

SBS #411 11pgs

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

DVEP LAND, LLC and RPW DEVELOPMENT, LTD., as Declarant hereby adopt the following Supplemental Declaration of Covenants, Conditions, Restrictions (ASupplemental Covenants@) to organize and establish the Desert Springs Home Owners Association in accordance with Article IV of the Covenants.

1. **Recitals.** Whereas, the Declarant filed the Declaration of Covenants, Conditions and Restrictions for Desert Springs Units 1 and 2 dated January 17, 2013 of record under Document No. 20130014902; and

Whereas, the Declarant filed the First Amendment to Declaration of Covenants, Conditions and Restrictions dated September 9, 2013 of record under Document No. 20130072922; and

Whereas, the Declarant filed the Second Amendment to Covenants dated March 5, 2014 of record under Document No. 20140015467; and

Whereas, Article IV of the Covenants provide that Declarant shall have the right and authority to organize a home owners association within two years from the date of filing of the Covenants and to file such supplemental covenants as are necessary in order to implement the home owners association; and

NOW, THEREFORE, Declarant hereby supplements the Covenants, including the First Amendment and Second Amendment as hereinafter provided:

2. **Supplement to Article I.** Article I of the Covenants is hereby supplemented to include the following definitions:

- h. AAssociation@ shall mean and refer to the Desert Springs Home Owners Association, Inc. and its successors and assigns.
- i. APublic Use Areas@ shall mean and refer to all areas that benefit and are used by Owners of Lots in the Subdivision including, without limitation, the following: (i) hike and bike trails and associated landscaping, (ii) landscaping on medians and parkways, (iii) monument sign and landscaping at entrance to the Subdivision, (iv) supplemental funding for park maintenance of City parks, and (v) any other public use areas or common areas that the Association may from time to time determine should be maintained or supported by the Association.

- j. AManagement Certificate@ shall mean the instrument required to be recorded pursuant to Section 209.004, Texas Property Code, the Texas Residential Property Owners Protection Act.
- k. ATexas Residential Property Owners Protection Act", or the AAct@ shall refer to Chapter 209, Texas Property Code as the same may be hereafter amended or repealed in whole or in part.

3. Supplement to Section 5.02. Section 5.02 is hereby supplemented to add the following provision:

After the Conversion Date, the membership of the Architectural Review Committee shall be determined by the Association.

4. Supplement to Section 6.02. Section 6.02 is hereby supplemented to add the following provision:

The Association shall have the right, in addition to Declarant and any Owner, to enforce all restrictions, covenants, conditions, reservations, liens or assessments and provisions set out in the Declaration and all amendments and supplemental declarations.

5. Supplemental Provisions to Organize and Adopt the Association: The following provisions are hereby added to the Covenants as authorized by Article IV for the purpose of the organization and creation of the Association:

ARTICLE VII THE ASSOCIATION

Section 7.01 Organization. The Declarant has organized or will organize the Desert Springs Home Owners Association, Inc. as a non-profit corporation under the laws of the State of Texas.

Section 7.02. Purpose. The purpose of the Association, in general, shall be:

- a. to provide for and promote the health, safety, and welfare of the Members,
- b. to collect the regular and any special assessments,
- c. to administer the funds collected to provide for the maintenance, repair, preservation, upkeep, and protection of the Public Use Areas, and
- d. such other purposes as stated in Articles of Incorporation or By-laws consistent with the provisions of the Declaration for the Subdivision and any supplemental declarations.

Section 7.03 Directors. The Association shall act through a Board of Directors as

provided in the Articles of Incorporation and By-laws, who shall manage the affairs of the Association. Prior to the Conversion Date (as defined in the By-laws), all members of the Board of Directors shall be appointed by the Declarant. Each Director shall continue to serve until such time as his or her successor is elected and qualified. After the Conversion Date, the Directors shall be elected by the Members in accordance with the terms of the Bylaws and shall serve a term of office as provided in the bylaws.

Section 7.04 Members. Each Owner, whether one or more persons or entities, of a Lot shall upon and by virtue of becoming such Owner become a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time the Membership in the Association shall automatically cease. Membership in the Association shall be appurtenant to and automatically follow the legal ownership of each Lot and may not be separated from such ownership whenever the legal ownership of any Lot passes from one person to another, by whatever means. It shall not be necessary that any instrument provide for the transfer of Membership in the Association, and no certificate of Membership will be issued. The Association shall not be a voting Member of the Association by virtue of its ownership of any Lot or portion thereof, or the Public Use Areas.

