INEFFECTIVENESS OF ANY SECURITY MEASURES UNDERTAKEN. EACH OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE CAUSED BY THIRD PARTIES.

ARTICLE V **ARCHITECTURAL REVIEW**

Section 1. Architectural Review. No Residence, improvements, building, fence, wall or other structure shall be commenced, erected, maintained or altered on any Lot nor shall any exterior addition to or change or alteration to a Residence be made or undertaken, until the Construction Documents and the landscape plan required herein shall have been submitted to and approved in writing by the Architectural Review Committee as being in compliance with the Architectural Standards, which are attached hereto and incorporated herein as Exhibit A. All construction performed on a Lot shall comply with all applicable Federal and State laws, and ordinances, codes and rules and regulations of the City of El Paso and regulations of other governmental agencies having jurisdiction over the Subdivision.

Section 2. Construction Start and Completion. Construction of a residence on a vacant Lot must be started within twelve (12) months after the vacant Lot is first purchased by an Owner not a Builder. Builders must start construction within twenty four (24) months after the vacant Lot is first purchased. Construction will be considered to be started only if a complete foundation has actually been placed, inspected and approved by the City of El Paso prior to the end of the indicated period for Owners and Builders. Once started, construction of the Residence must be completed within one (1) year from the start date. A Residence will be considered to be completed only if an occupancy permit has been issued by the City of El Paso. If an Owner or Builder has not started the Residence or completed the Residence as provided above, the Declarant or, if the Declarant is no longer the Class B member, the Association shall have the right and

option to purchase the Lot on the following terms. If the Residence has not been started, the purchase price shall be the price paid by the Owner or Builder, excluding the Owner's or Builder's closing costs, plus three percent (3%), plus real property taxes for the year of sale. If the Residence has been started but not completed, the purchase price shall be the price paid by the Owner or Builder, excluding the Owner's or Builder's closing costs, plus three percent (3%), plus real property taxes for the year of sale, less the reasonable cost of demolishing the Residence. Each Owner hereby grants the Declarant and, if applicable, the Association the right and option to purchase Owner's or Builder's Lot on the terms and conditions set forth above. The purchase price shall be payable in cash. The Declarant or, if applicable, the Association, must exercise its right and option to purchase as provided herein within sixty (60) business days following the last date on which the Lot Owner or Builder was obligated to start construction or complete construction, whichever date is applicable. The Declarant, or the Association, if applicable, shall exercise its right by serving the Owner with a notice stating that it will exercise its option to purchase and stating a closing date, which cannot be more than 60 days after the date of the notice. All decisions and notices shall be delivered as indicated in Section 2, Notices, of Article X. If the Declarant or the Association fail to exercise its option to purchase within the time frame stated above, it shall be deemed to have waived its option to purchase.

Section 3. **Failure to Approve.** If complete Construction Documents and the landscape plans required herein are submitted to the Architectural Review Committee and it fails to either approve or reject such Construction Documents and/or landscape plans for a period of twenty (20) days following the date of such submission, then such Construction Documents and/or landscape plans shall be deemed approved.

Section 4. **Initial Committee Members.** The initial members of the Architectural Review Committee shall be Arnold B. Peinado, Jr., Gustavo C. Quintana and David A. Carmona. 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 shall have full authority to designate a successor. The Declarant shall have the right to appoint all of the members to the Architectural Review Committee until all of the Lots in the Subdivision have been sold by the Declarant and Residences have been constructed on all Lots.

Section 5. **New Committee Members.** Following the date on which all Lots have been sold by the Declarant and Residences have been constructed on all Lots, the Board shall have the right to appoint members to the Architectural Review Committee.

