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MONTECILLO

AMENDED AND RESTATED MASTER COVENANT

*El Paso County, Texas*

THIS DOCUMENT AMENDS AND RESTATES IN THE ENTIRETY THAT CERTAIN MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MONTECILLO SUBDIVISION UNITS ONE, TWO AND THREE RECORDED AS DOCUMENT NO. 20090006318, OFFICIAL PUBLIC RECORDS OF EL PASO COUNTY, TEXAS, AS AMENDED BY THAT CERTAIN AMENDED PROTECTIVE COVENANTS COMMERCIAL – MONTECILLO UNIT ONE REPLAT "A", RECORDED AS DOCUMENT NO. 20110020845 IN THE OFFICIAL PUBLIC RECORDS OF EL PASO COUNTY, TEXAS; AS FURTHER AMENDED BY THAT CERTAIN AMENDED PROTECTIVE COVENANTS COMMERCIAL – MONTECILLO UNIT TWO, RECORDED AS DOCUMENT NO. 20110020846 IN THE OFFICIAL PUBLIC RECORDS OF EL PASO COUNTY, TEXAS; AS FURTHER AMENDED BY THAT CERTAIN AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS – MONTECILLO UNITS ONE, TWO AND THREE, RECORDED AS DOCUMENT NO. 20140071507 IN THE OFFICIAL PUBLIC RECORDS OF EL PASO COUNTY, TEXAS; AS FURTHER AMENDED BY THAT CERTAIN AMENDMENT TO MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS – MONTECILLO SUBDIVISION UNITS ONE, TWO AND THREE, RECORDED AS DOCUMENT NO. 20150017323 IN THE OFFICIAL PUBLIC RECORDS OF EL PASO COUNTY, TEXAS.

**NOTE:** EXCEPT FOR THE "PREVIOUSLY SUBMITTED PROPERTY" (AS DEFINED HEREIN), NO PORTION OF THE PROPERTY DESCRIBED ON EXHIBIT "A" IS SUBJECT TO THE TERMS OF THIS MASTER COVENANT UNLESS A NOTICE OF ANNEXATION DESCRIBING SUCH PORTION OF THE PROPERTY IS FILED IN THE OFFICIAL PUBLIC RECORDS OF EL PASO COUNTY, TEXAS, IN ACCORDANCE WITH SECTION 12.05 BELOW.

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

**MONTECILLO AMENDED AND RESTATED MASTER COVENANT**

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## MONTECILLO

### AMENDED AND RESTATED MASTER COVENANT

This Montecillo Amended and Restated Master Covenant the "**Master Covenant**") is made by **EPT MESA DEVELOPMENT, LP**, a Delaware limited partnership (the "**Declarant**"), and is as follows:

#### **RECITALS:**

**A.** Declarant and **EPT MONTECILLO DEVELOPMENT EAST, LP**, a Texas limited partnership; **ALAMO EL PASO HOLDINGS, LLC**, a Texas limited liability company; **EPT MONTECILLO DEVELOPMENT WEST, LP**, a Texas limited partnership; **EPT THE RETREAT AT MONTECILLO APARTMENTS, LLC**, a Texas limited liability company; **EPT TRE, LLC**, a Texas limited liability company; **EPT SANTI APARTMENTS, LLC**, a Texas limited liability company; **EPT MONTECILLO PRIME, LLC**, a Texas limited liability company; **EPT THE VENUE AT MONTECILLO APARTMENTS, LLC**, a Texas limited liability company; and **EPT TIME 2.0, LLC**, a Texas limited liability company (excluding Declarant, these owners are collectively referred to herein as the "**EPT Owners**") own certain real property located in El Paso County, Texas, as more particularly described on Exhibit "A" attached hereto (the "**Property**"). The EPT Owners, as owners of portions of the Property, have each executed this Master Covenant for the purpose of evidencing their consent to the terms and provisions hereof. The EPT Owners agree that **EPT MESA DEVELOPMENT, LP**, a Delaware limited partnership shall serve as "**Declarant**" under this Master Covenant for all purposes.

**B.** Declarant previously executed and Recorded that certain Master Declaration of Covenants, Conditions and Restrictions for Montecillo Subdivision Units One, Two and Three, recorded as Document No. 20090006318 in the Official Public Records of El Paso County, Texas, as amended by that certain Amended Protective Covenants Commercial – Montecillo Unit One Replat "A", recorded as Document No. 20110020845 in the Official Public Records of El Paso County, Texas; as further amended by that certain Amended Protective Covenants Commercial – Montecillo Unit Two, recorded as Document No. 20110020846 in the Official Public Records of El Paso County, Texas; as further amended by that certain Amendment to Master Declaration of Covenants, Conditions and Restrictions – Montecillo Units One, Two and Three, recorded as Document No. 20140071507 in the Official Public Records of El Paso County, Texas; as further amended by that certain Amendment to Master Declaration of Covenants, Conditions and Restrictions – Montecillo Subdivision Units One, Two and Three, recorded as Document No. 20150017323 in the Official Public Records of El Paso County, Texas (collectively, the "**Original Covenant**").

**C.** Portions of the Property have been made subject to the Original Covenant upon the Recording of the Original Covenant and by that certain Supplemental Declaration of Covenants, Conditions and Restrictions, recorded as Document No. 20150005688 in the Official Public Records of El Paso County, Texas and that certain Supplemental Declaration to Master Declaration of Covenants, Conditions and Restrictions for Montecillo, recorded as Document No. 20160067384 in the Official Public Records of El Paso County, Texas (the "**Supplemental Declarations**"). Those portions of the Property previously made subject to the Original Covenant are referred to herein as the "**Previously Submitted Property**."

**D.** Pursuant to *Section 9.4* of the Original Covenant, Declarant has the absolute right, prior to the "**Conversion Date**" (as defined in the Original Covenant) and without the joinder or consent of any

other person, to amend the Original Covenant by any instrument in writing, duly signed, acknowledged, and filed for record.

E. Pursuant to *Section 4.4(c)* of the Original Covenant, the "Conversion Date" will occur: (i) when Declarant has sold its interest in 100% of all the residential and commercial lots subject to the Original Covenant to unrelated or unaffiliated third parties; or (ii) at such earlier date as may be established by Declarant in a Supplemental Declaration (as defined in the Original Covenant). The Conversion Date has not yet occurred, and as such, Declarant presently retains, and wishes to exercise, its right to amend and restate the Original Covenant in its entirety, as set forth in this Master Covenant.

F. The Previously Submitted Property shall be subject to this Master Covenant upon its Recording. Subsequent to the Recordation of this Master Covenant, additional portions of the Property may be made subject to this Master Covenant upon the Recording of one or more Notices of Annexation pursuant to *Section 12.05* below, and once such Notices of Annexation have been Recorded, the portions of the Property described therein will constitute the Development (as defined below) and will be governed by and fully subject to this Master Covenant, and the Development in turn will be comprised of separate Development Areas (as defined below) which will be governed by and subject to separate Development Area Declarations (as defined below) in addition to this Master Covenant. This Master Covenant serves notice that upon the further Recording of one or more Notices of Annexation, portions of the Property identified in such notice or notices will be subject to the terms and provisions of this Master Covenant.

**Except for the Previously Submitted Property, no portion of the Property is subject to the terms and provisions of this Master Covenant until a Notice of Annexation is Recorded. A Notice of Annexation may only be Recorded by Declarant.**

**PROPERTY VERSUS DEVELOPMENT VERSUS DEVELOPMENT AREA**

<b>"Property"</b>	Described on <u>Exhibit "A"</u> . This is the land that <u>may be made</u> subject to this Master Covenant, from time to time, by the Recording of one or more Notices of Annexation. Declarant has no obligation to annex all or any portion of the Property to this Master Covenant.
<b>"Development"</b>	This is the portion of the Property that <u>has been made</u> subject to this Master Covenant pursuant to the Original Covenant and the Supplemental Declarations, as well as any land that <u>is made</u> subject to this Master Covenant through the Recording of a Notice of Annexation.
<b>"Development Area"</b>	This is a portion of the Development. Each Development Area may be made subject to a Development Area Declaration.

**NOW, THEREFORE**, it is hereby declared that: (i) the Previously Submitted Property together with any portion of the Property not previously encumbered by the Original Covenant and the Supplemental Declarations only as and when made subject to this Master Covenant by the Recording of a Notice of Annexation will be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all

parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each Owner thereof; (ii) each contract or deed conveying those portions of the Property which are made subject to this Master Covenant will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (iii) upon Recording of this Master Covenant, the Original Covenant shall be amended, restated and replaced in its entirety by the terms and provisions of this Master Covenant, this Master Covenant shall be in substitution and replacement of the Original Covenant, and all portions of the Previously Submitted Property shall be encumbered by the terms and conditions of this Master Covenant.

This Master Covenant uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of this Master Covenant, the text of this Master Covenant will control.

## **ARTICLE 1** **DEFINITIONS**

Unless the context otherwise specifies or requires, the following words and phrases when used in this Master Covenant will have the meanings hereinafter specified:

**"Applicable Law"** means all statutes, public laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Development and any other applicable building codes, zoning restrictions, permits and ordinances adopted by the City (defined below), which are in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes, ordinances and regulations specifically referenced in the Documents are "Applicable Law" on the effective date of the Document, and are not intended to apply to the Development if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

**"Assessment"** or **"Assessments"** means assessments imposed by the Association under this Master Covenant.

**"Assessment Unit"** has the meaning set forth in *Section 8.09*.

**"Association"** means Montecillo Owners Association, Inc., a Texas nonprofit corporation, which was created by Declarant to exercise the authority and assume the powers specified in *Article 6* and elsewhere in this Master Covenant. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Master Covenant, the Certificate, the Bylaws, and Applicable Law.

**"Board"** means the Board of Directors of the Association.

**"Builder"** refers to any Owner (other than Declarant) who (i) is or will be regularly engaged in the construction industry; (ii) intends to or does commence construction of Final Building Improvements or other Improvements; or (iii) acts as his own general contractor and intends to or does contract with

one or more subcontractors for the construction of Final Building Improvements or other Improvements.

**"Bulk Rate Contract"** or **"Bulk Rate Contracts"** means one or more contracts which are entered into by the Association for the provision of services of any kind or nature to the Lots and/or Condominium Units. The services provided under Bulk Rate Contracts may include, without limitation, security services, trash pick-up services, propane service, natural gas service, landscape services and any other services of any kind or nature which are considered by the Board to be beneficial to the Development and/or the Association. Each Bulk Rate Contract must be approved in advance and in writing by Declarant until expiration or termination of the Development Period.

**"Bylaws"** mean the Bylaws of the Association as adopted and as amended from time to time.

**"Certificate"** means the Certificate of Formation of the Association, filed in the Office of the Secretary of State of Texas, as the same may be amended from time to time.

**"City"** means the City of El Paso, Texas, a Texas home rule municipality.

**"Commercial Lot"** means a Lot, if any, within the Development, other than Common Area or Special Common Area, which is designated by Declarant for business or commercial use. The term "business or commercial use" shall include, but shall not be limited to, all office, retail, wholesale, manufacturing, and service activities, and may also be deemed to include multi-family, duplex and apartment housing of various densities. A Commercial Lot, for the purpose of this Master Covenant, may also include a Lot upon which a commercial or residential condominium regime will be impressed.

**"Common Area"** means any property or facilities that the Association owns or in which it otherwise holds rights or obligations, including, but not limited to, any property or facilities held by Declarant for the benefit of the Association or its Members. Declarant reserves the right, from time to time and at any time, to designate by written and Recorded instrument portions of the Property being held by Declarant for the benefit of the Association. Upon the Recording of such designation, the portion of the Property identified in the Recorded written instrument will be considered Common Area for the purpose of this Master Covenant. Common Area also includes any property that the Association holds under a lease, license, easement or other instrument in favor of the Association. Some Common Area will be solely for the common use and enjoyment of the Owners, while other portions of the Common Area may be for the use and enjoyment of the Owners and members of the public.

**"Condominium Unit"** means an individual unit, including any common element assigned thereto, within a condominium regime, if any, established within the Development. A Condominium Unit may be designated in any Development Area Declaration for residential, commercial or live/work purposes.

**"Declarant"** means **EPT MESA DEVELOPMENT, LP**, a Delaware limited partnership. Notwithstanding any provision in this Master Covenant to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights, reservations and duties under this Master Covenant to any person. Declarant may also, by Recorded written instrument, permit any other person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant's privileges, exemptions, rights and duties under this Master Covenant.



Declarant enjoys special privileges to facilitate the development, construction, and marketing of the Property and the Development, and to direct the size, shape and composition of the Property and the Development. These special rights are described in this Master Covenant. Many of these rights do not terminate until either Declarant: (i) has sold all Lots or Condominium Units which may be created out of the Property; or (ii) voluntarily terminates these rights by a Recorded written instrument. Declarant may also assign, in whole or in part, all or any of Declarant's rights established under the terms and provisions of this Master Covenant to one or more third parties.

**"Design Guidelines"** means the standards for design and construction of Improvements, landscaping and exterior items proposed to be placed on any Lot or Condominium Unit, and adopted pursuant to *Section 9.04(b)*, as the same may be amended from time to time, including, but not limited to any supplemental guidelines which may be adopted from time to time for portions of the Development. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Development. The Reviewer may adopt, and amend from time to time, the Design Guidelines applicable to the Development or any Development Area, or any portion thereof. The Design Guidelines may be Recorded as a separate written instrument or may be incorporated into a Development Area Declaration by exhibit or otherwise. Notwithstanding anything in this Master Covenant to the contrary, Declarant will have no obligation to establish Design Guidelines for the Development or any portion thereof.

**"Developer"** refers to any Owner who acquires undeveloped land, one or more Lots, or any other portion of the Property for the purposes of development and/or resale to a builder.

**"Development"** refers to the Previously Submitted Property together with all or any portion of the Property made subject to this Master Covenant by the Recording of Notices of Annexation.

**"Development Area"** means any part of the Development (less than the whole), which Development Area may be subject to a Development Area Declaration in addition to being subject to this Master Covenant.

**"Development Area Declaration"** means, with respect to any Development Area, the separate Recorded instrument, as may be amended from time to time, setting forth additional covenants, conditions, restrictions, limitations and/or easements, applicable only to the portion of the Development identified therein or as otherwise set forth in one or more Notices of Annexation Recorded pursuant to *Section 12.05* below.

**"Development Period"** means the period of time beginning on the date when this Master Covenant has been Recorded, and ending seventy-five (75) years thereafter, unless earlier terminated by a Recorded written instrument executed by Declarant. Declarant may terminate the Development Period by a Recorded written instrument executed by Declarant. The Development Period is the period of time in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property and the Development, and the right to direct the size, shape and composition of the Property and the Development. The Development Period is for a term of years and does not require that Declarant own any portion of the Property or the Development.

**"District"** means (i) a public improvement district created pursuant to Chapter 372, Subchapter B of the Texas Local Government Code; (ii) a municipal utility district created pursuant to Article XVI, Section 59 of the Constitution of Texas and Chapters 49 and 54, Texas Water Code; or (iii) any other

similarly constituted governmental or quasi-governmental entity created for the purpose of providing benefits or services to the Development.

**“Documents”** means, singularly or collectively, as the case may be, this Master Covenant, the Certificate, Bylaws, the Policy Manual, the Design Guidelines (if adopted), any applicable Development Area Declaration, any applicable Notice of Annexation, as each may be amended from time to time, and any Rules promulgated by the Association pursuant to this Master Covenant or any Development Area Declaration, as adopted and amended from time to time. An appendix, exhibit, schedule, or certification accompanying a Document is part of a Document. See Table 1 for a summary of the Documents.

**“Final Building Improvement”** consists of a completed residential home or a completed commercial building (or a previously approved phase thereof), as the case may be, and as evidenced by an unconditional certificate of occupancy (or partial occupancy), with all landscaping and other applicable appurtenances.

**“Improvement”** means any and all physical enhancements and alterations to the Development, including, but not limited to, grading, clearing, removal of trees, site work, utilities, utility lines, landscaping, irrigation, trails, hardscape, exterior lighting, alteration of drainage flow, drainage facilities, detention/retention ponds, reservoirs, pipes, pumps, wells, tanks, lines, meters, antennas, water features, fences, gates, walls or retaining walls, garages, streets, roadways, driveways, sidewalks, parking areas and/or facilities, buildings, warehouses, storage facilities, exterior air conditioning equipment, exterior fixtures, poles, signs, signage, mailboxes, awnings, and every structure and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, homes, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, and mailboxes.

**“Individual Assessment”** means an Assessment levied against a Lot or Condominium Unit as described in *Section 8.07*.

**“Lot”** means any portion of the Development designated by Declarant in a Recorded written instrument or as shown as a subdivided lot on a Plat, other than Common Area, Special Common Area, or a Lot on which a condominium regime has been established, and may include both Commercial Lots and Residential Lots. All or any portion of the Development which is not so platted or subject to the condominium form of ownership on the date this Master Covenant is Recorded shall be designated as a singular Lot for the purpose of this Master Covenant until such time as additional Lots are established herein.

**“Majority”** means more than half.

**“Manager”** has the meaning set forth in *Section 6.05(h)*.

**“Master Covenant”** means this Master Covenant, as amended from time to time, containing covenants, conditions, restrictions, limitations and/or easements applicable to all or any portion of the Property made subject hereto by one or more Notices of Annexation Recorded pursuant to *Section 12.05* below.

**“Member”** means each person or entity that holds membership privileges in the Association.

**“Mortgage”** means any mortgage or deed of trust securing indebtedness and covering any Lot or Condominium Unit.

**“Mortgagee”** means the holder of any Mortgage.

**“Notice of Annexation”** means the Recorded notice executed by Declarant for the purpose of adding all or any portion of the Property to the terms and provisions of this Master Covenant in accordance with *Section 12.05* below. A Notice of Annexation may also subject a portion of the Property to a previously Recorded Development Area Declaration.

**“Notice of Plat Recordation”** means the Recorded notice executed by Declarant for the purpose of more clearly identifying specific Lots subject to the terms and provisions of this Master Covenant after portions of the Property are made subject to a Plat and withdrawing those portions of the Property which are included on the Plat but not shown as a Residential Lot from the terms and provisions of this Master Covenant in accordance with *Section 12.06* below.

**“Occupant”** means any resident, occupant, or tenant of a Lot or Condominium Unit, other than the Owner of such Lot or Condominium Unit.

**“Owner”** means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot or Condominium Unit and in no event shall mean any Occupant. A Mortgagee who acquires title to a Lot or Condominium Unit through a deed in lieu of foreclosure or through foreclosure is an Owner. A person or entity having an ownership interest in a Lot or Condominium Unit merely as security for the performance of an obligation is not an Owner. Every Owner is a Member of the Association.

**“Plat”** means a Recorded subdivision plat of any portion of the Development, and any amendments thereto.

**“Policy Manual”** means the policy manual, which may be initially adopted and Recorded by Declarant as part of the initial project documentation for the Development. The Policy Manual may include the Bylaws, Rules and other policies governing the Association. The Policy Manual may be amended or modified, from time to time, by a Majority of the Board. Upon expiration or termination of the Development Period, any amendment or modification to the Policy Manual must be approved in advance and in writing by Declarant.

**“Property”** means all of that certain real property described on Exhibit “A”, attached hereto, that may be made subject to this Master Covenant, from time to time, by the Recording of one or more Notices of Annexation pursuant to *Section 12.05* below, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 12.03* and *Section 12.04* of this Master Covenant.

**“Record, Recording, Recordation and Recorded”** means recorded in the Official Public Records of El Paso County, Texas.

**“Regular Assessments”** means those Assessments levied against the Lots and/or Condominium Units as described in *Section 8.03* for the purpose of funding the estimated net expenses of the Association as reflected on the annual budget.

**“Residential Lot”** means a Lot which is designated solely for single-family residential use.

**“Reviewer”** means the party holding the rights to approve Improvements within the Development and shall be Declarant or its designee until expiration or termination of the Development Period. Upon expiration or termination of the Development Period, the rights of the Reviewer will automatically be transferred to an ACC, the members of which shall be appointed by the Board as set forth in *Section 9.02* below.

**“Rules”** mean any instrument, however denominated, which may be initially adopted by Declarant as part of the Policy Manual, or subsequently adopted by the Board, for the regulation and management of the Development, including any amendments to those instruments. During the Development Period, any amendment to the Rules must be approved in advance and in writing by Declarant, unless such approval is otherwise waived by Declarant in its sole discretion.

**“Service Area”** means a group of Lots and/or Condominium Units designated as a separate Service Area pursuant to this Master Covenant for purpose of receiving benefits or services from the Association which are not provided to all Lots and Condominium Units. A Service Area may be comprised of more than one type of use or structure and may include noncontiguous Lots. A Lot or Condominium Unit may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 2.04*.

**“Service Area Assessments”** means those Assessments levied against the Lots and/or Condominium Units in a particular Service Area to fund Service Area Expenses, as described in *Section 8.06*.

**“Service Area Expenses”** means the estimated or actual expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include reserves for operations, capital repairs, and replacements.

**“Special Assessments”** means those Assessments levied against the Lots and/or Condominium Units as described in *Section 8.05* for the purpose of enabling the Board to carry out the functions of the Association under the Documents, as may be determined from time to time by the Board in its sole discretion.

