

THE STATE OF TEXAS     )  
                                   )  
 COUNTY OF EL PASO     )

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
 FOR  
 WESTERN SKIES PATIO HOMES

THIS DECLARATION is made this 15th day of January, 1981, by WESTERN SKIES PARTNERSHIP (hereinafter referred to as "Declarant"):

WITNESSETH:

WHEREAS, Declarant is the owner of the real property referred to in Article II of this Declaration and desires to create thereon a residential patio home community with patio home lots, open spaces and greenbelts for the benefit of the community; and

WHEREAS, Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of said open spaces; and, to this end, desires to subject the real property referred to in Article II to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and

WHEREAS, Declarant has deemed it desirable for the efficient preservation of the values and amenities in said community, to create an agency to which would be delegated and assigned the powers of maintaining and administering the community properties and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant will cause to be incorporated under the laws of the State of Texas a nonprofit corporation for the purpose of effecting the intents and objectives herein set forth;

NOW, THEREFORE, Declarant declares that the real property referred to in Article II, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth.

ARTICLE I

DEFINITIONS

The following words used in this Declaration or any Supplemental Declaration (unless the context shall otherwise prohibit) shall have the following meanings:

(a) "Association" shall mean and refer to the nonprofit corporation to be incorporated under the laws of the State of Texas for the purpose of effecting the intents and objectives herein set forth.

(b) "Properties" shall mean and refer to all such existing properties as are subject to this Declaration.

(c) "Common Properties" shall mean and refer to those areas of land designated as common areas on any recorded subdivision plat(s) of the Properties or intended to be devoted to the common use and enjoyment of the Members of the Association, together with any and all improvements that are now or may hereafter be constructed thereon.

(d) "Lot" shall mean and refer to any plot or tract of land shown upon any recorded subdivision plat(s) of the Properties, as amended from time to time, which is designated as a lot therein and which is or will be improved with a residential patio home dwelling.

(i) Reference is here made to Exhibit "B", attached hereto and made a part hereof for the purpose of identifying those areas designated as "Common Properties" and "Lot" areas as hereinabove defined.

(e) "Owner" shall mean and refer to every person or entity who is a record owner of a fee or undivided fee interest, or leasehold interest (for a term of greater than 99 years), in any Lot which is subject by covenant of record to assessment by the Association, including contract sellers. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

(f) "Member" shall mean and refer to each member of the Association which shall include every Owner. When more than one person is an Owner of any Lot, all such persons shall be Members.

(g) "Declarant" shall mean and refer to WESTERN SKIES PARTNERSHIP, its successors and assigns, if such successors or assigns shall acquire more than 10 undeveloped Lots from WESTERN SKIES PARTNERSHIP for the purpose of development thereon.

(h) "Existing Property" shall mean and refer to the real property which is, and shall be, held, transferred, sold, conveyed and occupied subject to this Declaration pursuant to Section I of Article II.

(i) "Board of Directors" shall mean and refer to the board of directors of the Association designated in accordance with the Articles of Incorporation and/or Bylaws of the Association.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION: ADDITIONS THERETO

Section 1. Existing Property. The Existing Property is located in El Paso, El Paso County, State of Texas, and is more particularly described in "Exhibit A" attached hereto and made a part hereof.

Section 2. Additions to Existing Property. No additional lands will become subject to this Declaration.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every Owner shall automatically be a Member of the Association.

Section 2. Classes of Membership. The Association shall have two classes of voting membership:

CLASS A. Class A Members shall be all Members with the exception of Declarant. Class A members shall be entitled to one vote for each Lot in which they hold the interest required for membership. When more than one person is an Owner of any Lot, the vote for each such Lot shall be exercised as the Owners, among themselves, determine; but in no event shall more than one vote be cast with respect to such Lot.

CLASS B. The Class B Member(s) shall be the Declarant. The Class B Member(s) shall be entitled to three (3) votes for each Lot in which it is the Owner. Upon the earlier to occur of (i) such time as the total votes outstanding of the Class A Members exceed the total votes outstanding of the Class B Members or (ii) December 31, 1981, then the Class B Membership shall be converted into Class A membership.

Section 3. Quorum, Notice and Voting Requirements.

(a) Subject to the provisions of Paragraph (c) of this Section, or except as otherwise specifically provided herein, any action authorized by Sections 4 and 5 of Article V shall require the assent of the majority of the votes of those who are voting in person or by proxy at a meeting of the Association duly called for that purpose, written notice of which shall be given to all Members not less than fifteen (15) days nor more than sixty (60) days in advance and shall set forth the purpose of such meeting.

