

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR DESERT SPRINGS UNITS 1 AND 2**

DVEP Land, L.L.C. and RPW Development, Ltd., being the Owner of Desert Springs Units 1 and 2, an addition to El Paso County, Texas (the "Subdivision") hereby covenants, agrees and declares that the Subdivision will hereinafter be subject to the covenants, conditions, restrictions, limitations and uses set forth in this Declaration of Covenants, Conditions and Restrictions (the "Covenants") which will run with the land and will be binding upon and enure to the benefit of the Declarant, its successors and assigns, and any person or entity acquiring any right, title or interest in the property, or any part thereof, their heirs, devisees, successors and assigns from the date of recordation in the Real Property Records of El Paso County, Texas.

**ARTICLE I
DEFINITIONS**

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

- a. "Architectural Review Committee" shall mean the committee designated in Article V.
- b. "Declarant" shall mean DVEP Land, L.L.C. and RPW Development, Ltd. and their successors and assigns. (but not EP Transmountain Residential L.L.C. as more fully provided in Section 6.06).
- c. "Lot and/or Lots" shall mean and refer to each of the Lots shown upon the Subdivision Plat.
- d. "Owner" shall mean and refer to the record Owner of the fee simple title to any Lot(s) whether one or more persons or entities, but shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.
- e. "Subdivision" shall mean and refer to Desert Springs Units 1 and 2 and any other real property brought within the scheme of this Declaration.
- f. "Subdivision Plat" shall mean and refer to the map or plat of Desert Springs Units 1 and 2 recorded in the Plat Records of El Paso County, Texas.
- g. "Supplemental Declaration" shall mean and refer to any supplemental Declaration. References herein (whether specific or general) to the provisions set forth in (any or all) "Supplemental Declarations" shall be deemed to relate to the respective properties covered by such Supplemental declaration.

**ARTICLE II
PROPERTY SUBJECT TO THIS DECLARATION; EASEMENTS**

Section 2.01 Property Subject to Covenants. All portions of the Subdivision including all lots shall be subject to these Covenants. Declarant shall have the right to supplement these Covenants and to add additional portions of real estate or property subject to the terms and conditions of these Covenants. Developer may file Supplemental Covenants to evidence such additional property. Declarant may also file supplemental covenants in connection with the creation and organization of a homeowners association.

Section 2.02 Existing Easements and Drainage Rights of Way and Easements. The

Subdivision Plat dedicates, subject to the limitations set forth therein, certain easements and drainage rights of way and easements shown thereon, and such Subdivision Plat further establishes limitations, reservations and restrictions applicable to the Subdivision. Further, Declarant and Declarant's predecessors in title may have heretofore granted, created and dedicated by recorded instruments certain other easement and related rights affecting the Subdivision. All dedications, limitations, restrictions and reservations shown on the Subdivision Plat and all grants and dedications of easements and related rights heretofore made by Declarant and Declarant's predecessors in title affecting the Subdivision are incorporated herein by reference and made a part of this Declaration for all purposes, as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to, be executed by or on behalf of Declarant conveying any part of the Subdivision.

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

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

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

Section 2.06 Surface Areas. The surface of easement areas for underground utility services may be used for planting of shrubbery, trees, lawns or flowers. However, neither the Declarant nor any supplier of any utility or service using any easement area shall be liable to any Owner for any damage done by them or either of them, or their respective agents, employees, servants or assigns, to any of the vegetation as a result of any activity relating to (the construction, maintenance, operation or repair of any facility in any such

easement area). In the event of an inconsistency between this provision and the terms of the easement agreement with the utility company, the easement agreement shall control.

ARTICLE III BUILDING AND LAND USE RESTRICTIONS

Section 3.01 Land Use and Building Type. All Lots (except Lot 19, Block 6, Unit One and Lot 13, Block 13, Unit One, which are dedicated as ponds, Lot 13, Block 8, Unit Two, which is dedicated as a park, and any other lot specified on the Plat for use other than residential) shall be used solely for residential purposes and no other use. No structure shall be erected, altered, or placed or be permitted to remain on any Lot, or any part thereof, other than one detached single-family dwelling not to exceed two and one-half stories in height, together with a private garage, carport or other form of off-street parking and other accessory buildings or customary appurtenances to private dwellings. No more than one residential structure shall be erected on any Lot. No detached storage building or accessory building shall be larger than 10 feet by 12 feet on any Lot unless a variance is granted by the Architectural Review Committee.