**“Special Common Area”** means any interest in real property or improvements which benefits certain Lot(s), Condominium Unit(s), or one or more portion(s) of, but less than all of, the Development, which is designated by Declarant in a Notice of Annexation, Development Area Declaration, or any written instrument Recorded by Declarant (which designation will be made in the sole and absolute discretion of Declarant) as Special Common Area for the exclusive use of and/or the obligation to pay Special Common Area Assessments by the Owners of such Lot(s), Condominium Unit(s), or portion(s) of the Development attributable thereto, and which have been or will be conveyed to the Association, or as to which the Association will be granted rights or obligations, or otherwise held by Declarant for the benefit of the Association, as further set forth in *Section 2.05*.

**“Special Common Area Assessments”** means assessments levied against the Lots and/or Condominium Units as described in *Section 8.05*.

**“Special Common Area Expenses”** means the estimated and actual expenses which the Association incurs or expects to incur to operate, maintain, repair and replace Special Common Area, which may include a reasonable reserve for capital repairs and replacements.

**“Voting Group”** has the meaning set forth in *Section 6.04(d)* below.

**“Working Capital Assessment”** means a one-time Assessment payable to the Association upon transfer of title to a Lot or Condominium Unit as described in *Section 8.08* for the purpose of establishing working capital, which may include the use of such amounts by the Association to discharge operating expenses.

<b>TABLE 1: DOCUMENTS</b>	
<b>Master Covenant</b> (Recorded)	Creates obligations that are binding upon the Association and all present and future Owners of all or any portion of the Property made subject to this Master Covenant by the Recording of a Notice of Annexation.
<b>Notice of Annexation</b> (Recorded)	Describes the portion of the Property being made subject to the terms and provisions of this Master Covenant and any applicable Development Area Declaration.
<b>Development Area Declaration</b> (Recorded)	Includes additional covenants, conditions and restrictions governing portions of the Development.
<b>Certificate of Formation</b> (Filed with Secretary of State and Recorded)	Establishes the Association as a not-for-profit corporation under Texas law.
<b>Bylaws</b> (Recorded)	Governs the Association’s internal affairs, such as elections, meetings, etc.
<b>Policy Manual</b> (Recorded)	Establishes the Rules and policies governing the Association and the Development.
<b>Design Guidelines</b> (if adopted, Recorded)	If adopted, governs the design and architectural standards for the construction of Improvements and modifications thereto. Declarant will have no obligation to establish Design Guidelines for the Development.
<b>Rules</b> (if adopted, Recorded)	Rules regarding the use of property, activities, and conduct within the Development. The Rules may be included within the Policy Manual or included within separate documents.
<b>Board Resolutions</b> (adopted by the Board)	Documented decision-making by the Board to establish rules, policies, and procedures for the Association.
<b>Notice of Plat Recordation</b> (Recorded)	Identifies specific Lots on a Plat and, upon Recordation, withdraws all Property other than Lots from the terms and provisions of this Master Covenant. Declarant shall have no obligation to Record a Notice of Plat Recordation.

**ARTICLE 2**  
**GENERAL RESTRICTIONS**

**2.01. General.**

(a) Conditions and Restrictions. All Lots and Condominium Units within the Development will be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Documents.

(b) Compliance with Applicable Law and the Documents. Compliance with the Documents is mandatory. However, compliance with the Documents is not a substitute for compliance with Applicable Law. Please be advised that the Documents do not purport to list or describe each requirement, rule, or restriction which may be applicable to a Lot or a Condominium Unit located within the Development. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot or Condominium Unit. Furthermore, an approval by the Reviewer should not be construed by the Owner that any Improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot or Condominium Unit. The Association, each Owner, Occupant or other user of any portion of the Development must comply with the Documents and Applicable Law, as supplemented, modified or amended from time to time.

(c) Approval of Regulatory Submission Items. Each Owner is further advised that prior to submitting any application, zoning change, variance or special use permit, plat, drainage plans, building or site plan, expressly including any amendments to the preliminary plan and any development plan required to be submitted by an Owner pursuant to any zoning ordinance applicable to the Property or the Development (the "**Regulatory Submission Items**"), to a regulatory authority for approval or issuance of a permit, as applicable, the Owner must first obtain approval from Declarant during the Development Period and the Board thereafter of the Regulatory Submission Items (the "**Preliminary Regulatory Approval**"), unless obtaining such approval is waived in writing, in the sole and absolute discretion of Declarant or the Board, as applicable. In the event of a conflict between the Regulatory Submission Items approved pursuant to the Preliminary Regulatory Approval and the Regulatory Submission Items approved by the regulatory authority, the Owner will be required to resubmit the Regulatory Submission Items to obtain a final Preliminary Regulatory Approval. If granted, the Preliminary Regulatory Approval shall be conditional ONLY and any Improvements to be constructed in accordance with the Regulatory Submission Items must be submitted by the Owner to the Reviewer for approval in accordance with Section 9.04(c) below. Each Owner acknowledges that no regulatory authority has the authority to modify the terms and provisions of the Documents applicable to all or any portion of the Development.

(d) Approval of Project Names. Each Owner is advised that the name used to identify any Development Area or any portion thereof for marketing or identification purposes must be approved in advance and in writing by Declarant during the Development Period.

(e) Development Amenities. A Development Area may include Common Area, open space, water quality facilities, parkland, trails, landscape areas, roadways, driveways or easements which benefit the Development in addition to the Development Area, as reasonably determined by Declarant during the Development Period, and the Board after termination or

expiration of the Development Period (the “**Development Amenities**”). Declarant, during the Development Period, and the Board after termination or expiration of the Development Period, may require all or a portion of such Development Amenities be conveyed, transferred, or dedicated (by deed, easement, or license) to: (i) the Association; or (ii) another entity designated by Declarant or a Majority of the Board, as applicable, including but not limited to any then-existing District. Alternatively, Declarant, during the Development Period, and a Majority of the Board after termination or expiration of the Development Period, may require that all or a portion of such Development Amenities be owned and maintained by the Owner of all or a portion of a particular Development Area, subject to an easement in favor of other Owner(s) and Occupants, as designated by Declarant or a Majority of the Board, as applicable (e.g., ingress and egress over and across the driveways constructed within the Development Area).

The Development Amenities may not be conveyed or otherwise transferred unless the conveyance or transfer is approved in advance and in writing by Declarant during the Development Period, or a Majority of the Board after expiration or termination of the Development Period.

**2.02. Incorporation of Development Area Declarations.** Upon Recordation of a Development Area Declaration, such Development Area Declaration will, automatically and without the necessity of further act, be incorporated into, and be deemed to constitute a part of this Master Covenant, to the extent not in conflict with this Master Covenant, but will apply only to portions of the Property made subject to the Development Area Declaration. To the extent of any conflict between the terms and provisions of a Development Area Declaration and this Master Covenant, the terms and provisions of this Master Covenant will control.

**2.03. Conceptual Plans.** All master plans, site plans, brochures, illustrations, information and marketing materials related to the Property (collectively, the “**Conceptual Plans**”) are conceptual in nature and are intended to be used for illustrative purposes only. **The land uses and Improvements reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that actual land uses within the Property may include uses which are not shown on the Conceptual Plans.** Neither Declarant, a Developer, any Builder, nor any other developer of or contractor upon any portion of the Property makes any representation or warranty concerning such land uses and Improvements shown on the Conceptual Plans or otherwise planned for the Property. It is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans, or any statement made by Declarant or any of Declarant’s representatives regarding proposed land uses, or proposed or planned Improvements, in making the decision to purchase any land or Improvements within the Property. Each Owner who acquires a Lot or Condominium Unit within the Development acknowledges that the Development is a master planned community, the development of which will extend over many years, and agrees that the Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or to any proposed or actual changes in the Conceptual Plans, as they may be amended or modified from time to time.

**The Development is a master planned community which will be developed over a number of years. The plans, land uses, projected Improvements, Assessments, and Documents are subject to change from time to time, without notice or obligation to notify.**

**2.04. Provision of Benefits and Services to Service Areas.**

(a) Declarant, in a Notice of Annexation Recorded pursuant to *Section 12.05* or in any other Recorded notice, may assign Lots and/or Condominium Units to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Lots and/or Condominium Units in addition to those which the Association generally provides to the Development. Declarant may unilaterally amend any Notice of Annexation or other Recorded notice, to re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area will be assessed against the Lots and/or Condominium Units within the Service Area as a Service Area Assessment.

(b) In addition to Service Areas which Declarant may designate, any group of Owners may petition the Board to designate their Lots and/or Condominium Units as a Service Area for the purpose of receiving from the Association: (i) special benefits or services which are not provided to all Lots and/or Condominium Units; or (ii) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a Majority of the Lots and/or Condominium Units within the proposed Service Area, the Board will investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and associated expenses, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge will apply at a uniform rate per Lot and/or Condominium Units among all Service Areas receiving the same service). If approved by the Board, Declarant during the Development Period, and the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots and/or Condominium Units within the proposed Service Area, the Association will provide the requested benefits or services on the terms set forth in the proposal or in a manner otherwise acceptable to the Board. The cost and administrative charges associated with such benefits or services will be assessed against the Lots and/or Condominium Units within such Service Area as a Service Area Assessment.

**2.05. Designation of Special Common Areas.** During the Development Period, Declarant may designate, in a Notice of Annexation, a Development Area Declaration, or in any written instrument Recorded by Declarant (which designation will be made in the sole and absolute discretion of Declarant), any interest in real property or Improvements which benefits certain Lot(s), Condominium Unit(s), or one or more portion(s) of, but less than all of, the Development, as Special Common Area for the exclusive use of the Owner(s) of such Lot(s), Condominium Unit(s), or portion(s) of the Development. Such Owners shall have the obligation to pay Special Common Area Assessments for the exclusive use of such Special Common Area. Any portion of the Development designated as Special Common Area shall be conveyed to the Association, or the Association shall be granted rights or obligations with respect to such Special Common Area, or such Special Common Area shall otherwise be held by Declarant for the benefit of the Association. The Notice of Annexation, Development Area Declaration, or other Recorded written instrument designating such Special Common Area will identify the Lot(s), Condominium Unit(s), or other portion(s) of the Development assigned to such Special Common Area. All costs associated with maintenance, repair, replacement, and insurance of such Special Common Area will be assessed as a Special Common Area Assessment against the Owner(s) of the Lot(s), Condominium Unit(s) or portion(s) of the Development to which the Special Common Area is assigned.



**ARTICLE 3**  
**GENERAL USE RESTRICTIONS**

**3.01. Prohibited Uses.** No portion of the Development may be used as an adult entertainment establishment, including without limitation, an adult bookstore, adult motion picture theater, or nude or semi-nude live entertainment club, as such or similar terms are defined from time-to-time in the El Paso Municipal Code or other Applicable Law. Without limitation on any other remedy that may be available to an Owner for a breach of this restriction, this restriction may be enforced by injunction.

**3.02. Size of Final Building Improvements.** The Design Guidelines, or supplemental Design Guidelines for each Development Area, may establish maximum and/or minimum building heights and size for Final Building Improvements.

**3.03. Building Location.** The Design Guidelines, or supplemental Design Guidelines for each Development Area, may establish setbacks and other siting requirements for Improvements.

**3.04. Walls and Fences.** No walls or fences shall be erected or maintained on any Lot except in accordance with the Design Guidelines. No chain link fences shall be permitted, except for temporary fences constructed by Declarant or permitted by the Reviewer during construction of Final Building Improvements.

**3.05. Temporary and Other Structures.** No structure of a temporary character, trailer, mobile, modular or prefabricated home, tent, shack, barn, or any other structure or building, other than the Final Building Improvements to be built thereon, shall be placed on any Lot, either temporarily or permanently, and no Final Building Improvement or other structure appurtenant thereto, shall be moved upon any Lot from another location; provided, however, that Declarant reserves the exclusive right to erect, place and maintain, and to permit Builders and/or Developers to erect, place and maintain, such facilities in and upon the Development as in Declarant's sole discretion may be necessary or convenient during the period of and in connection with the sale of Lots, initial construction and selling of Final Building Improvements and constructing other Improvements in the Development. Such facilities may include, but not necessarily be limited to, a temporary office building, storage area, signs, portable toilet facilities and sales office. Builders and/or Developers shall also have the temporary right to use a Final Building Improvement situated on a Lot as a temporary office or model during the period of and in connection with construction and sales operations in the Development, but in no event shall a Builder or Developer have such right for a period in excess of one (1) year from the date of substantial completion of his last Final Building Improvement in the Development.

**3.06. Nuisance.** No noxious, offensive or significantly annoying activity shall be carried on or permitted upon any Lot. The Board shall have the sole and exclusive discretion to determine what constitutes a nuisance or annoyance. As to Residential Lots, no passenger cars, trucks, motor vehicles not currently licensed, boats, trailers, campers, motor or mobile homes or other vehicles (collectively, "Vehicles") may be parked on a Lot unless in a closed garage. Vehicles may be parked in a street; provided, however, that Vehicle storage on the street is not permitted, and no Vehicle may be parked on the street in front of any Lot for a period exceeding one (1) week. No Vehicle shall be parked on the landscaped area of any Lot. No repair work, dismantling, or assembling of Vehicles, or other machinery or equipment related thereto shall be parked or permitted on any street or driveway. The use or discharge of firearms, firecrackers, or other fireworks in the Development is prohibited. No motor bikes,

motorcycles, motor scooters, "go-carts", or other similar Vehicles shall be permitted to be operated in the Development if, in the judgment of the Board, such operation, by reason of noise or fumes emitted, dangerous conditions or danger to persons, or manner of use, constitutes a nuisance.

**3.07. Signs.** Other than signs, billboards or other advertising devices displayed by Declarant or approved by Declarant, no sign of any kind shall be displayed on any Lot or Condominium Unit that is visible from another Lot or Condominium Unit, a public or private street, thoroughfare or sidewalk, Common Area or Special Common Area, except in accordance with the Development Area Declaration applicable to such Lot or Condominium Unit. Declarant, the Association, the Reviewer, and any agents thereof shall have the right to remove any sign not complying with the provisions of this Section or the Rules, and they shall not be liable for and are released from, any liability for trespass or other tort in connection therewith, or arising from such removal.

**3.08. Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, except that dogs, cats or other common household pets (not to exceed two (2) adult animals per Residential Lot) may be kept on Residential Lots only, but they shall not be bred or kept for commercial purposes unless otherwise approved by Declarant. Notwithstanding the foregoing, no Occupant may keep a dangerous or exotic animal, trained attack dog, or any other animal deemed by the Board to be a potential threat to the well-being of people or other animals. In the event that any regulatory authority (i.e. animal control) determines that an animal within the Development is dangerous or hazardous, then the owner of such animal shall be required to immediately remove the animal from the Development.

**3.09. Removal of Dirt.** The digging of dirt or the removal of any dirt from any Lot is prohibited, except as necessary in conjunction with landscaping or plans approved in advance by the Reviewer.

**3.10. Garbage and Refuse Storage and Disposal.** Each Lot shall be kept by its Owner in a healthy, sanitary, clean and attractive condition at all times. No Lot shall be used or maintained as a dumping ground for garbage, trash, junk or other waste matter. The Owner is responsible for picking up all trash off of his Lot. All trash, garbage, or waste matter shall be kept in adequate containers constructed of metal, plastic or masonry materials, with tight-fitting lids, and shall be maintained in a clean and sanitary condition and screened from public view. During construction, Owners and Builders are responsible for controlling construction debris. No Lot shall be used for open storage of any materials, except that new building materials used in the construction of Final Building Improvements may be placed on a Lot at the time construction is commenced and may be maintained thereon for a reasonable time, so long as the construction progresses without unreasonable delay, until completion of the Final Building Improvements, after which the materials shall either be removed from the Lot or stored in a suitable enclosure on the Lot. No garbage, trash, debris, or other waste matter of any kind shall be burned on any Lot.

**3.11. Porta-Potty.** Porta-Potties must be screened from view to the extent reasonably possible, and they must be properly removed when construction ceases.

**3.12. Access.** No driveways or roadways may be constructed on any Lot to provide access to any adjoining Lot or other portion of the Development unless the prior written consent of the Reviewer is obtained.

**3.13. Driveways and Culverts.** Each Lot must be accessible to an adjoining street by a driveway suitable for such purposes before the structure located on any such Lot may be occupied or used. No Owner may block any required drainage. The Association shall have the right to enforce the maintenance obligations of Owners having drainage facilities on their Lots, including the right to go upon such Owner's Lot and perform the necessary cleaning and maintenance of the drainage facilities and to charge such Owner for the full cost thereof all after at least ten days prior notice to the Owner. All matters concerning drainage must be approved by the Association.

**3.14. Utilities.** All Final Building Improvements must be connected to the water and sewer lines, and other utilities.

**3.15. Subdivision of Lots.** No Lot may be re-subdivided or re-platted without the approval of Declarant, during the Development Period, and the Board thereafter. Additionally, no Residential Lot owned by an Owner other than Declarant shall be re-subdivided, re-platted or redeveloped into a Commercial Lot without the prior approval of Declarant.

**3.16. Oil and Mining Operations.** No oil or other mineral drilling or development operations shall be permitted in the Development.

**3.17. Lot Maintenance.** In addition to the maintenance and repair otherwise required by the Documents, the Owners, Builders, and Occupants of all Lots must keep all weeds, grass and other vegetation in a sanitary, healthy, and a recently-trimmed, cut and attractive condition. The drying of clothes in any area in public view is prohibited. The Owners and Occupants of any Lots on which the rear yard or a portion of the Lot is in public view from another Lot, a public or private street, thoroughfare or sidewalk, Common Area or Special Common Area shall construct and maintain a suitable enclosure to screen the following from being visible: the drying of clothes, yard equipment, wood piles or storage piles that are incident to the normal requirements of a typical family or a typical commercial use of Lots.

In the event of default on the part of a Builder or the Owner or Occupant of any Lot in observing the requirements of this Article, and in the event such default continues after ten (10) days written notice, Declarant, its successors and assigns or the Association may, without liability to the Owner or Occupant in trespass or otherwise, enter upon said Lot and take any reasonable action necessary to enforce compliance with this Master Covenant and the Rules. The Owner or Occupant of such Lot shall reimburse Declarant, the Association and their successors, assigns, agents and contractors for all related costs within ten (10) days of request for payment. Past due reimbursements shall bear interest and be governed by *Article 8*. The Owner or Occupant agrees by the purchase or occupancy of his Lot to pay such statement immediately upon receipt thereof.

**3.18. Turf and Vegetation Restrictions.** Turf and vegetation restrictions may be imposed on each Development Area as provided in the Design Guidelines.

**3.19. Commencement of Construction.** Unless otherwise approved by the Reviewer, construction of the Final Building Improvements and any other Improvements of every kind and character on any Lot and all landscaping in yards abutting streets shall be completed not later than one (1) year following commencement of construction and not later than two (2) years from closing on the purchase of the Lot. For the purposes hereof, the term "commencement of construction" shall be deemed to mean the date on which the foundation forms are set.

**3.20. Sex Offenders.** Registered sex offenders are not permitted to live within the Development. The foregoing shall, in no event, be deemed to impose upon Declarant, the Board, or the Association any obligation whatsoever to monitor the presence of sex offenders within the Development, or to notify Owners of the presence thereof.

**3.21. Use of Amenities.** Certain community amenities are planned for the Development. Such amenities may include, but are not limited to, a clubhouse, exercise room(s) and pool(s) and other related facilities (collectively, the "**Amenities**"). All or a portion of the Amenities may be privately owned and, in such event, those Amenities will not be designated as Common Area, but Owners may have the right to use and enjoy such Amenities pursuant to one or more separate agreements. Declarant reserves the right to use a portion of the Amenities for commercial purposes (including, without limitation, as a leasing center), whether or not the Amenities are designated as Common Area.

**3.22. Private Street Maintenance.** Declarant will develop all private streets in accordance with City standards. The Association shall be responsible for perpetual maintenance of any private streets and other improvements (including parks and open space) held privately. Owners shall be subject to Assessments for such private streets and improvements, and City staff shall be allowed to inspect such private streets to assure they are being maintained to City standards. Declarant, the Association, and the Owners shall not seek to recover from the City any costs of constructing the private streets. Declarant, the Association, and the Owners will allow the City to inspect the private streets in the same manner and intervals as public streets, and the cost of such inspections shall be a common expense of the Association. The Association shall release, indemnify, defend and hold harmless the City, any other governmental entity, and any public utility entity for damages to the private streets that may be occasioned by the reasonable use of the private streets by same, and for damages and injury arising from the condition of the private streets, out of any use of access gates or cross arms, or out of any use of Montecillo by the City or governmental or utility entity. Notice of any amendment to this Section shall be provided to the City attorney and City manager, and the City shall be a necessary party to an amendment of any provision of this Declaration affecting the private street requirements. Additional provisions that apply to private streets in the Development are as follows:

(a) Declarant and the Association will use only traffic control devices that conform to the Texas Manual of Uniform Traffic Control Devices, as amended.

(b) The Association will mark all entrances to the private streets with signs indicating that the streets within the Development are private and not maintained or patrolled by the City.

(c) If restricted access entrances are erected, then the Association will man the entrances 24 hours every day or provide reliable, alternative means of ensuring access into the Development by the City by emergency service providers or utility or public service providers with proper identification. If the Association proposes alternative means of access, then such means must be approved by the City's fire department and by other applicable emergency service providers.