(b) The quorum required for any action referred to in Paragraph (a) of this Section shall be as follows:

At the initial meeting called, as hereinafter provided, the presence at the meeting of Members, or of proxies, entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present at the meeting, one additional meeting may be called, subject to the notice requirement hereinabove set forth, and at such additional meeting the presence of Members, or of proxies, entitled to cast thirty percent (30%) of all the votes of each class of membership shall constitute a quorum; provided, however, that no such additional meeting shall be held more than sixty (60) days following the first meeting.

(c) Any provision of this Declaration to the contrary notwithstanding, any action of the Association referred to in Paragraph (a) of this Section may be taken with the assent of the Members having a majority of the outstanding vote, said assent to be in writing and signed.

(d) Except as specifically set forth in this Declaration, notice, voting and quorum requirements for all other action to be taken by the Association shall be as set forth in its Articles of Incorporation and Bylaws, as same may be amended from time to time.

#### ARTICLE IV

##### PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Members' Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Member, and every tenant of every Member, who resides on a Lot, and each individual who resides with either of them, respectively, on such Lot shall have a right and easement of use and enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Lot; PROVIDED, HOWEVER, such easement shall not give such Member, tenant or other individual the right to make any alterations, additions or improvements to the Common Properties.

Section 2. Title to the Common Properties. The Declarant shall dedicate and convey the fee simple title to the Common Properties to the Association free of any liens for borrowed money at such point in time deemed reasonable and appropriate by the Declarant but prior to the closing of any loan against any Lot or against the Common Properties.

Section 3. Extent of Members' Easement. The rights and easements of and use and enjoyment created hereby shall be subject to the following:

(a) The right of the Association to prescribe regulations governing the use, operation and maintenance of the Common Properties (including limiting the number of guests);

(b) The right of the Association to borrow money for the purpose of improving the Common Properties and facilities and in aid thereof to mortgage the Common Properties, such mortgage to be subject to the prior written approval of the holder(s) of the majority of the mortgage indebtedness secured by all or any portion of the Properties;

(c) The right of the Association to enter into and execute contracts with third parties for the purpose of providing maintenance or such other materials or services consistent with the purposes of the Association;

(d) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties of the Association;

(e) The right of the Association, as provided in its Bylaws, to suspend the voting rights of any Member and to suspend the right of any individual to use any of the Common Properties for any period during which any assessment against a Lot resided upon or owned by such individual remains unpaid, and for any period not to exceed sixty (60) days for an infraction of its rules and regulations;

(f) The right of the Association to dedicate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and upon such terms and conditions as the Association may approve.

## ARTICLE V

### COVENANTS FOR ASSESSMENT

Section 1. Creation of the Lien and Personal Obligation of Assessment. Declarant, for each Lot owned by it within the Properties, hereby covenants and agrees, and each Owner by acceptance of a deed or lease or other conveyance therefor, whether or not it shall be so expressed in such deed, lease or other conveyance, shall be deemed to covenant and agree to pay to the Association (or to a mortgage company or other collection agency designated by the Association): (1) the annual maintenance assessments or charges established pursuant to Section 4 of this Article; (2) special assessments for capital improvements established pursuant to Section 5 of this Article; (3) assessments for taxes on the Common Properties and insurance on the Common Properties (to the extent the Common Properties are insurable) established pursuant to Section 6 of this Article; (4) individual special assessments levied against individual Owners to reimburse the Association for extra costs for maintenance and repairs caused by the willful or negligent acts of the individual Owner and not caused by ordinary wear and tear, such assessments to be established pursuant to Section 5 of this Article. The annual, special capital, tax and insurance, and special individual assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment together with interest thereon and cost of collection thereof as hereinafter provided shall also be the continuing personal obligation of any person who was an Owner of the Lot at the time when the assessment fell due.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of the residents of the Properties, and in particular for the improvement and maintenance of private roadways, walkways, greenbelt areas, or other properties, services and facilities devoted to this purpose and directly related to the use and enjoyment of the Common Properties including, but not limited to, the payment of taxes on the Common Properties and insurance in connection with the Common Properties and the costs of repair, replacements and additions thereto; and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of the Common Properties for carrying out the duties of the Board of Directors of the Association as set forth in Article VI hereof; and for carrying out the purposes of the Association as stated in its Articles of Incorporation.