Section 6. **Committee Liability.** Neither the Architectural Review Committee nor any member thereof shall be liable to any Owner for any damage, loss or prejudice suffered or claimed on account of:

- a. the approval or disapproval of any plans and specifications, whether or not defective, so long as such approval or disapproval was not strictly arbitrary;

- b. the construction or performance of any work, whether or not pursuant to approval of plans and specifications;
- c. the development or manner of development of any Lot;
- d. the written notifications of approval or disapproval whether or not the facts therein are correct.

Without in any way limiting the generality of the foregoing, the Architectural Review Committee or any member thereof, may, but is not required to, consult with or hear any Owner or Builder with respect to any plans and specifications, or any other proposal submitted to the Architectural Review Committee. This paragraph shall not be construed to permit or authorize the Architectural Review Committee to arbitrarily fail or refuse to review and either approve or disapprove plans and specifications.

Section 7. Written action of Architectural Review Committee. The Architectural Review Committee shall issue written approvals or disapprovals of the Construction Documents and/or landscape plans required herein. To apply for approval of the Construction Documents and/or landscape plans required herein, an Owner shall follow the steps set forth below:

- a. If an Owner or Builder desires to obtain approval of a conceptual plan, the Owner or Builder or she shall provide the following information: a general description of exterior materials to be used or installed, drawings showing the concept proposed and the exterior colors selected for the initial Residence exterior design, for improvements or modifications of the structures listed in Section 1 of this Article. Approval of a conceptual plan shall not be a prerequisite to final approval. Preliminary approval shall be by one of two members if only two members attend a meeting and two of three members if all three members attend a meeting. The determination of whether a conceptual plan will be preliminarily approved shall be made within fifteen (15) calendar days after the Architectural Review Committee has received a conceptual plan drawn to scale, a site plan, a floor plan and a front elevation.
- b. When an Owner or Builder desires to obtain final approval of the initial conceptual plans, improvements or modifications indicated in the proposed conceptual documents or, if no conceptual plans have been submitted, the approval of the completed documents for the construction of a proposed Residence, the Owner or Builder shall provide the following final Construction Documents: detailed specifications of exterior materials to be used and installed, a site plan, and complete professional drawings of the final proposed exterior improvements drawn to scale including exterior colors and building materials and a site plan, floor plan and building elevations. Every Owner or Builder shall obtain final approval of his Residence Construction Documents. Final approval shall be by one or two members if only two members attend a meeting and two of three members if all three members attend a meeting. The determination of

whether plans and specifications will be finally approved shall be made within fifteen (15) calendar days after the Architectural Review Committee has received all Construction Documents and information required by the Architectural Standards. In order to be approved, the Construction Documents shall comply with not only the Architectural Standards but also all laws, ordinances, codes and rules and regulations of the City of El Paso, County of El Paso, State of Texas and other governmental authority having jurisdiction over the Property and the construction of improvements thereon. Final documents must be provided not less than 30 calendar days prior to submittal for a building permit.

c. When an Owner or Builder desires to obtain final approval of Owner or Builder landscape plan for the proposed Residence, Owner or Builder shall provide the following information: the type of plants and hardscape materials to be installed, the color and design of the hardscape and the distribution of the plants and such other information as is required by any landscape ordinance in effect in El Paso, Texas. Every Owner or Builder shall obtain final approval of the proposed landscape plan. Final approval shall be by one or two members if only two members attend a meeting and two of three members if all three members attend a meeting. The determination of whether plans and specifications will be finally approved shall be made within fifteen (15) calendar days after the Architectural Review Committee has received all documents and information required by the Architectural Standards. In order to be approved, the documents shall comply with not only the Architectural Standards but also all laws, ordinances, codes and rules and regulations of the City of El Paso, County of El Paso, State of Texas and other governmental authority having jurisdiction over the Property and the construction of improvements thereon.