Section 3.02 Resubdivision Prohibited. The number of Lots is restricted to the Lots shown on the plat of the Subdivision. No Lot shall be further divided or separated into smaller Lots by any Owner, and no portion less than all of such Lots shall be conveyed or transferred by an Owner, provided however, this provision shall not prohibit deeds of correction, deeds to resolve boundary line disputes and similar corrective instruments, or conveyances of less than five feet from a Lot to resolve or correct a setback or an encroachment problem.

Section 3.03 Architectural Review. No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Architectural Review Committee as to quality of workmanship and materials, harmony of external design with existing structures, compliance with these Covenants, and as to location with respect to topography and finish grade elevation. After such location with respect to topography and finish grade elevation has been approved and the finish grade of the Lot has been completed, such finish grade shall not be altered, changed or disturbed. Approval shall be as provided in Article V.

Section 3.04 Dwelling Size. A home constructed in the Subdivision shall be not less than 1200 square feet of living area, exclusive of open porches and garages. A multi-story home shall have not less than 700 square feet on the ground floor. The Architectural Review Committee shall be empowered to grant individual waivers not to exceed 10% of the above minimum area requirements, provided the proposed dwelling shall in general reflect credit to the neighborhood.

Section 3.05 Building Exterior Standards. Every residential structure will meet the following requirements:

- (a) All doors that are visible from the street in front of the Lot must be under a porch.
- (b) All wall finishes, accents and special finishes must wrap around a minimum of 2 feet from front of house.
- (c) Each structure (other than detached garages) will have at least two massings, other than porches, that are recessed or protrude at least 2 feet from the main facade of the structure.
- (d) All structures will have flat roofs or clay/concrete tile roofs or shingles or a

combination of these products. All clay or concrete roof tile or roof shingles must be neutral colors.

- (e) All visible flashing/ sheet metal and vents must be painted to match the adjacent roof, accent or primary color.
- (f) Any antennas, solar panels or similar equipment may not be visible from the street unless State or Federal Law states otherwise. Small (less than 2 feet in diameter) satellite dishes may be visible from the street, but must be placed on the farthest point from the street allowing proper exposure for reception.
- (g) Each structure may utilize only one color as its primary paint color and accent colors may not exceed more than thirty percent (30%) of painted surface of the structure.
- (h) No structure may be painted with any color that has not been approved by the Architectural Review Committee. The following colors will be automatically approved by the Architectural Review Committee:

Sherwin Williams colors SW 6043, 6044, 6045, 6046, 6057, 6058, 6059, 6060, 6064, 6065, 6066, 6067, 6078, 7079, 6080, 6081, 6085, 6086, 6087, 6088, 6092, 6093, 6094, 6095, 6099, 6100, 6101, 6102, 6106, 6107, 6108, 6109, 6141, 6142, 6143, 6144, 6047, 6061, 6068, 6082, 6089, 6096, 6103, 6110, 6145, Dunn Edwards colors DE 6149, 6112, 6118, 6116, C714, C713, 6124, 6098, 6216, C757, 6137, 6136, 6216, 6049, C759, 6231, C718, C756, 6131, A161, C750, C755, C712, 6130, 6244, 6228, 6229, 6241

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

Section 3.06 Building Location. No building shall be located on any Lot neared than 20 feet from the front Lot line and rear Lot line, nor nearer than 10 feet from the side street lines; nor nearer than 10 feet from the side streets; nor nearer than 5 feet to interior Lot lines, provided that a distance between buildings be no nearer than 10 feet. For the purposes of this covenant, boxed and bay windows, eaves, steps and open porches or stoops and projections of fireplaces and windows shall not be considered as a part of the building, provided however, that this shall not be construed to permit any portion of a building on a Lot to encroach upon another Lot.

