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AFTER RECORDING RETURN TO:

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MONTECILLO
DEVELOPMENT AREA DECLARATION
[SINGLE-FAMILY RESIDENTIAL]

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.

MONTECILLO DEVELOPMENT AREA DECLARATION
[*SINGLE-FAMILY RESIDENTIAL*]

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MONTECILLO DEVELOPMENT AREA DECLARATION
[*SINGLE-FAMILY RESIDENTIAL*]

This Montecillo Development Area Declaration [*Single-Family Residential*] (the "**Development Area Declaration**") is made by **EPT MESA DEVELOPMENT, LP**, a Delaware limited partnership (the "**Declarant**"), and is as follows:

R E C I T A L S:

A. Declarant previously Recorded that certain Montecillo Amended and Restated Master Covenant, recorded as Document No. 20160088513 in the Official Public Records of El Paso County, Texas (the "**Master Covenant**").

B. Pursuant to the Master Covenant, Declarant served notice that portions of the Property may be made subject to one or more Development Area Declarations upon the Recording of one or more Notices of Annexation in accordance with *Section 12.05* of the Master Covenant, and once such Notices of Annexation have been Recorded, the portions of the Property described therein will constitute the Development Area and will be governed by and fully subject to this Development Area Declaration in addition to the Master Covenant.

C. 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 Development Area Declaration. The Property made subject to the terms and provisions of this Development Area Declaration will be referred to herein as the "**Development Area**."

NOW, THEREFORE, it is hereby declared: (i) those portions of the Property as and when made subject to this Development Area Declaration by the Recording of a Notice of Annexation in accordance with *Section 12.05* of the Master Covenant 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; and (ii) each contract or deed conveying those portions of the Property which are made subject to this Development Area Declaration 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) that this Development Area Declaration will supplement and be in addition to the covenants, conditions, and restrictions of the Master Covenant.

ARTICLE 1
DEFINITIONS

Capitalized terms used but not defined in this Development Area Declaration shall have the meaning subscribed to such terms in the Master Covenant. Unless the context otherwise specifies or requires, the following words and phrases when used in this Development Area Declaration shall have the following meanings:

"**Solar Energy Device**" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-

generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.

"**Standby Electric Generator**" means a device that converts mechanical energy to electrical energy and is (a) powered by natural gas, liquefied petroleum gas, diesel fuel, biodiesel fuel, or hydrogen; (b) fully enclosed in an integral manufacturer-supplied sound attenuating enclosure; (c) connected to the main electrical panel of a Final Building Improvement by a manual or automatic transfer switch; and (d) rated for a generating capacity of not less than seven (7) kilowatts.

ARTICLE 2
USE AND GENERAL RESTRICTIONS

All of the Development Area will be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions.

2.01 **Use Restrictions**. The Development Area shall be used solely for residential purposes. The Development Area shall not be used for any other purposes without the prior written consent of Declarant, which consent may be withheld by Declarant in its sole and absolute discretion. No professional, business, or commercial activity to which the general public is invited shall be conducted on any portion of the Development Area, except an Owner or Occupant may conduct business activities within a residence so long as: (a) such activity complies with Applicable Law; (b) participating in the business activity is limited to the Owner(s) or Occupant(s) of a residence; (c) the existence or operation of the business activity is not apparent or detectable by sight, *i.e.*, no sign may be erected advertising the business within the Development Area, sound, or smell from outside the residence; (d) the business activity does not involve door-to-door solicitation of residents within the Development; (e) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Development Area which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (f) the business activity is consistent with the residential character of the Development Area and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development as may be determined in the sole discretion of the Board; and (g) the business does not require the installation of any machinery other than that customary to normal household operations. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required. In addition, for the purpose of obtaining any business or commercial license, neither the Final Building Improvement nor the Lot will be considered open to the public. Leasing of a residence shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant, a Developer or a Builder.