d. The Architectural Review Committee shall notify, in writing, the Owner or Builder who applied for conceptual, final or landscaping approval within fifteen (15) calendar days after plans and specifications have been received by the Architectural Review Committee. All decisions and notices shall be delivered as indicated in Section 2, Notices, of Article X. If the Architectural Review Committee fails or refuses to notify the Owner or Builder of approval or disapproval within the fifteen (15) calendar day period, such plans and specifications shall be deemed approved by the Architectural Review Committee. The Architectural Review Committee may, however, extend the approval period by mutual agreement of the Architectural Review Committee and the Owner or Builder.

e. Until otherwise notified, all Owners or Builders shall submit plans and specifications for the proposed Residence and landscaping to the Architectural Review Committee, at the office of Wildwood Developers, L.L.C., 299 Shadow Mountain Dr., Suite C, El Paso, Texas 79912, Attn: Arnold B. Peinado, Jr. or Gustavo C. Quintana. When and if the plans and specifications contain all information required by this Declaration and the Architectural Standards, the

Architectural Review Committee, shall set a date, time and place for a meeting to review the plans and specifications submitted with the Owner and/or Builder.

Section 8. Variance. The Architectural Review Committee is hereby authorized and empowered, upon written request of an Owner or Builder, to grant such Variances from the Architectural Standards as will be in the best interest of all Owners where, owing to the Lot itself or special conditions caused by property adjacent to the Lot, whether within or without the Property, a literal enforcement of the provisions of the Architectural Standards will prevent a reasonable use of the Lot or a reasonable design of the residence and other improvements to be constructed on such Lot. All decisions of the Architectural Review Committee shall be reasonable under the circumstances and shall not be arbitrary or capricious. In making its decision, the Architectural Review Committee may completely dispense with the application of a particular design standard where the particular circumstances so warrant. The Architectural Review Committee shall render its decision either approving or disapproving a request for variance not later than twenty (20) calendar days following receipt of the request and all information reasonably necessary to determine whether the variance request is in the best interest of all Owners. The decision of the Architectural Review Committee shall be made by one of two members if only two members attend a meeting and by two of three members if three members attend a meeting. All decisions and notices shall be delivered as indicated in Section 2, Notices, of Article X. If the Architectural Review Committee fails to approve or disapprove within twenty (20) calendar days following the receipt of the Variance request, then the request shall be deemed approved. The Architectural Review Committee shall not consider a request for Variance that is the same or substantially similar to one that has been previously disapproved for a period of six (6) months from the date of disapproval. Further, the Architectural Review Committee shall not consider any request for Variance which may be in violation of any statute, ordinance or rule and regulation to which a Lot is subject; provided, however, if the subject of the request is on its face unlawful, but can be made lawful by governmental administrative action, then the Architectural Review Committee may conditionally approve such request subject to favorable governmental administrative action.

Section 9. Architectural Standards. All Construction Documents and landscape plans and all improvements made pursuant to such Construction Documents and landscape plans shall comply with the Architectural Standards described on Exhibit A. Any conflict between the Architectural Standards and this Declaration shall be resolved in favor of this Declaration.

Section 10. Rules. The Architectural Review Committee shall have the right to promulgate such rules as it deems necessary to further implement the provisions of this Article. Each Lot Owner shall be bound by such Rules.

ARTICLE VI **EASEMENTS**

Section 1. **Publicly Dedicated Easements on Plat.** No residence or other improvements (except landscaping) shall be erected or permitted to remain on any part of a Lot which has been dedicated to the public on the Subdivision Plat for utilities, fire, drainage or any other public purpose on the Plat.

Section 2. **Private Landscape Easement on Lot 1, Block 1 of the Plat.** No residence or other improvements shall be erected or permitted to remain on that part of Lot 1, Block 1 that has been identified on the Plat as a Private Landscape Easement, except for landscaping and the entrance monument sign. The Association shall be solely responsible for the cost of maintaining the landscaping and the entrance monument sign on that part of Lot 1, Block 1 which is subject to the Private Landscape Easement. The Owner of Lot 1, Block 1 shall not have any right to use the Private Landscape Easement on Lot 1, Block 1 for any purpose and shall not have the right, except through a vote as a member of the Association, to determine the type and extent of landscaping on the Private Landscape Easement or the location of the entrance Monument Sign.