Section 3.07 Building Height. The maximum height any residential building shall be not more than 35 feet measured from the ground adjacent to the foundation to the top of the roof structure for a pitched roof or to the top of parapet wall for a flat roof having a parapet. The limitation on height shall not include chimneys or vent pipes.

Section 3.08 Lot Drainage. All Lots within the Subdivision, whether vacant, with buildings under construction, or with completed buildings (occupied or unoccupied) shall be designed and constructed to provide positive Lot drainage from the rear of the Lot to street in front of the Lot. This positive Lot drainage to the street in front of each Lot must be maintained at all times by the Owner. Driveways, walks, patios, landscaping (including without limitation grass, bushes, trees, brick, rock, or other materials), and all other portions of each Lot shall be constructed, installed and maintained to drain away from the main building structure and sloped or slanted through the rear, side and front yards so as to drain to the street in front of the Lot. If necessary, roof drainage will be collected in gutters and diverted toward the front of the Lot. Walls or other structures should not be placed along the side of any dwelling in a manner that would block or impair

drainage from the rear of the Lot to the street. Any variance from this drainage requirement shall only be made with the express written approval of the Architectural Review Committee. FAILURE BY AN OWNER TO MAINTAIN THE PROPER DRAINAGE CAN RESULT IN DAMAGE TO THE IMPROVEMENTS (FOUNDATIONS, GARDEN AND/OR RETAINING WALLS, POOLS, WALKS, ETC.) FROM SETTLING AND/OR EROSION ON THE SUBJECT LOT AND ON SURROUNDING LOTS.

Section 3.09 Slope Control. Some Lots may have a designed sloped area within the Lot located at the side or rear of the Lots. Soil conditions and/or storm drainage requirements may dictate that the sloped areas be secured by a slope stabilization treatment and/or retaining walls. IT SHALL BE THE SOLE RESPONSIBILITY OF THE LOT OWNER WHOSE PROPERTY INCLUDES A SLOPED AREA(S) TO MAINTAIN AND/OR STABILIZE THE SLOPED AREA(S). Drainage of sloped areas shall typically be controlled within the Lot and drain to the street in front of the Lot. However, if rear or side yard drainage easements are provided across adjoining Lots connecting to subdivision streets or drainage rights of way, then the slope drainage may be diverted to flow through the easements to a connecting street or drainage right of way. Each property Owner shall be responsible for maintenance of that portion of any private drainage easement within their property. FAILURE BY THE OWNER TO MAINTAIN OR STABILIZE THE SLOPE AND/OR DRAINAGE EASEMENT, IF ANY, FOR PROPER DRAINAGE MAY RESULT IN DAMAGE TO IMPROVEMENTS (FOUNDATIONS, GARDEN AND/OR RETAINING WALLS, POOLS, WALKS, ETC.) ON THE SUBJECT LOT AND ON SURROUNDING LOTS. Storm drainage, landscape irrigation, swimming pool drainage or overflow, or any other waterflow on or over the Lots SHALL FLOW TO THE STREET ONLY AND NOT OVER SIDE OR REAR SLOPED AREAS WHETHER SAID SLOPES ARE WITHIN THE PROPERTY LINES OF THE LOT OR NOT. All surface drainage of the flat buildable areas of the Lot shall be controlled and maintained as provided in paragraphs 3.08 and 3.09 herein.

Section 3.10 Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.

Section 3.11 Temporary Structures. No structure of a temporary character (trailer, basement, tent, shack, garage, barn or other outbuilding) shall be used on any Lot at any time as a residence, with temporarily or permanently. During the period of construction of the Subdivision and until all houses are completed, one or more construction trailers will be allowed in the Subdivision.

Section 3.12 Fences and Garden Walls. No fence or garden wall shall be erected, placed or altered on any Lot nearer to any street than the minimum building setback lines, except that on corner Lots a fence may be placed or erected along the rear Lot line from the interior Lot line to the side street Lot line, and forward along the side street Lot line not farther than within 10 feet of the front of the dwelling. This provision shall not preclude any necessary retaining walls. Masonry or rock fences only shall be permitted across the rear of any Lot, the interior Lot line of any Lot, or along the side yard of a corner Lot where such side yard abut on a side street.

