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Courtesy
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AFTER RECORDING RETURN TO:

JOSHUA D. BERNSTEIN, ESQ.
NORTON ROSE FULBRIGHT US LLP
98 SAN JACINTO BLVD., SUITE 1100
AUSTIN, TEXAS 78701

MONTECILLO
AMENDED AND RESTATED POLICY MANUAL

El Paso County, Texas

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

Cross reference to that certain Montecillo Amended and Restated Master Covenant, recorded as Document No. 20160088513 in the Official Public Records of El Paso County, Texas, as amended.

MONTECILLO
AMENDED AND RESTATED POLICY MANUAL

THIS DOCUMENT AMENDS AND RESTATES THAT CERTAIN MONTECILLO OWNERS ASSOCIATION, INC. NOTICE OF DEDICATORY INSTRUMENTS AND POLICY MANUAL RECORDED AS PART OF DOCUMENT NO. 20150017323, OFFICIAL PUBLIC RECORDS OF EL PASO COUNTY, TEXAS. ALL POLICIES THEREIN HAVE BEEN REPLACED IN THEIR ENTIRETY.

EPT MESA DEVELOPMENT, LP, a Delaware limited partnership, as Declarant under that certain Montecillo Amended and Restated Master Covenant, recorded as Document No. 20160088513 in the Official Public Records of El Paso County, Texas, as amended, hereby certifies that the following Amended and Restated Policy Manual amends and restates in its entirety that certain Montecillo Owners Association, Inc. Notice of Dedicatory Instruments and Policy Manual, recorded as part of Document No. 20150017323, Official Public Records of El Paso County, Texas.

As the Association policies are changed or new Rules or other dedicatory instruments are adopted which require Recordation, a Majority of the Board, upon approval by the Declarant, will adopt a supplement to the Policy Manual (the "**Supplement**") to include the documents which are being changed or added and cause such Supplement to be Recorded. If for any reason a document is added to the Policy Manual pursuant to a Supplement which has previously been Recorded, the effective date of such document shall be the original date of Recordation, unless provided in the Supplement. Capitalized terms used but not defined in this Policy Manual shall have the meaning subscribed to such terms in the Master Covenant.

This Policy Manual becomes effective when Recorded.

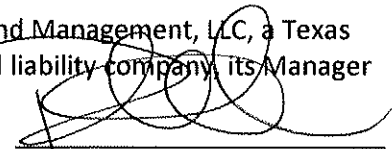
[SIGNATURE PAGE FOLLOWS]

DECLARANT:

EPT MESA DEVELOPMENT, LP, a Delaware limited partnership

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

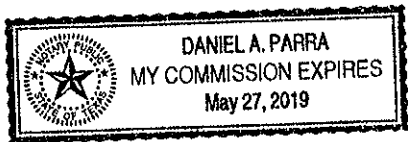
By: EPT Land Management, LLC, a Texas limited liability company, its Manager

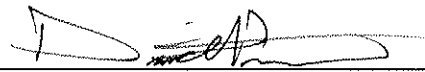
By: 
Richard Aguilar, Manager

THE STATE OF TEXAS §
 §
COUNTY OF El Paso §

This instrument was acknowledged before me on this 3rd day of July 2017, 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

MONTECILLO

AMENDED AND RESTATED POLICY MANUAL

TABLE OF CONTENTS

1.	CERTIFICATE OF FORMATION	ATTACHMENT 1
2.	BYLAWS	ATTACHMENT 2
3.	ASSESSMENT COLLECTION POLICY	ATTACHMENT 3
4.	RECORDS INSPECTION AND COPYING POLICY	ATTACHMENT 4
5.	STATUTORY NOTICE OF POSTING AND RECORDATION OF ASSOCIATION GOVERNANCE DOCUMENTS	ATTACHMENT 5
6.	EMAIL REGISTRATION POLICY	ATTACHMENT 6

ATTACHMENT 1
CERTIFICATE OF FORMATION

[INSERT CERTIFICATE OF FORMATION]

ATTACHMENT 1

FILED
In the Office of the
Secretary of State of Texas

JAN 16 2009

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

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

ARTICLE 1. NAME & TYPE.

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

ARTICLE 2. REGISTERED AGENT & ADDRESS.

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

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

ARTICLE 3. MANAGEMENT BY BOARD.

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

TRUSTEE	ADDRESS:
Doug Borrett	444 Executive Center #238

El Paso, TX 79902

David Bogas

444 Executive Center #238
El Paso, TX 79902

Tony Conde

444 Executive Center #238
El Paso, TX 79902

ARTICLE 4. MEMBERSHIP.

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

ARTICLE 5. PURPOSES.

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

ARTICLE 6. MANNER OF DISTRIBUTION.

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

ARTICLE 7. DURATION.

The duration of the Association is perpetual.

ARTICLE 8. POWERS.

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

the Governing Documents or applicable law.

ARTICLE 9. MEETING LOCATION.

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

ARTICLE 10. LIMITATIONS ON LIABILITY.

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

ARTICLE 11. INDEMNIFICATION.

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

ARTICLE 12. IMMUNITY FOR VOLUNTEERS.

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

ARTICLE 13. AMENDMENT OF ARTICLES.

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

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

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

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

ARTICLE 14. AMENDMENT OF BYLAWS.

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

ARTICLE 15. ACTION WITHOUT MEETING.

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

ARTICLE 16. DECLARANT CONTROL PERIOD.

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

ARTICLE 17. CHANGE OF STATUS.

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

ARTICLE 18. TERMINOLOGY.

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

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

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

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

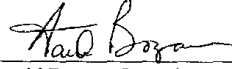
ARTICLE 19. EFFECTIVENESS OF FILING.

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

EXECUTION

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

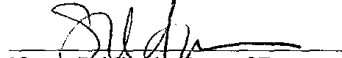
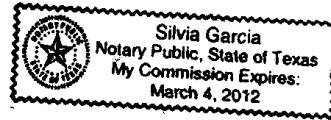
SIGNED this 8th day of January, 2009.