Section 3. **View Easements.** There are no easements of view encumbering or benefiting any Lot.

ARTICLE VII **LAND USE**

Section 1. **Building Type.** Except as provided in this Section 1, no Lot shall be used except for residential purposes and no structure shall be erected, altered, or placed or permitted to remain on any of said Lots, or any part thereof, other than one single family Residence together with an attached private 3 car garage or less. Provided, however, if that part of Lot 1, Block 1 that is not designated as a private landscape easement on the Plat is acquired by the owner of Lot 2, Block 1, it may be used for a garage and a swimming pool and related improvements instead of a single family residence.

Section 2. **Leasing.** Any Lot Owner may lease or rent his/her Residence, subject to the terms of this Declaration.

Section 3. **Re-Subdivision of a Lot.** No Lot may be re-subdivided.

Section 4. **No Duplexes.** No Residence shall be converted into a duplex.

Section 5. **Damage or Destruction.** In the event of reconstruction or restoration required by damage or destruction of any Residence, such Residence must be restored to the same condition shown in the original exterior drawings and specifications, except to the extent that changes may be required to bring the structure into conformance with current ordinances of the City of El Paso. Any exceptions or deviations from the

original exterior design must have written approval of the Architectural Review Committee.

Section 6. **Garage Conversion.** No garage of any Residence shall be enclosed for living purposes or converted to any use other than as a garage for the storage of motor vehicles or a for a home workshop. The garage door shall always be in place and operable and shall be closed except when the garage is in use.

Section 7. **Temporary Structures.** No structure of a temporary character including trailers, tents, shacks or other buildings shall be used on any Lot at any time as a residence, either temporarily or permanently.

Section 8. **Storage Sheds.** Storage sheds are permitted only if they are erected within an indent in the Residence structure and are not directly visible from the street.

Section 9. **Recreational Vehicles and Boats.** No recreational vehicles, motor homes, trailers, trucks, campers or motorcycles of any kind or character and no boats or yachts shall be stored or parked on any Lot other than in the garage.

Section 10. **Nuisances.** No noxious or offensive activity shall be carried on upon any Lot or in any Residence including, but not limited to, unreasonable levels of noise created by radios, televisions, home theater systems, musical instruments and pets.

Section 11. **Hours of Construction.** No new construction or exterior remodeling of any existing Residence shall be permitted during the hours of 7:00 PM to 6:00 AM, Monday through Saturday and all day Sunday, unless such work is being performed by the Owner and/or his immediate family.

Section 12. **Signs.** No signs of any type shall be displayed to public view on any Lot, Residence or building except "For Sale" signs by a real estate agent, Builder or Owner.

Section 13. **Rock Walls, Fences and Gates.** All walls between Lots , all walls between Lots and a street, and all walls between Lots and the perimeter of the Subdivision shall be constructed with rock and mortar. The cost of constructing new rock walls on common lot lines and/or the cost of rock wall repairs on such lot lines shall be shared equally by the adjacent Lot Owners. Rock walls shall be located centered on the common property line except in the case of rock walls located on the perimeter of the Subdivision, which shall be located within the Lot abutting the perimeter boundary. All rock walls shall be erected in conformity with the requirements of the ordinances of the City of El Paso. No chain link fences shall be erected on any part of a Lot for any purpose. All gates to allow access to the rear yard or the front entryway of a Residence shall be made of wrought iron. No fences of any type shall be constructed along the front property line or side property line of corner lots next to the street.

Section 14. **City Ordinances.** All Residences, buildings, walls and other structures, shall comply with all applicable Federal and State laws and ordinances of the City of El Paso.

Section 15. **Drilling.** No drilling or excavation for oil, gas, sand, clay, dirt, coal, gravel or minerals shall be made on any Lot, whether for profit or otherwise.