Section 3.13 Completion of Structures. A structure, once commenced, shall be completed as to exterior in accordance with the provision of these restrictions in not more than twelve (12) months from the date of commencement.

Section 3.14 Sidewalk. Every person constructing a residence on any Lot in the Subdivision shall also place a sidewalk across the front of the Lot. Sidewalks shall be placed along side yards of corner Lots.

Section 3.15 Sight Distance at Intersections. No fence, hedge or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at

points 25 feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot or alley pavement. No trees shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

Section 3.16 Maintenance of Property. The Owner of each Lot shall keep all improvements and the surrounding grounds in good condition and repair, free of debris, junk, rubbish and weeds.

Section 3.17 Satellite Dishes and Antennas. No Owner shall operate or allow to be operated on any Lot any electronic transmission or receiving device or equipment which interferes with normal radio, television, telephone or other electronic transmission or receiving devices or equipment of any other owners or residents in the Subdivision. No Owner shall erect, construct, place or permit to remain on any Lot any tower, antenna or similar structure which is higher than the highest part of the roof of the dwelling on that Lot. Any satellite receiving dish or similar structure shall not be visible from the street.

Section 3.18 Value. No Owner shall do or permit to be done any act which would tend to depreciate the value of his Lot or dwelling unit, an adjacent dwelling unit, or any structure or property in the Subdivision.

Section 3.19 Oil, Mining and Excavation. No oil or natural gas drilling, oil development operation or refining, quarrying or mining operation of any kind shall be permitted upon or on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot. No excavation shall be made on any Lot for the purpose of obtaining sand, gravel, rock, clay or dirt, either for profit or otherwise.

Section 3.20 Vehicles and Vehicle Parking. Commercial vehicles, semi-tractors, trailers, eighteen wheelers, inoperable vehicles, dune buggies, boats, camping trailers, or recreational vehicles shall not be parked or placed in the street, between the street and the front of any dwelling unit, or in the side or rear yard of any Lot. No vehicle shall be left parked on any Lot in disrepair or for the purpose of repair. Temporary parking for a period of not to exceed three (3) days for maintenance is permitted. Recreational equipment such as boats, camping trailers and recreational vehicles may be kept on a Lot so long as all are kept in an enclosed building or garage which is otherwise in conformance with the terms of these Covenants. No vehicle may be parked on any portion of the Lot except upon paved areas.

Section 3.21 Miscellaneous. Except as required during construction, no privy shall be placed upon any Lot in said Subdivision. No signboard or other visible advertisement larger than one square foot may be placed upon any Lot, other than signs pertaining to the sale of Lots or the builder's signs which may be placed upon the premises during the construction of improvements and sales of the property. Marketing and directional signs pertaining to the sale of houses may also be placed on Lots other than those on which houses are being constructed. No hog pen, stockyard or pen, or chicken pen will be allowed, whether operated for profit or otherwise. No animals, livestock, poultry or fowl of any kind shall be raised, bred or kept on any portion of the Subdivision except that dogs, cats and other customary house pets may be kept on a Lot, provided they are not kept, bred or maintained for any commercial purpose whatsoever, and the number of pets shall not exceed an aggregate total of five (5).

Section 3.22 Party Walls. All walls separating Lots shall be deemed to be party walls and shall be constructed on the Lot line, unless otherwise approved by the Architectural Review Committee. The cost of construction for all party walls shall be shared on an equal basis between Lot owners. The Lot owner first constructing a home shall initially bear the entire cost and the adjoining Lot owners shall be required to

reimburse for a share of the cost of the party wall when a home is constructed on the adjoining lot. After the initial construction of the party wall, the Owners shall each be responsible for its pro rata share of the reasonable cost of maintenance and upkeep of the wall. In the event a Lot owner, or his agents, invitees, or family causes damage to a wall, the Owner shall be liable and responsible to replace or repair the damage to the wall.