Section 7.05 Classes of Membership. The Association shall have two classes of membership as follows:

(a) Class A. Class A Members shall be all Lot Owners with the exception of the Class B member.

(b) Class B. The Class B Member shall be Declarant and any successor of Declarant who takes title for the purposes of development and sale of Lots in the Subdivision.

Section 7.06 Voting. Class "A" Members shall be entitled to one (1) vote for each Lot of which they are record Owner. Class "B" Members shall be entitled to ten (10) votes per Lot owned. The Class "B" membership shall terminate and be converted to Class "A" on or before the 20th day after the date seventy-five percent (75%) of the Lots that may be made subject to this Declaration are conveyed to Class "A" Members.

Section 7.07 Appointment of Board of Directors. During the Declarant Control Period, the Class "B" Member is entitled to appoint and remove the members of the Board of Directors and the officers of the Association. Notwithstanding, at least one-third (1/3) of the members of the Board shall be elected by the Owners other than the Declarant not later than the tenth (10th) anniversary after this Declaration was recorded in the Official Public Records of Real Property, El Paso County, Texas.

**ARTICLE VIII
ASSESSMENTS AND LIENS**

Section 8.01 Purpose of Assessment. The assessments levied hereunder by the Association shall be used exclusively for the purposes of the Association including, without limitations, the following:

- a. To provide for and promote the health, safety, and welfare of the Members,
- b. To collect the regular and any special assessments,
- c. To administer the funds collected to provide for the maintenance, repair, preservation, upkeep, and protection of the Public Use Areas.
- d. To maintain and upkeep any other common areas located within or serving the Subdivision,
- e. To pay for any management or supervisory services, fees for performing services to the Association, costs of any labor and equipment needed by the Association.
- f. The carrying out of the duties of the Board of Directors as provided in the bylaws and Articles of Incorporation of the Association and in this Declaration.
- g. The carrying out of the purposes of the Association as stated herein and in its Declaration and Articles of Incorporation, and
- h. The carrying out of all other matter set forth or contemplated in the Declaration or allowed by the laws for Texas Non-Profit Corporations.

Section 8.02 Annual Budget and Regular Annual Assessments. Each fiscal year while the Declaration is in force, the Board shall adopt an annual budget and Regular Annual Assessment to be levied for the next year. All Regular Annual Assessments will be made in accordance with the Bylaws of the Association and determined no later than 15 days before the beginning of the fiscal year. Each Lot's pro rata share of the Regular Annual Assessment shall be determined by dividing the total Assessment by the number of Lots in the subdivision subject to Assessment. The Board as its discretion may adjust the pro rate share due for unimproved Lots.

Section 8.03 Payment of Regular Assessments. The Regular Annual Assessment provided for herein, shall commence on a date fixed by the Board and thereafter be due and payable in annual installments in advance no later than 30 days after the beginning of the fiscal year. At no time may the assessments increase in excess of 20% per year except in an emergency determined by the Board.

(a) Term: The minimum term for a payment agreement shall be (3) three months and the maximum shall be (18) eighteen months from the date of the Owner's request for a payment plan. Subject to such minimum and maximum terms, the

Section 8.06 Alternative Payment Schedule. Pursuant to Section 209.062 of the Act, the Association shall adopt reasonable guidelines to establish an alternative payment schedule by which an Owner may make partial payments for delinquent regular or special assessments or any other amount owed without incurring additional penalties. The Association shall adopt the following guidelines with regard to alternative payment schedules for delinquent assessments and other amounts owed by an Owner:

The unpaid amount of any Assessment shall bear interest at eighteen percent (18%) per annum or the maximum legal rate of interest then prevailing, whichever is less. In addition, the Board may elect to retain the services of any attorney of its choice for the purposes of collecting any unpaid Assessment and interest charges thereon, and/or to foreclose the lien against the property, or to pursue any other legal or equitable remedy which the Association may have. The cost of collection shall be added to the unpaid and/or delinquent amount due the Association.