Section 16. **Prohibited Activities.** No professional, business, or commercial activity of any kind shall be conducted on or from any Lot or in any Residence, except for uses permitted as Home Occupations under the El Paso City Code.

Section 17. **Rubbish, Trash and Garbage.** No Lot shall be used or maintained as a dumping ground for rubbish or trash, and no other garbage or waste shall be kept except in sanitary containers. All containers for the storage and disposal of such materials shall be kept in a clean and sanitary condition behind the front rear yard walls out of sight. No person shall dump rubbish, trash or garbage on any Lot.

Section 18. **Trash Burning.** Burning of trash, leaves and other similar material or waste is prohibited.

Section 19. **Animals.** No animals, including but not limited to, livestock or poultry, of any kind shall be raised, bred, or kept on any Lot; provided, however, not more than three (3) pets, including dogs and cats, or other household pets as part of the three may be kept together on a Lot or in a Residence if such numbers do not violate ordinances of the City of El Paso and such pets do not create a legal nuisance. No Lot Owner shall permit his/her dog or dogs to unreasonably disturb other residents by barking. Each Lot Owner shall immediately properly dispose of animal waste deposited on his /her Lot from his/her pets. Each Lot Owner who walks his/her pet through the Subdivision shall have the pet on a leash at all times and shall immediately pick up and properly dispose of any animal waste that is deposited by his/her pet.

Section 20. **Eyesores.** Clotheslines, inoperable motor vehicles, building materials, broken or discarded furniture and fixtures, broken or discarded equipment and other similar personal property shall not be stored or permitted to remain on any Lot in such a manner as to be visible from the street or adjacent Lot. Such eyesores may be removed by the Association at the expense of the Owner if, after thirty (30) days prior written notice, the Lot Owner fails to do so. All expenses of removal shall become due to the Association as a special assessment to the Lot Owner in question. Failure to pay such assessment shall entitle the Association to exercise its rights for non-payment of an assessment.

Section 21. **Transmitting, and Receiving Equipment.** Radio and television antennas and satellite dishes shall be permitted but must comply with the Architectural Standards.

Section 22. Hazardous Materials and Waste. No Owner shall permit anything to be done or kept on his Lot or in his Residence that will result in the cancellation of customary Texas homeowner's property damage and liability insurance. No hazardous waste materials shall be kept or processed on any Lot or Residence thereon.

Section 23. Encroachments. If an encroachment occurs due to settlement or shifting of a Residence or other improvements, there shall be created a valid easement for the maintenance of any such encroachment so long as it shall exist; provided, however, in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful or negligent conduct of such Owner or his Builder.

Section 24. Commercial Vehicles. No commercial type vehicles shall be stored or parked on any Lot except while engaged in transport of goods and services to or from a residence.

Section 25. Yard or Garage Sales. Yard or garage sales may be conducted on a Lot but shall not take place more than one time in a calendar year and shall not last more than two days.

ARTICLE VIII

OWNER'S OBLIGATION TO REPAIR AND MAINTAIN

Section 1. Exterior Maintenance of Lot, Residence and Improvements on a Lot. Each Owner of a Lot shall at all times maintain his Lot, the Residence and other improvements situated thereon in neat and clean condition and in a state of good repair.

Section 2. Maintenance of Parkways. Each Owner of a Lot shall at all times maintain the landscaping in the Parkways abutting the front of his Lot, in good condition. All Parkways are deemed to abut the front of a Lot except for the Parkways situated on the north side of Snowheights that abut Lots 7 through 17, Block 2, the Parkway that abuts the east side of Lot 17, Block 2, the Parkway that abuts the west side of Lot 1, Block 3, the Parkway that abuts the east side of Lot 7, Block 3, and the Parkways situated on the south side of Wildwood Court that abuts Lots 1 through 7, Block 3. The Association shall maintain those Parkways excepted above.