Section 3. Improvement and Maintenance of the Common Properties Prior to Conveyance to the Association. Until the date of the conveyance of the title to the Common Properties to the Association, the Declarant, on behalf of the Association, shall have the responsibility and duty of improving and maintaining the Common Properties, including, but not limited to, the payment of taxes on and insurance in connection with the Common Properties and the cost of repairs, replacements and additions thereto, and for paying the cost of labor, equipment (including the expense of leasing any equipment) and materials required for, and management and supervision of, the Common Properties. In this regard, and until such time as title to the Common Properties is conveyed to the Association, all assessments, both annual and special, collected by the Association (less such amounts required for the operation of the Association) shall be forthwith paid by the Association to Declarant, to the extent that such assessments are required by Declarant to improve and maintain the Common Properties as set forth in this paragraph. The Association may rely upon a certificate executed and delivered by the Declarant with respect to the amount required by Declarant to improve and maintain the Common Properties hereunder.

### Section 4. Basis and Amount of Annual Maintenance Assessments.

(a) Until the year beginning January 1, 1981, the maximum annual maintenance assessment shall be Twenty Dollars (\$20.00) for each Lot as set forth below. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

(b) Commencing with the year beginning 1981, and each year thereafter, the Board of Director, at its annual meeting next preceding such January 1, 1981, and each respective January 1 thereafter, may set the amount of the maximum annual assessment for the following year for each Lot, provided that the maximum annual assessment may not be increased more than twenty percent (20%) above the maximum annual assessment for the previous year unless otherwise approved by the Members as provided in Section 3 of Article III.

(c) When the assessment is established for all Lots, all or a portion of such assessment for each Lot shall be payable to the Association by the Owner(s) according to the status of the Lot as follows:

(i) When a Lot is improved by a patio home and is occupied, 100% of the assessment shall be payable.

(ii) When a Lot is owned by parties other than Declarant and is vacant or when the patio home is under construction or otherwise unoccupied, 50% of the assessment shall be payable.

(iii) When a Lot is owned by Declarant and is vacant or the patio home thereon is not completed and occupied, no part of the assessment shall be payable.

(d) The Declarant shall be responsible for contributing the net difference between income and expense to the Association. This responsibility shall exist so long as Declarant or his assigns controls a majority of the votes of the Association.

Section 5. Special Assessments. In addition to the annual assessments authorized by Section 4 hereof, special assessments may be levied as follows: (i) the Association may levy in any assessment year a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Properties or Common Properties, including the necessary fixtures and personal property related thereto; PROVIDED THAT any such assessment shall have the affirmative approval of the Members, as provided in Section 3, Article III; (ii) upon the affirmative approval of 60% of the votes of those voting in person or by proxy at a meeting duly called for that purpose in accordance with the procedures in Section 3, Article III, hereof, the Association may levy special assessments against individual Owners for reimbursement for repairs occasioned by the willful or negligent acts (but not ordinary wear and tear) of the Owner or any tenants of any Owner, who reside on any Lot, or any other individual who resides with such tenant or Owner of any Lot.

Section 6. Assessments for Taxes and Insurance. In addition to the annual assessments authorized by Section 4 hereof, the Board of Directors is authorized to levy an assessment on each Lot for the purpose of collecting: (i) the cost of insuring the Common Properties, and (ii) the taxes and governmental assessments levied on the Common Properties. However, the first mortgagee of each respective Owner of any Lot shall have the right and election to collect and disburse such assessment for the benefit of the Owner and the Association.

Section 7. Uniform Rate of Annual and Special Assessments. Both annual and special assessments shall be fixed at an equal rate for each Lot but shall be payable as set forth in Section 4(c) above. Unless the Owners entitled to cast a majority of the votes of the Association and their respective first mortgagees have given prior written approval, the Board of Directors shall not change the pro rata interest or obligations of any Lot (or Owner thereof) for purposes of levying annual and special assessments.

Section 8. Date of Commencement of Assessments: Due Dates. The annual maintenance assessments provided for herein shall commence on the date fixed by the Board of Directors to be the date of commencement, and, except as hereinafter provided, shall be payable monthly, in advance, on the first day of each month thereafter. The first annual maintenance assessment shall be made for the balance of the calendar year in which it is levied. The amount of the annual maintenance assessment which may be levied for the balance remaining in the year of the assessment shall be an amount which bears the same relationship to the annual maintenance assessment provided for in Section 4 hereof as the remaining number of months in that year bear to twelve; provided, however, that if the date of commencement falls on other than the first day of a month, the maintenance assessment for such month shall be prorated by the number of days remaining in the month. The first annual maintenance assessment shall be due and payable, in as many equal installments as there are monthly payment dates remaining in the first year, said installments to be due and payable on said monthly payment dates. The same pro rata reduction in the amount of the assessment shall apply to the first

annual maintenance assessment levied against any Lot which is hereafter added to the Lots now subject to assessment at a time other than the beginning of any assessment period. The due date or dates, if it is to be paid in installments, of any other assessment or special assessment under Sections 5 and 6 hereof, shall be fixed in the respective resolution authorizing such assessment.