2.02 **Rentals**. No portion of the Development Area may be used as an apartment house, hotel, bed and breakfast, lodge, or any similar purpose, but the primary Final Building Improvement constructed on a Lot may be leased for residential purposes for a lease term of not less than six (6) months. All leases shall be in writing. The Owner shall provide the Occupant lessee copies of the Documents. Notice of any lease, together with such additional information as may be required by the

Board, must be remitted to the Association by the Owner on or before the expiration of ten (10) days after the effective date of the lease. All leases must be for the entire residence.

2.03 Trash Containers. Trash containers and recycling bins must be stored at all times either: (a) inside the garage on the Lot; or (b) behind the Final Building Improvement or fence constructed on the Lot in such a manner that the trash container and recycling bin are not visible from another Lot, a public or private street, thoroughfare or sidewalk, Common Area, or Special Common Area. The Reviewer shall have the right to specify additional locations in which trash containers or recycling bins must be stored.

2.04 Unsightly Articles. No article deemed to be unsightly by the Board will be permitted to remain on any Lot so as to be visible from another Lot, a public or private street, thoroughfare or sidewalk, Common Area, or Special Common Area. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics must be appropriately screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash must be kept, stored, or allowed to accumulate on any portion of the Development Area except within enclosed structures or appropriately screened from view.

2.05 Animals; Household Pets. The Board may conclusively determine, in its sole discretion, whether a particular pet is a common household pet within the ordinary meaning and interpretation of such words. No animal may be allowed to make an unreasonable amount of noise or become a nuisance. The Association may restrict pets to certain areas on the Development Area. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on the Development Area, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed and inoculated as required by Applicable Law. All pets not confined to a residence must wear collars with appropriate identification tags. If, in the opinion of the Board, any pet becomes a source of danger or unreasonable annoyance to others, or if the owner of the pet fails or refuses to comply with these restrictions, the Owner or Occupant, upon written notice, shall be required to remove the pet from the Development Area.

2.06 Antennas. The installation of only certain antennas shall be permitted in the Development, as further set forth below.

(a) Prohibited Antennas; Permitted Antennas. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, may be erected, maintained or placed on a Lot without the prior written approval of the Reviewer; provided, however, that:

(i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, (i) through (iii) are referred to herein as the "**Permitted Antennas**") will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the Reviewer, consistent with Applicable Law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Association will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Development.

(b) Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Lot and may not encroach upon any street, Common Area, Special Common Area, or any other portion of the Development Area. A Permitted Antenna may be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from outside the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible from outside the Lot by the Reviewer are as follows:

(i) attached to the back of the principal single-family Final Building Improvement constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then

(ii) attached to the side of the principal single-family Final Building Improvement constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.

The Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

2.07 Signs. Except for those permitted signs as set forth below or otherwise permitted by Applicable Law, no sign of any kind may be displayed on any Lot without the prior written approval of the Reviewer.

(a) Permitted under the Documents. Signs which are expressly permitted pursuant to the Design Guidelines or Rules and Regulations may be displayed on a Lot.

(b) Sales and Marketing. Signs which are part of Declarant's or a Builder's overall marketing, sale, or construction plans or activities for the Property shall be permitted on any Lot.

(c) School Spirit. One (1) temporary school "spirit" sign may be placed on any Lot so long as the sign: (i) is professionally made; (ii) is limited to maximum face area of five square feet (*e.g.*, 2' x 2.5') on each visible side; (iii) is mounted on a single or frame post if free standing; (iv) does not exceed four feet (4') in height from finished grade at the location where the sign is located; and (v) is removed within five (5) business days following the athletic season for which the sign relates.

(d) For Sale. One (1) temporary "For Sale" sign placed on any Lot so long as the sign: (i) is professionally made; (ii) is limited to a maximum face area of five square feet (*e.g.*, 2' x 2.5') on each visible side; (iii) is mounted on a single or frame post if free standing; (iv) does

not exceed four feet (4') in height from finished grade at the location where the sign is located; (v) is removed within two (2) business days following the sale of the Lot; provided, however, that "For Lease" and "For Rent" signs are expressly prohibited.