Section 3. Consequences of failure to repair and/or maintain. If any Owner fails to maintain his Lot, or the Residence and other improvements located thereon, or the landscaping in the Parkways abutting the front of his Lot, in neat and clean condition and/or in a state of good condition and repair, the Board of Directors may elect to send written notice to such Owner specifying the default, and providing a time, not less than ten (10) calendar days after receipt of such notice within which the default must be corrected. All decisions and notices shall be delivered as indicated in Section 2, Notices, of Article X. If the Owner receiving the notice has not corrected the default within the time period specified in the notice, the Board of Directors shall have the right

and authority to make all necessary repairs and replacements, including landscaping. In this connection, the Board of Directors and its contractors shall have the right to enter upon the defaulting Owner's Lot to make such repairs and replacements and correct the default without committing a trespass. The cost of making such repairs and any reasonable attorney fees shall become a personal obligation of the Owner receiving the notice. If the cost of necessary repairs and any attorneys fees are not paid by the Owner within ten (10) days after service of a notice of the amount due, such amount due shall become a lien on the Owner's Lot. The Board of Directors of the Association may bring an action at law against such Owner to collect the debt and judicially foreclose the lien. Each Owner by his acceptance of a deed expressly agrees to the foregoing provisions. The lien created herein to secure the payment of sums expended by the Association as provided above shall be inferior to any purchase money or home improvement Deed of Trust or Mechanic's Lien encumbering a Lot.

ARTICLE IX

USE OF THE PROPERTY BY DECLARANT

Section 1. **Declarant Property Use.** Notwithstanding anything to the contrary, Declarant, its agents, employees, contractors, successors or assigns may operate and maintain upon the Property described herein a real estate sales and development business, and may place, erect and maintain upon the property such customary sales and advertising signs and parking areas as are usual and reasonable for such real estate sales and development operations until all Lots in the Subdivision have been sold and conveyed to grantees.

Notwithstanding anything herein to the contrary, Declarant, its agents, employees, contractors, subcontractors and other authorized personnel shall have the right to enter upon all Lots to complete construction of subdivision improvements and to perform work required by governmental agencies having jurisdiction over the Subdivision. During such construction, Declarant shall have the right to place upon all Lots such sheds, storage buildings, temporary toilets, storage yards and areas, materials, tools and machines, fabrication areas and other temporary installations as are reasonably necessary to complete construction. No Owner shall in any manner interfere with any of the foregoing activities of Declarant. No action shall be maintained by any Owner for damages or inconvenience resulting from the exercise of the foregoing rights of Declarant. Homebuilders shall have the same rights as Declarant but such rights shall terminate for each Lot immediately after the sale of the Lot.

ARTICLE X

GENERAL PROVISIONS

Section 1. **Enforcement.** The Association or any Owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or

restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Notices. Notices shall be served by one of the three following methods: (i) by United States mail, postage prepaid, addressed to the Owner at his Residence. Mailed notice shall be deemed given when deposited in the United States mail, postage prepaid and addressed as provided above. (ii) by facsimile to the telephone number provided by the Lot Owner to the Architectural Review Committee. Faxed notice shall be deemed given when sent. (iii) by electronic mail to the electronic address provided by the Lot Owner to the Architectural Review Committee. Electronic mail shall be deemed given when sent.

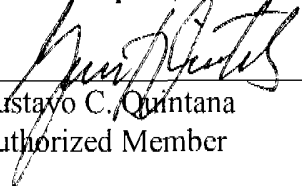
Section 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provision, which shall remain in full force and effect.

Section 4. Duration. These covenants, conditions and restrictions shall run with and bind the land for a term of thirty-five (35) years unless amended by an instrument signed by not less than 90% of the Lot Owners, and thereafter by an instrument signed by not less than 75% of the Lot Owners. Any amendment must be recorded in the Deed Records of El Paso County, Texas. Notwithstanding the foregoing, so long as the Declarant owns more than four (4) Lots in THE PARK AT WILDWOOD, the Declarant shall have the right to amend the Declaration without the consent of any other Lot Owner.