(d) Declarant grants the City the right to enter the Development and remove any gate, barrier, or device which impedes access to the Development. The Association will pay the City all costs of removing any such obstruction. If the Association does not pay for such removal, the City may file a lien for the expense against any property owned by the Association.

(e) Declarant, Association and the Owners waive all City services in regards to the private streets. Such City services include street maintenance, routine law enforcement patrols, enforcement of traffic and parking regulations, preparation of accident reports, and payment of costs for street lighting.

(f) The Association will maintain street lighting in accordance with City code.

(g) The Association will assume the obligation of perpetual maintenance of the private streets and all private improvements within the Development. The Association shall also assess on all Owners mandatory fees for the maintenance of such private streets and private improvements within the Development as well as fees for the payment of all inspections to assure that such private streets are maintained to City standards.

(h) Declarant, the Association and the Owners release, indemnify, defend, and hold harmless the City, any other governmental entity, and any public utility for damages to the private streets that may be occasioned by the reasonable use of the private streets by same, and for damages and injury, including death, arising from the condition of the private streets, out of any use of access gates or cross arms, or out of any use of the Development by the City or governmental or utility entity.

#### **ARTICLE 4** **SPECIFIC USE RESTRICTIONS**

**4.01. Montecillo Unit Two.** No premises or building on Lot 1, Block 2, Montecillo Unit Two, City of El Paso, El Paso County, Texas, according to the map or plat thereof recorded as Document No. 20090006768 in the Official Public Records of El Paso County, Texas ("**Lot 1, Block 2**"), shall be used for other than multi-family (176 units) and general commercial purposes. The construction of single-family and two-family units on Lot 1, Block 2 is prohibited.

**4.02. Montecillo Unit One Replat "A".** No premises or building on Lot 1A, Block 1, Montecillo Unit One, Replat A, City of El Paso, El Paso County, Texas, according to the map or plat thereof recorded as Document No. 20110018395 in the Official Public Records of El Paso County, Texas ("**Lot 1A, Block 1**"), shall be used for other than multi-family (114 units) and general commercial purposes. The construction of single-family and two-family units on Lot 1A, Block 1 is prohibited.

**4.03. Theater Parcel.** Except for the owner of that property more particularly described on Exhibit "B", attached hereto and incorporated herein by reference (the "**Theater Parcel**"), and/or such Owner's Occupant, no person or entity shall operate a movie theater in any portion of the Development. In addition, no portion of the Development shall be used or occupied, or be leased or rented for the purpose of being used, for any use that would, pursuant to applicable laws and regulations, prevent the Owner or Occupant of the Theater Parcel from being granted a liquor license for the sale of beer, wine, and alcohol within the building(s) that are to be constructed on the Theater Parcel for on-site consumption, or, if such liquor license had previously been granted to such Owner or Occupant, would cause the revocation or suspension of such license. The use restrictions contained in this Section are for the benefit of, and are enforceable only by, Declarant and Owner of the Theater Parcel and/or such Owner's Occupant that operates a movie theater on the Theater Parcel, and such enforcement may be by way of a suit for damages and/or for injunctive relief; and are not enforceable by any other Owners of the Development or their Occupants. The use restrictions contained in this Section shall

automatically terminate upon cessation of use of the Theater Parcel for a movie theater for a period of sixty (60) continuous months, or upon such earlier date on which the Owner of the Theater Parcel or its Occupant commences the use of the Theater Parcel for a purpose other than a movie theater.

**4.04. Private Street Easement.** Subject to the easements created within this Master Covenant, the street within Montecillo Unit 1 (the "**Private Street**") shall be "private" and shall not constitute a common area or dedicated street. The Private Street provides for the non-exclusive use by the Owners of Lots within Montecillo Unit 1 abutting the Private Street (the "**Beneficiaries of the Private Street**") and their invitees, tenants, contractors, owners, employees and agents, for ingress and egress over the Private Street for the purposes set forth in this Section. Declarant reserves for the benefit of Declarant, and grants for the benefit of: (i) Persons contracted by Declarant or the Association for purposes set forth in this Master Covenant, the easements enumerated below, upon, across, over and under the Private Street, and (ii) the Beneficiaries of the Private Street, an easement upon, across, over and under the Private Street for:

(a) Ingress and egress of vehicular and pedestrian traffic over the Private Streets to and from the public streets adjoining Unit 1 (excluding, however, any easement or any right to claim for an easement for parking;

(b) The repairing, restoring, patching, replacing and maintenance of the Private Street, the cost of which shall be apportioned to the Beneficiaries of the Private Street in the same proportion as a Beneficiary's Lot within Unit 1 bears in square footage to the total square footage of all Lots within Unit 1;

(c) The easements granted, pursuant to *Article 11* and this Master Covenant, located on Unit 1.

Declarant, or persons contracted by Declarant or the Association, and each of the Beneficiaries of the Private Street, are entitled to reasonable access across each Lot within Montecillo Unit 1 for the purposes described in this Section; provided, however, that such access and such purposes shall be strictly defined and shall not obstruct access to, or interfere with a business operating in, one or more of the Final Building Improvements on a Lot.

## **ARTICLE 5** **SCHOOL PROPERTY**

**5.01. School Property Easements.** The Lot described on the attached Exhibit "C" is owned by the El Paso Independent School District ("**EPISD**"), or an affiliate of EPISD (the "**EPISD Lot**"). The EPISD Lot is subject to this Master Covenant to the extent such Lot is encumbered by the landscaping and monument signage easements created in *Article 11* and the assessments imposed by this *Article 5*, otherwise this Master Covenant shall not apply to the EPISD Lot; provided, however, that this Master Covenant shall not be amended to materially adversely affect the EPISD Lot. The EPISD Lot may be used by EPISD, or an affiliate of EPISD, only for purposes of owning and operating a public school funded from tax revenue and administered by EPISD, and not for any other purpose.

**5.02. School Property Assessments.** During ownership by EPISD, or an affiliate of EPISD, of the EPISD Lot, EPISD shall pay a "**Special School Assessment**" in the amount of One Thousand Dollars

(\$1,000) per year to defray the cost to the Association for its maintenance of landscaping and signage improvements on or adjacent to the EPISD Lot.

**5.03. CPI Adjustment.** The "Base Year" shall mean the date of vesting of ownership of the EPISD Lot in EPISD, or an affiliate of EPISD. Every five (5) years (the "Adjustment Period") from the Base Year, the Special School Assessment shall be adjusted to reflect any increase in the consumer price index ("CPI") as hereinafter provided. The "Adjusted Special School Assessment" shall be obtained by multiplying the Special School Assessment by a fraction, the numerator of which is the index number for the first month of each Adjustment Period hereunder in the column for "All Items" (unadjusted) in the table entitled "Consumer Price Index for All Urban Consumers" (index base: 1982-84 = 100) "U.S. City Average" published monthly by the Bureau of Labor Statistics of the U.S. Department of Labor in the Monthly Labor Review (said table herein referred to as the "CPI-U"), and the denominator of which is the CPI-U for the first full calendar month of the Base Year, and the difference between the Special School Assessment for the Base Year and the Special School Assessment for the Adjustment Period shall be multiplied by 50%, and added to the Special School Assessment for the Base Year. Notwithstanding the foregoing calculation, the Adjusted Special School Assessment pursuant to this CPI Adjustment shall in no event be less than the Special School Assessment assessed during the previous Adjustment Period. EPISD shall continue payment of the Special School Assessment in effect for the expiring Adjustment Period until notified by Declarant or the Board of any increase in such Special School Assessment. Such notification shall include a memorandum showing the calculations used by Declarant or the Board in determining the new Special School Assessment. On the first day of the calendar month immediately succeeding receipt of such notice, EPISD shall pay the Adjusted Special School Assessment specified in the notice for the following year.

**5.04. Changes in Index.** If the CPI-U is discontinued, the "Consumer Price Index for Urban Wage Earners and Clerical Workers" ("CPI-W") for "All Items", unadjusted, (index base: 1982-84 = 100), "U.S. City Average", published monthly in the Monthly Labor Review by the Bureau of Labor Statistics of the United States Department of Labor shall be used for calculating the CPI Adjustment increase stated in Section 5.03 above. If the "CPI-W" is discontinued, comparable statistics on the purchasing power of the consumer dollar published by the Bureau of Labor Statistics of the United States Department of Labor shall be used for making such computation. If the Bureau of Labor Statistics shall no longer maintain statistics on the purchasing power of the consumer dollar, comparable statistics published by a responsible financial periodical or recognized authority selected by Declarant or Board shall be used for making such computation. If the base year "(1982-84 = 100)" or other base year used in computing the CPI-U (or CPI-W if applicable) is changed, the figures used in making the adjustment discussed above shall be changed accordingly, so that all increases in the "CPI-U" (or CPI-W if applicable) are taken into account notwithstanding any such change in the base year.

**5.05. Amendment.** Notwithstanding anything contained in this Master Covenant to the contrary, Declarant shall have the right to amend this Declaration to provide for certain covenants, restrictions, reservations, terms, agreements and provisions to be placed upon the EPISD Lot.

## **ARTICLE 6**

### **MONTECILLO OWNERS ASSOCIATION, INC.**

**6.01. Organization.** The Association is a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a Texas non-profit corporation. Neither the

Certificate nor the Bylaws will, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Master Covenant.

**6.02. Membership.**

(a) Mandatory Membership. Any person or entity, upon becoming an Owner, will automatically become a Member of the Association. Membership will be appurtenant to and will run with the ownership of the Lot or Condominium Unit that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of the Lot or Condominium Unit, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot or Condominium Unit.

(b) Easement of Enjoyment – Common Area. Every Member of the Association will have a right and easement of enjoyment in and to all of the Common Area and an access easement, if applicable, by and through any Common Area, which easements will be appurtenant to and will pass with the title to such Member's Lot or Condominium Unit, subject to the following restrictions and reservations:

(i) The right of Declarant during the Development Period, and the Board thereafter or with Declarant's advance written consent during the Development Period, to cause such Improvements and features to be constructed upon the Common Area;

(ii) The right of the Association to suspend the Member's right to use the Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due or for any period during which such Member is in violation of any provision of this Master Covenant;

(iii) The right of Declarant during the Development Period, and the Board thereafter or with Declarant's advance written consent during the Development Period, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;

(iv) The right of Declarant during the Development Period, and the Board thereafter or with Declarant's advance written consent during the Development Period, to grant easements or licenses over and across the Common Area;

(v) The right of the Board with the advance written approval of Declarant during the Development Period, to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area;

(vi) The right of Declarant during the Development Period, and the Board thereafter or with the advance written approval of Declarant during the Development Period, to promulgate Rules regarding the use of the Common Area and any Improvements thereon; and

(vii) The right of the Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by Declarant.



(c) Easement of Enjoyment – Special Common Area. Each Owner of a Lot or Condominium Unit which has been assigned use of Special Common Area in a Notice of Annexation, Development Area Declaration, or other Recorded instrument, will have a right and easement of enjoyment in and to all of such Special Common Area for its intended purposes, and an access easement, if applicable, by and through such Special Common Area, which easement will be appurtenant to and will pass with title to such Owner's Lot or Condominium Unit, subject to *Section 6.02(b)* above and subject to the following restrictions and reservations:

(i) The right of Declarant during the Development Period, and the Board thereafter or with Declarant's advance written consent during the Development Period, to cause such Improvements and features to be constructed upon the Special Common Area;

(ii) The right of Declarant during the Development Period to grant additional Lots or Condominium Units use rights in and to Special Common Area in a subsequently Recorded Notice of Annexation, Development Area Declaration, or other Recorded instrument;

(iii) The right of the Association to suspend the Member's rights to use the Special Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due and for any period during which such Member is in violation of any provision of this Master Covenant;

(iv) The right of Declarant during the Development Period, and the Board thereafter or with Declarant's advance written consent during the Development Period, to grant easements or licenses over and across the Special Common Area;

(v) The right of Declarant during the Development Period, and the Board thereafter or with Declarant's advance written consent during the Development Period, to dedicate or transfer all or any part of the Special Common Area to any public agency, authority or utility for any purpose;

(vi) With the advance written consent of Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Special Common Area and, in furtherance thereof, mortgage the Special Common Area;

(vii) The right of Declarant during the Development Period, and the Board thereafter with the advance written consent of Declarant during the Development Period, to promulgate Rules regarding the use of the Special Common Area and any Improvements thereon; and

(viii) The right of the Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by Declarant.

### **6.03. Governance.**

(a) Board of Directors; Officers. The Board will consist of at least three (3) persons elected at the annual meeting of the Association, or at a special meeting called for such

purpose. Notwithstanding the foregoing provision, or any provision in this Master Covenant to the contrary, until the expiration or termination of the Development Period, Declarant will be entitled to appoint and remove all members of the Board. Declarant may terminate its right as to the appointment and removal of one or more or all the Board members by the Recordation of a termination notice executed by the Declarant. In the event Declarant terminates its right to appoint and remove less than all of the Board members, the Board positions to which the termination applies will be elected by the Members. Each Board member elected by the Members in accordance with the foregoing sentence will be elected for a term of one (1) year.

At such time as Declarant no longer has or terminates the right to appoint and remove any members of the Board as provided in this Section 6.03, the president of the Association will call a meeting of the Members of the Association where the Members will elect one (1) Board member for a three (3) year term, one (1) Board member for a two (2) year term, and one (1) Board member for a one (1) year term. Upon expiration of the term of a Board member elected by the Members as provided herein, his or her successor will be elected by the Members for a term of two (2) years. A Board member takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed.

*It is not presently intended that the majority of the Development will be restricted to residential use, thus rendering Chapter 209 of the Texas Property Code inapplicable to Development or the Association. However, in the event it is determined that Section 209.00591 of the Texas Property Code applies to the Development and/or the Association, then subject to the provisions set forth therein, the Board will call a meeting of Members of the Association for the purpose of electing one-third of the Board (the "Initial Member Election Meeting"), which Board member(s) must be elected by Owners other than the Declarant. Declarant shall continue to have the sole right to appoint and remove two-thirds (2/3) of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.*

(b) Advisory Committees. Subject to the requirements otherwise set forth in Section 9.02 below and as further set forth in the Bylaws, the Board may, but is not required, to adopt a resolution to designate two (2) or more Members, which may include Declarant and/or one (1) or more Board members to a committee for any purpose; provided, that any such committee shall serve in an advisory capacity only with the sole powers of: (i) recommending action to the Board; and (ii) carrying out and implementing any instructions or any policies, plans, programs and rules theretofore approved, authorized and adopted by the Board.

**6.04. Voting Allocation.** The number of votes which may be cast for election of Board members and on all other matters to be voted on by the Members will be calculated as set forth below.

(a) Residential Lot. Each Residential Lot will be allocated one (1) vote. In the event of the re-subdivision of any Residential Lot into two or more Residential Lots: (i) the number of votes to which such Residential Lot is entitled will be increased as necessary to retain the ratio of one (1) vote for each Residential Lot resulting from such re-subdivision, e.g., each Residential Lot resulting from the re-subdivision will be entitled to one (1) vote; and (ii) each Residential Lot resulting from the re-subdivision will be allocated one (1) Assessment Unit (as defined in Section 8.09(a)(1)). In the event of the consolidation of two (2) or more Residential Lots for

purposes of construction of a single residence thereon, votes and Assessment Units which are allocated pursuant to *Section 8.09* below will continue to be determined according to the number of original Residential Lots contained in such consolidated Residential Lot. Nothing in this Master Covenant will be construed as authorization for any re-subdivision or consolidation of Residential Lots, such actions being subject to the conditions and restrictions of the applicable Development Area Declaration and the approval of the Reviewer.

(b) Commercial Lot or Condominium Unit. Each Commercial Lot within the Previously Submitted Property shall be allocated one vote per acre contained within such Commercial Lot, rounded to the nearest whole number. Each Commercial Lot and Condominium Unit annexed into the Development will be allocated that number of votes set forth in the Notice of Annexation applicable to such Commercial Lot or Condominium Unit. Declarant will determine such number of votes in its sole and absolute discretion. Declarant's determination regarding the number of votes applicable to each Commercial Lot or Condominium Unit will be final, binding and conclusive. The Notice of Annexation may include a provision with an alternative vote allocation in the event all or a portion of a Commercial Lot is submitted to the condominium form of ownership. Declarant, in its sole and absolute discretion, or a Majority of the Board after the expiration or termination of the Development Period, may modify and amend (which modification and amendment may be effected after Declarant's conveyance of any Commercial Lot or Condominium Unit to any person) the number of votes previously assigned to a Commercial Lot or Condominium Unit if the actual use of the Commercial Lot or Condominium Unit or Improvements actually constructed on the Commercial Lot or Condominium Unit differ from the anticipated use of the Commercial Lot or Condominium Unit or Improvements contemplated to be constructed thereon at the time the Notice of Annexation allocating votes thereto was originally Recorded. In the event of a modification to the votes allocated to a Commercial Lot or Condominium Unit, Declarant, or the Board, as applicable, will Record an amended Notice of Annexation setting forth the revised allocation of votes attributable to the Commercial Lot or Condominium Unit.

(c) Declarant. In addition to the votes to which Declarant is entitled by reason of *Section 6.04(a)* and *Section 6.04(b)*, for every one (1) vote outstanding in favor of any other person or entity, Declarant will have four (4) additional votes until the expiration or termination of the Development Period. Declarant may cast votes allocated to Declarant pursuant to this Section and shall be considered a Member for the purpose of casting such votes, and need not own any portion of the Development as a pre-condition to exercising such votes.

(d) Co-Owners. Any co-Owner may cast the vote for the Lot or Condominium Unit, and Majority agreement shall be conclusively presumed unless another co-Owner of the Lot or Condominium Unit protests to the Secretary prior to the close of balloting. In the absence of a Majority agreement, the Lot's or Condominium Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently. In no event will the vote for a Lot or Condominium Unit exceed the total votes allocated to such Lot or Condominium Unit pursuant to this *Section 6.04*.

(e) Voting Groups. Voting Groups permit Owners in separate portions of the Development the opportunity to be represented on the Board and to avoid situations in which one or more, but less than all, Owners are able to elect all Board members. Declarant hereby reserves the right to create and group certain Lots and/or Condominium Units into Voting

Groups as set forth in a Recorded written notice and to establish rules and procedures applicable thereto. If established, then upon the expiration or termination of the Development Period, the Owners within such Voting Groups will vote on a separate slate of Board member candidates, with each Voting Group electing an equal number of Board members, and any additional Board member elected at large by all Members. Voting Groups and any rules and procedures attributable thereto will be established, if at all, not later than the date of the expiration or termination of the Development Period. Such designation may be amended from time to time by Declarant, acting alone, during the Development Period by a Recorded written instrument. The designation of Voting Groups and the rules and procedures attributable thereto may be amended by Declarant from time to time. An amendment to a Voting Group designation shall not constitute an amendment to this Master Covenant, and no consent or approval to modify such Voting Group designation shall be required except as stated in this paragraph.

**6.05. Powers.** The Association will have the powers of a Texas nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by Applicable Law or this Master Covenant. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, will have the following powers at all times:

(a) **Rules.** To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, Rules, policies, the Bylaws and the Policy Manual, as applicable, which are not in conflict with this Master Covenant, as it deems proper, covering any and all aspects of the Development (including the operation, maintenance and preservation thereof) or the Association. Any Rules, policies, the Bylaws and the Policy Manual and any modifications thereto, proposed by the Board must be approved in advance and in writing by Declarant until expiration or termination of the Development Period.

(b) **Insurance.** To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to protect the Association and carry out the Association's functions.

(c) **Records.** To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Documents available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours in accordance with Applicable Law.

(d) **Assessments.** To levy and collect Assessments and to determine Assessment Units, as provided in *Article 8* below.

(e) **Right of Entry and Enforcement.** To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot or into any Condominium Unit for the purpose of enforcing the Documents or for the purpose of maintaining or repairing any area, Improvement or other facility or removing any item to conform to the Documents. The expense incurred by the Association in connection with the entry upon any Lot or into any Condominium Unit and the removal or maintenance and repair work conducted therefrom, thereon or therein will be a personal obligation of the Owner of the Lot or the Condominium Unit so entered, will be deemed an Individual Assessment against such Lot or Condominium Unit, will be secured by

a lien upon such Lot or Condominium Unit, and will be enforced in the same manner and to the same extent as provided in *Article 8* hereof for Assessments. The Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Documents. The Association is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Documents; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not alter or demolish any Improvements on any Lot, or in any Condominium Unit, other than Common Area or Special Common Area, in enforcing this Master Covenant, before a judicial order authorizing such action has been obtained by the Association, or before the written consent of the Owner(s) of the affected Lot(s) or Condominium Unit(s) has been obtained. **EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 6.05(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT TO THE EXTENT SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION RESULTED FROM THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE. NOTWITHSTANDING THE FOREGOING, THE ASSOCIATION SHALL NOT BE LIABLE FOR, AND ALL OWNERS AND OCCUPANTS WAIVE THEIR RIGHTS TO, ANY INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.**

(f) Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association.

(g) Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area or Special Common Area for the purpose of constructing, erecting, operating or maintaining the following:

- (i) Parks, parkways or other recreational facilities or structures;
- (ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;
- (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and/or
- (v) Any similar improvements or facilities.

Until expiration or termination of the Development Period, any grant or conveyance under this *Section 6.05(g)* must be approved in advance and in writing by Declarant. In addition, the Association (with the advance written approval of Declarant during the Development Period) and Declarant are expressly authorized and permitted to convey easements over and across Common Area or Special Common Area for the benefit of property not otherwise subject to the terms and provision of this Master Covenant.