Section 9. Duties of Board of Directors with Respect to Assessment.

(a) The Board of Directors shall fix the date of commencement and the amount of the assessment against each Lot for each assessment period at least thirty (30) days in advance of such date or period and shall, at that time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association.

(b) Written notice of the assessment shall thereupon be delivered or mailed to every Owner subject thereto.

(c) The Board of Directors shall upon written demand at any time furnish to any Owner(s) liable for said assessment or their respective Mortgagee's, a certificate in writing signed by an Officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid. A reasonable charge may be made by the Board of Directors for the issuance of such certificates.

Section 10. Effect of Nonpayment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of Association.

(a) If any assessment is not paid in full on the date(s) when due, then the unpaid amount of such assessment shall become delinquent and shall, together with such interest thereon and cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot of the nonpaying Owner(s) which shall bind such Lot in the hands of each Owner, his heirs, executors, devisees, personal representatives, successors and assigns. The Association shall have the right to reject partial payments of an assessment and demand the full payment thereof. The obligation of the then existing Owner(s) to pay such assessment, however, shall remain the personal obligation of the Owner, or the joint and several obligation of each Owner if more than one, and shall not be extinguished by transfer of title. The lien for unpaid assessments shall be unaffected by any sale or assignment of a Lot and shall continue in full force and effect. No Owner may waive or otherwise escape liability for the assessment provided herein by nonuse of the Common Properties or abandonment of any Lot.

(b) The Association shall give written notification to the holder(s) of any recorded mortgage or deed of trust on the Lot of any default in payment of any assessment within a reasonable time if such default has not been cured within thirty (30) days.

(c) If any assessment is not paid in full within forty (40) days after the delinquency date, the unpaid amount of such assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum and the Association may, at its election, bring an action at law against any Owner personally obligated to pay the same in order to enforce payment and/or to foreclose the lien in order to enforce payment and/or to foreclose the lien against the Lot subject thereto. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action.

Section 11. Rights of City of El Paso. Unless the Owners of a majority of the Lots and the respective holders of the first mortgage liens on the respective Lots have given their prior written approval, the Association shall not by act or omission abandon or seek to abandon any obligations imposed on it by this Declaration. However, in the event:

(a) The Association dissolves and the Common Properties shall not be either (i) dedicated to and accepted by an appropriate public agency, authority or

utility to be devoted to purposes as nearly as practicable the same as those to which such Common Properties were required to be devoted by the Association or (ii) conveyed to another organization or entity which assumes all obligations imposed hereunder upon the Association to maintain said Common Properties; or

(b) The Association, its successors or assigns, shall fail or refuse to adequately maintain the appearance and condition of the Common Properties which it is obligated to maintain hereunder.

then in either such event, the City of El Paso, Texas shall have the right and may assume the duty of performing all maintenance obligations of the Association at any time after such dissolution or failure to maintain upon giving written notice to all Owners or at any time after the expiration of ten (10) days after receipt by the Association, its successors or assigns of written notice specifying in detail the nature and extent of the dissolution or the failure to maintain without such failure being timely remedied, whichever notice shall be reasonable and appropriate by the City of El Paso. Upon assuming such maintenance obligations, the City of El Paso may collect, when the same shall become due, all assessments, annual or special, levied by the Association pursuant to the provisions hereof for the purposes of repairing, replacing, maintaining or caring for the Common Properties; and, if necessary, enforce the payment of delinquent assessments in the manner set forth herein. In the alternative, upon assuming such maintenance obligations, the City of El Paso may levy an assessment upon each Lot, on an equal basis, for the cost of such maintenance, notwithstanding any other provisions contained in this Declaration, which assessment shall constitute a lien upon the Lot against which each assessment is made. The right and authority of the City of El Paso to maintain the Common Properties shall cease and terminate when the Association, its successors or assigns shall present to the City of El Paso reasonable and appropriate evidence of its willingness and ability to resume maintenance of the Common Properties. In the event that the City of El Paso assumes the duty of performing the maintenance obligations of the Association as provided herein, then the City of El Paso, its agents, representatives and employees shall have right of access in, to and over the Common Properties for the purpose of maintaining, improving and preserving the same.

