

**ATTACHMENT 1**

**FILED**  
In the Office of the  
Secretary of State of Texas

JAN 16 2009

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

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

**ARTICLE 1. NAME & TYPE.**

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

**ARTICLE 2. REGISTERED AGENT & ADDRESS.**

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

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

**ARTICLE 3. MANAGEMENT BY BOARD.**

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

TRUSTEE	ADDRESS:
Doug Borrett	444 Executive Center #238

El Paso, TX 79902

David Bogas

444 Executive Center #238  
El Paso, TX 79902

Tony Conde

444 Executive Center #238  
El Paso, TX 79902

#### **ARTICLE 4. MEMBERSHIP.**

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

#### **ARTICLE 5. PURPOSES.**

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

#### **ARTICLE 6. MANNER OF DISTRIBUTION.**

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

#### **ARTICLE 7. DURATION.**

The duration of the Association is perpetual.

#### **ARTICLE 8. POWERS.**

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

the Governing Documents or applicable law.

**ARTICLE 9. MEETING LOCATION.**

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

**ARTICLE 10. LIMITATIONS ON LIABILITY.**

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

**ARTICLE 11. INDEMNIFICATION.**

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

**ARTICLE 12. IMMUNITY FOR VOLUNTEERS.**

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

**ARTICLE 13. AMENDMENT OF ARTICLES.**

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

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

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

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

#### **ARTICLE 14. AMENDMENT OF BYLAWS.**

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

#### **ARTICLE 15. ACTION WITHOUT MEETING.**

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

#### **ARTICLE 16. DECLARANT CONTROL PERIOD.**

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

#### **ARTICLE 17. CHANGE OF STATUS.**

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

#### **ARTICLE 18. TERMINOLOGY.**

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

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

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

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

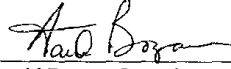
#### **ARTICLE 19. EFFECTIVENESS OF FILING.**

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

EXECUTION

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

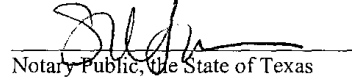
SIGNED this 8<sup>th</sup> day of January, 2009.



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

THE STATE OF TEXAS §  
§  
COUNTY OF EL PASO §

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



Notary Public, State of Texas