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

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

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


Notary Public, State of Texas

ATTACHMENT 2

**AMENDED AND RESTATED BYLAWS
OF
MONTECILLO PROPERTY OWNERS ASSOCIATION, INC.**

**ARTICLE I
RECITALS**

Section 1.01. The Bylaws of Montecillo Property Owners Association, Inc. (the “**Original Bylaws**”), were previously approved and adopted by EPT MESA DEVELOPMENT, LP, a Delaware limited partnership (“**Declarant**”).

Section 1.02. Pursuant to *Section 12.1* of the Original Bylaws, the Original Bylaws may be amended by a majority of the Board.

Section 1.03. Therefore, in accordance with the aforementioned terms of the Original Bylaws, a majority of the Board now desire to and hereby so does amend and restate the Original Bylaws in their entirety, as the Bylaws are set forth hereinbelow.

**ARTICLE II
NAME, PRINCIPAL OFFICE, AND DEFINITIONS**

Section 2.01. **Name.** The name of the Association shall be Montecillo Property Owners Association, Inc., a Texas non-profit corporation (hereinafter referred to as the “**Association**”) which shall be the property owner’s association governing the Montecillo development (the “**Development**”) located in the El Paso County, Texas which is subject to that certain Montecillo Amended and Restated Master Covenant, recorded in the Official Public Records of El Paso County, Texas (the “**Master Covenant**”).

Section 2.02. **Principal Office.** The principal office of the Association shall be located in El Paso County, Texas.

Section 2.03. **Definitions.** Capitalized terms used herein but not defined in these Bylaws shall have the same meaning as set forth in the Master Covenant, as the same may be amended and supplemented from time to time, unless the context indicates otherwise.

**ARTICLE III
MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES**

Section 3.01. **Membership.** Each Owner of a Condominium Unit or Lot is a mandatory Member of the Association, as more fully set forth in the Master Covenant.

Section 3.02. **Place of Meetings.** Meetings of the Association shall be held where designated by the Board, either within the Development or as convenient as possible and practical.

Section 3.03. Majority. As used in these Bylaws, the term “Majority” shall mean more than half.

Section 3.04. Annual Meetings. An annual meeting of the Association will be held once during each 12 month period on a date and at a time determined by the Board.

Section 3.05. Special Meetings. It is the duty of the president to call a special meeting of the Association if directed to do so by a majority of the Board or by a petition signed by Members representing at least forty percent (40%) of the votes in the Association. The meeting must be held within thirty (30) days after the Board resolution or receipt of petition. The notice of any special meeting must state the time, place, and purpose of the meeting. No business, except the purpose stated in the notice of the meeting, may be transacted at a special meeting.

Section 3.06. Notice of Meetings. At the direction of the Board, written notice of meetings of the Association will be given to each Member at least ten (10) days but not more than sixty (60) days prior to the meeting. Notices of meetings will state the date, time, and place the meeting is to be held. Notices will identify the type of meeting as annual or special, and will state the particular purpose of a special meeting. Notices may also set forth any other items of information deemed appropriate by the Board. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at such party’s address as it appears on the records of the Association, with postage prepaid.

Section 3.07. Waiver of Notice. Waiver of notice of a meeting by a Member shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting, either before or after such meeting. Attendance at a meeting shall be deemed waiver by such Person of notice of the time, date, and place thereof, unless such Person specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall be deemed waiver of notice of all business transacted at such meeting unless an objection is raised based on the lack of proper notice before the business is put to a vote.

Section 3.08. Quorum. Except as provided in these Bylaws or in the Master Covenant, the presence of Members representing at least twenty percent (20%) of the votes in the Association constitute a quorum.

Section 3.09. Conduct of Meetings. The President or any other person appointed by the Board shall preside over all Association meetings, and the Secretary, or the Secretary’s designee, shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 3.10. Voting. The voting rights of the Members shall be as set forth in the Master Covenant, and such voting rights provisions are specifically incorporated by reference. Except as otherwise provided in the Master Covenant, action may be taken at any legally convened meeting of the Members upon the affirmative vote of the Members having a Majority of the total votes present at such meeting. The person holding legal title to a Condominium Unit or Lot shall be entitled to cast the vote allocated to such Condominium Unit or Lot and not the person merely holding beneficial title to the same unless such right is expressly delegated to the beneficial Owner thereof in writing.

Section 3.11. Proxies. On any matter as to which a Member is entitled personally to cast the vote for his or her Condominium Unit or Lot, such vote may be cast in person (or through any other method of exercising the Member's voting rights, if authorized pursuant to *Article 3* of the Master Covenant) or by proxy, subject to the limitations of Applicable Law relating to use of general proxies and subject to any specific provision to the contrary in the Master Covenant or these Bylaws. No proxy shall be valid unless signed by the Member for which it is given or his or her duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Proxies shall be valid only for the specific meeting for which given and for lawful adjournments of such meeting. In no event shall a proxy be valid more than ninety (90) days after the date of the original meeting for which it was given. Every proxy shall be revocable and shall automatically cease upon conveyance of the Condominium Unit or Lot for which it was given.

Section 3.12. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote if written consent specifically authorizing the proposed action is signed by the Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within sixty (60) days after receipt of the earliest dated consent, dated, and delivered to the Association at its principal place of business in Texas. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE IV BOARD OF DIRECTORS

Section 4.01. Authority; Number of Directors.

(a) The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. The number of Directors shall be fixed by the Board of Directors from time to time. The initial Directors shall be three (3) in number and shall be those Directors named in the Certificate. The initial Directors shall serve until their successors are elected and qualified. Except as is provided in the Master Covenant and in *Sections 4.01(b)* and *4.01(c)* below, Declarant shall have the absolute right to appoint and remove members of the Board of Directors.