ARTICLE IV SUPPLEMENTAL COVENANTS FOR HOMEOWNERS ASSOCIATION

Section 4.01 Homeowner's Association. Declarant reserves the right for a period of two years from the date of filing of these Covenants to organize a homeowner's association for the Subdivision. In the event Declarant determines to organize a homeowner's association, the association will be organized as a Texas non-profit corporation. The purpose of the association will be to provide for the health, safety and welfare of the members, to collect regular and special assessments and to administer funds collected to provide for the purposes of the association. Each lot owner will be a member of the association. The association will be governed by a board of directors as elected by the members of the association. Prior to any Conversion Date, the directors will be elected by the Declarant. After the Conversion Date, the directors will be elected in accordance with the terms of the organizational documents of the association. Declarant reserves the right to make such further provisions and arrangements with respect to the association as Declarant determines to be in the best interest of the Subdivision.

ARTICLE V ARCHITECTURAL REVIEW

Section 5.01 Architectural Review. No building, fence, wall or other structure shall be erected, placed, altered, remodeled or renovated (including additions to any existing structure) on any of the Lots until the construction plans and specifications and a plat showing the location of the structure have been approved by the Architectural Review Committee as to quality of workmanship and materials, harmony of external design with existing and proposed structures, compliance with these Covenants, and as to location with respect to topography and finish grade elevation. The Committee shall have broad, discretionary authority to interpret and apply the standards set forth in this Declaration.

Section 5.02 Membership. The initial Architectural Review Committee is composed of Randal S. O'Leary, Kelly O'Leary and Art Eliason, all of El Paso County, Texas. A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any Member of the Committee, the remaining Members of the Committee shall have full authority to designate a successor. Neither the Members of the Committee nor its designated representatives shall be entitled to any compensation for services performed pursuant to this Declaration.

Section 5.03 Procedure. The Committee's approval or disapproval as required in this Declaration shall be in writing, and in the event the Committee, or its designated representative, fails to approve or disapprove within thirty (30) days after final and complete plans and specifications have been submitted to it, or in any event, if no suit to enjoin the construction has been commenced prior to the completion thereof, approval will not be required and the related procedural requirement for this Declaration shall be deemed to have been fully complied with. No action shall be taken against the Declarant, its officers, directors or shareholders, the Association, its officers, trustees, or Members, or the Architectural Review Committee for any action or failure to act on matters required of them in this Declaration.

Section 5.04 Limitation of Liability. Neither Declarant, the Architectural Review Committee (nor any officer, director, trustee, member, employee or agent hereof) shall be liable in damages to anyone submitting plans and specifications for approval or to any Owner of a property or any to her person or entity because of a mistake in judgment, or negligence arising out of or in connection with the approval or disapproval of an plans submitted. Without limiting the foregoing, no approval of any plans or specifications shall be construed to represent nor is such approval intended to imply that such plans, if followed, will result in a properly designed improvement.

Section 5.05 No Waiver of Future Approvals. The approval of the Architectural Review Committee of any proposals, plans, specifications or drawings for any work done or proposed or in connection with any other matter requiring the approval and consent of the Architectural Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters subsequently or additionally submitted for approval or consent.

Section 5.06 Inspection; Correction of Defects. Inspection of work and correction of defects therein shall proceed as follows:

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

b. Remedies for Noncompliance. Prior to the expiration of thirty (30) days from the date of such notification of noncompliance, upon the request of the Owner, the Architectural Review Committee may (but is not required to) set a time and date for a hearing before the Architectural Review Committee. If a hearing is conducted, the Architectural Review Committee shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. Alternatively, the Architectural Review Committee may make any determination required by these Covenants without the necessity of a formal hearing or meeting. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date that notice of the Architectural Review Committee ruling is given to the Owner. If the Owner does not comply with the Architectural Review Committee ruling within that period, Declarant, at its option, may record a notice of noncompliance and may peacefully remedy the noncompliance, and the Owner shall reimburse Declarant, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner, Declarant shall have all remedies available at law for the collection of such indebtedness. The right of the Declarant to remove a noncomplying Improvement or otherwise remedy the noncompliance shall be in addition to all other rights and remedies which Declarant may have at law or in equity, including injunctive relief Declarant will be entitled to injunctive relief as a matter of right restraining any Owner from violating the terms of this Declaration, without the necessity of proving actual damages or posting a bond,

cash or otherwise.