Section 5. Effect. This First Amended and Restated Declaration of Covenants, Conditions and Restrictions shall supersede the Declaration of Covenants, Conditions and Restrictions of record in Book 80, Page 53, Public Records of El Paso County, Texas.

IN WITNESS THEREOF, the undersigned being the Declarant herein has hereunto set its hand this 03 day of June 2008.

Wildwood Developers, L.L.C.

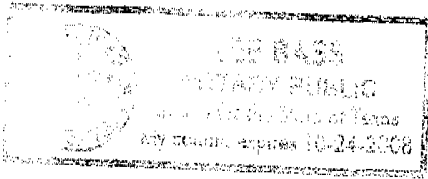
By: 
Gustavo C. Quintana
Authorized Member

(Signatures continued on following page)

STATE OF TEXAS)
COUNTY OF EL PASO)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared **Gustavo C. Quintana** known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Wildwood Developers, L.L.C., a Texas Limited Liability Company, for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN under my hand and seal of office, this the 3d day of June, 2008.



[Handwritten Signature]

Notary Public, State of Texas

Exhibit A

ARCHITECTURAL STANDARDS

Section 1. **Purpose.** These Architectural Standards shall be used exclusively to create and maintain a consistent architectural image within the Subdivision. The following requirements shall apply at all times including any reconstruction and remodeling of Residences.

Section 2. **Area.** Each Residence shall have a total fully enclosed gross floor living area of not less than 2250 square feet exclusive of the garage, car ports, porches (open or enclosed) and spaces that are not air conditioned. Each Owner or Builder shall submit Construction Documents and stucco color samples for the proposed Residence to the Architectural Review Committee for review prior to applying for a building permit.

Section 3. **Second Story.** Residences may have a second story not exceeding fifty (50%) percent of the ground floor constructed area. Notwithstanding the foregoing, Lots 29, 30, 31 and 32, Block 1, may have two stories with no second floor area limitation.

Section 4. **Roofs.** All roofs, including roofs over porches, shall be pitched at a minimum roof slope of 4 vertical to 12 horizontal.. All roofs shall be covered with concrete type roof tile whose color and shape shall be designated by the Architectural Review Committee for uniform use on all Residences constructed in the Subdivision. No horizontal or approximately horizontal roof surfaces waterproofed with asphaltic or tar material are permitted. No asphalt or wood shingle or metal roofs are permitted. The height of the crest of the roof of a one story homes shall not exceed 24 feet and the height of the crest of the roof of a two story home shall not exceed 34 feet.

Section 5. **Building Exterior Walls.** All exterior walls of all Residences shall be constructed of stucco with a color within the range of colors designated by the Architectural Review Committee. A sample of the proposed stucco color shall be submitted to the Architectural Review Committee prior to use. Notwithstanding the foregoing, a maximum of thirty five (35%) percent of the front elevation wall of a Residence may be of a construction material other than stucco.

Section 6. **Parkways.** Each Parkway adjacent to the front of a Lot and each Parkway adjacent to the side of a Lot (if applicable) and each Parkway adjacent to the rear of a Lot (if applicable) shall be covered with a colored rock, not less than 4 inches in size, designated by the Architectural Review Committee and shall be landscaped with not less than three 5 gallon desert plants designated by the Architectural Review Committee. In addition, on each such Parkway, at least three large rocks, each having a volume not less than 5 cubic feet and each having dimensions of not less than 1.5 ft. in any direction, shall placed and evenly spaced. All Parkways shall have automatic irrigation systems sufficient to properly irrigate the plants. Prior to placing rock, the ground shall be properly treated to prevent the growth of vegetation. No plants shall be allowed in the Parkways except for the desert plants designated by the Architectural Review Committee.