The obligation of an Owner to pay an assessment on a Lot during such Owner's period of ownership shall remain its personal obligation, and a sale or other transfer of title to such Lots shall not release the former Owner from said liability. The lien for any unpaid Assessment shall be unaffected by the sale or transfer of full or partial interest in a Lot. In the event of a full or partial sale of a Lot, it is the sole responsibility of the Owner, and not the Association, to disclose to the buyer or transferee that an unpaid Assessment against the Ownership interest exist. A copy of the notice shall be sent to the Association at the time notification is given and upon written request, the Association shall provide Owner with a statement reflecting the amount of any unpaid or delinquent Assessments with respect to the Lot (s) owned by said Owner.

Section 8.05 Enforcement and Personal Obligation of Owners. The Regular Annual Assessments and Special Assessments provided for herein shall be the personal and individual debt of the Owner of a Lot or portion thereof covered by such assessments. No Owner may, for any reason, except itself from liability for such Assessments levied in accordance with the provisions of this Declaration. In the event that any Assessment or installment thereof is not paid when due and remains unpaid for a period of (30) days thereafter, then the unpaid amount shall become delinquent and shall together with interest thereon and cost of collection become a personal obligation and debt of the nonpaying Owner (Member) secured by a self-executing lien on the Lot or portion thereof including all improvements thereon. The Association, at its sole discretion, may elect to accept a partial payment without waiving any rights with respect to the remaining balance due.

Section 8.04 Special Assessments. In addition to the Regular Assessments provided herein, Special Assessments may be levied as provided for in the bylaws of the Association, subject to the limitation in Section 8.03.

Association shall determine the appropriate term of the payment plan in its sole discretion.

- (b) Form: Any and all alternative payment agreements shall be in writing and signed by the Owner and a duly authorized member of the Board of the Association.
- (c) Additional Monetary Expense: So long as an Owner is not in default under the terms of the payment agreement, the Owner shall not incur additional monetary expenses; however, the Owner shall be responsible for all interest accruing during the term of the payment plan as well as reasonable costs associated with administering the payment plan or interest.
- (d) Application of Payments: If at the time the Association receives a payment, and the Owner is not in default under an alternative payment agreement, the Association shall apply the payment to the Owner's debt in the following order of priority: (a) any delinquent assessment; (b) any current assessment; (c) any attorney's fees or third party collection costs incurred by the Association associated solely with assessments or any other charge that could provide the basis for foreclosure; (d) any attorney's fees incurred by the Association that are not subject to subsection (c); (e) any fees assessed by the Association; and (f) any other amounts owed to the Association.
- (e) Default: If the Owner defaults under a payment plan agreement, the account may immediately be turned over to the Association's attorney for collection. The Association shall not be required to enter into an alternative payment agreement with an Owner who failed to honor the terms of a previous payment agreement during the two (2) years following the Owner's default under the previous alternative payment agreement. At the discretion of the Association, an Owner who failed to honor the terms of a previous payment agreement may be required to waive Expedited Foreclosure Proceedings under Section 209.0092 of the Act as a condition to an additional alternative payment agreement. If, at any time the Association receives a payment from an Owner who is in default of an alternative payment agreement, the Association is not required to apply the payment in the order of priority specified by Paragraph 4, Sections (a) through (f) above.

The Association may reduce or waive some or all of the charges addressed by this policy on an *ad hoc* basis without waiving the right to charge such fees on future requests

Section 8.07. Lien and Foreclosure. All sums assessed in the manner provided in this Declaration or in the Bylaws, together with all interest and collection cost as herein provided shall be secured by the lien provided for in section 6.05 above. The Association, at its sole discretion, may elect to proceed with any and all legal remedies, including but not limited to foreclosure, for the collection of the delinquent amount. The Association shall have the right to

bid on the property being foreclosed.

Section 8.08. Lien Subordination. Any lien established as herein provided in this Declaration or the Bylaws shall be subordinate and inferior to any Purchase Money Mortgage or Deed of Trust in favor of any Bank, Mortgage Company or other lender. Provided however that such subordination shall apply only to Assessments which have become due and payable prior to a foreclosure by any lender under the terms and conditions any such Mortgage or Deed of Trust. Such foreclosure shall not relieve any new Owner from the liability of any new Assessments thereafter becoming due or from any lien arising out of any such subsequent Assessments. Notwithstanding anything to the contrary herein, a lien for Assessments shall be unaffected by a foreclosure of other than a first lien created by a Deed of Trust or Mortgage.

Section 8.09 Notice and Opportunity to Cure for Certain Other Lienholders. The Association may not foreclose its assessment lien by Expedited Foreclosure Proceedings or judicially unless it has provided written notice by certified mail, return receipt requested, of the total amount of the delinquency to any other holder of a lien that is inferior or subordinate to the Association's lien and is evidenced by a deed of trust; and provided the recipient of the notice an opportunity to cure within sixty-one (61) days from the receipt of the notice.