(b) At such time as Declarant no longer has the right to appoint and remove any members of the Board as provided in the Master Covenant, and if Voting Groups have not been established, the Board of Directors will be increased to five (5) members. The President of the Association will thereupon call a meeting of the Members of the Association wherein the Members will elect one (1) Director for a three (3) year term, two (2) Directors for a two (2) year term, and two (2) Directors for a one (1) year term. Upon expiration of the term of a Director elected by the Members as provided herein, his or her successor will be elected by the Members for a term of two (2) years. If Voting Groups have been established, the number of Directors will be equivalent to the number of Voting Groups and the terms of each such Director will be established by the Board; provided, (i) that the total number of Directors will be not less than three (3); and (ii) upon expiration of the term of a Director initially elected by the Owners of

Condominium Unit or Lots within the applicable Voting Group, the Owners of the Condominium Units or Lots within the Voting Group will elect his or her successor for a term of two (2) years.

It is not presently intended that the majority of the Development will be restricted to residential use. 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 on or before the tenth (10th) anniversary of the date the Master Covenant is Recorded, or sooner as determined by Declarant, 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 of the Board from and after the Initial Member Election Meeting until expiration or termination of the Development Period.

(c) A Director takes office upon the adjournment of the meeting or balloting at which he or she is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his or her successor is elected or appointed.

(d) Until such time as Declarant no longer has the right to appoint and remove any members of the Board of Directors as provided in the Master Covenant, Directors need not be Members of the Association. At such time as Declarant no longer has the right to appoint and remove all members of the Board, all of the Directors must be Members. In the case of a Member which is not a natural person, any officer, director, partner, or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of Directors appointed by the Declarant as set forth herein.

Section 4.02. Compensation. The Directors shall serve without compensation for such service.

Section 4.03. Removal of Directors and Vacancies. Any Director elected by the Members may be removed, with or without cause, by the vote of Members holding a Majority of the votes entitled to be cast in the Association. Any Director whose removal is sought shall be given written notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall be elected by the Members or Voting Group, as applicable. The Director so appointed will serve for the unexpired term of the Director removed pursuant to this Section. In the event of the death, disability, or resignation of a Director, the remaining Board shall declare a vacancy and shall appoint a successor to fill the vacancy for the remainder of such Director's term.

ARTICLE V MEETINGS OF DIRECTORS

Section 5.01. Definition of Board Meetings. A meeting of the Board means a deliberation between a quorum of the Board, or between a quorum of the Board and another person, during which Association business is considered and the Board takes formal action.

Section 5.02. Regular Meetings. Regular meetings of the Board shall be held annually or such other frequency as determined by the Board, at such place and hour as may be fixed from time to time by resolution of the Board.

Section 5.03. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than three (3) days' notice to each Director.

Section 5.04. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of the Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

Section 5.05. Quorum. A Majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a Majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the Directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

Section 5.06. Record; Minutes. The Board shall keep a record of each regular or special Board meeting in the form of written minutes of the meeting. The Board shall make meeting records, including approved minutes, available to a Member for inspection and copying on the Member's written request to the Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the Board.

Section 5.07. Telephone and Electronic Meetings. Any action permitted to be taken by the Board may be taken by telephone or electronic methods by means of which all persons participating in the meeting can hear each other. Participation in such a meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 5.08. Consent in Writing. Any action which may be taken at a meeting of the Board of Directors, is permitted to be taken by the Board by unanimous written consent. Unanimous written consent occurs if all Directors individually or collectively consent in writing to such action. The written consent must be filed with the minutes of Board meetings. Action by written consent shall be in lieu of a meeting and has the same force and effect as a unanimous vote of the Directors.

ARTICLE VI POWERS AND DUTIES OF THE BOARD

Section 6.01. Powers and Duties.

(a) **Powers.** The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all

responsibilities and exercising all rights of the Association as set forth in the Documents, and as provided by Applicable Law. The Board may do or cause to be done all acts and things that the Documents, or Applicable Law do not direct to be done and exercised exclusively by the Members.

(b) Duties. The Board's duties shall include, without limitation:

(i) Preparation and adoption of the annual budgets and establishing Assessments under the Master Covenant;

(ii) Providing for the operation, care, upkeep, and maintenance of the Common Area;

(iii) Designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(iv) Depositing all funds received on the Association's behalf in a bank depository that it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in the depositories other than banks;

(v) Making and amending rules and regulations;

(vi) Opening bank accounts on the Association's behalf and designating the signatories required;

(vii) Making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Documents and these Bylaws;

(viii) Enforcing by legal means the provisions of the Documents and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with Applicable Law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;

(ix) Obtaining and carrying insurance, as provided in the Master Covenant, providing for payment of all premiums, and filing and adjusting claims, as appropriate;

(x) Paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Members;

(xi) Keeping books with detailed accounts of the Association's receipts and expenditures;

(xii) Making available to any prospective purchaser of a Condominium Unit or Lot, any Member, and the holders, insurers, and guarantors of any Mortgage on any Condominium Unit or Lot, current copies of the Documents and all other books, records, and financial statements of the Association;

(xiii) Permitting utility suppliers to use portions of the Common Areas as may be determined necessary, in the Board's sole discretion, to the ongoing development or operation of the Development;

(xiv) Indemnifying a director, officer, or committee member or former director, officer, or committee member of the Association to the extent such indemnity is required by Applicable Law or the Documents; and

(xv) Assisting in the resolution of disputes between Members and others without litigation, as set forth in the Master Covenant.

Section 6.02. Management. The Board of Directors may employ for the benefit of the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policymaking authority. The Board of Directors may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

Section 6.03. Accounts and Reports. The following management standards of performance shall be followed unless the Board, by resolution, specifically determines otherwise:

(a) Accounting and controls should conform to generally accepted accounting principles;

(b) The Association's cash accounts shall not be commingled with any other accounts;

(c) No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fee, services fees, prizes, gifts, or otherwise; anything of value received shall benefit the Association;

(d) Any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(e) Commencing at the end of the month in which the first Condominium Unit or Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(f) An income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(g) A statement reflecting all cash receipts and disbursements for the preceding period;

(h) A variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(i) A balance sheet as of the last day of the preceding period;

(j) A delinquency report listing all Members who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution); and

(k) An annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year; (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared and reviewed by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any Mortgage on a Condominium Unit or Lot, the Association shall provide an audited financial statement.