(e) Elections. Political signs may be displayed on any Lot provided that: (i) the sign is erected no earlier than the 90th day before the date of the election to which the sign relates; (ii) the sign is removed no later than the 10th day after the date of the election to which the sign relates; (iii) the sign is ground-mounted; (iv) only one sign may be erected for each candidate or ballot item; and (v) signs which include any of the components or characteristics described in Section 202.009(c) of the Texas Property Code are strictly prohibited.

(f) Religious Items. A religious item may be displayed on the entry door or door frame of a residence (which may not extend beyond the outer edge of the door frame) provided that the size of the item(s), individually or in combination with other religious items on the entry door or door frame of the residence, does not exceed twenty-five square inches (*e.g.*, 5" x 5").

(g) Permits. Permits may be displayed on any Lot as may be required by: (i) legal proceedings; or (ii) a governmental entity.

(h) No Solicitation. A "no soliciting" and "security warning" sign may be displayed on or near the front door to a residence, provided that the sign does not exceed twenty-five (25) square inches.

2.08 Flags. Owners are permitted to display certain flags on the Owner's Lot, as further set forth below.

(a) Approval Requirements. An Owner is permitted to display the flag of the United States of America, the flag of the State of Texas, an official or replica flag of any branch of the United States Military, or one (1) flag with official insignia of a college or university ("**Permitted Flag**") and permitted to install a flagpole no more than five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of a residence ("**Permitted Flagpole**"). Only two (2) Permitted Flagpoles are allowed per residence. A Permitted Flag or Permitted Flagpole need not be approved in advance by the Reviewer. Approval by the Reviewer is required prior to installing vertical freestanding flagpoles installed in the front or back yard area of any Lot ("**Freestanding Flagpole**").

(b) Installation and Display. Unless otherwise approved in advance and in writing by the Reviewer, Permitted Flags, Permitted Flagpoles and Freestanding Flagpoles, installed in accordance with the Flagpole Application, must comply with the following:

(i) No more than one (1) Freestanding Flagpole OR no more than two (2) Permitted Flagpoles are permitted per Lot, on which only Permitted Flags may be displayed;

(ii) Any Permitted Flagpole must be no longer than five feet (5') in length and any Freestanding Flagpole must be no more than twenty feet (20') in height;

(iii) Any Permitted Flag displayed on any flagpole may not be more than three feet in height by five feet in width (3' x 5');

(iv) The flag of the United States of America must be displayed in accordance with 4 U.S.C. Sections 5-10 and the flag of the State of Texas must be displayed in accordance with Chapter 3100 of the Texas Government Code;

(v) The display of a flag, or the location and construction of the flagpole must comply with Applicable Law, easements and setbacks of record;

(vi) Any flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the dwelling;

(vii) A flag or a flagpole must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpole must be repaired, replaced or removed;

(viii) Any flag may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property; and

(ix) Any external halyard of a flagpole must be secured so as to reduce or eliminate noise from flapping against the metal of the flagpole.

2.09 **Tanks**. Unless otherwise approved in writing by the Reviewer, no tanks for any purpose other than residential gas grills may be erected, placed or permitted on any Lot without the advance written approval of the Reviewer. All tanks must be screened so not to be visible from any portion of the Development.

2.10 **Hazardous Activities**. No activities may be conducted on or within the Development and no Improvements may be constructed on or within any portion of the Development Area which are or might be unsafe or hazardous to any person or properties. Without limiting the generality of the foregoing, no exterior fires, except that barbecues, outside fires in fireplaces and braziers or other fires contained within designated facilities or receptacles and in areas designated and approved by the Reviewer, shall be permitted. Grills shall be stored inside the garage on a Lot when not in use. No Owner will permit any condition upon its portion of the Development Area which creates a fire hazard or violates Applicable Law. No portion of the Development Area may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters).