Section 12. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate and inferior to the lien of any bona fide first mortgage or deed of trust now or hereafter placed upon any Lot(s); provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale, whether public or private, of such Lots pursuant to the terms and conditions of any such mortgage or deed of trust. Such sale shall not relieve such Lot(s) from liability for the amount of any assessments thereafter becoming due nor from the lien of any such subsequent assessment.

Section 13. Exempt Property. The following property subject to this Declaration shall be exempt from the assessments, charge and lien created herein:

- (a) All properties dedicated and accepted by the local public authority and devoted to public use.
- (b) All Common Properties.
- (c) All areas unplatted or reserved by the Declaration on the recorded plat(s) of the Properties.

## ARTICLE VI

### GENERAL POWERS AND DUTIES OF DIRECTORS

Section 1. Powers and Duties. The Board of Directors, for the benefit of the Properties and the Owners, shall provide, and shall pay for out of the funds provided for in Article V above, the following:

- (a) Care and preservation of the Common Properties, the furnishing and upkeep of any desired personal property for use in the Common Properties.

(b) Maintenance of exterior grounds, including care of trees, shrubs, grass (lying outside fences and walls and to which the Association has access), and parking areas, the exact scope of which shall be further specified by the Board of Directors from time to time.

(c) The services of a person or firm to manage the Association or all or any part of the Common Properties, to the extent deemed advisable by the Board of Directors, and the services of such other personnel as the Board of Directors shall determine to be necessary or proper for the operation of the Association, whether such personnel are employed directly by the Board of Directors or by any manager.

(d) Legal and accounting services.

(e) Any other materials, supplies, furniture, alterations, taxes or assessments which the Board of Directors is required to obtain or pay for pursuant to the terms of this Declaration or by law or which in its opinion shall be necessary or proper for the operation or protection of the Association or for the enforcement of this Declaration.

Section 2. Additional Powers and Duties. The Board of Directors shall have the following additional rights, powers and duties:

(a) To execute all declarations of ownership for tax assessment purposes with regard to the Common Properties on behalf of all Owners.

(b) To enter into agreements or contracts with insurance companies, taxing authorities and the holders of first mortgage liens on the individual Lots with respect to: (i) taxes on the Common Properties, and (ii) insurance coverage of the Common Properties, as they relate to the assessment, collection and disbursement process envisioned by Article V hereinabove.

(c) To borrow funds to pay costs of operation, secured, if the Board of Directors desires, by assignment or pledge of rights against delinquent Owners.

(d) To enter into contracts, maintain one or more bank accounts, and, generally, to have all the powers necessary or incidental to the operation and management of the Association.

(e) To protect or defend the Common Properties from loss or damage by suit or otherwise, to sue or defend in any court of law on behalf of the Association and to provide adequate reserves for replacements.

(f) To make reasonable rules and regulations for the operation of the Common Properties and to amend them from time to time, provided that any rule or regulation may be amended or repealed by an instrument in writing signed by the Owners entitled to cast a majority of the votes of the Association.

(g) To make available to each Owner within sixty (60) days after the end of each year an annual report.

(i) To enforce the provisions of this Declaration and any rules made hereunder and to enjoin and seek damages from any person for violation of such provisions or rules.

Section 3. Board Powers. From and after the date on which the title to the Common Properties has been conveyed to the Association, the Board of Directors shall have the exclusive right to contract for all goods, services and insurance, and the exclusive right and obligation to perform the functions of the Board of Directors, except as otherwise provided herein.

Section 4. Maintenance Contracts. The Board of Directors, on behalf of the Association, shall have full power and authority, but not the obligation, to contract with



any Owner for the performance by the Association of services which the Board of Directors is not otherwise required to perform pursuant to the terms hereof, such contracts to be upon such terms and conditions and for such consideration as the Board of Directors may deem proper, advisable and in the best interest of the Association.

## ARTICLE VII

### INSURANCE; REPAIR AND RESTORATION

Section 1. Right to Purchase Insurance. The Association shall have the right, privilege and opportunity to purchase, carry and maintain in force insurance covering any or all portions of the Common Properties, the improvements thereon and appurtenant thereto, in such amounts and with such endorsements and coverage as shall be considered good sound insurance coverage for properties similar in construction, location and use. Such insurance may include, but need not be limited to:

(a) Insurance against loss or damage by fire and hazards covered by a standard extended coverage endorsement in an amount which shall be equal to the maximum insurable replacement value, excluding foundation and excavation costs as determined annually by the insurance carrier.