(h) Manager. To retain and pay for the services of a person or firm, which may include Declarant (the "Manager"), to manage and operate the Association, its real or personal property, including any Common Area or Special Common Area, and/or any Service Area, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees or any other fees associated with the provision of management services to the Association or its Members. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, security services, gardening, private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, canals, and lakes and all other utilities, services, repair and maintenance for any portion of the Property.

(j) Other Services and Declarant. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Documents or as determined by the Board.

(k) Construction on Common Area and Special Common Area. To construct new Improvements or additions to Common Area and Special Common Area, subject to the approval of the Board, or Declarant during the Development Period.

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain the Development, any Common Area, Special Common Area, Service Area, Improvement, or other property, or to provide any service, including but not limited to cable, utility, telecommunication or security services, or perform any function on behalf of Declarant, the Board, the Association, or the Members. During the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by the Declarant.

(m) Property Ownership. To acquire, own and dispose of real or personal property, whether by grant, lease, easement, gift or otherwise. During the Development Period, all acquisitions and dispositions of the Association hereunder must be approved in advance and in writing by Declarant.

(n) Authority with Respect to the Documents. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any of the Documents. Any decision by the Board to delay or defer the exercise of the power and authority granted by this *Section 6.05(n)* will not subsequently in any way limit, impair or affect ability of the Board to exercise such power and authority.

(o) Membership Privileges. To establish Rules governing and limiting the use of the Common Area, Special Common Area, Service Area, and any Improvements thereon. All Rules governing and limiting the use of the Common Area, Special Common Area, Service Area, and any Improvements thereon must be approved in advance and in writing by Declarant during the Development Period.

(p) Relationships with Districts and Tax Exempt Organizations. To create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area, Special Common Area, or Service Area to any District or nonprofit, tax-exempt organization, the operation of which confers some benefit upon the Development, the Association, the Members or Occupants. The Association may contribute money, real or personal property, or services to such entity. Any such contribution shall be a common expense to be included in the Assessments levied by the Association and included as a line item in the Association's annual budget. For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code (the "**Code**"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be amended from time to time. The Association may maintain multiple-use facilities within the Development and allow use by tax-exempt organizations. Such use may be on a scheduled or "first-come, first-served" basis. A reasonable maintenance and use fee may be charged for the use of such facilities.

**6.06. Common Area and Special Common Area.** The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant may transfer or convey to the Association interests in real or personal property within or for the benefit of the Development, or the Development and the general public, and the Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. In addition, Declarant may reserve from any such property easements for the benefit of Declarant, any third party, and/or property not otherwise subject to the terms and provisions of this Master Covenant. Such property will be accepted by the Association and thereafter will be maintained as Common Area or Special Common Area, as applicable, by the Association for the benefit of the Development and/or the general public subject to any restrictions set forth in the deed or other instrument conveying, transferring or assigning such property to the Association. Upon Declarant's written request during the Development Period, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association to the extent conveyed in error or needed to make minor adjustments in property lines, as determined in the sole and absolute discretion of Declarant. Declarant and/or its assignees may construct and maintain upon portions of the Common Area and/or the Special Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of Improvements on the Development, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its assignees shall have an easement over and across the Common Area and/or the

Special Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

**6.07. Indemnification.** To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Certificate or Bylaws of the Association, the Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that he or she is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him or her in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that he or she: (a) acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Association; or (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

**6.08. Insurance.** The Board may purchase and maintain, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against such person or incurred by such person in their capacity as an director, officer, committee member, employee, servant or agent of the Association, or arising out of the person's status as such, whether or not the Association would have the power to indemnify the person against such liability or otherwise.

**6.09. Bulk Rate Contracts.** Without limitation on the generality of the Association powers set out in *Section 6.05* hereinabove (except that during the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by Declarant), the Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are the owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may, at its option and election add the charges payable by such Owner under such Bulk Rate Contract to the Assessments (Regular, Special, Service Area, Special Common Area, or Individual, as the case may be) against such Owner's Lot or Condominium Unit. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Master Covenant with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot or Condominium Unit which is reserved under the terms and provisions of this Master Covenant. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12-day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or Occupant of such Owner's Lot or Condominium Unit) directly to the



applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or Occupant of such Owner's Lot or Condominium Unit) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

**6.10. Community Services and Systems.** Declarant, during the Development Period, and the Board, with Declarant's consent during the Development Period, is specifically authorized, but not required, to install, provide, maintain and furnish, or to enter into contracts with other persons to install, provide, maintain and furnish, central telecommunication receiving and distribution systems (e.g., telephone, satellite television, cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve all or any portion of the Development ("**Community Services and Systems**"). The Community Services and Systems, including any fees or royalties paid or revenue generated therefrom, shall be the property of Declarant unless transferred to a third party, whereupon any proceeds of such transfer shall belong to Declarant, and neither the Association nor any Owner shall have any interest therein. Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Services and Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Association or to any individual or entity. Any or all of the Community Services and Systems may be provided either: (a) directly through the Association and paid for by the Owners as part of the Assessments; or (b) directly by Declarant or a third party to the Owner who receives any or all of the Community Services and Systems. In the event Declarant elects to provide any of the Community Services and Systems to all or any portion of the Development, Declarant, or affiliate of Declarant, may enter into an agreement with the Association with respect to the Community Services and Systems provided. In the event Declarant enters into a contract with a third party for the provision any Community Services and Systems to serve all or any portion of the Development, Declarant may assign any or all of the rights or obligations of Declarant under such contract to the Association or any individual or entity. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Services and Systems as Declarant or the Board, as applicable, determines appropriate. Each Owner acknowledges that interruptions in Community Services and Systems will occur from time to time. Declarant and the Association, or any of their respective affiliates, board members, officers, employees and agents, or any of their successors or assigns shall not be liable for, and no Community Services and Systems user shall be entitled to any refund, rebate, discount, damages, or offset in applicable fees for, any interruption in Community Services and Systems, regardless of whether or not such interruption is caused by reasons within the service provider's control. The rights of Declarant with respect to the Community Services and Systems installed by Declarant and the services provided through such Community Services and Systems are exclusive, and no other person may provide such services through the Community Services and Systems installed by Declarant without the prior written consent of Declarant.

**6.11. Protection of Declarant's Interests.** Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant or which would be detrimental to the sale of Lots or Condominium Units owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. Unless otherwise agreed to in advance and in writing by Declarant, the Board will be

required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

**6.12. Administration of Common Area, Special Common Area, or Service Area.** The administration of the Common Area, Special Common Area, and Service Area by the Association shall be in accordance with the provisions of Applicable Law and the Documents, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any public agency or District having regulatory jurisdiction over the Common Area, Special Common Area, or Service Area, or by any title insurance company selected by Declarant to insure title to any portion of such areas.

**ARTICLE 7**  
**INSURANCE**

**7.01. Insurance.** Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot or Condominium Unit. The Association will not maintain insurance on the Improvements constructed upon any Lot or Condominium Unit. The Association may, however, obtain such other insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a common expense to be included in the Assessments levied by the Association. The acquisition of insurance by the Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

**ARE YOU COVERED?**

The Association will not provide insurance which covers an Owner's Lot, a Condominium Unit, or any Improvements or personal property located on a Lot or within a Condominium Unit.

**7.02. Restoration Requirements.** In the event of any fire or other casualty, the Owner will either: (a) unless otherwise approved by the Reviewer, promptly commence the repair, restoration and replacement of any damaged or destroyed improvements to the same exterior condition which existed prior to the damage or destruction thereof, within one hundred and eighty (180) days after the occurrence of such damage or destruction, and thereafter prosecute the same to completion; or (b) in the case of substantial or total damage or destruction of any Improvement, remove all such damaged Improvements and debris from the Development within sixty (60) days after the occurrence of such damage or destruction. Unless otherwise approved by the Reviewer, any repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials substantially the same as those originally used in the Improvements which have been damaged or destroyed, as determined by the Reviewer, in its sole and absolute discretion. To the extent that the Owner fails to commence repair, restoration, replacement, or the removal of debris, within the time period required in this Section 7.02, the Association may commence, complete or effect such repair, restoration, replacement or clean-up, and the costs incurred by the Association will be levied as an Individual Assessment against such Owner's Lot or Condominium Unit; provided, however, that if the

Owner is prohibited or delayed by Applicable Law from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision will not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1.5%) per month) will be levied as an individual Assessment chargeable to the Owner's Lot or Condominium Unit. **EACH OWNER AND OCCUPANT HEREBY INDEMNIFIES, RELEASES, AND HOLDS HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 7.02, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

**7.03. Restoration - Mechanic's and Materialmen's Lien.** Each Owner whose structure is repaired, restored, replaced or cleaned up by the Association pursuant to the rights granted under this 7, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, replacement or clean-up of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration, replacement, or clean-up exceeds any insurance proceeds allocable to such repair, restoration, replacement, or clean-up which are delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration, replacement, or clean-up such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

## **ARTICLE 8 COVENANT FOR ASSESSMENTS**

### **8.01. Assessments.**

(a) **Established by Board.** Assessments established by the Board pursuant to the provisions of this *Article 8* will be levied against each Lot and Condominium Unit in amounts determined pursuant to *Section 8.09* below. The total amount of Assessments will be determined by the Board in accordance with the terms of this *Article 8*.

(b) **Personal Obligation; Lien.** Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot or Condominium Unit against which the Assessment is levied and will be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon or each such Condominium Unit (such lien, with respect to any Lot or Condominium Unit not in existence on the date hereof, will be deemed granted and conveyed at the time that such Lot or Condominium Unit is created). The Association may enforce payment of such Assessments in accordance with the provisions of this Article. Unless the Association elects otherwise (which election may be made at any time), each residential condominium association established by a condominium regime imposed upon all or a portion of the Development Area will collect all Assessments levied pursuant to this Master Covenant from Condominium Unit Owners within such condominium regime. The condominium association will promptly remit all Assessments collected from Condominium Unit Owners to the

Association. If the condominium association fails to timely collect any portion of the Assessments due from the Owner of the Condominium Unit, then the Association may collect such Assessments allocated to the Condominium Unit on its own behalf and enforce its lien against the Condominium Unit without joinder of the condominium association. The condominium association's right to collect Assessments on behalf of the Association is a license from the Association which may be revoked by written instrument at any time, and from time to time, at the sole and absolute discretion of the Board.

(c) Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots and Condominium Units for any fiscal year by the payment of a subsidy to the Association. Any subsidy paid to the Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Association in future years.

**8.02. Maintenance Fund.** The Board will establish a maintenance fund into which will be deposited all monies paid to the Association and from which disbursements will be made in performing the functions of the Association under this Master Covenant. The funds of the Association may be used for any purpose authorized by the Documents and Applicable Law.

**8.03. Regular Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a budget to establish the estimated net expenses of the Association (the "**Annual Budget**") by setting forth: (a) an estimate of expenses to be incurred by the Association during such year in performing its functions and exercising its powers under this Master Covenant, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Documents; and (b) an estimate of the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve; and which excludes (c) the operation, maintenance, repair and management costs and expenses associated with any Service Area and Special Common Area. The Regular Assessments shall be set at such a level which is sufficient to fund the estimated net expenses of the Association as reflected on the Annual Budget, as determined by the Board in its sole and absolute discretion, and such amount shall thereafter be levied against each Lot and Condominium Unit. The Board's determination as to the amount of the Regular Assessments to be levied will be final and binding. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment by an Owner, the Association may at any time, and from time to time, levy further Regular Assessments in the same manner. All such Regular Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

**8.04. Special Assessments.** In addition to the Regular Assessments provided for above, the Board may levy Special Assessments whenever, in the Board's sole discretion, such Special Assessments are necessary to enable the Board to carry out the functions of the Association under the Documents. The amount of any Special Assessments will be at the sole discretion of the Board. In addition to the Special Assessments authorized above, the Association may, in any fiscal year, levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or Special Common Area. Any Special Assessment levied by the Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will

be levied against all Owners based on Assessment Units. Any Special Assessments levied by the Association for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Special Common Area will be levied against all Owners who have been assigned the obligation to pay Special Common Area Assessments based on Assessment Units. All Special Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

**8.05. Special Common Area Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a separate budget estimating the Special Common Area Assessments which will be needed to cover estimated expenses to be incurred by the Association to operate, maintain, repair, or manage any Special Common Area (the "**Special Common Area Budget**"). Such Special Common Area Assessments may be used, for example, to maintain landscaping within street medians or to pay for utility service to a specific area within the Development. The Special Common Area Budget will be an estimate of the amount needed to operate, maintain, repair and manage such Special Common Area including a reasonable provision for contingencies and an appropriate replacement reserve. The level of Special Common Area Assessments will be set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding. If the sums collected prove inadequate for any reason, including non-payment of any Assessment by any Owner, the Association may at any time, and from time to time, levy further Special Common Area Assessments in the same manner as aforesaid. All such Special Common Area Assessments will be due and payable to the Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

**8.06. Service Area Assessments.** Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by the Association in the coming year. The total amount of Service Area Assessments will be allocated either: (a) equally among Lots or Condominium Units within the Service Area; (b) based on Assessment Units assigned to Lots or Condominium Units within the Service Area; or (c) based on the benefit received among all Lots and Condominium Units in the benefited Service Area. All amounts that the Association collects as Service Area Assessments will be expended solely for the benefit of the Service Area for which they were collected and will be accounted for separately from the Association's general fund.

**8.07. Individual Assessments.** In addition to any other Assessments, the Board may levy an Individual Assessment against an Owner's Lot or Condominium Unit, which may include, but is not limited to: (a) interest, late charges, and collection costs on delinquent Assessments; (b) reimbursement for costs incurred in bringing an Owner or the Owner's Lot or Condominium Unit into compliance with the Documents; (c) fines for violations of the Documents; (d) transfer-related fees and resale certificate fees; (e) fees for estoppel letters and project documents; (f) insurance deductibles; (g) reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Occupants of the Owner's Lot or Condominium Unit; (h) common expenses that benefit fewer than all of the Lots or Condominium Units, which may be assessed according to benefit received; and (i) fees or charges levied against the Association on a per-Lot or per-Condominium Unit basis.

**8.08. Working Capital Assessment.** Each Owner of a Residential Lot (other than Declarant) will pay a one-time Working Capital Assessment to the Association in such amount, if any, as may be determined by Declarant during the Development Period, and by the Board thereafter. The Working

Capital Assessment hereunder will be due and payable to the Association immediately upon each transfer of title to a Residential Lot or Condominium Unit, including upon transfer of title from one Owner of such Residential Lot or Condominium Unit to any subsequent purchaser or transferee thereof. Such Working Capital Assessment need not be uniform among all Residential Lots or Condominium Units, and Declarant or the Board, as applicable, is expressly authorized to levy Working Capital Assessments of varying amounts depending on the size, use and general character of the Residential Lots or Condominium Units then being made subject to such levy. The Association may use the Working Capital Assessments to discharge operating expenses. The levy of any Working Capital Assessment will be effective only upon the Recordation of a written notice, signed by Declarant or a duly authorized officer of the Board, as applicable, setting forth the amount of the Working Capital Assessment and the Lot(s) or Condominium Unit(s) to which it applies.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Assessment: (a) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment lien; (b) transfer to, from, or by the Association; or (c) voluntary transfer by an Owner to one or more co-Owners, or to the Owner's spouse, child, or parent. Additionally, an Owner who is a Builder or a Developer will not be subject to the Working Capital Assessment; however, the Working Capital Assessment will be payable by any Owner who acquires a Lot or Condominium Unit from a Builder or Developer for residential living purposes or by any Owner who: (y) acquires a Lot or Condominium Unit and is not in the business of constructing single-family residences for resale to a third party; or (z) who acquires the Lot or Condominium Unit for any purpose other than constructing a single-family residence thereon for resale to a third party. In the event of any dispute regarding the application of the Working Capital Assessment to a particular Owner, Declarant during the Development Period, or the Board thereafter, will determine application of an exemption in its sole and absolute discretion. The Working Capital Assessment will be in addition to, and not in lieu of, any other Assessments levied in accordance with this *Article 8* and will not be considered an advance payment of such Assessments. Declarant during the Development Period, and the Board thereafter, will have the power to waive the payment of any Working Capital Assessment attributable to any or all Lots or Condominium Units by the Recordation of a waiver notice or in the Notice of Annexation, which waiver may be temporary or permanent.

#### **8.09. Amount of Assessment.**

(a) Assessments to be Levied. The Board will levy Assessments against each "**Assessment Unit**" (as defined in *Section 8.09(b)* below). Unless otherwise provided in this Master Covenant, Assessments levied pursuant to *Section 8.03* and *Section 8.04* will be levied uniformly against each Assessment Unit. Special Common Area Assessments levied pursuant to *Section 8.05* will be levied uniformly against each Assessment Unit allocated to a Lot or Condominium Unit that has been assigned the obligation to pay Special Common Area Assessments for specified Special Common Area. Service Area Assessments levied pursuant to *Section 8.06* will be levied either: (i) equally among Lots or Condominium Units within the Service Area; (ii) based on Assessment Units assigned to Lots or Condominium Units within the Service Area; or (iii) based on the benefit received among all Lots and Condominium Units in the Service Area.

(b) Assessment Unit. Each Residential Lot will constitute one (1) Assessment Unit unless otherwise provided in *Section 8.09(c)*. Each Commercial Lot within the Previously Submitted Property shall be allocated one vote per acre contained within such Commercial Lot,

rounded to the nearest whole number. Each Commercial Lot and Condominium Unit annexed into the Development will be allocated that number of Assessment Units set forth in the Notice of Annexation attributable to such Commercial Lot or Condominium Unit. Declarant will determine such Assessment Units in its sole and absolute discretion. Declarant's determination regarding the number of Assessment Units applicable to each Commercial Lot or Condominium Unit will be final, binding and conclusive and can be revised by Declarant in its discretion. The Notice of Annexation may include a provision with an alternative Assessment Unit allocation in the event all or a portion of a Commercial Lot is submitted to the condominium form of ownership. Declarant, in its sole and absolute discretion, or the Board after the expiration or termination of the Development Period, may modify and amend (which modification and amendment may be effected after Declarant's conveyance of any Commercial Lot or Condominium Unit to any person) the number of Assessment Units previously assigned to a Commercial Lot or Condominium Unit if the actual use of the Commercial Lot or Condominium Unit or Improvements actually constructed on the Commercial Lot or Condominium Unit differ from the anticipated use of the Commercial Lot or Condominium Unit or Improvements contemplated to be constructed thereon at the time of Recording of the Notice of Annexation. In the event of a modification to the Assessment Units allocated to a Commercial Lot or Condominium Unit, Declarant or the Board, as applicable, will Record an amended Notice of Annexation setting forth the revised allocation of Assessment Units attributable to the Commercial Lot or Condominium Unit.

(c) Residential Assessment Allocation. Declarant, in Declarant's sole and absolute discretion, may elect to allocate more than one Assessment Unit to a Residential Lot. An allocation of more than one Assessment Unit to a Residential Lot must be made in a Notice of Annexation. Declarant's determination regarding the number of Assessment Units applicable to a Residential Lot pursuant to this *Section 8.09(c)* will be final, binding and conclusive.

(d) Declarant Exemption. Notwithstanding anything in this Master Covenant to the contrary, no Assessments will be levied upon Lots or Condominium Units owned by Declarant.

(e) Other Exemptions. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Development, or any Lot or Condominium Unit from Assessments; (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Development, or any Lot or Condominium Unit; or (iii) reduce the levy of Assessments against any un-platted, unimproved or improved portion of the Development, or any Lot or Condominium Unit. In the event Declarant elects to delay or reduce Assessments pursuant to this Section, the duration of the delay or the amount of the reduction will be set forth in a Recorded written instrument. Declarant may terminate, extend or modify any delay or reduction set forth in a previously Recorded instrument by the Recordation of a replacement instrument. Declarant or the Board may also exempt any portion of the Property which is dedicated and accepted by public authority from Assessments.

**8.10. Late Charges.** If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment thereof may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) will be a charge upon the Lot or Condominium Unit owned by such Owner, collectible in the manner as provided for collection of Assessments, including

foreclosure of the lien against such Lot or Condominium Unit; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

**8.11. Owner's Personal Obligation for Payment of Assessments.** Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot or Condominium Unit against which such Assessments are levied. No Owner may exempt himself or herself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot or Condominium Unit will be obligated to pay interest on the amount of the Assessment at eighteen percent (18%) or the highest rate allowed by Applicable Laws (including usury laws) on the amount of the Assessment from the due date thereof, together with all costs and expenses of collection, including reasonable attorney's fees.