2.11 **Noise**. Except as otherwise provided herein, no horns, whistles, bells, or other sound devices (other than security devices used exclusively for security purposes) shall be located, used, or placed on any portion of the Development Area. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Development Area so as to be offensive or detrimental to any other portion of the Development Area or to its Occupants. Without limiting the generality of the foregoing, if any noise or nuisance emanates from any Improvement on any Lot, the Common or the Master Community Facilities, the Association may (but shall not be obligated to) enter any such Improvement and take such reasonable actions necessary to terminate such noise (including silencing any burglar or break-in alarm). Exterior speakers are only permitted within the rear yard of each Lot and placed in such manner so as to minimize their effect upon any other portion of the Development Area or to its occupants and the operation thereof shall be specifically subject to this *Section 2.11*. The "rear yard" for the purpose of this provision means the yard area in the rear or posterior to the Final Building

Improvement on the Lot. In the event of any dispute regarding what portion of a Lot constitutes the "rear yard," the opinion of the Reviewer will be final, binding, and conclusive.

2.12 Maintenance. Each Owner of a Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep the Owner's entire Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. The Board shall determine whether a violation of the maintenance obligations set forth in this *Section 2.12* has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner as determined by the Board in its sole discretion:

(a) Prompt removal of all litter, trash, refuse, and wastes;

(b) Lawn mowing;

(c) Tree and shrub pruning;

(d) Watering;

(e) Keeping exterior lighting and mechanical facilities in working order;

(f) Keeping lawn and garden areas alive, free of weeds, and attractive;

(g) Keeping planting beds free from turf grass;

(h) Keeping sidewalks and driveways in good repair;

(i) Complying with all Applicable Law;

(j) Repainting of Improvements; and

(k) Repair of exterior damage, and wear and tear to Improvements.

ARTICLE 3
CONSTRUCTION RESTRICTIONS

3.01 Construction of Improvements. No Improvements of any kind shall hereafter be placed, maintained, erected or constructed upon any portion of the Development Area unless approved in advance and in writing by the Reviewer in accordance with the Master Covenant. Pursuant to *Section 9.04(b)* of the Master Covenant, the Reviewer has adopted Design Guidelines applicable to the Development Area. All Improvements must strictly comply with the requirements of the Design Guidelines unless a variance is obtained pursuant to the Master Covenant. The Design Guidelines, if any, may be supplemented, modified, amended, or restated by the Reviewer as authorized by the Master Covenant.

3.02 Utility Lines. Unless otherwise approved by the Reviewer, no sewer, drainage or utility lines or wires or other devices for the communication or transmission of electric current, power, or signals including telephone, television, microwave or radio signals, shall be constructed, placed or maintained anywhere in or upon any portion of the Development Area other than within buildings or

structures unless the same shall be contained in conduits or cables constructed, placed or maintained underground, concealed in or under buildings or other structures.

3.03 Recreational Courts and Playscapes. No recreational courts, *e.g.*, "sport courts", shall be constructed on any Lot unless expressly approved by the Reviewer. The Reviewer may prohibit the installation of a recreational court on any Lot. Playscapes or any similar recreational facilities may not be constructed on any Lot without the advance written approval of the Reviewer. The Reviewer may prohibit the installation of recreational courts, playscapes or similar recreational facilities on any Lot. Tennis courts may not be constructed on any Residential Lot.

3.04 Basketball Goals; Permanent and Portable. Upon prior written approval by the Reviewer, basketball goals may permanently installed on a Lot and must be maintained in good condition and repair, including but not limited to the condition of the basketball net. Portable basketball goals may be used in unfenced yards and on private driveways during periods of active play, if the portable goals are removed from sight when not in use. Portable basketball goals shall not be placed in any public right-of-way or in any private right-of-way other than the private driveway of such Owner or Occupant using the portable basketball goal, and must be maintained in good condition and repair, including but not limited to the condition of the basketball net. If determined unsightly by the Reviewer or placed in the public right-of way or a private right-of-way other than the private driveway of such Owner or Occupant using the portable basketball goal, the Association may cause any such basketball goal to be removed without liability for damage to said equipment.

3.05 Garages. Each Final Building Improvement within the Development Area must contain a private, enclosed garage capable at all times of housing at least one (1) automobile. All garages shall be approved in advance of construction by the Reviewer. No garage may be permanently enclosed or otherwise used for livable area or habitation as part of the Final Building Improvement.