Section 8.10 Foreclosure Sale Prohibited in Certain Circumstances. The Association may not foreclose its assessment lien for debts consisting solely of fines or attorneys' fees associated with the fines assessed, or for copy charges under its Open Records Policy, pursuant to '209.005 of the Act.

Section 8.11 Assessment Lien Filing. In addition to the right of the Association to enforce the Maintenance Charge or other charge or assessment levied hereunder, the Association may file a claim of lien against the Lot of the delinquent Owner by recording a Notice of Lien setting forth (a) the amount of the claim of delinquency, (b) the interest thereon, (c) the costs of collection which have accrued thereon, (d) the legal description and street address of the Lot against which the lien is claimed and (e) the name of the Owner. The Notice of Lien shall be recorded in the Official Public Records of Real Property of El Paso County, Texas, and is a legal instrument affecting title to a Lot, and shall be prepared by the Association's attorney. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the filing of the Notice of Lien have been fully paid or satisfied, the Association shall execute and record a notice of satisfaction of the delinquent assessment upon payment by the Owner of a reasonable fee as fixed by the Board of Directors to cover the preparation and recordation of such instrument.

Section 8.12 Attorney's Fees. All attorney's fees, costs, and other amounts collected from an Owner shall be deposited into an account maintained at a financial institution in the name of the Association or its Managing Agent. Only Board members or the Association's Managing Agent or employees of its Managing Agent may be signatories on the account. On written request from the Owner, the Association shall provide copies of invoices for attorney's

fees and other costs relating only to the matter for which the Association seeks reimbursement of fees and costs.

Section 8.13 Notice After Foreclosure Sale. After the Association conducts a foreclosure sale of an Owner's Lot, the Association must send to the Owner and to each lienholder of record, not later than the thirtieth (30th) day after the date of the foreclosure sale, a written notice stating the date and time the sale occurred and informing the Lot Owner and each lienholder of record of the right of the Lot owner and lienholder to redeem the property. The notice must be sent by certified mail, return receipt requested, to the Lot Owner's last known mailing address, as reflected in the records of the Association, the address of each holder of a lien on the Lot subject to foreclosure evidenced by the most recent deed of trust filed of record in the real property records of the county in which the property is located, and the address of each transferee or assignee of a deed of trust who has provided notice to the Association of such assignment or transfer. Notice provided by a transferee or assignee to the Association shall be in writing, shall contain the mailing address of the transferee or assignee, and shall be mailed by certified mail, return receipt requested, or United States mail with signature confirmation to the Association according to the mailing address of the Association pursuant to the most recent Management Certificate filed of record. If a recorded instrument does not include an address for the lienholder, the Association does not have a duty to notify the lienholder as provided by this section. For purposes of this section, the Lot Owner is deemed to have given approval for the Association to notify the lienholder. Not later than the thirtieth (30th) day after the date the Association sends the notice, the Association must record an affidavit in the Real Property Records, stating the date on which the notice was sent and containing a legal description of the Lot. Any person is entitled to rely conclusively on the information contained in the recorded affidavit. The notice requirements of this section also apply to the sale of an Owner's Lot by a sheriff or constable conducted as provided by a judgment obtained by the Association.

Section 8.14 Right of Redemption After Foreclosure. The Owner of a Lot in the Subdivision or a lienholder of record may redeem the property from any purchaser at a sale foreclosing a the Association's assessment lien not later than the one hundred eightieth (180th) day after the date the Association mails written notice of the sale to the Owner and the lienholder under Sections 209.010 and 209.011 of the Act. A lienholder of record may not redeem the Lot as provided herein before ninety (90) days after the date the Association mails written notice of the sale to the Lot Owner and the lienholder under the Act, and only if the Lot Owner has not previously redeemed. A person who purchases a Lot at a sale foreclosing the Association's assessment lien may not transfer ownership of the Lot to a person other than a redeeming Lot Owner during the redemption period.

Section 8.15 Removal of Foreclosure Authority. The right to foreclose the lien on real property for unpaid amounts due to the Association may be removed by a vote of at least sixty-seven percent (67%) of the total votes allocated in the Association. Owners holding at least ten percent (10%) of all voting interests may petition the Association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section. This

section is required pursuant to '209.0093 of the Act, and should this provision be amended or repealed in any form, this section shall be deemed to be automatically amended or repealed in accordance therewith.