Section 6.04. Borrowing. The Association shall have the power to borrow money for any legal purpose.

Section 6.05. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, and other Members, Owners or Occupants, or associations.

Section 6.06. Enforcement. In addition to such other rights as are specifically granted under the Master Covenant, the Board shall have the power to impose monetary fines, which shall constitute a lien upon the Condominium Unit or Lot of the violator, and to suspend a Member's right to vote or any person's right to use the Common Area (other than those facilities open to the public) for violation of any duty imposed under the Documents; provided, nothing herein shall authorize the Board to limit ingress and egress to or from a Condominium Unit or Lot. In addition, the Board may suspend any services provided by the Association to a Member or the Member's Condominium Unit or Lot if the Member is more than thirty (30) days delinquent in paying any assessment or other charges owed to the Association. In the event that any Occupant, guest or invitee of a Condominium Unit or Lot violates the Documents and a fine is imposed, the fine may first be assessed against the Occupant; provided, if the fine is not paid by the Occupant within the time period set by the Board, the Member shall pay the fine upon notice from the Association. The Board's failure to enforce any provision of the Documents shall not be deemed a waiver of the Board's right to do so thereafter.

Section 6.07. Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or, following compliance with the procedures set forth in the Master Covenant, if applicable, by any

proceeding at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Member or Occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

ARTICLE VII OFFICERS AND THEIR DUTIES

Section 7.01. Officers. The Association's officers shall be a President, a Vice President, a Secretary, and a Treasurer. Officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 7.02. Election and Term of Office. Within ten (10) days after each annual meeting of the Association, the Directors will convene an organizational meeting for the purpose of electing officers.

Section 7.03. Removal and Vacancies. The Board may remove any officer whenever in its judgment the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal or otherwise, for the unexpired portion of the term.

Section 7.04. Powers and Duties. The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Master Covenant and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 7.05. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.06. Agreements, Contracts, Deeds, Leases, Checks, etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

ARTICLE VIII OTHER COMMITTEES OF THE BOARD OF DIRECTORS

Section 8.01. Advisory Committees. The Board may, by resolution adopted by affirmative vote of a Majority of the number of Directors fixed by these Bylaws, designate two or more Directors along with one or more non-Declarant Members (with such alternates, if any, as may be deemed desirable) to constitute another committee or committees for any purpose; provided, that any such other committee or committees shall only serve in an advisory capacity and may exercise only the power of recommending action to the Board of Directors and of carrying out and implementing any

instructions or any policies, plans, programs and rules theretofore approved, authorized and adopted by the Board.

Section 8.02. Service Area Committees. In addition to any other committees appointed as provided above, for each Service Area that has no formal organizational structure a Service Area Committee may be created by the Board to determine the nature and extent of services, if any, to be provided to the Service Area by the Association in addition to those provided to all Members in accordance with the Master Covenant. A Service Area Committee may advise the Board on any other issues but shall not have the authority to bind the Board. Such Service Area Committees shall consist of three to five Members from the Service Area to which the committee will have jurisdiction. Service Area Committee members shall be elected for a term of one year or until their successors are elected, or such other term as may be permitted under a Supplemental Declaration governing the Service Area. Any director elected to the Board of Directors from a Service Area shall be an *ex officio* member of the Committee. In the conduct of its activities, each Service Area Committee shall abide by the notice and quorum requirements applicable to the Board.

ARTICLE IX MISCELLANEOUS

Section 9.01. Fiscal Year. The fiscal year of the Association will be set by resolution of the Board, and is subject to change from time to time as the Board determines. In the absence of a resolution by the Board, the fiscal year is the calendar year.

Section 9.02. Conflicts. If there are conflicts among the provisions of Applicable Law, the Certificate of Formation, the Master Covenant, and these Bylaws, the provisions of Applicable Law, the Master Covenant, the Certificate of Formation, and the Bylaws (in that order) shall prevail.

Section 9.03. Books and Records.

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Condominium Unit or Lot; any Member; or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to such Member's interest in a Condominium Unit or Lot: the Master Covenant, Bylaws, and Certificate of Formation, including any amendments, the rules of the Association, the membership register, books of account, and the minutes of meeting of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Development as the Board shall designate.

(b) **Rules for Inspection.** The Board shall establish rules with respect to:

- (i) Notice to be given to the custodian of the records;
- (ii) Hours and days of the week when such an inspection may be made; and
- (iii) Payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

Section 9.04. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid: if to a Member at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Condominium Unit or Lot of such Member; or if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 9.05. Amendment. These Bylaws may be amended by a Majority of the Board.

Section 9.06. Indemnification. To the fullest extent permitted by Applicable Law, 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 such person is or was a director, officer, committee member, including the Reviewer, employee, servant, or agent of the Association against expenses (including attorney's fees, judgments, fines, and amounts paid in settlement) actually and reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court that such person: (i) acted in good faith; (ii) in the case of conduct by a person in his or her official capacity, acted in a manner which such person reasonably believed to be in, or not opposed to, the best interests of the Association; (iii) in the case of conduct by a person not in his or her official capacity, acted in a manner which such person reasonably believed to be not opposed to the best interests of the Association; and (iv) with respect to any criminal action or proceeding, had no reasonable cause to believe such 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 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 such conduct was unlawful.

ATTACHMENT 3

MONTECILLO PROPERTY OWNERS ASSOCIATION, INC. ASSESSMENT COLLECTION POLICY

Terms used but not defined in this policy will have the meaning subscribed to such terms in that certain Montecillo Amended and Restated Master Covenant, recorded in the Official Public Records of El Paso County, Texas, as amended.