3.06 Fence Maintenance. Unless otherwise agreed between the Owners of any Lots, side and rear yard fences that separate adjacent Lots shall be owned and maintained by the Owner on whose Lot the fence has been installed, or if the location is indeterminate, such fence will be maintained jointly by such Owners with expenses being shared equally.

3.07 Swimming Pools. Above-ground or temporary swimming pools are expressly prohibited.

3.08 HVAC Location; Window Units Prohibited. No air-conditioning apparatus may be installed on the ground in front of or on the roof of any Final Building Improvement, unless otherwise approved in advance by the Reviewer. No window or wall type air-conditioning apparatus or evaporative cooler may be used, placed, maintained or attached to any wall, window or any other location on a Final Building Improvement, garage or other structure on the Lott. All HVAC units must be screened from view.

3.09 Landscaping. Landscaping shall be required to be installed on each Lot as approved by the Reviewer. An automatic irrigation system may be installed upon any Lot upon prior written consent of the Reviewer. Any automatic irrigation system must comply with Applicable Law. Each Owner shall further ensure that any automatic irrigation system does not cause excessive run-off onto adjacent streets or sidewalks and must maintain in good working order the automatic irrigation system's irrigation pipes, valves, heads, and controller. In the event an Owner fails to properly and on a timely basis (both standards to be determined by the Board in the Board's sole and absolute discretion) mow,

replace, prune, and/or irrigate any landscaping, including trees, on such Owner's Lot, such failure will constitute a violation of the Documents and the Board may cause such landscaping, including trees, to be mowed, replaced, pruned and/or irrigated in a manner determined by the Board, in its sole and absolute discretion. If the Board causes such landscaping, including trees, to be mowed, replaced, pruned and irrigated, the Owner otherwise responsible therefor will be personally liable to the Association for all costs and expenses incurred by the Association for effecting such work. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest on such costs and expense from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) will be assessed against and chargeable to the Owner's Lot as an Individual Assessment. EACH SUCH OWNER WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND 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 3.09* (INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE 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.

3.10 **Foundation Shielding**. Certain exposed portions of the foundation on the elevations of the Final Building Improvements on each Lot shall be required to be shielded in accordance with the Design Guidelines.

3.11 **Drainage**. There may be no interference with the established drainage patterns over any of the Development Area, except by Declarant, unless adequate provision is made for proper drainage and such provision is approved by the Reviewer. Plans submitted to the Reviewer for approval must indicate thereon an erosion control plan to be instituted during the construction of the Final Building Improvement on the Lot. The Owner of the Lot will be obligated to maintain and keep such approved erosion controls in good condition and repair. The erosion controls must be removed when the Final Building Improvement is complete.

3.12 **Solar Energy Device**. Solar Energy Devices may be installed with the advance written approval of the Reviewer, subject to the following provisions.

(a) Application. To obtain approval of a Solar Energy Device, the Owner shall submit the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "**Solar Application**"). A Solar Application may only be submitted by an Owner. The Solar Application shall be submitted in accordance with the provisions of *Article 9* of the Master Covenant.

(b) Approval Process. The Reviewer will review the Solar Application in accordance with the terms and provisions of *Article 9* of the Master Covenant. The Reviewer will approve a Solar Energy Device if the Solar Application complies with *Section 3.12(c)* below **UNLESS** the Reviewer makes a written determination that placement of the Solar Energy Device, despite compliance with *Section 3.12(c)*, will create a condition that substantially interferes with the use and enjoyment of property within the Development by causing unreasonable discomfort or

annoyance to persons of ordinary sensibilities. The Reviewer's right to make a written determination in accordance with the foregoing sentence is negated if all Owners of Lots immediately adjacent to the Owner/applicant provide written approval of the proposed placement. Any proposal to install a Solar Energy Device on property owned or maintained by the Association or property owned in common by Members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to this *Section 3.12* when considering any such request.