Section 8.16 Duty to Provide Notice Before Enforcement Action. Before the Association may suspend an Owner's right to use the Common Area, file a suit against an Owner other than a suit to collect a Maintenance Charge, or a Regular or Special Assessment or foreclose under the Association's lien, charge an Owner for property damage, or levy a fine for a violation of the Declaration, Bylaws, or Rules and Regulations, the Association or its Managing Agent must give written notice to the Owner by certified mail, return receipt requested. The notice must describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the Association from the Owner and inform the Owner that the Owner is entitled to a reasonable period to cure the violation and avoid the fine or suspension (unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months), may request a hearing under Section 209.007 of the Act on or before the thirtieth (30th) day after the date the Owner receives the notice, and may have special rights or relief related to the enforcement action under federal law, including the Service Members Civil Relief Act (50 U.S.C. Section 501 et seq.), if the Owner is serving on active military duty.

Section 8.17 Hearing Before Board; Alternative Dispute Resolution. If the Owner is entitled to an opportunity to cure the violation, the Owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the Board or before the Board of Directors if a committee is not appointed. If a hearing is to be held before a committee, the notice prescribed by Section 209.006 of the Act must state that the Owner has the right to appeal the committee's decision to the Board by written notice. The Association shall hold a hearing under this section not later than the thirtieth (30th) day after the date the Board receives the Owner's request for a hearing and shall notify the Owner of the date, time, and place of the hearing not later than the tenth (10th) day before the date of the hearing. The Board or the Owner may request a postponement, and, if requested, a postponement shall be granted for a period of not more than ten (10) days. Additional postponements may be granted by agreement of the parties. The Owner or the Association may make an audio recording of the hearing and may use alternative dispute resolution services. The Owner's presence is not required to hold a hearing.

Section 8.18. Collection and Enforcement. Each Member, by his assertion to title or claim of Ownership, or by his acceptance of a deed to a Lot, whether or not recited in such deed, shall be conclusively deemed to have an expressly vested interest in the Association. The Association, through its officers and agents shall have the right and authority to take all action which the Association deems proper for the collection of Assessments and/or the enforcement of the by-laws or liens due the Association.


Section 8.19. Duty to Prepare and Record Management Certificates. The

Association shall record in the Real Property Records of El Paso County, Texas a Management Certificate, signed by an officer of the Association, or the managing agent stating the name of the subdivision, the name of the association, the recording date of the subdivision, the name and all other declarations, the name and mailing address of the association, the name and mailing address of the association's managing agent or designated representative, and other information that the association deems appropriate or as required by law. The Association shall record an amended certificate not later than the 30th day after the association has a change in any information required to be filed with regard to a management certificate. The Association and its officers, directors, employees, and agents are not subject to liability to any person for delay in recording or a failure to record the management certificate, unless a delay or failure is caused by gross negligence.

In witness whereof, the undersigned, being the Declarant herein, has executed this Supplemental Declaration effective as of this 30 day of May, 2014.

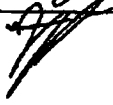
DECLARANT:

DVEP LAND, LLC

By: 
 Name: Patricia Liborio
 Title: MEMBER

RPW DEVELOPMENT, LTD.

By: RPW Development, LLC
 its General Partner

By: 
 Name: Patricia Liborio
 Title: MEMBER

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

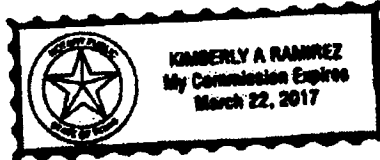


This instrument was acknowledged before me on the 30 day of May, 2014
by Patrick Wood, member of DVEP LAND, L.L.C., a Texas
Limited Liability Company, on behalf of said company.

SEAL:


NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)



This instrument was acknowledged before me on the 30 day of May, 2014
by Patrick Woods, Member of RPW DEVELOPMENT, L.L.C., a
Texas Limited Liability Company, General Partner for RPW DEVELOPMENT, LTD., on behalf
of said limited partnership.

SEAL:


NOTARY PUBLIC, STATE OF TEXAS

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Filed & Recorded in
Official Records of
El Paso County
Delia Briones
County Clerk
Fees \$66.00

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RC

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



EL PASO COUNTY, TEXAS

Delia Briones