**8.12. Assessment Lien and Foreclosure.** The payment of all sums assessed in the manner provided in this *Article 8* is, together with late charges as provided in *Section 8.10* and interest as provided in *Section 8.11* and all costs of collection, including attorney's fees, are secured by the continuing Assessment lien granted to the Association pursuant to *Section 8.01(b)* above, and will bind each Lot and Condominium Unit in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot or Condominium Unit, except only for (a) tax and governmental assessment liens; (b) all sums secured by a Recorded first mortgage lien or Recorded first deed of trust lien; and (c) home equity loans or home equity lines of credit which are secured by a second mortgage lien or Recorded second deed of trust lien; provided that, in the case of subparagraphs (b) and (c) above, such Mortgage was Recorded, before the delinquent Assessment was due. The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an authorized officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot or Condominium Unit covered by such lien and a description of the Lot or Condominium Unit. Such notice may be signed by an authorized officer of the Association and will be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot or Condominium Unit subject to this Master Covenant will be deemed conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Association may have pursuant to Applicable Law and under this Master Covenant, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the Lot or Condominium Unit at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than sixty (60) days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot or Condominium Unit; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from



paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 8.12*, the Association will, upon the request of the Owner and at such Owner's cost, execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release may be signed by an authorized officer of the Association and Recorded. In addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least twelve (12) days since such payment was due, the Association may, upon five (5) days' prior written notice (which may run concurrently with such 12-day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility or cable services, provided through the Association and not paid for directly by an Owner or Occupant to the utility or service provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or Occupant can make arrangements for payment of the bill and for reconnection of service. Any utility or cable service will not be disconnected or terminated on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot or Condominium Unit will not relieve the Owner of such Lot or Condominium Unit or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot or Condominium Unit and on the date of such conveyance Assessments against the Lot or Condominium Unit remain unpaid, or said Owner owes other sums or fees under this Master Covenant to the Association, the Owner will pay such amounts to the Association out of the sales price of the Lot or Condominium Unit, and such sums will be paid in preference to any other charges against the Lot or Condominium Unit other than liens superior to the Assessment liens and charges in favor of the State of Texas or a political subdivision thereof for taxes on the Lot or Condominium Unit which are due and unpaid. The Owner conveying such Lot or Condominium Unit will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot or Condominium Unit also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the administrative expenses associated with updating the Association's records upon the transfer of a Lot or Condominium Unit to a third party; provided, however, that no administrative transfer fee will be due upon the transfer of a Lot or Condominium Unit from Declarant to a non-Declarant Owner.

**8.13. Exempt Property.** The following area within the Development will be exempt from the Assessments provided for in this Article:

- (a) All area dedicated and accepted by a District or other public authority or governmental or quasi-governmental entity;
- (b) The Common Area and the Special Common Area; and
- (c) Any portion of the Property or Development owned by Declarant.

**8.14. Fines and Damages Assessment.**

(a) **Board Assessment.** The Board may assess fines against an Owner for violations of the Documents which have been committed by an Owner, an Occupant or an Owner's or

Occupant's guests, agents or invitees pursuant to the *Fine and Enforcement Policy* contained in the Policy Manual. Any fine and/or charge for damage levied in accordance with this *Section 8.14* shall be considered an Individual Assessment pursuant to this Master Covenant. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area, Special Common Area, Service Area, or any Improvements caused by the Owner, Occupant, or the Owner's or Occupant's guests, agents, or invitees. The Manager shall have authority to send notices to Owners informing them of the alleged violations and asking the Owners to comply with the Documents, and/or informing the Owners of potential or probable fines or damage Assessments. The Board may from time to time adopt a schedule of fines.

(b) Lien Created. The payment of each fine and/or damage charge levied by the Board against an Owner is, together with interest as provided in *Section 8.11* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to *Section 8.01(b)* of this Master Covenant. Unless otherwise provided in this *Section 8.14*, the fine and/or damage charge shall be considered an Assessment for the purpose of this Article and shall be enforced in accordance with the terms and provisions governing the enforcement of assessments pursuant to this *Article 8*.

## **ARTICLE 9**

### **ARCHITECTURAL REVIEW**

**9.01. Architectural Control By Declarant.** During the Development Period, neither the Association, the Board, nor a committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Until expiration of the Development Period, the Reviewer is Declarant or its designee. No Improvements constructed or caused to be constructed by Declarant will be subject to the terms and provisions of this *Article 9*, and such Improvements are not required to be approved by the Reviewer.

(a) Declarant's Rights Reserved. Each Owner, by accepting an interest in or title to a Lot or Condominium Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that during the Development Period no Improvements will be started or progressed without the prior written approval of Declarant, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting upon an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization.

(b) Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, designate one or more persons from time to time to act on its behalf and may delegate all or a portion of its reserved rights under this Article to an architectural control committee appointed by the Board or a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. Declarant is not responsible for: (i) errors in or omissions from the

plans and specifications submitted to Declarant; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with governmental codes and ordinances, state and federal laws.

**9.02. Architectural Control by Association.** Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Board, or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through an architectural control committee (the "ACC") will assume jurisdiction over architectural control and will have the powers of the Reviewer hereunder.

(a) ACC. The ACC will consist of at least three (3) but no more than seven (7) persons appointed by the Board. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Documents to the ACC will be construed to mean the Board. Members of the ACC need not be Owners or Occupants, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

(b) Limits on Liability. The ACC has sole discretion with respect to taste, design, and all standards specified in this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the ACC; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with Applicable Law.

**9.03. Prohibition of Construction, Alteration and Improvement.**

(a) Construction of Improvements. No Improvements shall be constructed, and no addition, alteration, improvement, installation, modification, redecoration, or reconstruction thereof may occur, unless approved in advance and in writing by the Reviewer. The Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Development.

(b) Improvements Not Within Public View. Notwithstanding anything to the contrary as set forth above, unless otherwise provided in the Design Guidelines, an Owner shall have the right to modify, alter, repair, decorate, redecorate, or improve the interior of any Improvement located on such Owner's Lot or within such Owner's Condominium Unit, provided that such Improvements and activities are not within view from a Lot, public or private street, thoroughfare or sidewalk, Common Area or Special Common Area.

(c) Preliminary Regulatory Approval. If an Owner is required to obtain and is granted a Preliminary Regulatory Approval pursuant to *Section 2.01(c)* above, no Improvements may be constructed in accordance with any permit or approval otherwise granted by the applicable regulatory authority until the Owner has submitted to the Reviewer a copy of the Regulatory Submission Items approved by the regulatory authority and the Reviewer issues a written notice to proceed in compliance with such approval (the "Notice to Proceed").

#### 9.04. Architectural Approval.

(a) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to plat, re-subdivide or consolidate Lots or Condominium Units, a proposal for such plat, re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines, if any, or any additional rules adopted by the Reviewer together with any review fee which is imposed by the Reviewer in accordance with *Section 9.04(b)*. No plat, re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot or Condominium Unit, until the plans and specifications and the contractor which the Owner intends to use to construct the proposed Improvement have been approved in writing by the Reviewer. The Reviewer reserves the right to adopt preconditions or requirements for the approval of contractors proposed by the Owner to construct the Improvements. The Reviewer may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the Reviewer or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Reviewer, in its sole discretion, may require. Site plans must be approved by the Reviewer prior to the clearing of any Lot or Condominium Unit, or the construction of any Improvements. The Reviewer may refuse to approve plans and specifications for proposed Improvements, or for the plat, re-subdivision or consolidation of any Lot or Condominium Unit on any grounds that, in the sole and absolute discretion of the Reviewer, are deemed sufficient, including, but not limited to, purely aesthetic grounds. Notwithstanding any provision to the contrary in this Master Covenant, the Reviewer may issue an approval to a Builder or a Developer for the construction of Improvements based upon the review and approval of plan types and adopt a procedure which differs from the procedures for review and approval otherwise set forth in this Master Covenant.

(b) Design Guidelines. The Reviewer will have the power, from time to time, to adopt, amend, modify, or supplement the Design Guidelines which may apply to all or any portion of the Development; provided, however, that Declarant will have no obligation to establish Design Guidelines for the Property, the Development, or any portion thereof. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Master Covenant, the terms and provisions of this Master Covenant will control. In addition, the Reviewer will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Master Covenant. Such charges will be held by the Reviewer and used to defray the administrative expenses and any other costs incurred by the Reviewer in performing its duties hereunder; provided, however, that any excess funds held by the Reviewer will be distributed to the Association at the end of each calendar year. The Reviewer will not be required to review any plans until a complete submittal package, as required by this Master Covenant and the Design Guidelines, is assembled and submitted to the Reviewer. The Reviewer will have the authority to adopt such additional or alternate procedural and substantive rules and guidelines not in conflict with this Master Covenant (including, without limitation, the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any Improvement, and the right to approve in advance any

contractor selected for the construction of Improvements), as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(c) Failure to Act. In the event that any plans and specifications are submitted to the Reviewer as provided herein, and the Reviewer fails to either approve or reject such plans and specifications for a period of sixty (60) days following such submission, the plans and specifications will be deemed disapproved.

(d) Variances. The Reviewer, in its sole and absolute discretion, may grant variances from compliance with any of the provisions of this Master Covenant, the Design Guidelines, and any applicable Development Area Declaration. All variances must be evidenced in writing and, if Declarant has assigned its rights to the ACC, must be approved by Declarant until expiration or termination of the Development Period, a Majority of the Board, and a Majority of the members of the ACC. Each variance must also be Recorded; provided, however, that failure to Record a variance will not affect the validity thereof or give rise to any claim or cause of action against the Reviewer, Declarant, the Board or the ACC. If a variance is granted, no violation of any of the provisions of the Documents will be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of the Documents for any purpose, except as to the particular Lot or Condominium Unit, or portion thereof, or Improvement thereon or therein, and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of the Documents.

(e) Duration of Approval. The approval of the Reviewer of any final plans and specifications, and any variances granted by the Reviewer will be valid for a period of one hundred and eighty (180) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and eighty (180) day period and diligently prosecuted to completion thereafter, the Owner will be required to resubmit such final plans and specifications or request for a variance to the Reviewer, and the Reviewer will have the authority to re-evaluate such plans and specifications in accordance with this *Section 9.04(e)* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(f) No Waiver of Future Approvals. The approval of the Reviewer to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Reviewer will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the Reviewer.

(g) Non-Liability of Reviewer. NEITHER DECLARANT, THE BOARD NOR THE REVIEWER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE REVIEWER'S DUTIES UNDER THIS MASTER COVENANT.

**ARTICLE 10**  
**MORTGAGE PROVISIONS**

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots or Condominium Units within the Development. The provisions of this Article apply to this Master Covenant and the Bylaws of the Association.

**10.01. Notice of Action.** An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot or Condominium Unit to which its Mortgage relates) (thereby becoming an "Eligible Mortgage Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot or Condominium Unit on which there is Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Lot or Condominium Unit subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Documents relating to such Lot or Condominium Unit or the Owner or Occupant which is not cured within sixty (60) days after notice by the Association to the Owner of such violation; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

**10.02. Examination of Books.** The Association will permit Mortgagees to examine the books and records of the Association during normal business hours.

**10.03. Taxes, Assessments and Charges.** All taxes, assessments and charges that may become liens prior to first lien Mortgages under Applicable Law will relate only to the individual Lots or Condominium Units and not to any other portion of the Development.

**ARTICLE 11**  
**EASEMENTS AND DISCLOSURES**

**11.01. Reserved Easements.** All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant or any third party prior to any portion of the Property becoming subject to this Master Covenant are incorporated herein by reference and made a part of this Master Covenant for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of developing the Property and the Development.

**11.02. Common Area or Special Common Area Right of Ingress and Egress.** Declarant, its agents, employees, successors and designees will have a right of ingress and egress over and the right of access to the Common Area or Special Common Area to the extent necessary to use the Common Area or Special Common Area and the right to such other temporary uses of the Common Area or Special

Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with construction and development of the Property.

**11.03. Bulk Rate Services; Community Services and Systems Easement.** The Development shall be subject to a perpetual non-exclusive easement for the installation, maintenance and repair, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly install, provide, maintain and furnish Community Services and Systems and the facilities pertinent and necessary to the same, and provide and maintain services available through any Bulk Rate Contract, which easement shall run in favor of Declarant and the Association.

**11.04. Roadway and Utility Easements.** Declarant hereby reserves a perpetual, non-exclusive easement over and across the Development for: (a) the installation, operation and maintenance of utilities and associated infrastructure to serve the Development, the Property, and any other property owned by Declarant; (b) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Development, the Property, and any other property owned by Declarant; (c) the installation, operation and maintenance of, walkways, pathways and trails, drainage systems, street lights and signage to serve the Development, the Property, and any other property owned by Declarant; and (d) the installation, location, relocation, construction, erection and maintenance of any streets, roadways, or other areas to serve the Development, the Property, and any other property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in (a) through (d) of this *Section 11.04*. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area, Special Common Area, or a Service Area.

**11.05. Subdivision Entry and Fencing Easement.** Declarant reserves for itself and the Association, a perpetual, non-exclusive easement over and across the Development for the installation, maintenance, repair or replacement of fencing and subdivision entry facilities which serve the Development, the Property, and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the fencing and/or subdivision entry facilities to which the easement reserved hereunder applies. Declarant may designate all or any portion of the fencing and/or subdivision entry facilities as Common Area, Special Common Area, or a Service Area.

**11.06. Landscape, Monumentation and Signage Easement.** Declarant hereby reserves a perpetual, non-exclusive easement over and across the Development for the installation, maintenance, repair or replacement of landscaping, monumentation and signage which serves the Development, the Property, and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the landscaping, monumentation, or signage to which the easement reserved hereunder applies. Declarant may designate all or any portion of the landscaping, monumentation, or signage as Common Area, Special Common Area, or a Service Area.

**11.07. Easement for Special Events.** Declarant reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, non-exclusive easement over the Common Area and Special Common Area, for the purpose of conducting educational, cultural, artistic, musical and entertainment activities, and other activities of general community interest at such locations and times as Declarant or the Association, in their reasonable discretion, deem appropriate. Members of the public may have access to such events. Each Owner, by accepting a deed or other instrument conveying

any interest in a Lot or Condominium Unit subject to this Master Covenant acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and any Occupants to take no action, legal or otherwise, which would interfere with the exercise of such easement.

**11.08. Drainage, Detention and Water Quality Facilities Easement.** Portions of the Development may include one or more water quality facilities, sedimentation, drainage and detention facilities, or ponds or related improvements, which serve all or a portion of the Development, the Property, or additional land (collectively, the "Facilities"). Declarant hereby reserves a perpetual, non-exclusive easement over and across the Development for the installation, maintenance, repair, or replacement of the Facilities. Declarant may designate the Facilities by Recording a written notice identifying the particular Facilities to which the easement reserved herein applies. Declarant may also dedicate all or a portion of the Facilities to a District or other governmental or quasi-governmental authority (which may include retention of maintenance responsibilities by the Association), or convey or transfer all or any portion of the Facilities to the Association as Common Area, Special Common Area, or Service Area. If the Facilities are designated, dedicated, or conveyed or transferred, or if maintenance responsibility is reserved by the Association, the Association shall maintain and operate the Facilities in accordance with Applicable Law and with any requirements of any applicable District or other governmental or quasi-governmental authority to which the Facilities have been dedicated.

**11.09. View Impairment.** Neither Declarant, the Reviewer, the ACC, nor the Association guarantee or represent that any view over and across the Lots, Condominium Units, Common Area, Special Common Area, or any open space within the Development will be preserved without impairment. Declarant, the Reviewer, the ACC and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Association (with respect to any Common Area or Special Common Area) will have the right to add trees and other landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

**11.10. Safety and Security.** Each Owner and Occupant of a Lot or Condominium Unit, and his or her respective guests and invitees, shall be responsible for his or her own personal safety and the security of his or her property in the Development. The Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Development, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Development, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any Occupants of such Owner's Lot or Condominium Unit that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each person within the Development assumes all risks of personal injury and loss or damage to property, including any Improvements constructed upon any Lot or Condominium Unit and the contents thereof, resulting from acts of third parties.



**11.11. Public Use Improvements.** Certain Improvements, physical assets, and areas within the Property will be open for the use and enjoyment of the public and may include, by way of example, greenbelts, trails and paths, parks, roads, sidewalks and medians.

**11.12. Stormwater Runoff.** From time to time, Declarant may grant easements to the City and the Owners for the inspection, monitoring, operation, maintenance, replacement, upgrade, or repair of certain drainage facilities that may be constructed in order to convey and receive stormwater runoff from and to the Property. From time to time, Declarant may impress upon certain portions of the Development, the Property, and any other property owned by Declarant, additional easements for the inspection, monitoring, operation, maintenance, replacement, upgrade, or repair of other drainage facilities that convey and receive stormwater runoff from and to the Development, the Property, and any other property owned by Declarant, as set forth in one or more declarations, agreements, or other Recorded written instruments.

## **ARTICLE 12** **DEVELOPMENT RIGHTS**

**12.01. Development.** It is contemplated that the Development will be developed pursuant to a plan, which may, from time to time, be amended or modified by Declarant in its sole and absolute discretion. Declarant reserves the right, but will not be obligated, to designate Development Areas, and to create and/or designate Voting Groups, Common Area, Special Common Area, and Service Areas and to subdivide all or any portion of the Development. As each area of the Development is conveyed, developed or dedicated, Declarant may Record one or more Development Area Declarations and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for each area. Any Development Area Declaration may provide its own procedure for the amendment thereof.

**12.02. Special Declarant Rights.** Notwithstanding any provision of this Master Covenant to the contrary, at all times, Declarant will have the right and privilege: (a) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots and Condominium Units in the Development; (b) to maintain improvements upon Lots, Condominium Units, Common Area, or Special Common Area, as sales, model, management, business and construction offices; and (c) to maintain and locate construction trailers and construction tools and equipment within the Development. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance.

**12.03. Addition of Land.** Declarant may, at any time and from time to time, add additional land to the Property and, upon the Recording of a notice of addition of land (as set forth below), such land will be considered part of the Property for purposes of this Master Covenant, and upon the further Recording of a Notice of Annexation meeting the requirements of *Section 12.05* below, such added land will be considered part of the Development and be subject to this Master Covenant, and the rights, privileges, duties and liabilities of the persons subject to this Master Covenant will be the same with respect to such added land as with respect to the land originally covered by this Master Covenant. Such added land need not be contiguous to the Property. To add land to the Property, Declarant shall Record a notice of addition of land (which notice may be contained within any Development Area Declaration affecting such land) containing the following provisions:

(a) A reference to this Master Covenant, which reference will state the document number or volume and page wherein this Master Covenant is Recorded;

(b) A statement that such land will be considered Property for purposes of this Master Covenant, and that upon the further Recording of a Notice of Annexation meeting the requirements of *Section 12.05* of this Master Covenant, all of the terms, covenants, conditions, restrictions and obligations of this Master Covenant will apply to the added land; and

(c) A legal description of the added land.

**12.04. Withdrawal of Land.** Declarant may, at any time and from time to time, reduce or withdraw any land from the Property or the Development, and remove and exclude from the burden of this Master Covenant and the jurisdiction of the Association any portion of the Development so withdrawn. Upon any such withdrawal and removal, this Master Covenant and the covenants conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Development withdrawn. To withdraw land from the Development, Declarant shall Record a notice of withdrawal of land containing the following provisions:

(a) A reference to this Master Covenant, which reference will state the document number or volume and page number wherein this Master Covenant is Recorded;

(b) A statement that the provisions of this Master Covenant will no longer apply to the withdrawn land; and

(c) A legal description of the withdrawn land.

**12.05. Notice of Annexation.** Upon Recording, (i) the Previously Submitted Property shall be subject to this Master Covenant; and (ii) this Master Covenant serves to provide notice that at any time, and from time to time, Declarant, and Declarant only, may subject all or any portion of the Property to the terms, covenants, conditions, restrictions and obligations of this Master Covenant and any applicable Development Area Declaration. This Master Covenant and any applicable Development Area Declaration will apply to and burden a portion or portions of the Property upon the Recording of a Notice of Annexation legally describing such applicable Property and expressly providing that such Property will be considered a part of the Development and will be subject to the terms, covenants conditions, restrictions and obligations of this Master Covenant and any applicable Development Area Declaration. In the event that no exemption or exclusion of such portion of the Property has occurred, then unless and until Declarant Records a Notice of Annexation setting forth information to the contrary, each Lot and/or Condominium Unit which has now been automatically subjected to the terms and conditions of this Master Covenant will be allocated the number of votes and Assessments Units which would otherwise be attributable thereto by Declarant pursuant to *Section 6.04(a)* and *Section 8.09(b)* using the allocations set forth on Exhibit "D".

To be effective, a Notice of Annexation must be executed by Declarant, and the portion of the Property included in the Notice of Annexation need not be owned by Declarant. Declarant may also cause a Notice of Annexation to be Recorded covering a portion of the Property for the purpose of encumbering such Property with this Master Covenant and any Development Area Declaration previously Recorded by Declarant (which Notice of Annexation may amend, modify or supplement the restrictions set forth in the Development Area Declaration, which will apply to such Property). To make

the terms and provisions of this Master Covenant applicable to a portion of the Property, Declarant shall Record a Notice of Annexation containing the following provisions:

- (a) A reference to this Master Covenant, which reference will state the document number or volume and page number wherein this Master Covenant is Recorded;
- (b) If applicable, a reference to the Recorded Development Area Declaration applicable to such portion of the Property (with any amendment, modification, or supplementation of the restrictions set forth in the Development Area Declaration which will apply to such portion of the Property);
- (c) A statement that all of the provisions of this Master Covenant will apply to such portion of the Property;
- (d) A legal description of such portion of the Property; and
- (e) If applicable, a description of any Special Common Area or Service Area which benefits such portion of the Property, and the beneficiaries of such Special Common Area or Service Area.