SECTION 1. DELINQUENCIES, LATE CHARGES & INTEREST

- 1-A. Due Date. An Owner will timely and fully pay Assessments. Regular Assessments are assessed annually and are due and payable on the first calendar day of the month at the beginning of the fiscal year, or in such other manner as the Board may designate in its sole and absolute discretion.
- 1-B. Delinquent. Any Assessment that is not fully paid when due is delinquent. When the account of an Owner becomes delinquent, it remains delinquent until paid in full — including collection costs, interest and late fees.
- 1-C. Late Fees & Interest. If the Association does not receive full payment of an Assessment by 5:00 p.m. on the due date established by the Board, the Association may levy a late fee of \$25 per month and/or interest at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of 1½% per month) until paid in full.
- 1-D. Liability for Collection Costs. The defaulting Owner is liable to the Association for the cost of title reports, credit reports, certified mail, long distance calls, court costs, filing fees, and other reasonable costs and attorney's fees incurred by the Association in collecting the delinquency.
- 1-E. Insufficient Funds. The Association may levy a charge of \$50 for any check returned to the Association marked "not sufficient funds" or the equivalent.
- 1-F. Waiver. Properly levied collection costs, late fees, and interest may only be waived by a Majority of the Board.

SECTION 2. INSTALLMENTS & ACCELERATION

If an Assessment, other than a Regular Assessment, is payable in installments, and if an Owner defaults in the payment of any installment, the Association may declare the entire Assessment in default and accelerate the due date on all remaining installments of the Assessment. An Assessment, other than a Regular Assessment, payable in installments may be accelerated only after the Association gives the Owner at least fifteen (15) days prior notice of the default and the Association's intent to accelerate the unpaid balance if the default is not timely cured. Following acceleration of the indebtedness, the Association has no duty to reinstate the installment program upon partial payment by the Owner.

SECTION 3. PAYMENTS

- 3-A. Application of Payments. After the Association notifies the Owner of a delinquency and the Owner's liability for late fees or interest, and collection costs, any payment received by the Association shall be applied in the following order, starting with the oldest charge in each category, until that category is fully paid, regardless of the amount of payment, notations on checks, and the date the obligations arose:
- (1) Fines
 - (2) Attorney fees and costs associated with delinquent assessments
 - (3) Other attorney's fees
 - (4) Delinquent assessments
 - (5) Current assessments
 - (6) Any other amount
- 3-B. Form of Payment. The Association may require that payment of delinquent Assessments be made only in the form of cash, cashier's check, or certified funds.
- 3-C. Partial and Conditioned Payment. The Association may refuse to accept partial payment (i.e., less than the full amount due and payable) and payments to which the payer attaches conditions or directions contrary to the Board's policy for applying payments. The Association's endorsement and deposit of a payment does not constitute acceptance. Instead, acceptance by the Association occurs when the Association posts the payment to the Owner's account. If the Association does not accept the payment at that time, it will promptly refund the payment to the payer. A payment that is not refunded to the payer within thirty (30) days after being deposited by the Association may be deemed accepted as to payment, but not as to words of limitation or instruction accompanying the payment. The acceptance by the Association of partial payment of delinquent Assessments does not waive the Association's right to pursue or to continue pursuing its remedies for payment in full of all outstanding obligations.
- 3-D. Notice of Payment. If the Association receives full payment of the delinquency after Recording a notice of lien, the Association will cause a release of notice of lien to be publicly Recorded, a copy of which will be sent to the Owner. The Association may require the Owner to prepay the cost of preparing and Recording the release.
- 3-E. Correction of Credit Report. If the Association receives full payment of the delinquency after reporting the defaulting Owner to a credit reporting service, the Association will report receipt of payment to the credit reporting service.

SECTION 4. LIABILITY FOR COLLECTION COSTS

- 4-A. Collection Costs. The defaulting Owner may be liable to the Association for the cost of title reports, credit reports, certified mail, long distance calls, filing fees, and other reasonable costs and attorney's fees incurred in the collection of the delinquency.

SECTION 5. COLLECTION PROCEDURES

- 5-A. Delegation of Collection Procedures. From time to time, the Association may delegate some or all of the collection procedures, as the Board in its sole discretion deems appropriate, to the Association's Manager, an attorney, or a debt collector.
- 5-B. Delinquency Notices. If the Association has not received full payment of an Assessment by the due date, the Association may send written notice of nonpayment to the defaulting Owner, by hand delivery, first class mail, and/or by certified mail, stating the amount delinquent. The Association's delinquency-related correspondence may state that if full payment is not timely received, the Association may pursue any or all of the Association's remedies, at the sole cost and expense of the defaulting Owner.
- 5-C. Verification of Owner Information. The Association may obtain a title report to determine the names of the Owners and the identity of other lien-holders, including the mortgage company.
- 5-D. Collection Agency. The Board may employ or assign the debt to one or more collection agencies.
- 5-E. Notification of Mortgage Lender. The Association may notify the Mortgage lender of the default obligations.
- 5-F. Notification of Credit Bureau. The Association may report the defaulting Owner to one or more credit reporting services.
- 5-G. Collection by Attorney. If the Owner's account remains delinquent for a period of ninety (90) days, the Manager of the Association or the Board of the Association shall refer the delinquent account to the Association's attorney for collection. In the event an account is referred to the Association's attorney, the Owner will be liable to the Association for its legal fees and expenses. Upon referral of a delinquent account to the Association's attorney, the Association's attorney will provide the following notices and take the following actions unless otherwise directed by the Board:
- (1) Initial Notice: Preparation of the Initial Notice of Demand for Payment Letter. If the account is not paid in full within 30 days (unless such notice has previously been provided by the Association), then
 - (2) Lien Notice: Preparation of the Lien Notice and Demand for Payment Letter and record a Notice of Unpaid Assessment Lien. If the account is not paid in full within 30 days, then
 - (3) Final Notice: Preparation of the Final Notice of Demand for Payment Letter and Intent to Foreclose and Notice of Intent to Foreclose to Lender. If the account is not paid in full within 30 days, then
 - (4) Foreclosure of Lien: Only upon specific approval by a majority of the Board.
- 5-H. Notice of Lien. The Association's attorney may cause a notice of the Association's Assessment lien against the Owner's Lot to be publicly Recorded. In that event, a copy of the notice will be sent to the defaulting Owner and may also be sent to the Owner's Mortgagee.