(b) Public liability and property damage insurance on a broad form basis.

(c) Fidelity bond for all officers and employees of the Association having control over the receipt or the disbursement of funds in such penal sums as shall be determined by the Association in accordance with its Bylaws.

Section 2. Insurance Proceeds. Proceeds of insurance on the Common Properties or under policies carried by the Association shall be disbursed by the insurance carrier to the Association or contractors designated by the Association as the Board of Directors may direct. The Association shall use the net insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance. Any balance from the proceeds of insurance paid to the Association, as required in this Article, remaining after satisfactory completion of repair and replacement, shall be retained by the Association as part of a general reserve fund for repair and replacement of subject property.

Section 3. Insufficient Proceeds. If the insurance proceeds are insufficient to repair or replace any loss or damage, the Association may levy a special assessment as provided for in Article V of this Declaration to cover the deficiency.

Section 4. Mortgagee Protection. There may be attached to all policies of insurance against loss or damage by fire and other hazards, a mortgagee's or lender's loss payable clause; provided, however, that amounts payable under such clause to the mortgagee may be paid to the Association to hold for the payment of all costs of repair or replacement. The Association shall be responsible to hold said monies or to collect additional monies if the proceeds are insufficient to pay for the cost of all repairs or replacements and shall ensure that all mechanics', materialmen's and similar liens which may result from said repairs or replacements are satisfied.

Section 5. Individual Lots. Each Owner shall be responsible for purchasing, carrying and maintaining in force insurance covering his Lot, the improvements thereon and appurtenant thereto, in such amounts and with such endorsements and coverage as shall be considered good, sound insurance coverage for properties similar in construction, location and use. In the event the Owner(s) of any Lot fail to purchase, carry or maintain such insurance, the Association may purchase insurance for the benefit of the Lot and the amount expended for such insurance shall constitute a lien on the Lot, as well as the personal obligation of each Owner thereof and shall be deemed an assessment and governed pursuant to Article V hereof. Each Owner, by acceptance of a deed or other conveyance for a Lot, whether or not it shall be expressed in such deed or other conveyance, shall be deemed to covenant and agree to use any insurance proceeds to repair and replace any damage or destruction to the Lot or any improvements thereon. If the insurance proceeds are insufficient to repair or replace any loss or damage, each Owner shall pay any excess costs of repair or replacement.

Section 6. Total Destruction. Destruction of sixty-seven percent (67%) or more of the Properties (including improvements) shall be deemed total destruction. In the event of total destruction, the Association may obtain bids for reconstruction and proceed with reconstruction unless objection to such reconstruction is made in writing, signed by the Owners entitled to cast a majority of the votes of the Association before such reconstruction has begun, in which event, the Association, as agent for all Owners coupled with its own interest, shall be granted the power to sell the entire property in its then present condition. The proceeds of sale, together with any available insurance proceeds, shall be distributed to the Owners and their mortgagees as their interest may appear of record.

#### ARTICLE VIII

##### USE OF COMMON PROPERTIES

The Common Properties may be occupied and used as follows:

Section 1. Restricted Action by Owners. No Owner shall permit anything to be done on or in the Common Properties which would violate any applicable public law or zoning ordinance or which will result in the cancellation of or increase of any insurance carried by the Association, or which would be in violation of any law. No waste shall be committed in the Common Properties.

Section 2. Damage to the Common Properties. Each Owner shall be liable to the Association for any damage to the Common Properties caused by the negligence or willful misconduct of the Owner, any tenant occupying the Owner's Lot, or the family, guests, or invitees of any Owner or tenant.

Section 3. Rules of the Board of Directors. All Owners and other occupants of any Lot shall abide by any rules and regulations adopted by the Board of Directors. The Board of Directors shall have the power to enforce compliance with said rules and regulations by all appropriate legal and equitable remedies, and an Owner determined by judicial action to have violated said rules and regulations shall be liable to the Association for all damages and costs, including reasonable attorney's fees.

Section 4. Use of Common Properties. Use of the Common Properties shall be limited to the Owners, or any tenant of any Owner, residing on any Lot, any other individual who resides with such tenant or Owner on any Lot and their guests. No alcoholic beverages may be sold in the Common Properties nor will any private locker or bottle club be permitted, and the only consumption of alcoholic beverages which will be permissible will be those beverages carried into the Common Properties by the Owners, their tenants, and their respective families and guests.