(c) Approval Conditions. Unless otherwise approved in advance and in writing by the Reviewer, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

(i) The Solar Energy Device must be located on the roof of the Final Building Improvement located on the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located on the Owner's Lot. If the Solar Energy Device will be located on the roof of the Final Building Improvement, the Reviewer may designate the location for placement unless the location proposed by the Owner increases the estimated annual energy production of the Solar Energy Device, as determined by using a publicly available modeling tool provided by the National Renewable Energy Laboratory, by more than ten percent (10%) above the energy production of the Solar Energy Device if installed in the location designated by the Reviewer. If the Owner desires to contest the alternate location proposed by the Reviewer, the Owner should submit information to the Reviewer which demonstrates that the Owner's proposed location meets the foregoing criteria. If the Solar Energy Device will be located in the fenced area of the Owner's Lot or patio, no portion of the Solar Energy Device may extend above the fence line;

(ii) If the Solar Energy Device is mounted on the roof of the principal Final Building Improvement located on the Owner's Lot, then: (A) the Solar Energy Device may not extend higher than or beyond the roofline; (B) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; and (C) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be silver, bronze or black.

3.13 Xeriscaping. As part of the installation and maintenance of landscaping on an Owner's Lot, an Owner may submit plans for and install drought tolerant landscaping ("**Xeriscaping**") upon written approval by the Reviewer, subject to the following provisions.

(a) Application. Approval by the Reviewer is required prior to installing Xeriscaping. To obtain the approval of the Reviewer for Xeriscaping, the Owner shall provide the Reviewer with the following information: (i) the proposed site location of the Xeriscaping on the Owner's Lot; (ii) a description of the Xeriscaping, including the types of plants, border materials, hardscape materials and photograph or other accurate depiction and (iii) the percentage of yard to be covered with gravel, rocks and cacti (the "**Xeriscaping Application**"). A Xeriscaping Application may only be submitted by an Owner unless the Owner's tenant provides written confirmation at the time of submission that the Owner consents to the Xeriscaping Application. The Reviewer is not responsible for: (iv) errors or omissions in the Xeriscaping Application submitted to the Reviewer for approval; (v) supervising installation or construction to confirm

compliance with an approved Xeriscaping Application or (vi) the compliance of an approved application with Applicable Law.

(b) Approval Conditions. Unless otherwise approved in advance and in writing by the Reviewer each Xeriscaping Application and all Xeriscaping to be installed in accordance therewith must comply with the following:

(i) The Xeriscaping must be aesthetically compatible with other landscaping in the community as reasonably determined by the Reviewer. For purposes of this Section, "aesthetically compatible" shall mean overall and long-term aesthetic compatibility within the community. For example, an Owner's Lot plan may be denied if the Reviewer determines that: (A) the proposed Xeriscaping would not be harmonious with already established turf and landscaping in the overall community; and/or (B) the use of specific turf or plant materials would result in damage to or cause deterioration of the turf or landscaping of an adjacent property owner, resulting in a reduction of aesthetic appeal of the adjacent property Owner's Lot;

(ii) No Owners shall install gravel, rocks or cacti that in the aggregate encompass over ten percent (10%) of such Owner's front yard or ten percent (10%) of such Owner's back yard; and

(iii) The Xeriscaping must not attract diseases and insects that are harmful to the existing landscaping on neighboring Lots, as reasonably determined by the Reviewer.

(c) Process. The decision of the Reviewer will be made within a reasonable time, or within the time period otherwise required by the specific provisions in the Design Guidelines, if adopted or other provisions in the Documents which govern the review and approval of improvements. A Xeriscaping Application submitted to install Xeriscaping on property owned by the Association or property owned in common by members of the Association will not be approved. Any proposal to install Xeriscaping on property owned by the Association or property owned in common by members of the Association must be approved in advance and in writing by the Board, and the Board need not adhere to the requirements set forth in this Section when considering any such request.