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

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

Section 5.07 Variances. The Architectural Review Committee may grant variances from compliance with any of the provisions of this Article under the following circumstances:

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

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

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

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

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

ARTICLE VI GENERAL PROVISIONS

Section 6.01 Duration. These Covenants are to run with the land and shall be binding on all parties or persons claiming an interest in any portion of the Subdivision and shall inure to the benefit and be enforceable by the Owner of any Lot subject to this Declaration or any Supplemental Declaration, and shall run with the land for a period of Forty (40) years from the date these covenants are recorded after which time said covenants shall automatically extend for successive periods of ten (10) years unless changed by amendment as provided below. The covenants, conditions, and restrictions of this Declaration may be changed or terminated only by an instrument duly executed and recorded by the then Owners of 75% of all Lots in the subdivision.

Section 6.02 Enforcement. The Declarant and any Owner shall have the right to enforce all restrictions, covenants, condition, reservation, liens or assessments and provisions set out in the Declaration pursuant to but not limited to Texas Property Code §202.004. Failure of the Declarant or any Owner to take action upon any breach or default with respect to any of the foregoing shall not be deemed a waiver of their right to enforce. The prevailing party in any enforcement action shall be entitled to recover his cost., including reasonable attorneys fees.

Section 6.03 Amendments by Declarant. The Declarant shall have, and reserves the right at any time, without the joinder or consent of any other party, to amend this Declaration by any instrument in writing, duly executed and filed of record at any time prior to sale of all Lots in the Subdivision, provided however, any amendment by the Declarant shall not affect the rights of any Owner who has purchased a Lot prior to the amendment by Declarant.

Section 6.04 Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed certified, return receipt requested, to the last known address of the person who appears as Member or Owner in the records of the Association at the time of such mailing.

Section 6.05 Severability. Invalidation of any one or more of the covenants, restrictions, conditions, or provisions contained in this declaration, or any part thereof shall in no manner affect any of the other covenants, restrictions, conditions or provisions herein, which shall remain in full force and effect.

Section 6.06 EP Transmountain Residential, L.L.C. is not a Declarant for Purposes of these Covenants. EP Transmountain Residential, L.L.C. has signed the Plat for the sole purpose of including the portion of Hybrid Channel No. 3 and a portion of Enchanted Springs Drive in the Plat of the Subdivision. EP Transmountain shall not be deemed a Declarant for any purposes under these Covenants.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have executed this Declaration to be effective on this ____ day of _____, 2013.

DECLARANT:

DVEP LAND, L.L.C.

BY: *Teresa Kemp*
TERESA KEMP, VICE PRESIDENT

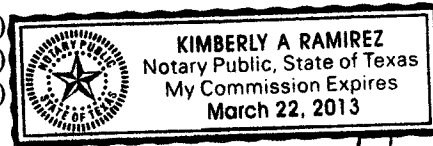
RPW DEVELOPMENT LTD.

BY: RPW DEVELOPMENT, L.L.C. AS GENERAL PARTNER

BY: *Teresa Kemp*
TERESA KEMP, VICE PRESIDENT

THE STATE OF TEXAS)

COUNTY OF EL PASO)



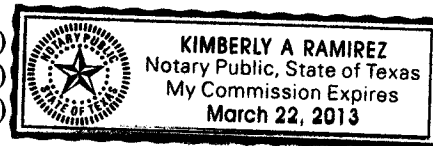
This instrument was acknowledged before me on the 11 day of January, 2013 by Teresa Kemp, Vice President of DVEP LAND, L.L.C.

SEAL:

Kimberly A Ramirez
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS)

COUNTY OF EL PASO)



This instrument was acknowledged before me on the 17 day of January, 2013 by Teresa Kemp, Vice President of RPW Development, L.L.C., General Partner of RPW DEVELOPMENT, LTD.

SEAL:

Kimberly A Ramirez
NOTARY PUBLIC, STATE OF TEXAS

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El Paso County
Delia Briones
County Clerk
Fees \$56.00

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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.



Delia Briones

EL PASO COUNTY, TEXAS