**NOTICE TO TITLE COMPANY**

**EXCEPT FOR THE PREVIOUSLY SUBMITTED PROPERTY, NO PORTION OF THE PROPERTY IS SUBJECT TO THE TERMS AND PROVISIONS OF THIS MASTER COVENANT AND THIS MASTER COVENANT DOES NOT APPLY TO ANY PORTION OF THE PROPERTY UNLESS A NOTICE OF ANNEXATION DESCRIBING SUCH PROPERTY AND REFERENCING THIS MASTER COVENANT HAS BEEN RECORDED.**

**12.06. Notice of Plat Recordation.** Declarant may, at any time and from time to time, Record a Notice of Plat Recordation to clearly identify specific Lots subject to this Master Covenant after portions of the Property are made subject to a Plat. Unless otherwise provided in the Notice of Plat Recordation, portions of the Property included in the Plat identified in the Notice of Plat Recordation, but not shown as a Residential Lot on such Plat, shall be automatically withdrawn from the terms and provisions of this Master Covenant (without the necessity of complying with the withdrawal provisions set forth in this Section). Declarant shall have no obligation to Record a Notice of Plat Recordation and failure to Record a Notice of Plat Recordation shall in no event remove any portion of the Property from the terms and provisions of this Master Covenant.

**12.07. Assignment of Declarant's Rights.** Notwithstanding any provision in this Master Covenant to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, reservations and duties under this Master Covenant to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, reservations and duties hereunder.

**ARTICLE 13**  
**GENERAL PROVISIONS**

**13.01. Term.** The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Master Covenant will run with and bind the Development, and will inure to the benefit of and

be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Master Covenant is Recorded, and continuing through and including January 1, 2066, after which time this Master Covenant will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by Members entitled to cast at least seventy-five percent (75%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean seventy-five percent (75%) of a quorum as established pursuant to the Bylaws. Notwithstanding any provision in this *Section 13.01* to the contrary, if any provision of this Master Covenant would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**13.02. Eminent Domain.** In the event it becomes necessary for any public authority to acquire all or any part of the Common Area or Special Common Area for any public purpose during the period this Master Covenant is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot or Condominium Unit. In the event any proceeds attributable to acquisition of Special Common Area are paid to Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area, such payment will be allocated on the basis of Assessment Units and paid jointly to such Owners and the holders of first Mortgages or deeds of trust on the respective Lot or Condominium Unit.

**13.03. Amendment.** This Master Covenant may be amended or terminated by the Recording of an instrument executed and acknowledged by: (a) Declarant acting alone during the Development Period; or (b) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least seventy-five percent (75%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean seventy-five percent (75%) of a quorum as established pursuant to the Bylaws.

**13.04. Enforcement.** The Association and Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Master Covenant. Failure to enforce any right, provision, covenant, or condition granted by this Master Covenant will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future. Failure of Declarant or the Association to enforce the terms and provisions of the Documents shall in no event give rise to any claim or liability against Declarant, the Association, or any of their partners, directors, officers, or agents. EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE DEVELOPMENT, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF DECLARANT, THE ASSOCIATION, AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS OR LIABILITY ASSOCIATED WITH THE FAILURE OF DECLARANT OR THE ASSOCIATION TO ENFORCE THE TERMS AND PROVISIONS OF THE DOCUMENTS

**13.05. No Warranty of Enforceability.** Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in this Master Covenant. Any Owner acquiring a Lot or Condominium Unit in reliance on one or more of such restrictive covenants, terms, or provisions will assume all risks of the validity and enforceability thereof and, by acquiring the Lot or Condominium Unit, agrees to hold Declarant harmless therefrom.

**13.06. Higher Authority.** The terms and provisions of this Master Covenant are subordinate to Applicable Law. Generally, the terms and provisions of this Master Covenant are enforceable to the extent they do not violate or conflict with Applicable Law.

**13.07. Severability.** If any provision of this Master Covenant is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Master Covenant, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other person or entity.

**13.08. Conflicts.** If there is any conflict between the provisions of this Master Covenant, the Certificate, the Bylaws, or any Rules adopted pursuant to the terms of such documents, or any Development Area Declaration, the provisions of this Master Covenant will govern.

**13.09. Gender.** Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

**13.10. Acceptance by Grantees.** Each grantee of a Lot, Condominium Unit, or other real property interest in the Development, by the acceptance of a deed of conveyance, and each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Master Covenant or to whom this Master Covenant is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Development, and will bind any person having at any time any interest or estate in the Development, and will inure to the benefit of each Owner in like manner as though the provisions of this Master Covenant were recited and stipulated at length in each and every deed of conveyance.

**13.11. Damage and Destruction.**

(a) **Claims.** Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or Special Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the recording and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. "Repair," as used in this *Section 13.11(a)*, means repairing or restoring the Common Area or Special Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) Repair Obligations. Any damage to or destruction of the Common Area or Special Common Area will be repaired unless a Majority of the Board decides within sixty (60) days after the casualty not to repair such damage or destruction. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period will be extended until such information is made available to the Association.

(c) Restoration. In the event that it should be determined by the Board that the damage or destruction of the Common Area or Special Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area or Special Common Area will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition.

(d) Special Assessment for Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 8*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) Special Assessment for Special Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Special Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article 8*, against all Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(f) Proceeds Payable to Owners. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments will be allocated based on Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

(g) Proceeds Payable to Owners Responsible for Special Common Area. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to Special Common Area, such payments will be allocated based on Assessment Units and will be paid jointly to the Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

**13.12. No Partition.** Except as may be permitted in this Master Covenant or any amendments hereto, no physical partition of the Common Area or Special Common Area or any part thereof will be permitted, nor will any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless all or the portion of the Development in question has been removed from the provisions of this Master Covenant pursuant to *Section 12.04* above. This *Section 13.12* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Master Covenant.

**13.13. Notices.** Any notice permitted or required to be given to any person by this Master Covenant will be in writing and may be delivered either personally or by mail, or as otherwise provided in this Master Covenant or required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3<sup>rd</sup>) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

*[SIGNATURE PAGES FOLLOW]*

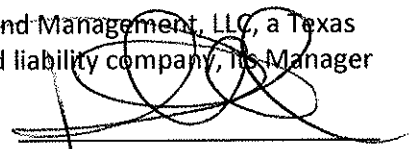
EXECUTED to be effective on the date this instrument is Recorded.

**DECLARANT:**

**EPT MESA DEVELOPMENT, LP**, a Delaware limited partnership

By: EPT Mesa Development Management, LLC, a Delaware limited liability company, its General Partner

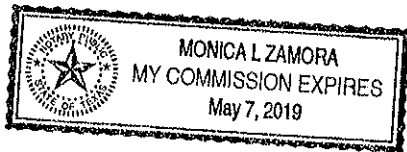
By: EPT Land Management, LLC, a Texas limited liability company, its Manager

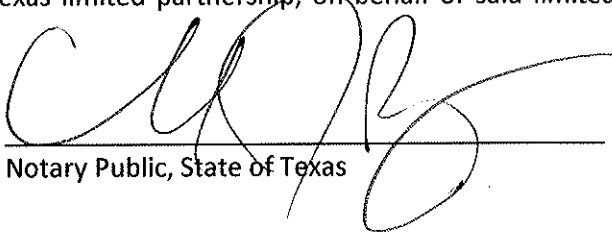
By:   
Richard Aguilar, Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF El Paso           §

This instrument was acknowledged before me on this 14<sup>th</sup> day of December, 2016, by Richard Aguilar, the Manager of EPT Land Management, LLC, a Texas limited liability company, Manager of EPT Mesa Development Management, LLC, a Delaware limited liability company, the General Partner of EPT Mesa Development, LP, a Texas limited partnership, on behalf of said limited liability companies and limited partnership.

(seal)



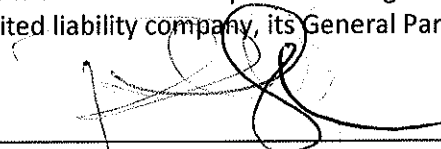
  
Notary Public, State of Texas



**ACKNOWLEDGED, AGREED TO, RATIFIED AND CONFIRMED BY EPT OWNER:**

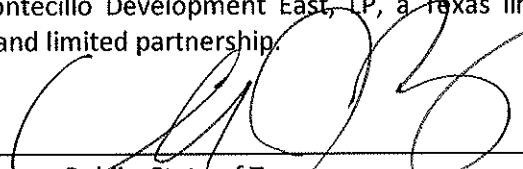
**EPT MONTECILLO DEVELOPMENT EAST, LP,**  
a Texas limited partnership

By: EPT Montecillo Development Management, LLC, a Texas  
limited liability company, its General Partner

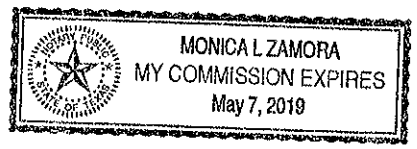
By:   
Richard Aguilar, its Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF El Paso       §

This instrument was acknowledged before me on this 14th day of December, 2016, by Richard Aguilar, the Manager of EPT Montecillo Development Management, LLC, a Texas limited liability company, General Partner of EPT Montecillo Development East, LP, a Texas limited partnership, on behalf of said limited liability company and limited partnership.

  
\_\_\_\_\_  
Notary Public, State of Texas

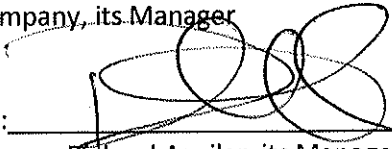
(seal)



**ACKNOWLEDGED, AGREED TO, RATIFIED AND CONFIRMED BY EPT OWNER:**

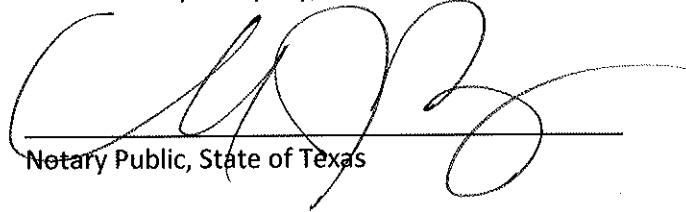
**ALAMO EL PASO HOLDINGS, LLC,**  
a Texas limited liability company

By: 123 Plus Management, LLC, a Texas limited liability  
company, its Manager

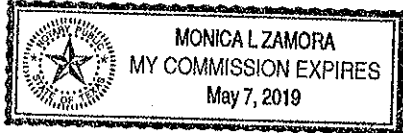
By:   
Richard Aguilar, its Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF El Paso       §

This instrument was acknowledged before me on this 14th day of December 2016, by Richard Aguilar, the Manager of 123 Plus Management, LLC, a Texas limited liability company, Manager of Alamo El Paso Holdings, LLC, a Texas limited liability company, on behalf of said limited liability companies.

  
Notary Public, State of Texas

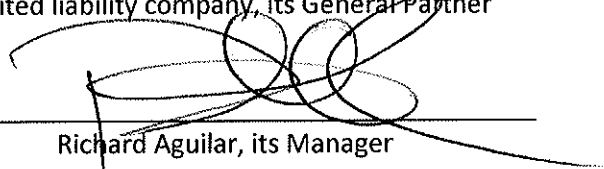
(seal)



**ACKNOWLEDGED, AGREED TO, RATIFIED AND CONFIRMED BY EPT OWNER:**

**EPT MONTECILLO DEVELOPMENT WEST, LP,**  
a Texas limited partnership

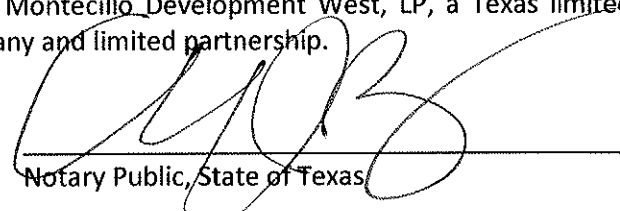
By: EPT Montecillo Development Management, LLC, a Texas  
limited liability company, its General Partner

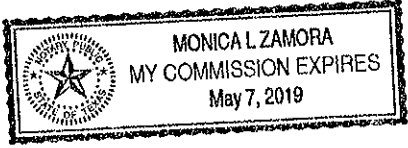
By:   
Richard Aguilar, its Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF El Paso       §

This instrument was acknowledged before me on this 14<sup>th</sup> day of December  
2016, by Richard Aguilar, the Manager of EPT Montecillo Development Management, LLC, a Texas  
limited liability company, General Partner of EPT Montecillo Development West, LP, a Texas limited  
partnership, on behalf of said limited liability company and limited partnership.

(seal)

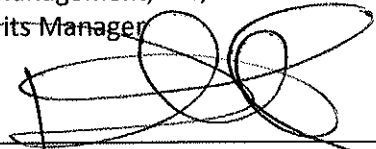
  
Notary Public, State of Texas



**ACKNOWLEDGED, AGREED TO, RATIFIED AND CONFIRMED BY EPT OWNER:**

**EPT THE RETREAT AT MONTECILLO APARTMENTS, LLC,**  
a Texas limited liability company

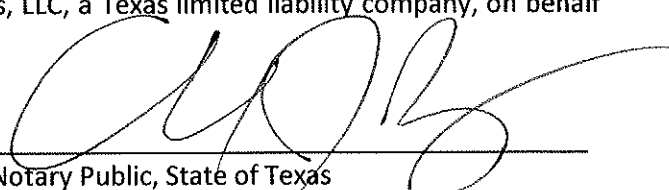
By: 123 Plus Management, LLC, a Texas limited liability  
company, its Manager

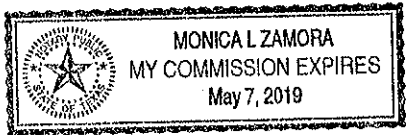
By:   
Richard Aguilar, its Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF El Paso           §

This instrument was acknowledged before me on this 14<sup>th</sup> day of December  
2016, by Richard Aguilar, the Manager of 123 Plus Management, LLC, a Texas limited liability company,  
Manager of EPT the Retreat at Montecillo Apartments, LLC, a Texas limited liability company, on behalf  
of said limited liability companies.

(seal)

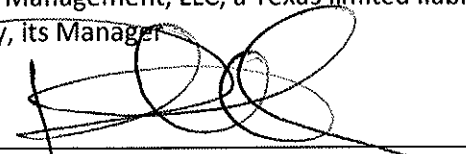
  
Notary Public, State of Texas



**ACKNOWLEDGED, AGREED TO, RATIFIED AND CONFIRMED BY EPT OWNER:**

**EPT TRE, LLC,**  
a Texas limited liability company

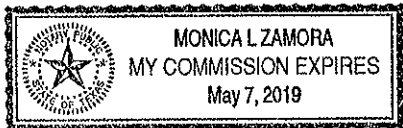
By: 123 Plus Management, LLC, a Texas limited liability  
company, its Manager

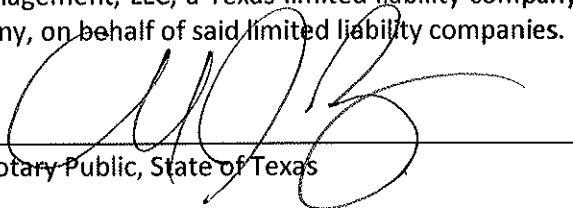
By:   
Richard Aguilar, its Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF E. Paso           §

This instrument was acknowledged before me on this 14<sup>th</sup> day of December  
2016, by Richard Aguilar, the Manager of 123 Plus Management, LLC, a Texas limited liability company,  
Manager of EPT Tre, LLC, a Texas limited liability company, on behalf of said limited liability companies.

(seal)

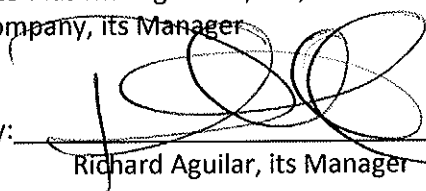


  
Notary Public, State of Texas

**ACKNOWLEDGED, AGREED TO, RATIFIED AND CONFIRMED BY EPT OWNER:**

**EPT SANTI APARTMENTS, LLC,**  
a Texas limited liability company

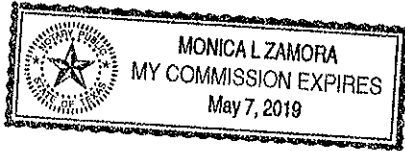
By: 123 Plus Management, LLC, a Texas limited liability  
company, its Manager

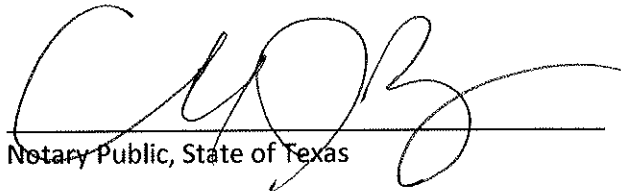
By:   
Richard Aguilar, its Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF El Paso           §

This instrument was acknowledged before me on this 14<sup>th</sup> day of December  
2016, by Richard Aguilar, the Manager of 123 Plus Management, LLC, a Texas limited liability company,  
Manager of EPT Santi Apartments, LLC, a Texas limited liability company, on behalf of said limited  
liability companies.

(seal)

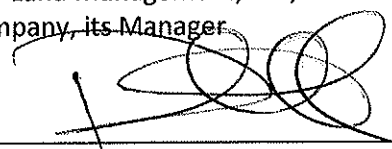


  
Notary Public, State of Texas

**ACKNOWLEDGED, AGREED TO, RATIFIED AND CONFIRMED BY EPT OWNER:**

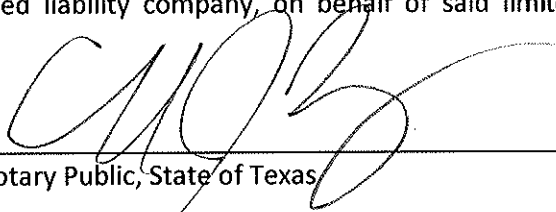
**EPT MONTECILLO PRIME, LLC,**  
a Texas limited liability company

By: EPT Land Management, LLC, a Texas limited liability  
company, its Manager

By:   
Richard Aguilar, its Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF EL PASO           §

This instrument was acknowledged before me on this 14<sup>th</sup> day of December  
2016, by Richard Aguilar, the Manager of EPT Land Management, LLC, a Texas limited liability company,  
Manager of EPT Montecillo Prime, LLC, a Texas limited liability company, on behalf of said limited  
liability companies.

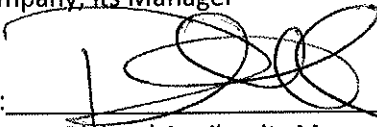
  
\_\_\_\_\_  
Notary Public, State of Texas



**ACKNOWLEDGED, AGREED TO, RATIFIED AND CONFIRMED BY EPT OWNER:**

**EPT TIME 2.0, LLC,**  
a Texas limited liability company

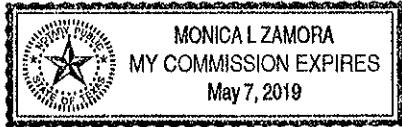
By: 123 Plus Management, LLC, a Texas limited liability  
company, its Manager

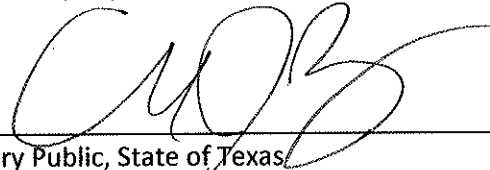
By:   
Richard Aguilar, its Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF El Paso       §

This instrument was acknowledged before me on this 14<sup>th</sup> day of December  
2016, by Richard Aguilar, the Manager of 123 Plus Management, LLC, a Texas limited liability company,  
Manager of EPT Time 2.0, LLC, a Texas limited liability company, on behalf of said limited liability  
companies.

(seal)



  
Notary Public, State of Texas



**ACKNOWLEDGED, AGREED TO, RATIFIED AND CONFIRMED BY EPT OWNER:**

**EPT THE VENUE AT MONTECILLO APARTMENTS, LLC,**  
a Texas limited liability company

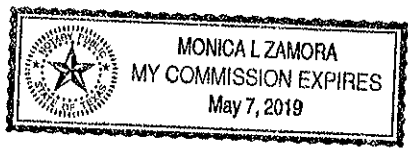
By: [Signature]  
Richard Aguilar, its Manager

THE STATE OF TEXAS           §  
  §  
COUNTY OF El Paso           §

This instrument was acknowledged before me on this 14<sup>th</sup> day of December 2016, by Richard Aguilar, the Manager of EPT the Venue at Montecillo Apartments, LLC, a Texas limited liability company, on behalf of said limited liability company.