- 5-I. Cancellation of Debt. If the Board deems the debt to be uncollectible, the Board may elect to cancel the debt on the books of the Association, in which case the Association may report the full amount of the forgiven indebtedness to the Internal Revenue Service as income to the defaulting Owner.
- 5-J. Suspension of Use of Certain Facilities or Services. The Board may suspend the use of the Common Area amenities by an Owner, or his or her Occupant, whose account with the Association is delinquent for at least thirty (30) days.

SECTION 6. GENERAL PROVISIONS

- 6-A. Independent Judgment. Notwithstanding the contents of this detailed policy, the officers, directors, Manager, and attorney of the Association may exercise their independent, collective, and respective judgment in applying this policy.
- 6-B. Other Rights. This policy is in addition to and does not detract from the rights of the Association to collect Assessments under the Documents and the Applicable Law.
- 6-C. Limitations of Interest. The Association, and its officers, directors, Managers, and attorneys, intend to conform strictly to the applicable usury laws of the State of Texas. Notwithstanding anything to the contrary in the Documents or any other document or agreement executed or made in connection with this policy, the Association will not in any event be entitled to receive or collect, as interest, a sum greater than the maximum amount permitted by Applicable Law. If from any circumstances whatsoever, the Association ever receives, collects, or applies as interest a sum in excess of the maximum rate permitted by Applicable Law, the excess amount will be applied to the reduction of unpaid Assessments, or reimbursed to the Owner if those Assessments are paid in full.

Notices. Unless the Documents, Applicable Law, or this policy provide otherwise, any notice or other written communication given to an Owner pursuant to this policy will be deemed delivered to the Owner as follows: if mailed, the notice or communication shall be deemed to be delivered when deposited in the United States mail addressed to the Member at such party's address as it appears on the records of the Association, with postage prepaid. If delivery is made by facsimile or email transmission, it will be deemed to have been delivered upon the read or received receipt of the facsimile or email transmission showing that the transmission has been received and sent to the facsimile transmission number or email address which has been designated in writing to the Secretary of the Association or managing agent, if any, as the official facsimile transmission number or email address for the purpose of service of notices under this *Section 6-C.*

If the Association's records show that an Owner's property is owned by two (2) or more persons, notice to one co-Owner is deemed notice to all co-Owners. Similarly, notice to one Occupant is deemed notice to all Occupants. Written communications to the Association, pursuant to this policy, will be deemed given on actual receipt by the Association's president, secretary, managing agent, or attorney.

6-D. Amendment of Policy. This policy may be amended from time to time by the Board.

ATTACHMENT 4

MONTECILLO PROPERTY OWNERS ASSOCIATION, INC. RECORDS INSPECTION AND COPYING POLICY

Terms used but not defined in this policy will have the meaning subscribed to such terms in that certain Montecillo Amended and Restated Master Covenant, recorded in the Official Public Records of El Paso County, Texas, as amended.

1. **Written Form.** Montecillo Property Owners Association, Inc., a Texas nonprofit corporation (the "**Association**") shall maintain its records in written form or in electronic form which can be converted into written form.

2. **Request in Writing; Pay Estimated Costs In Advance.** A Member (or an individual identified as a Member's agent, attorney or certified public accountant, provided the designation is in writing and delivered to the Association) may submit a written request via certified mail to the Association's mailing address or authorized representative listed in the management certificate to access the Association's records. The written request must include sufficient detail describing the books and records requested and whether the Member desires to inspect or copy the records. Upon receipt of a written request, the Association may estimate the costs associated with responding to each request, which costs may not exceed the costs allowed pursuant to Texas Administrative Code Section 70.3, as may be amended from time to time (a current copy of which is attached hereto). Before providing the requested records, the Association will require that the Member remit such estimated amount to the Association. The Association will provide a final invoice to the Member on or before the 30th business day after the records are provided by the Association. If the final invoice includes additional amounts due from the requesting party, the additional amounts, if not reimbursed to the Association before the 30th business day after the date the invoice is sent to the Member, may be added to the Member's account as an assessment. If the estimated costs exceeded the final invoice amount, the Member is entitled to a refund, and the refund shall be issued to the Member not later than the 30th business day after the date the final invoice is sent to the Member.

3. **Period of Inspection.** Within ten (10) business days from receipt of the written request, the Association must either: (1) provide the copies to the Member; (2) provide available inspection dates; or (3) provide written notice that the Association cannot produce the documents within the ten (10) days along with either: (i) another date within an additional fifteen (15) days on which the records may either be inspected or by which the copies will be sent to the Member; or (ii) a notice that after a diligent search, the requested records are missing and cannot be located.

4. **Confidential Records.** As determined in the discretion of the Board, certain Association records may be kept confidential such as personnel files, Member account or other personal information (except addresses) unless the Member requesting the records provides a court order or written authorization from the person whose records are sought.

5. **Attorney Files.** Attorney's files and records relating to the Association are not records of the Association and are not: (a) subject to inspection by the Member; or (b) subject to production in a

legal proceeding. If a document in an attorney's files and records relating to the Association would be responsive to a legally authorized request to inspect or copy Association documents, the document shall be produced by using the copy from the attorney's files and records if the Association has not maintained a separate copy of the document. The Association is not required under any circumstance to produce a document for inspection or copying that constitutes attorney work product or that is privileged as an attorney-client communication.

6. Presence of Board Member or Managing Agent; No Removal. At the discretion of the Board or the Association's managing agent, if any, certain records may only be inspected in the presence of a Board member or employee of the Association's managing agent. No original records may be removed from the office without the express written consent of the Board.