#### ARTICLE IX

##### USE OF PROPERTIES AND LOTS — PROTECTIVE COVENANTS

The Properties and each Lot situated thereon shall be constructed, developed, occupied and used as follows:

Section 1. Residential Purposes. Each Lot shall be used exclusively for residential patio home purposes. Not more than one dwelling shall be constructed on any Lot among two adjacent and contiguous lots may be utilized for the construction thereon of one residential dwelling.

Section 2. Floor Space. Each dwelling constructed on any Lot shall contain minimum floor space as established by the Architectural Control Committee.

Section 3. Height. No building or structure on any Lot shall exceed, in height, the lesser of two (2) stories or thirty (30) lineal feet, measured from the applicable street elevation lines. The construction of basements may be approved by the Architectural Control Committee if and when the sloping topography of a Lot reasonably permits such construction.

**Section 4. Temporary Structures and Vehicles.** No temporary structure of any kind shall be erected or placed upon any Lot. Any truck, bus, boat, boat trailer, trailer, mobile home, campmobile, camper or any vehicle other than conventional automobile shall, if brought within the Properties, be stored, placed or parked within an area to be designated by the Architectural Control Committee. Trucks with tonage in excess of one ton and any vehicle with painted advertisement shall not be permitted to park overnight on the streets, driveways, or otherwise within the Properties at any time. No vehicle of any size which transports inflammatory or explosive cargo may be stored, placed or parked within the Properties at any time.

**Section 5. Garages.** Each residential dwelling erected on any Lot shall provide garage or carport space for a minimum of two (2) conventional automobiles. All garage doors shall be equipped with an automatic and remote-controlled door opener; all garage doors shall be closed at all times when not in use. Plans for garage and carports shall be subject to the approval of the Architectural Control Committee. All automobiles, brought within the Properties shall be stored, placed or parked within the garages or such other areas as may be designated by the Architectural Control Committee.

**Section 6. Signs.** No sign or signs shall be displayed to the public view on any Lot except that:

(i) Declarant may erect and maintain a sign or signs deemed reasonable and necessary for the construction, development, operation, promotion and sale of the Lots;

(ii) any builder, during the applicable initial construction and sales period, may utilize one professional sign (of not more than twelve (12) square feet in size) per Lot for advertising and sales promotion;

(iii) thereafter, a dignified "for sale" sign (of not more than six (6) square feet in size) may be utilized by the Owner of the respective Lot for the sale of the Lot.

**Section 7. Fences.** No chain link fences or other wire type fences shall be erected on any Lot. No fence, wall or hedge shall be erected, placed or altered on any Lot without the approval of the Architectural Control Committee. Clothes lines, wood piles, tool sheds, utility meters or service facilities must be enclosed within fences, walls or landscaping so as not to be visible from other lots.

**Section 8. Trash Receptacles and Collection.** Trash, garbage and other waste shall not be kept except in sanitary containers. All trash receptacles shall be screened by fences or shrubbery so as not to be visible from other Lots. Each Owner shall make or cause to be made appropriate arrangements with the City of El Paso for collection and removal of garbage and trash on a regular basis. If the Owner fails to make such provisions, the Association may do so and assess the costs thereof to the Owner. Each and every Lot Owner shall observe and comply with any and all regulations or requirements promulgated by the City of El Paso or the Association, or both, in connection with the storage and removal of trash and garbage.

**Section 9. Offensive Activities.** No obnoxious or offensive activity shall be conducted on any Lot nor shall anything be done thereon which is or may become an annoyance or nuisance to the other Owners. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes.

If, at any time, an Owner of any Lot shall fail to control weeds, grass and/or other unsightly growth, the Association shall have the authority and right to go onto said Lot for the purpose of mowing and cleaning said Lot and shall have the authority and right to assess and collect from the Owner of said Lot a sum not to exceed twenty-five (\$25.00) for mowing or cleaning said Lot on each respective occasion of such mowing or cleaning. The assessments, together with such interest thereon and costs of collection thereof, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. Each such assessment, together with such interest thereon and

cost of collection thereof, shall also be the continuing personal obligation of the Owner(s) of such Lot at the time when the assessment occurred. Each and every Owner, by the acceptance of a deed or other conveyance of a Lot shall thereby covenant and agree to pay such assessments. The lien securing any such assessment shall be subordinate and inferior to the lien of any mortgage and any renewals or extensions thereof existing prior to the assessment date.

Section 10. Mineral Development. No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any of the Properties, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any of the Properties. No derrick or other structural designed for use in quarrying for oil or natural gas shall be erected, maintained or permitted upon any of the Properties.