[Signature]  
Notary Public, State of Texas

(seal)



**EXHIBIT "A"**  
**DESCRIPTION OF PROPERTY**

A

Tract 4, John Barker Survey No. 10,  
City Of El Paso, El Paso County, Texas  
March 14, 2011  
(Parcel 2)

**METES AND BOUNDS DESCRIPTION**

Description of a parcel of land being Tract 4, John Barker Survey No. 10, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a found brass disk marking the northeast corner of tract 3A, John Barker survey No. 10, Thence along the line between tract 1 and 3, John Barker No. 10, South 00°49'08" West a distance of 2,252.05 feet to a set 1/2" rebar with cap "5152" set for the northeasterly corner of tract 4 as described in Book 3712, Page 1055, from which a found E.P.E.C. brass cap bears North 00°48'24" East a distance of 200.13 feet;

Thence along the easterly line of said tract 4, South 00°48'24" West (South 00°01'45" West, Bk. 3712, Pg. 1055) a distance of 1,283.08 feet (1283.47 feet, Bk. 3712, Pg. 1055) to a found TX.D.O.T. sheared concrete monument at the easterly right of way line of Interstate 10 as per R.O.W. Map Control No. 2121, Sect. 2, Job No. 27;

Thence with said right of way line, North 21°16'42" West (North 18°07'32" West, Cont 2121, Sect. 2, Job No. 27) a distance of 663.74 feet (661.79 feet, Cont 2121, Sect. 2, Job No. 27) to a found TX.D.O.T. brass cap;

Thence with said right of way line, North 71°39'13" East (North 71°52'28" East, Cont 2121, Sect. 2, Job No. 27) a distance of 49.73 feet (50.00 feet, Cont 2121, Sect. 2, Job No. 27) to a found TX.D.O.T. brass cap;


Thence with said right of way line, North 21°53'42" West (North 18°39'33" West, Cont 2121, Sect. 2, Job No. 27) a distance of 537.26 feet (536.77 feet, Cont 2121, Sect. 2, Job No. 27) to a found TX.D.O.T. brass cap;

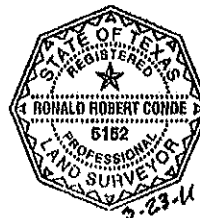
Thence with said right of way line, North 37°37'35" West (North 34°27'12" West, Cont 2121, Sect. 2, Job No. 27) a distance of 175.03 feet (175.26 feet, Cont 2121, Sect. 2, Job No. 27) to a point the southerly line of 175 foot El Paso Electric Company Right of Way as described by Book 1357, Page 385, Book 1324, Page 273, and Book 552, Page 446, recorded with the El Paso County Deed Records, from which a found 1/2" rebar bears North 30°35'53" West a distance of 0.23 feet;

Thence leaving said right of way line, North 88°42'39" East (North 87°59' 00" East, Bk. 1324, Pg. 273) a distance of 519.06 feet to the "TRUE POINT OF BEGINNING" and containing in all 300,801.16 square feet or 6.9054 acres of land more or less.

Bearing basis is true north for a transverse Mercator surface projection as determined by GPS methods centered at an El Paso Electric Company brass disk.

Plat of even date accompanies this Metes and Bounds.

  
Ron R. Conde  
R.P.L.S. No. 5152



#311-22

**CONDE, INC.**  
**ENGINEERING / LAND SURVEYING / PLANNING**  
**6080 SURETY DRIVE SUITE 100 / EL PASO, TEXAS 79905 / (915) 592-0283**

Being Tracts 3, 3A, 4, 4F2B, 6 and 7, John Barker Survey No. 10,  
And Montecillo Unit Three Amending Plat save and except  
Lot 2, Block 2 thereof  
City of El Paso, El Paso County, Texas  
Prepared for: EPT Land Communities  
March 14, 2011  
(Parcel 1)

#### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Tract 1, John Barker Survey No. 10 and a portion of Montecillo Unit Three Amending Plat as recorded in clerks file no. 20090065237, City of El Paso City, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 1" pipe in concrete marked "NE 10" for the northeast corner of John Barker Survey No. 10; from which a found pipe for the northwest corner of John Baker Survey No. 10 bears North 89°10'00" West a distance of 2,596.86 feet; Thence from said northeast corner of John Baker No. 10, North 89°10'00" West a distance of 978.66 feet to a point on the westerly line of Lot 2, Block 2, Montecillo Unit Three Amending for the "TRUE POINT OF BEGINNING".

Thence along the westerly line of Lot 2, Block 2, Montecillo Unit Three Amending Plat the following courses;

South 05°24'34" West a distance of 178.31 feet to a point;

South 18°45'13" West a distance of 133.53 feet to a point;

South 09°53'25" West a distance of 133.88 feet to a point;

South 10°01'41" West a distance of 124.87 feet to a point;

South 05°56'36" West a distance of 54.88 feet to a point;

South 10°14'52" East a distance of 95.04 feet to a point;

South 01°18'09" West a distance of 49.46 feet to a point;

South 11°35'01" West a distance of 71.13 feet to a point;

South 15°50'34" East a distance of 206.33 feet to a point;

South 06°49'19" East a distance of 46.74 feet to a point;

South 01°32'51" West a distance of 152.97 feet to a point;

South 06°11'09" East a distance of 156.42 feet to a point;

South 49°10'11" East a distance of 212.37 feet to a point on the northwesterly right of way line of Montecillo Blvd;

Thence along said right of way line 64.94 feet along the arc of a curve to the left which has a radius of 1045.00 feet a central angle of 03°33'29" a chord which bears North 15°30'36" East a distance of 64.93 feet to a point;

Thence along said right of way line North 13°43'46" East a distance of 67.75 feet to a point of curve;

Thence along said right of way line 450.97 feet along the arc of a curve to the right which has a radius of 860.00 feet a central angle of 30°02'42" a chord which bears North 28°45'07" East a distance of 445.82 feet to a point;

Thence along said right of way line North 43°46'28" East a distance of 10.23 feet to a point of curve;

Thence along said right of way line 213.50 feet along the arc of a curve to the right which has a radius of 1068.00 feet a central angle of 11°27'14" a chord which bears North 49°30'05" East a distance of 213.15 feet to a point on the intersection of the westerly line of Montecillo Unit Two and the northerly right of way line of Montecillo Blvd;

Thence along the northerly right of way line of Montecillo Blvd., 200.54 feet along the arc of a curve to the right which has a radius of 1068.00 feet a central angle of 10°45'30" a chord which bears North 60°36'28" East a distance of 200.24 feet to a point;

Thence along said right of way line North 65°59'13" East a distance of 56.37 feet to a point of curve;

Thence 39.27 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 89°59'44" a chord which bears North 20°59'21" East a distance of 35.35 feet to a point on the westerly right of way line of Mesa Street (U.S. 80);

Thence along said right of way line South 24°00'31" East a distance of 160.00 feet to a point;

Thence leaving said right of way line 39.27 feet along the arc of a curve to the left which has a radius of 25.00 feet a central angle of 90°00'16" a chord which bears North 69°00'39" West a distance of 35.36 feet to a point on the southerly right of way line of Montecillo Blvd.;

Thence along said right of way line South 65°59'13" West a distance of 56.35 feet to a point;

Thence 371.40 feet along the arc of a curve to the left which has a radius of 958.00 feet a central angle of 22°12'45" a chord which bears South 54°52'51" West a distance of 369.08 feet to a point on the westerly line of Montecillo Unit One;

Thence along said line South 28°33'14" East a distance of 538.18 feet to a point on the southerly line of Montecillo Unit One;

Thence along said line North 63°20'17" East a distance of 269.84 feet to a point on the easterly line of Montecillo Unit Three;

Thence along said line South 00°46'50" West a distance of 953.90 feet to a point on the southerly line of Montecillo Unit Three;

Thence along said line North 82°25'27" West a distance of 1051.35 feet to a point on the easterly right of way line of Montecillo Blvd;

Thence 152.54 feet along the arc of a curve to the left which has a radius of 2144.12 feet a central angle of  $04^{\circ}04'34''$  a chord which bears South  $17^{\circ}58'17''$  West a distance of 152.50 feet to a point;

Thence leaving said right of way line North  $82^{\circ}25'27''$  West a distance of 111.12 feet to a point on the westerly right of way line of Montecillo Blvd ;

Thence along said right of way line 152.29 feet along the arc of a curve to the right which has a radius of 2254.12 feet a central angle of  $03^{\circ}52'15''$  a chord which bears North  $17^{\circ}27'29''$  East a distance of 152.26 feet to a point;

Thence leaving said right of way line North  $82^{\circ}25'27''$  West a distance of 1452.81 feet to a point on the westerly line of Montecillo Unit Three Amending;

Thence along said line North  $00^{\circ}49'12''$  East a distance of 75.05 feet to a point;

Thence, South  $88^{\circ}42'39''$  West (South  $87^{\circ}59'$  West, Bk. 1357, Pg. 385) a distance of 731.43 feet to a point at the easterly right of way line of Interstate Highway no.10 as per R.O.W. Map Control No. 2121, Sect. 2, Job No. 27;

Thence along said right of way line, North  $37^{\circ}37'35''$  West (North  $34^{\circ}27'12''$  West, Cont 2121, Sect. 2, Job No. 27) a distance of 86.51 feet (87.29 feet book 3712, page 1055);

Thence along said right of way line, North  $53^{\circ}33'34''$  West a distance of 1,031.67 feet to a point;

Thence along said right of way, North  $73^{\circ}22'05''$  West a distance of 596.01 feet to a point;

Thence along said right of way line, North  $89^{\circ}50'45''$  West a distance of 1156.06 feet to a point at the intersection of said right of way and the southeasterly line of Rubin Heights Unit Two Replat "A" Amending Plat;

Thence along said southeasterly line, North  $57^{\circ}42'45''$  East a distance of 364.55 feet to a point;

Thence along said southeasterly line, South  $21^{\circ}57'44''$  East (South  $21^{\circ}58'17''$  East, Vol. 75, Pg. 53) a distance of 51.42 feet (51.56 feet book. 3019, page 1895) to a point;

Thence along said southeasterly line, North  $48^{\circ}10'04''$  East (North  $48^{\circ}09'31''$  East, Vol. 75, Pg. 53) a distance of 949.15 feet (book 3019, page 1895) to a point;

Thence along said southeasterly line, North  $53^{\circ}40'20''$  East (North  $53^{\circ}39'47''$  East, Vol. 75, Pg. 53) a distance of 265.80 feet to a point;

Thence along the westerly right of way extension of Suncrest Drive described as northeasterly line of Tract 6, I.F. Harrison Survey No. 54 in Book 3019, Page 1895 with the El Paso County Deed Records, 378.95 feet (379.09 feet, Bk. 3019, Pg. 1895) along the arc of a curve to the left which has a radius of 695.00 feet, a central angle of  $31^{\circ}14'25''$  ( $31^{\circ}15'08''$ , Bk. 3019, Pg. 1895), and a chord which bears South  $36^{\circ}00'23''$  East (South  $36^{\circ}02'41''$  East, Bk. 3019, Pg. 1895) a distance of 374.27 feet (374.41 feet Bk. 3019, Pg. 1895) to a point;

Thence along said right of way extension, South 51°37'35" East (South 51°40'15" East, Bk. 3019, Pg. 1895) a distance of 90.00 feet to a point at the common line between Tract 6 and Tract 7;

Thence with the westerly line of Tract 7, I.F. Harrison Survey No. 54 described in Book 3019, Page 1895 with the El Paso County Deed Records, North 38°22'25" East (North 38°19'45" East, Bk. 3019, Pg. 1895) a distance of 35.00 feet to a point at the centerline extension of Suncrest Drive;

Thence with said centerline extension, North 51°37'35" West (North 51°40'15" West, Bk. 3019, Pg. 1895) a distance of 90.00 feet to a point at a point of curvature;

Thence with said centerline extension, 360.00 feet along the arc of a curve to the right which has a radius of 660.00 feet, a central angle of 31°15'08", and a chord of 355.55 feet that bears North 36°00'01" West (North 36°02'41" West, Bk. 3019, Pg. 1895) to a point;

Thence leaving said centerline, North 69°37'36" East (North 69°34'53" East, Bk. 3019, Pg. 1895) a distance of 35.00 feet to a point at the southwesterly corner of Lot 1, Block 2, Rubin Heights Unit One recorded in Volume 37, Page 8 with the El Paso County Plat Records;

Thence with the southerly line of said lot, North 85°08'41" East (North 85°04'36" East, Bk. 3019, Pg. 1895) a distance of 665.73 feet (665.94 feet, Bk. 3019, Pg. 1895) to a point;

Thence continuing with the southerly line of said lot, North 68°51'17" East (North 68°47'14" East, Bk. 3019, Pg. 1895) a distance of 480.17 feet to a point at the common line between I.F. Harrison No. 54 and A.F. Miller Survey No. 215;

Thence with said common line, North 00°50'42" East (North 00°48'15" East, Bk. 3019, Pg. 1895) a distance of 23.28 feet to a point;

Thence continuing with said common line, North 00°48'05" East (North 00°45'38" East, Bk. 3019, Pg. 1895) a distance of 22.00 feet to a point on the southerly line of Fiesta Hills Addition Unit Three recorded in Volume 19, Page 28 with the El Paso County Plat Records;

Thence along the southerly line of said Fiesta Hills Addition Unit Three, North 77°12'38" East (North 77°10'11" East, Bk. 3019, Pg. 1895) a distance of 1,463.16 feet (1463.37 feet, Bk. 3019, Pg. 1895) to a point on the westerly line of Fiesta Hills Addition Unit Four recorded in Volume 52, Page 11, of the El Paso County Plat Records;

Thence with said westerly line, South 00°48'00" West (South 00°46'56" West, Bk. 3019, Pg. 1895) a distance of 260.73 feet (260.49 feet, Bk. 3019, Pg. 1895) to a point at the southwest corner of Lot 36, Block 3, Fiesta Hills Addition Unit Four;

Thence with the south line of said Lot 36, South 89°55'57" East (South 89°57'01" East, Bk. 3019, Pg. 1895) a distance of 153.24 feet to a point on the northerly right of way of New Orleans Drive;

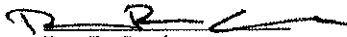
Thence, South 00°04'03" West (South 00°02'59" West, Bk. 3019, Pg. 1895) a distance of 171.00 feet (171.16 feet, Bk. 3019, Pg. 1895) to a point at the north line of Tract 1, J. Barker Survey No. 10 as described by Book 1177, Page 0599 recorded with the El Paso County Deed Records;

Thence along said line South 89°10'00" East a distance of 985.14 feet to the "TRUE POINT OF BEGINNING and containing 201.26 acres of land more or less.

Note: Not a ground survey, Bearings basis on plat of Montecillo Unit Three Amending Plat recorded in clerks file no. 20090065237, Real property records of El Paso County, Texas.



Job # 311-22

  
Ron R. Conde  
R.P.L.S. No. 5152

CONDE, INC.  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVER SUITE 100 / EL PASO, TEXAS 79905 / (915) 592-0283 FAX (915) 592-0286



Being Lot 1, Block 3, Kings Hill Replat  
And Tract 4A, 6G and a portion of Tract 6A,  
A.F. Miller Survey No. 216, And Tract 21,  
John Barker Survey No. 10  
City of El Paso, El Paso County, Texas  
Prepared for: EPT  
March 14, 2011  
(Parcel 3)

#### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being Lot 1, Block 3, Kings Hill Replat and Tracts 4A, 6G and a Portion of Tract 6A, A.F. Miller Survey No. 216 and Tract 21, John Barked Survey No. 10, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at a found city monument at the centerline intersection of Argonaut Drive and Kingspoint Drive thence along the centerline of Kingspoint Dr., South 89°09'56" West a distance of 150.00 feet to a point; Thence leaving said centerline North 00°50'04" West a distance of 30.00 feet to a point on the northerly right of way line of Kingspoint Dr. for The "TRUE POINT OF BEGINNING";

Thence leaving said right of way line North 00°50'04" West a distance of 151.58 feet to a point on the line between Tracts 6F and 6G;

Thence along said line South 89°09'56" West a distance of 242.35 feet to a point;

Thence along said line South 60°09'56" West a distance of 877.00 feet to a point;

Thence South 58°48'50" West a distance of 114.48 feet to a point;

Thence South 41°09'56" West a distance of 115.13 feet to a point;

Thence South 28°29'56" West a distance of 115.13 feet to a point;

Thence South 22°09'56" West a distance of 153.07 feet to a point;

Thence South 12°00'00" East a distance of 130.00 feet to a point;

Thence South 35°50'16" East a distance of 120.36 feet to a point on the common boundary line of tracts 6A and lot 11, Block 1, Kings Hills;

Thence along said boundary line South 42°56'56" East a distance of 297.80 feet to a point;

Thence continuing along said boundary line South 60°31'49" East a distance of 150.09 feet to a point on the westerly right of way line of Argonaut Drive;

Thence along said right of way line South 31°26'17" West a distance of 43.20 feet to a point on the southerly boundary line of tract 6A, A.F. Miller Survey No 216;

Thence along said boundary line North 89°28'41" West a distance of 551.99 feet to a point on the easterly right of way line of Mesa Street;

Thence along said right of way line the following three courses

North 33°51'53" West a distance of 483.84 feet to a point;

North 22°47'47" West a distance of 127.04 feet to a point;

North 15°17'53" West a distance of 923.26 feet to a point;

Thence 31.42 feet along the arc of a curve to the left whose interior angle is 90°00'00" whose radius is 20.00 feet whose chord bears South 60°17'53" East a distance of 28.28 feet to a point on the common boundary line of tract 4A, A.F. Miller Survey No. 216 and Mesa Hills Unit Fifteen recorded in volume 61, page 66, Plat records of El Paso County, Texas;

Thence along said boundary line North 74°42'07" East (N75°16'56"E vol. 61, pg. 66) a distance of 97.77 feet to a point on the easterly boundary line of Mesa Hills Unit 15;

Thence along the easterly boundary line of Mesa Hills Unit 15 the following Six Courses

North 00°15'38" East (N00°50'27"E vol. 61, pg. 66) a distance of 747.02 feet to a point;

68.76 feet along the arc of a curve to the left whose interior angle is 13°07'54" whose radius is 300.00 feet whose chord bears North 27°11'01" East a distance of 68.61 feet to a point;

North 20°37'09" East (N21°11'58"E vol. 61, pg. 66) a distance of 33.96 feet to a point;

101.08 feet along the arc of a curve to the right whose interior angle is 18°14'24" whose radius is 317.50 feet whose chord bears North 29°44'21" East a distance of 100.65 feet to a point;

North 38°51'30" East (N39°26'19"E vol. 61, pg. 66) a distance of 334.47 feet to a point;

39.51 feet along the arc of a curve to the left whose interior angle is 07°32'47" whose radius is 300.00 feet whose chord bears North 35°05'07" East a distance of 39.48 feet to a point;

Thence South 89°43'19" East (S89°08'30"W vol. 76, pg. 48) a distance of 1730.88 feet to a point on the westerly boundary line of an 75 feet El Paso Electric Company right of way;

Thence along said right of way line South 00°50'04" East a distance of 883.05 feet to a point;

Thence South 89°02'02" West a distance of 1.83 feet to a point on the easterly line of lot 1, Block 9, Kings Hill Replat;

Thence along said line South 00°50'04" East a distance of 501.39 feet to a point on the northerly right of way line of Kingspoint Dr.


Thence along said right of way line South 89°09'56" West a distance of 80.00 feet to a point;

Thence along said right of way line 31.42 feet along the arc of a curve to the left whose interior angle is 90°00'00" whose radius is 20.00 feet whose chord bears South 44°09'56" West a distance of 28.28 feet;

Thence along said right of way line South 89°09'56" West a distance of 100.00 feet to the "TRUE POINT OF BEGINNING" and containing 83.91 acres of land more or less.

NOTES:

- 1) Bearings based on centerline monumentation of Argonaut Drive as shown on plat of Kings Hill recorded in volume 23, page 41, Plat Records of El Paso County, Texas

  
Ron R. Conde  
R.P.L.S. No. 5152  
Job No. 311-22



CONDE, INC.  
ENGINEERING / LAND SURVEYING / PLANNING  
6080 SURETY DRIVE SUITE 100 / EL PASO, TEXAS 79905 / (915) 592-0283 FAX (915) 592-0286

Being a Portion of Lot 1, Block 1,  
Montecillo Unit One,  
City of El Paso, El Paso County, Texas  
January 26, 2009  
(Parcel 2)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Lot 1, Block 1, Montecillo Unit 1, recorded in clerk's file no. 20080068640, real property records of El Paso County, Texas, City of El Paso City, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 1" pipe in concrete marked "NE 10" held for the northeast corner of J. Barker Survey No. 10; from which a found pipe for the northwest corner of John Baker Survey No. 10 bears North  $89^{\circ}10'00''$  West a distance of 2,596.86 feet; Thence from said northeast corner of John Baker No. 10, South  $00^{\circ}46'48''$  West a distance of 1029.04 feet to a set 1/2" rebar with cap marked TX 5152 on the westerly right of way line of Mesa Street (U.S. Highway No. 80) for the "TRUE POINT OF BEGINNING".

Thence along said right of way line South  $00^{\circ}46'50''$  West a distance of 0.91 feet to a set 1/2" rebar with cap marked TX 5152;

Thence along said right of way line South  $33^{\circ}15'52''$  East a distance of 134.89 feet to a set 1/2" rebar with cap marked TX 5152;

Thence leaving said right of way line South  $56^{\circ}44'08''$  West a distance of 9.38 feet to a set 1/2" rebar with cap marked TX 5152;

Thence 146.70 feet along the arc of a curve to the right which has a radius of 202.52 feet a central angle of  $41^{\circ}30'16''$  a chord which bears South  $77^{\circ}29'16''$  West a distance of 143.51 feet to a set 1/2" rebar with cap marked TX 5152 point;

Thence 142.99 feet along the arc of a curve to the right which has a radius of 186.50 feet a central angle of  $43^{\circ}55'46''$  a chord which bears North  $54^{\circ}49'28''$  West a distance of 139.52 feet to a set 1/2" rebar with cap marked TX 5152 point;

Thence North  $34^{\circ}13'02''$  West a distance of 68.42 feet to a set 1/2" rebar with cap marked TX 5152;

Thence North  $55^{\circ}46'58''$  East a distance of 12.50 feet to a set 1/2" rebar with cap marked TX 5152;

Thence North 34°13'02" West a distance of 165.94 feet to a set 1/2" rebar with cap marked TX 5152 on the southerly right of way line of Monticello Blvd.;

Thence 121.84 feet along the arc of a curve to the right which has a radius of 958.00 feet a central angle of 07°17'14" a chord which bears North 62°20'36" East a distance of 121.76 feet to a set 1/2" rebar with cap marked TX 5152 point;

Thence North 65°59'13" East a distance of 56.35 feet to a set 1/2" rebar with cap marked TX 5152

Thence 39.27 feet along the arc of a curve to the right which has a radius of 25.00 feet a central angle of 90°00'16" a chord which bears South 69°00'39" East a distance of 35.36 feet to a set 1/2" rebar with cap marked TX 5152 on the westerly right of way line of Mesa Street (U.S. 809);


Thence along said right of way line South 24°00'31" East a distance of 66.95 feet to a set 1/2" rebar with cap marked TX 5152;

Thence, South 33°17'31" East a distance of 163.78 feet to the "TRUE POINT OF BEGINNING" and containing in all 71,454.64 square feet or 1.6404 acres of land more or less.