(d) Approval. Each Owner is advised that if the Xeriscaping Application is approved by the Reviewer installation of the Xeriscaping must: (i) strictly comply with the Xeriscaping Application; (b) commence within thirty (30) days of approval; and (ii) be diligently prosecuted to completion. If the Owner fails to cause the Xeriscaping to be installed in accordance with the approved Xeriscaping Application, the Reviewer may require the Owner to: (iii) modify the Xeriscaping Application to accurately reflect the Xeriscaping installed on the property; or (iv) remove the Xeriscaping and reinstall the Xeriscaping in accordance with the approved Xeriscaping Application. Failure to install Xeriscaping in accordance with the approved Xeriscaping Application or an Owner's failure to comply with the post-approval requirements constitutes a violation of the Master Covenant and may subject the Owner to fines and penalties. Any requirement imposed by the Reviewer to resubmit a Xeriscaping Application or remove and relocate Xeriscaping in accordance with the approved Xeriscaping Application shall be at the Owner's sole cost and expense.

3.14 Standby Electric Generators. The installation, operation and maintenance of all Standby Electric Generators must comply with the following:

(a) The installation and maintenance of any Standby Electric Generator must be in compliance with manufacturer's specifications and all Applicable Law;

(b) The installation of all electrical, plumbing and fuel line connections must be performed only by licensed contractors;

(c) The installation of all electrical connections must be performed in accordance with Applicable Law;

(d) The installation of all natural gas, diesel fuel, biodiesel fuel, or hydrogen fuel line connections must be performed in accordance with Applicable Law;

(e) The installation of all liquefied petroleum gas fuel line connections must be performed in accordance with the rules and standards promulgated and adopted by the Railroad Commission of Texas and other Applicable Law;

(f) The installation and maintenance of non-integral Standby Electric Generator fuel tanks must comply with applicable municipal zoning ordinances and other Applicable Law;

(g) All Standby Electric Generators and its electrical lines and fuel lines must be maintained in good condition. In addition, the repair, replacement and removal of any deteriorated or unsafe component of the Standby Electric Generator, including electrical or fuel lines, is required;

(h) Owners must screen the Standby Electric Generator if it is:

(i) Visible from the street faced by a Final Building Improvement; or

(ii) Located in unfenced side or rear yard of a Final Building Improvement and is visible either from an adjoining Lot or from adjoining Common Area; or

(iii) Located in a fenced side or rear yard and is visible either from an adjoining Lot or from adjoining Common Area (*i.e.*, through wrought iron or aluminum fencing);

(i) Any periodic testing of the Standby Electric Generator consistent with the manufacturer's recommendation must only be performed during the hours of 9:00 a.m. to 5:00 p.m., Monday through Saturday;

(j) Use of a Standby Electric Generator to generate all or substantially all of the electrical power to a Lot is strictly prohibited, except when utility-generated electrical power is not available or is intermittent due to causes other than nonpayment for utility service;

(k) No Standby Electric Generator shall be located on Common Area; and

(l) No Standby Electric Generator may be installed prior to obtaining written approval pursuant to *Article 9* of the Master Covenant.

3.15 Construction Activities. This Development Area Declaration may not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Development Area. Specifically, no such construction activities will be deemed to constitute a nuisance or a violation of this Development Area Declaration by reason of noise, dust, presence of vehicles or construction machinery, posting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event that construction upon any Lot does not conform to usual practices in the area as determined by the Reviewer in its sole good faith judgment, the Reviewer will have the authority to seek an injunction to stop such construction. In addition, if during the course of construction upon any Lot there is excessive accumulation of debris of any kind which would render the Lot or any portion thereof unsanitary, unsightly, offensive, or detrimental to it or any other portion of the Development Area, then the Board may contract for or cause such debris to be removed, and the Owner otherwise responsible therefor will be personally liable to the Association for all costs and expenses incurred by the Association for effecting such work, including an administrative fee of fifteen percent (15%) of the total cost or removal. If such Owner fails to pay such costs and expenses upon demand by the Association, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) will be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot hereunder will be secured by the liens reserved in the Master Covenant for Assessments and may be collected by any means provided in the Master Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). EACH OWNER AND OCCUPANT WILL INDEMNIFY AND HOLD HARMLESS THE ASSOCIATION AND 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 3.15* INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE 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.