Each Owner shall be responsible for maintaining the Parkways adjacent to his/her/its Lot clean and free of trash, debris and weeds and for maintaining the plants in good condition. Each Owner shall promptly replace any plant that dies. Notwithstanding the foregoing, the Parkways behind Lots 7 through 17, Block 2 on the north side of Snowheights and the Parkways behind Lots 1 through 7, Block 3 on the south side of Wildwood Street shall not be required to be landscaped with plants or to have automatic irrigation systems.

Section 7. Rock Walls. All rock walls shall have a minimum thickness of one foot, except for retaining walls, which shall comply with applicable ordinances of the City of El Paso. All walls shall be designed and constructed in accordance with applicable ordinances of the City of El Paso. All walls on Lots shall be constructed of the same rock as has been used in constructing the existing Subdivision rock walls. Rock walls shall be not less than 4 feet above the highest adjacent finished earth grade except rock walls at side property lines from the sidewalk to the rear yard front wall which shall extend one foot above the highest adjacent finished earth grade. Rock walls at side property lines between lots shall be extended to any earth slopes at the rear of the Lot and shall terminate on the slope. A rock wall shall be constructed at the rear of each Lot. The rear rock wall on Lots with slopes shall be parallel to the toe of the rear slope and shall have 4" diameter drainage pipes at a maximum spacing of 10 feet on center along the length of the wall. All rock walls shall be constructed with a 1" deep groove between rocks.

Section 8. Other Fences. No concrete block, chain link or wood picket fences or enclosures, such as a dog run, shall be permitted on any Lot in the Subdivision, whether screened from view or not. All gates to access the rear yard of a Residence shall be made of wrought iron. No fences of any type shall be permitted along the front property line of any lot. Only rock walls are permitted on the side property line next to the side street for corner lots.

Section 9. Drainage. All Lots shall be graded and landscaped so that storm water drains from the rear of the Lot to the street in front of the Residence. No Owner shall be permitted to drain storm water onto an adjacent Lot even with the consent of the adjacent Lot Owner.

Section 10. Slopes. Each Owner who has a sloped area on his/her/its Lot shall be solely responsible for the cost of treating the sloped areas so that they are protected from erosion by wind and storm water. Each Owner shall at all times maintain such protection in good condition and repair. Each Owner shall be solely responsible for determining and complying with all ordinances of the City of El Paso that require protection or treatment of sloped areas on residential Lots. Owners may landscape the sloped areas with drought resistant plants but no irrigation pipes shall be installed on sloped areas.

Section 11. Landscaping. Front and side yards shall be xeriscaped to not less than 60% of the total area. The front setback area of each Residence shall be planted with the following trees, not less than 2 inches caliper each: one Bradford Pear tree and one of the following trees: Mondale pine (pinus eldarica), Raywood ash, Desert willow or

Paloverde. Each Owner or Builder shall submit landscape plans for the proposed Residence to the Architectural Review Committee for review 15 calendar days prior to applying for a landscaping permit. Notwithstanding the foregoing, all landscaping shall comply with the landscaping ordinance of the City of El Paso. Plans for all re-landscaping after the Residence and its landscaping has been completed and the Residence occupied shall be resubmitted to the Architectural Review Committee for review 15 calendar days prior to applying for a landscaping permit.

Section 12. **Antennae.** Exterior television and radio antennas, satellite dishes or other similar electronic equipment or devices are not permitted on the roof of a Residence.

Section 13. **Air conditioning and Solar Units.** No roof mounted air conditioning units, evaporative cooled or refrigerated, are permitted. Solar units are permitted only if placed on the same plane of the roof tile slope of the Residence and the solar unit is not visible from any position on the street at the front of the Residence.

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Official Records of
EL PASO COUNTY
DELIA BRIONES
COUNTY CLERK
Fees \$104.00

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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