Note: Bearings basis is per plat of Montecillo Unit One recorded in Clerk's file No. 20080068640, Real property records of El Paso County, Texas



Job # 109-46

  
Ron R. Conde  
R.P.L.S. No. 5152

**CONDE, INC.**  
ENGINEERING / LAND SURVEYING / PLANNING  
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

**Property (including any improvements):** Being Lot 1A, Block 1, MONTECILLO UNIT ONE REPLAT A, an Addition to the City of El Paso, El Paso County, Texas, according to the map thereof recorded under Instrument No. 20110018395, Real Property Records of El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 1" pipe in concrete marked "NE 10" held for the northeast corner of J. Barker Survey No. 10; from which a found pipe for the northwest corner of John Barker Survey No. 10 bears North 89°10'00" West a distance of 2,596.86 feet; Thence from said northeast corner of John Baker No. 10, South 03°00'15" East a distance of 1144.21 feet to a set ½" rebar with cap marked TX 5152 on the westerly right of way line of Mesa Street (U.S. Highway No. 80) for the "TRUE POINT OF BEGINNING".

Thence along said right of way line South 33°15'52" East a distance of 185.39 feet to a found chiseled x on concrete sidewalk on the southerly line of Lot 1, Block 1, Monticello Unit One;

Thence with said line South 59°16'25" West a distance of 210.31 feet to a set ½" rebar with cap marked TX 5152;

Thence with said line South 63°20'17" West a distance of 269.84 feet to a found ½" rebar with cap marked TX 5152 on the westerly line of Lot 1, Block 1, Monticello Unit One;

Thence with said line North 28°33'14" West a distance of 538.18 feet to a set ½" rebar with cap marked TX 5152 on the southerly right of way line of Montecillo Blvd;

Thence 140.92 feet along the arc of a curve to the right which has a radius of 958.00 feet to a central angle of 08°25'41" a chord which bears North 47°59'19" East a distance of 140.79 feet to a set ½" rebar with cap marked TX 5152;

Thence leaving said right of way line South 39°19'33" East a distance of 108.81 feet to a point of curve;

Thence 92.60 feet along the arc of a curve to the left which has a radius of 62.50 feet a central angle of 84°53'28" a chord which bears South 81°46'17" East a distance of 84.36 feet to a set ½" rebar with cap marked TX 5152;

Thence North 55°46'58" East a distance of 24.13 feet to a set ½" rebar with cap marked TX 5152;

Thence South 34°13'02" East a distance of 68.42 feet to a set ½" rebar with cap marked TX 5152;

Thence 142.92 feet along the arc of a curve to the left which has a radius of 186.50 feet to a central angle of 43°55'46" a chord which bears South 54°49'28" East a distance of 139.52 feet to a set ½" rebar with cap marked TX 5152;

Thence 146.72 feet along the arc of a curve the left which has a radius of 202.52 feet a central angel of 41°30'43" a chord which bears North 77°29'30" East a distance of 143.53 feet to a set ½" rebar with cap marked TX 5152;

Thence North 56°44'08" East a distance of 9.38 feet to the "TRUE POINT OF BEGINNING" and containing 176,349 Square Feet or 4.0484 acres of land more or less.

**Property (including any improvements):** Lot 1, Block 2, MONTECILLO UNIT TWO, an Addition to the City of El Paso, El Paso County, Texas, according to the map thereof recorded under Instrument No. 20090006768, Plat Records of El Paso County, Texas, and being more particularly described by Metes and Bounds as follows:

Commencing for reference at a found 1" pipe in concrete marked "NE 10" held for the northeast corner of J. Barker Survey No. 10; from which a found pipe for the northwest corner of John Baker Survey No. 10 bears North 89°10'00" West a distance of 2,596.86 feet; Thence from said northeast corner of John Baker No. 10, North 89°10'00" West a distance of 398.44 feet to a set ½" rebar with cap marked TX 5152 on the westerly right of line of Mesa Street (U.S. Highway No. 80) for the "TRUE POINT OF BEGINNING".

Thence along said right of way line South 14°43'31" East a distance of 514.54 feet to a set ½" rebar with cap marked TX 5152 for a point of curve;

Thence along said right of way line 164.50 feet along the arc of a curve to the left which has a radius of 1015.28 feet a central angle of 09°17'00" a chord which bears South 19°22'01" East a distance of 164.32 feet to a set ½" rebar with cap marked TX 5152;

Thence along said right of way line South 24°00'31" East a distance of 41.45 feet to a set ½" rebar with cap marked TX 5152;

Thence 39.27 feet along the arc of a curve to the right which has a radius of 25.00 feet a central angle of 89°59'44" a chord which bears South 20°59'21" West a distance of 35.35 feet to a set ½" rebar with cap marked TX 5152 on the northerly right of way line of Monticello Blvd.;

Thence along said right of way line South 65°59'13" West a distance of 56.37 feet to a set ½" rebar with cap marked TX 5152 for a point of curve;

Thence 200.54 feet along the arc of a curve to the left which has a radius of 1068.00 feet a central angle of 10°45'30" a chord which bears South 60°36'28" West a distance of 200.24 feet to a point;

Thence leaving said right of way line North 14°43'31" West a distance of 877.34 feet to a set ½" rebar with cap marked TX 5152 on the northerly line of John Barker Survey No. 10;

Thence, along said line, South 89°10'00" East a distance of 259.51 feet to the "TRUE POINT OF BEGINNING" and containing in all 203,842.19 square feet or 4.6796 acres of land more or less.



**Property (including any improvements):** A parcel of land containing 0.3718 acres, more or less, being a portion of Lot 1, Block 1, MONTECILLO UNIT ONE, an Addition to the City of El Paso, El Paso County, Texas, according to the map thereof recorded under Instrument No. 20080068640, Plat Records of El Paso County, Texas, and being more particularly described by Metes and Bounds as follows:

**COMMENCING** for reference at a 1-inch pipe stamped "NE 10" found for the northwest corner of the John Barker Survey No. 10; **WHENCE**, a 2-inch aluminum cap found for the northwest corner of said John Barker Survey No. 10, bears North 89°10'00" West, a distance of 2,596.86 feet; **THENCE**, leaving said northeast corner of the John Barker Survey No. 10, South 19°49'57" West, a distance of 954.55 feet (South 19°49'02" West-954.18 feet-record) to a ½ inch rebar with survey cap no. "TX 5152" found on the southerly right-of-way line of Montecillo Boulevard (110 feet wide) for the **POINT OF BEGINNING** of the parcel herein described;

**THENCE**, leaving the southerly right-of-way line of said Montecillo Boulevard, South 34°13'02" East, a distance of 165.94 feet to a concrete nail with shiner found on pavement for the southeasterly corner of the parcel herein described;

**THENCE**, South 58°46'58" West, at a distance of 12.50 pass the northeasterly corner of Lot IA,

Block 1, Montecillo Unit One, Replat A as recorded in File No. 20110018395, Plat Records, El Paso County, Texas and continuing on for a total distance of 36.63 feet to a chiseled "V" found on concrete for a point of curvature;

**THENCE**, following the northerly boundary line of said Lot IA, along the arc of a curve to the right having a radius of 62.50 feet, a central angle of 84°53'28", an arc length of 92.60 feet and whose long chord bears North 81°46'17" West, a distance of 84.36 feet to a chiseled "V" found on concrete for a point of tangency;

**THENCE**, continuing along the northerly boundary line of said Lot IA, North 39°19'33" West, a distance of 108.81 feet a chiseled "X" found on concrete on the southerly right-of-way line of said Montecillo Boulevard and the beginning of a non-tangent curve to the right for the northwesterly corner of the parcel herein described;

**THENCE**, following the southerly right-of-way line of said Montecillo Boulevard along the arc of said non-tangent curve to the right having a radius of 958.00 feet, a central angle of 06°29'50", an arc length of 108.63 feet and whose long chord bears North 55°27'04" East, a distance of 108.58 feet to the **POINT OF BEGINNING**.

**EXHIBIT "B"**  
**DESCRIPTION OF THEATER PARCEL**

**MONTECILLO UNIT FIVE 'A-B-C'**

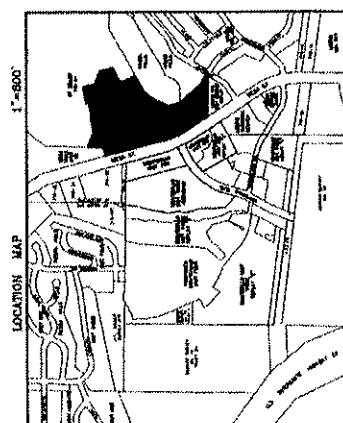
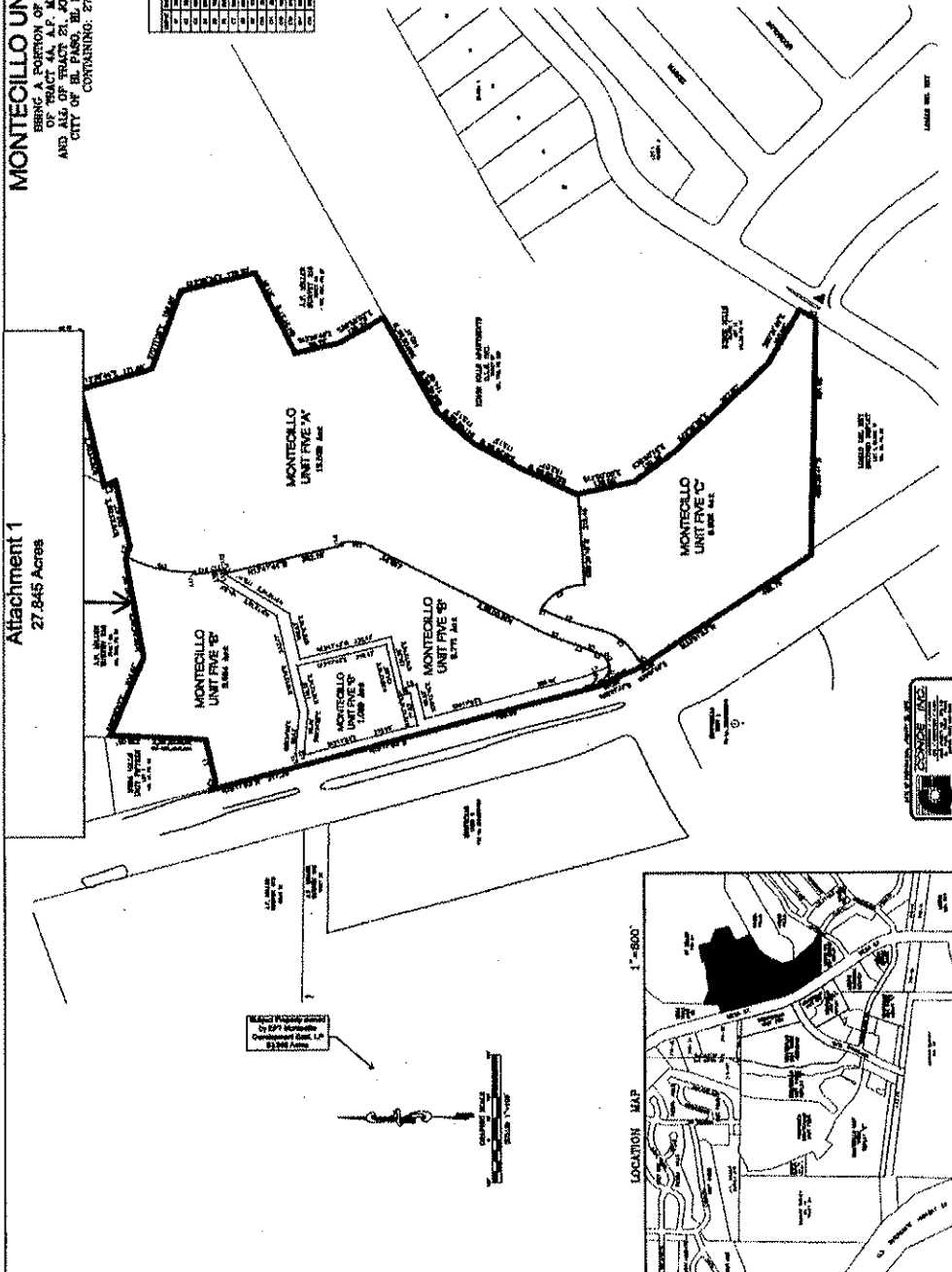
BEING A PORTION OF TRACT 6A AND ALL OF TRACT 4A, A.P. MILLER SURVEY 216, AND ALL OF TRACT 21, JOHN BARBER SURVEY 10, BE PART OF PASS COUNTY, TEXAS CITY OF

CONTAINING 27.845 ACRES

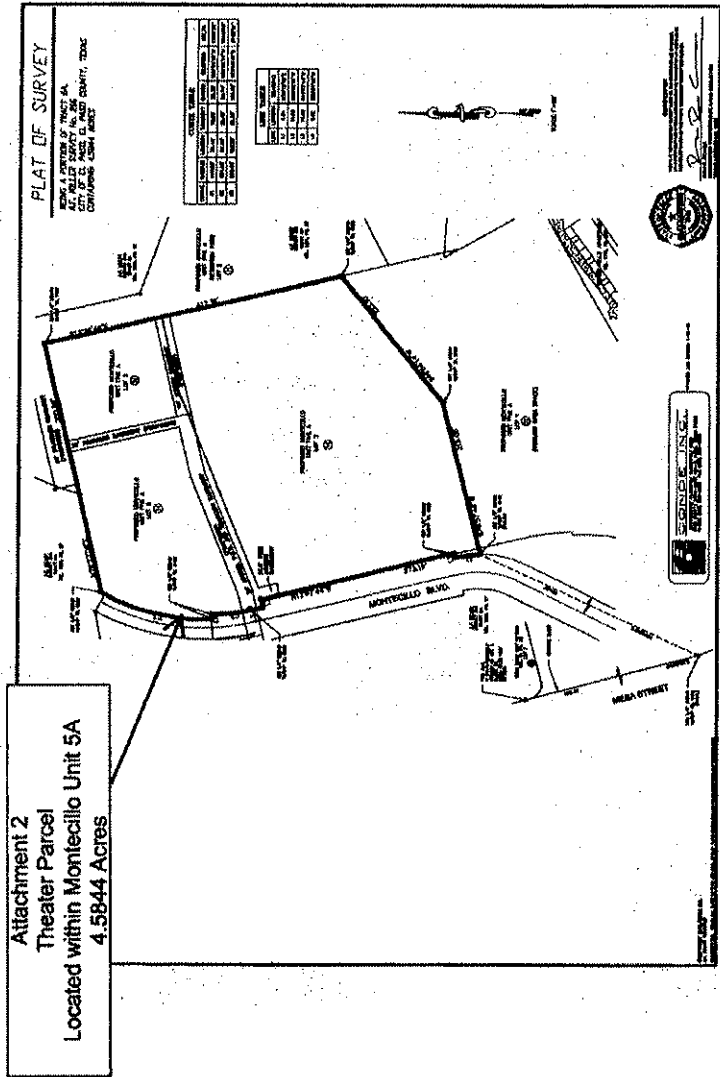
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Attachment 1  
27.845 Acres



Map of Property (2022)  
by TSP Landmark  
Development, LLC, L.P.  
\$1,000,000



**EXHIBIT "C"**  
**DESCRIPTION OF EPISD PARCEL**

Being a Portion of John Barker  
Survey No. 10.  
City of El Paso, El Paso County, Texas  
Prepared for: EPT Land Communities  
October 23, 2008  
(EP15D)

#### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of John Barker Survey No. 10, City of El Paso City, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 1" pipe in concrete marked "NE 10" held for the northeast corner of John Barker Survey No. 10; from which a found pipe for the northwest corner of John Baker Survey No. 10 bears North 89°10'00" West a distance of 2,596.86 feet; Thence from said northeast corner of John Baker No. 10, North 89°10'00" West a distance of 657.95 feet to a set 1/2" rebar with cap marked TX 5152 on the northerly line of John Barker Survey No. 10 for the "TRUE POINT OF BEGINNING".

Thence leaving said line South 14°43'31" East a distance of 877.34 feet to a set 1/2" rebar with cap marked TX 5152 on the proposed right of way line of Montecillo Blvd.;

Thence along said right of way line 213.50 feet along the arc of a curve to the left which has a radius of 1068.00 feet a central angle of 11°27'14" a chord which bears South 49°30'05" West a distance of 213.15 feet to a set 1/2" rebar with cap marked TX 5152;

Thence along said right of way line South 43°46'28" West a distance of 10.23 feet to a set 1/2" rebar with cap marked TX 5152;

Thence along said right of way line 450.97 feet along the arc of a curve to the left which has a radius of 860.00 feet a central angle of 30°02'42" a chord which bears South 28°45'07" West a distance of 445.82 feet to a set 1/2" rebar with cap marked TX 5152;

Thence along said right of way line South 13°43'46" West a distance of 67.75 feet to a set 1/2" rebar with cap marked TX 5152;

Thence along said right of way line 64.94 feet along the arc of a curve to the right which has a radius of 1045.00 feet a central angle of 03°33'29" a chord which bears South 15°30'36" West a distance of 64.93 feet to a set 1/2" rebar with cap marked TX 5152;

Thence leaving said right of way line North 49°10'11" West a distance of 212.37 feet to a set 1/2" rebar with cap marked TX 5152;

Thence North 06°11'09" West a distance of 156.42 feet to a set 1/2" rebar with cap marked TX 5152;

Thence North 01°32'51" East a distance of 152.97 feet to a set 1/2" rebar with cap marked TX 5152;

Thence North 06°49'19" West a distance of 46.74 feet to a set X chiseled on boulder;

Thence North 15°50'34" West a distance of 206.33 feet to a set 1/2" rebar with cap marked TX 5152;

Thence North 11°35'01" East a distance of 71.13 feet to a set 1/2" rebar with cap marked TX 5152;

Thence North 01°18'09" East a distance of 49.46 feet to a set 1/2" rebar with cap marked TX 5152;

Thence North 10°14'52" West a distance of 95.04 feet to a set 1/2" rebar with cap marked TX 5152

Thence North 05°56'36" East a distance of 54.88 feet to a set 1/2" rebar with cap marked TX 5152

Thence North 10°01'41" East a distance of 124.87 feet to a set 1/2" rebar with cap marked TX 5152

Thence North 09°53'25" East a distance of 133.88 feet to a set 1/2" rebar with cap marked TX 5152

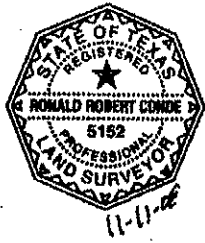
Thence North 18°45'13" East a distance of 133.53 feet to a set 1/2" rebar with cap marked TX 5152

Thence North 05°24'34" East a distance of 178.31 feet to a set 1/2" rebar with cap marked TX 5152 on the northerly line of John Barker Survey No. 10;

Thence, along said line South 89°10'00" East a distance of 320.72 feet to the "TRUE POINT OF BEGINNING" and containing in all 627,995.81 square feet or 14.42 acres of land more or less.

Note: Bearings basis is true north for a Transverse Mercator surface projection as determined by RTK GPS methods centered near this site.

SCANNED



*R R Conde*  
Ron R. Conde  
R.P.L.S. No. 5152

Job # 1008-65

CONDE, INC.  
ENGINEERING / LAND SURVEYING / PLANNING  
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

**EXHIBIT "D"**  
**VOTING AND ASSESSMENT UNIT ALLOCATIONS**



<u>Use</u>	<u>Voting and Assessment Units</u>
Detached residential Condominium Unit or Residential Lot	1 per Condominium Unit/ Residential Lot
Attached residential Condominium Unit	0.8 per Unit
Retail/Restaurant/Office	1 per 1200 square feet of proposed Improvements (includes detached and attached commercial Condominium Units; excludes structured parking)
Hotel Property	0.3 per individual hotel room designed to accommodate overnight guests, <i>i.e.</i> , "key"
Multi-Family (including Senior Living)	0.5 per apartment

03/11/2010



SCANNED

Doc# 20160088513  
#Pages 88 #NPages 1  
12/14/2016 4:29:21 PM  
Filed & Recorded in  
Official Records of  
El Paso County  
Dellia Briones  
County Clerk  
Fees \$374.00

89

AC

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.



*Dellia Briones*

EL PASO COUNTY, TEXAS