ARTICLE 4
DEVELOPMENT

4.01 Notice of Annexation. Upon Recording, this Development Area Declaration 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 Development Area Declaration. This Development Area Declaration will apply to and burden a portion or portions of the Property upon the filing of a Notice of Annexation in accordance with *Section 12.05* of the Master Covenant describing such Property by a legally sufficient description and expressly providing that such Property will be subject to the terms, covenants conditions, restrictions and obligations of this Development Area Declaration. To add land to the Development Area, Declarant will be required only to Record a Notice of Annexation filed pursuant to *Section 12.05* of the Master Covenant containing the following provisions:

(a) A reference to this Development Area Declaration, which will include the recordation information thereof;

(b) A statement that such land will be considered a part of the Development Area for purposes of this Development Area Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Development Area Declaration will apply to the added land; and

(c) A legal description of the added land.

4.02 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw land from the Development Area and remove and exclude from the burden of this Development Area Declaration any portion of the Development Area. Upon any such withdrawal this Development Area Declaration and the covenants, conditions, restrictions and obligations set forth herein will no longer apply to the portion of the Development Area withdrawn. To withdraw lands from the Development Area hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

(a) A reference to this Development Area Declaration, which will include the recordation information thereof;

(b) A statement that the provisions of this Development Area Declaration will no longer apply to the withdrawn land; and

(c) A legal description of the withdrawn land.

4.03 Assignment of Declarant's Rights. Notwithstanding any provision in this Development Area Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Development Area Declaration 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, and duties hereunder.

ARTICLE 5
GENERAL PROVISIONS

5.01 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Development Area Declaration will run with and bind portion of the Development Area described in such notice, 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 Development Area Declaration is Recorded, and continuing through and including January 1, 2066, after which time this Development Area Declaration 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 sixty-seven percent (67%) of the total number of votes of the Association, voting in person or by proxy at a meeting duly called for such purpose, written notice of which will be given to all Members at least thirty (30) days in advance and will set forth the purpose of such meeting; provided, however, that such change will be effective only upon the Recording of a certified copy of such resolution. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Representative System of Voting is not applicable

to an amendment as contemplated in this *Section 5.01*, it being understood and agreed that any change must be approved by a vote of the Members, with each Member casting their vote individually. Notwithstanding any provision in this *Section 5.01* to the contrary, if any provision of this Development Area Declaration 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.

5.02 Amendment. This Development Area Declaration may be amended or terminated by the Recording of an instrument setting forth the amendment executed and acknowledged by (a) Declarant, acting alone; 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 sixty-seven percent (67%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Representative System of Voting is not applicable to an amendment as contemplated in this *Section 5.02*, it being understood and agreed that any such amendment must be approved by a vote of the Members, with each Member casting their vote individually. No amendment will be effective without the written consent of Declarant during the Development Period.

5.03 Notices. Any notice permitted or required to be given by this Development Area Declaration must be in writing and may be delivered either personally or by mail, or as otherwise required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) 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.

5.04 Interpretation. The provisions of this Development Area Declaration will be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Development Area, provided, however, that the provisions of this Development Area Declaration will not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Development Area. This Development Area Declaration will be construed and governed under the laws of the State of Texas.

5.05 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.

5.06 Enforcement and Nonwaiver. Except as otherwise provided herein, Declarant and the Association will have the right to enforce all of the provisions of this Development Area Declaration. The Association and/or Declarant may initiate, defend or intervene in any action brought to enforce any provision of this Development Area Declaration against any Owner, at such Owner's own expense. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Documents is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the Development Area is hereby declared to be a violation of this Development Area Declaration and subject to all of the enforcement

procedures set forth herein. The failure to enforce any provision of the Documents at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Documents.

5.07 Construction. The provisions of this Development Area Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof will not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular. All captions and titles used in this Development Area Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

[SIGNATURE PAGE FOLLOWS]

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 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)

DANIEL A. PARRA
MY COMMISSION EXPIRES
May 27, 2019

_____
Notary Public, State of Texas

Doc # 20170050830
#Pages 20 #NFPages 1
7/12/2017 4:37 PM
Filed & Recorded in
Official Records of
El Paso County
Delia Briones
County Clerk
Fees $102.00

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