**TEXAS ADMINISTRATIVE CODE
TITLE 1, PART 3, CHAPTER 70
RULE §70.3 - CHARGES FOR PROVIDING COPIES OF PUBLIC INFORMATION**

(a) The charges in this section to recover costs associated with providing copies of public information are based on estimated average costs to governmental bodies across the state. When actual costs are 25% higher than those used in these rules, governmental bodies other than agencies of the state, may request an exemption in accordance with §70.4 of this title (relating to Requesting an Exemption).

(b) Copy charge.

(1) Standard paper copy. The charge for standard paper copies reproduced by means of an office machine copier or a computer printer is \$.10 per page or part of a page. Each side that has recorded information is considered a page.

(2) Nonstandard copy. The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may be associated with a particular request. The charges for nonstandard copies are:

(A) Diskette--\$1.00;

(B) Magnetic tape--actual cost;

(C) Data cartridge--actual cost;

(D) Tape cartridge--actual cost;

(E) Rewritable CD (CD-RW)--\$1.00;

(F) Non-rewritable CD (CD-R)--\$1.00;

(G) Digital video disc (DVD)--\$3.00;

(H) JAZ drive--actual cost;

(I) Other electronic media--actual cost;

(J) VHS video cassette--\$2.50;

(K) Audio cassette--\$1.00;

(L) Oversize paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper--See also §70.9 of this title)--\$.50;

(M) Specialty paper (e.g.: Mylar, blueprint, blue-line, map, photographic--actual cost.

(c) Labor charge for programming. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer's time.

(1) The hourly charge for a programmer is \$28.50 an hour. Only programming services shall be charged at this hourly rate.

(2) Governmental bodies that do not have in-house programming capabilities shall comply with requests in accordance with §552.231 of the Texas Government Code.

(3) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of §552.261(b) of the Texas Government Code.

(d) Labor charge for locating, compiling, manipulating data, and reproducing public information.

(1) The charge for labor costs incurred in processing a request for public information is \$15 an hour. The labor charge includes the actual time to locate, compile, manipulate data, and reproduce the requested information.

(2) A labor charge shall not be billed in connection with complying with requests that are for 50 or fewer pages of paper records, unless the documents to be copied are located in:

(A) Two or more separate buildings that are not physically connected with each other; or

(B) A remote storage facility.

(3) A labor charge shall not be recovered for any time spent by an attorney, legal assistant, or any other person who reviews the requested information:

(A) To determine whether the governmental body will raise any exceptions to disclosure of the requested information under the Texas Government Code, Subchapter C, Chapter 552; or

(B) To research or prepare a request for a ruling by the attorney general's office pursuant to §552.301 of the Texas Government Code.

(4) When confidential information pursuant to a mandatory exception of the Act is mixed with public information in the same page, a labor charge may be recovered for time spent to redact, blackout, or otherwise obscure confidential information in order to release the public information. A labor charge shall not be made for redacting confidential information for requests of 50 or fewer pages, unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

(5) If the charge for providing a copy of public information includes costs of labor, a governmental body shall comply with the requirements of Texas Government Code, Chapter 552, §552.261(b).

(6) For purposes of paragraph (2)(A) of this subsection, two buildings connected by a covered or open sidewalk, an elevated or underground passageway, or a similar facility, are not considered to be separate buildings.

(e) Overhead charge.

(1) Whenever any labor charge is applicable to a request, a governmental body may include in the charges direct and indirect costs, in addition to the specific labor charge. This overhead charge would cover such costs as depreciation of capital assets, rent, maintenance and repair, utilities, and administrative overhead. If a governmental body chooses to recover such costs, a charge shall be made in accordance with the methodology described in paragraph (3) of this subsection. Although an exact calculation of costs will vary, the use of a standard charge will avoid complication in calculating such costs and will provide uniformity for charges made statewide.

(2) An overhead charge shall not be made for requests for copies of 50 or fewer pages of standard paper records unless the request also qualifies for a labor charge pursuant to Texas Government Code, §552.261(a)(1) or (2).

(3) The overhead charge shall be computed at 20% of the charge made to cover any labor costs associated with a particular request. Example: if one hour of labor is used for a particular request, the formula would be as follows: Labor charge for locating, compiling, and reproducing, $\$15.00 \times .20 = \3.00 ; or Programming labor charge, $\$28.50 \times .20 = \5.70 . If a request requires one hour of labor charge for locating, compiling, and reproducing information ($\$15.00$ per hour); and one hour of programming labor charge ($\$28.50$ per hour), the combined overhead would be: $\$15.00 + \$28.50 = \$43.50 \times .20 = \8.70 .

(f) Microfiche and microfilm charge.

(1) If a governmental body already has information that exists on microfiche or microfilm and has copies available for sale or distribution, the charge for a copy must not exceed the cost of its reproduction. If no copies of the requested microfiche or microfilm are available and the information on the microfiche or microfilm can be released in its entirety, the governmental body should make a copy of the microfiche or microfilm. The charge for a copy shall not exceed the cost of its reproduction. The Texas State Library and Archives Commission has the

capacity to reproduce microfiche and microfilm for governmental bodies. Governmental bodies that do not have in-house capability to reproduce microfiche or microfilm are encouraged to contact the Texas State Library before having the reproduction made commercially.

(2) If only a master copy of information in microfilm is maintained, the charge is \$.10 per page for standard size paper copies, plus any applicable labor and overhead charge for more than 50 copies.

(g) Remote document retrieval charge.

(1) Due to limited on-site capacity of storage documents, it is frequently necessary to store information that is not in current use in remote storage locations. Every effort should be made by governmental bodies to store current records on-site. State agencies are encouraged to store inactive or non-current records with the Texas State Library and Archives Commission. To the extent that the retrieval of documents results in a charge to comply with a request, it is permissible to recover costs of such services for requests that qualify for labor charges under current law.

(2) If a governmental body has a contract with a commercial records storage company, whereby the private company charges a fee to locate, retrieve, deliver, and return to storage the needed record(s), no additional labor charge shall be factored in for time spent locating documents at the storage location by the private company's personnel. If after delivery to the governmental body, the boxes must still be searched for records that are responsive to the request, a labor charge is allowed according to subsection (d)(1) of this section.

(h) Computer resource charge.

(1) The computer resource charge is a utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communications devices, software, and system utilities.

(2) These computer resource charges are not intended to substitute for cost recovery methodologies or charges made for purposes other than responding to public information requests.

(3) The charges in this subsection are averages based on a survey of governmental bodies with a broad range of computer capabilities. Each governmental body using this cost recovery charge shall determine which category(ies) of computer system(s) used to fulfill the public information request most closely fits its existing system(s), and set its charge accordingly. Type of System--Rate: mainframe--\$10 per CPU minute; Midsized--\$1.50 per CPU minute; Client/Server--\$2.20 per clock hour; PC or LAN--\$1.00 per clock hour.

(4) The charge made to recover the computer utilization cost is the actual time the computer takes to execute a particular program times the applicable rate. The CPU charge is not meant to apply to programming or printing time; rather it is solely to recover costs associated with the actual time required by the computer to execute a program. This time, called CPU time, can be read directly from the CPU clock, and most frequently will be a matter of seconds. If programming is required to comply with a particular request, the appropriate charge that may be recovered for programming time is set forth in subsection (d) of this section. No charge should be made for computer print-out time. Example: If a mainframe computer is used, and the processing time is 20 seconds, the charges would be as follows: $\$10 / 3 = \3.33 ; or $\$10 / 60 \times 20 = \3.33 .

(5) A governmental body that does not have in-house computer capabilities shall comply with requests in accordance with the §552.231 of the Texas Government Code.

(i) Miscellaneous supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information, may be added to the total charge for public information.

(j) Postal and shipping charges. Governmental bodies may add any related postal or shipping expenses which are necessary to transmit the reproduced information to the requesting party.

(k) Sales tax. Pursuant to Office of the Comptroller of Public Accounts' rules sales tax shall not be added on charges for public information (34 TAC, Part 1, Chapter 3, Subchapter O, §3.341 and §3.342).

(l) Miscellaneous charges: A governmental body that accepts payment by credit card for copies of public information and that is charged a "transaction fee" by the credit card company may recover that fee.

(m) These charges are subject to periodic reevaluation and update.

Source Note: The provisions of this §70.3 adopted to be effective September 18, 1996, 21 TexReg 8587; amended to be effective February 20, 1997, 22 TexReg 1625; amended to be effective December 3, 1997, 22 TexReg 11651; amended to be effective December 21, 1999, 24 TexReg 11255; amended to be effective January 16, 2003, 28 TexReg 439; amended to be effective February 11, 2004, 29 TexReg 1189; transferred effective September 1, 2005, as published in the Texas Register September 29, 2006, 31 TexReg 8251; amended to be effective February 22, 2007, 32 TexReg 614.

ATTACHMENT 5

MONTECILLO PROPERTY OWNERS ASSOCIATION, INC.
STATUTORY NOTICE OF RECORDATION OF
ASSOCIATION DOCUMENTS

Terms used but not defined in this policy will have the meaning subscribed to such terms in that certain Montecillo Amended and Restated Master Covenant, recorded in the Official Public Records of El Paso County, Texas, as amended.

1. **Dedictory Instruments.** As set forth in Texas Property Code Section 202.001(1), the term "dedictory instrument" means each document governing a planned unit development or any similar planned development and includes a declaration or similar instrument subjecting real property to: (a) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association; (b) properly adopted rules and regulations of the property owners' association; or (c) all lawful amendments to the covenants, bylaws, instruments, rules, or regulations.

2. **Recordation of All Documents.** As set forth in Texas Property Code Section 202.006, a property owners' association shall file all dedictory instruments in the real property records of each county in which the property to which the dedictory instruments relate is located. A dedictory instrument has no effect until the instrument is recorded in accordance with this Section.

3. **Property Owners' Association.** As set forth in Texas Property Code Section 202.001(2), the term "property owners' association" means an incorporated or unincorporated association owned by or whose members consist primarily of the owners of the property covered by the dedictory instrument and through which the owners, or the board of directors or similar governing body, manage or regulate the planned unit development or similar planned development.

4. **Applicability.** Pursuant to the foregoing, the Association is required to record all dedictory instruments in the Official Public Records of El Paso County, Texas.

ATTACHMENT 6

MONTECILLO PROPERTY OWNERS ASSOCIATION, INC. **EMAIL REGISTRATION POLICY**

Terms used but not defined in this policy will have the meaning subscribed to such terms in that certain **Montecillo Amended and Restated Master Covenant**, recorded in the Official Public Records of El Paso County, Texas, as amended.

1. **Purpose.** The purpose of this Email Registration Policy is to facilitate the delivery of notices, demands, bills, statements or other written communications under the Documents (“**Written Notices**”) to Members of the Association.

2. **Email Address Registration.** Should any Member desire to receive any and all Written Notices under the Documents through email transmission in lieu of U.S. Mail or personal delivery, it is that Member’s sole responsibility to register an official email address by designating such information in writing to the Secretary of the Association or the Association’s managing agent, if any, at the address for the Association’s or managing agent’s principal office or to such other email address as shall be designated by notice in writing to the Members as the official email address for the Association or the managing agent. It shall be the responsibility of the Member to continue to keep the registered email address updated and current with the Association at all times.

3. **Failure to Register.** A Member may not receive email transmission notifications or communications from the Association should the Member fail to register an official email address with the Association and/or properly and timely update and maintain accurate information with the Association.

4. **Amendment.** The Association may, from time to time, modify, amend or supplement this Policy or any other rules regarding email registration or notifications or communications.

Doc # 20170050829
#Pages 29 #NFPages 1
7/12/2017 4:37 PM
Filed & Recorded in
Official Records of
El Paso County
Delia Briones
County Clerk
Fees \$138.00

eRecorded

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



EL PASO COUNTY, TEXAS

Delia Briones