Section 11. Antennas. No exterior antennas shall be permitted on any residence constructed on any Lot without the prior written approval of the Architectural Control Committee.

Section 12. Water Supply. No individual water supply system shall be permitted on any Lot unless the system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the applicable state or local public health authority. Approval of such system, as installed, shall be obtained from such authority.

Section 13. Sewer System. No individual sewerage disposal system shall be permitted on any Lot unless such system is designed, located and constructed in accordance with the requirements, standards and recommendations of the applicable state or local public health authority. Approval of such system as installed shall be obtained from such authority.

#### ARTICLE X

##### ARCHITECTURAL CONTROL COMMITTEE

The Architectural Control Committee, hereinafter sometimes called "the Committee," shall be composed of three (3) individuals selected and appointed by the Declarant. Declarant hereby appoints, Gerald B. Hartgraves, Jeff Bean and Amen Wardy. The Committee shall function as the representative of the Owners for the purposes herein set forth as well as for all other purposes consistent with the creation and preservation of a first-class residential patio home development.

A majority of the Committee may designate a representative to act for it. In the event of the death or resignation of any member of the Committee, the remaining members shall have full authority to designate and appoint a successor. Each member of the Committee, or its designated representative, shall neither be entitled to any compensation for services performed hereunder, nor be liable for claims, causes of action or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of services performed pursuant to this covenant. At any time after January 1, 1983, the record Owners of seventy-five percent (75%) of the Lots shall have the power to change the membership of the Committee, to withdraw or add powers and duties from or to the Committee, or to restore the powers and duties of the Committee. Such action shall be effective upon recordation of a written instrument properly reflecting same.

No building, structure or improvement of any nature shall be erected, placed or altered on any lot until the construction plans and specifications and a plot plan showing the location of such building, structure or improvement have been submitted to and approved in writing by the Committee as to: (i) quality of workmanship and materials, (ii) conformity and harmony of external design, color and texture, with existing structures, (iii) location with respect to topography and finished grade elevation, and (iv) the other standards set forth within this instrument. The Committee is authorized to request the submission of samples of proposed construction materials or colors of proposed exterior surfaces.

Final plans and specifications shall be submitted in duplicate to the Committee for approval or disapproval. At such time as the plans and specifications meet the approval of the Committee, one complete set of plans and specifications will be retained by the Committee and the other complete set of plans will be marked "Approved" and returned to the Owner. If found not to be in compliance with these Covenants and Restrictions, one set of such plans and specifications shall be returned marked "Disapproved," accompanied by a reasonable statement of items found not to comply with these Covenants and Restrictions. Any modification or change to the approved set of plans and specifications must again be submitted to the Committee for its inspection and approval. The Committee's approval or disapproval as required in these covenants shall be in writing. If the Committee, or its designated representative, fails to approve or disapprove such plans and specifications within thirty (30) days after they have been submitted to it, and if no suit to enjoin the construction is commenced prior to substantial completion of such construction, then Committee approval shall be presumed.

The Committee is authorized and empowered to consider and review any and all aspects of dwelling construction which may, in the reasonable opinion of the Committee, adversely affect the living enjoyment of one or more Owner(s) or the general value of the Properties. As an example, and not by way of limitation, the Committee may impose limits upon the window area or location of one residential dwelling which would overlook the enclosed patio area of an adjacent residential dwelling. Similarly, the Committee may or may not permit the construction of residential dwellings which contain party walls. Also, the Committee is permitted to consider technological advances in design and materials such that comparable or alternative techniques, methods or materials may or may not be permitted, in accordance with the reasonable opinion of the Committee. The Committee may from time to time publish and promulgate architectural standards bulletins; such bulletins shall supplement these covenants and restrictions and are incorporated herein by reference. The Committee shall have the authority to make final decisions in interpreting the general intent, effect and purpose of these restrictions.

#### ARTICLE XI

##### EASEMENTS

Section 1. Utility Easements. Easements for installation, maintenance, repair and removal of utilities and drainage facilities and floodway easements over, under and across the Properties are reserved by Declarant for itself, its successors and assigns. Full rights of ingress and egress shall be had by Declarant and its successors and assigns at all times over the Properties for the installation, operation, maintenance, repair or removal of any utility, together with the right to remove any obstruction that may be placed in such easement that would constitute interference with the use of such easement, or with the use, maintenance, operation or installation of such utility.

Section 2. Overhang Easements. Declarant hereby reserves for itself and each Owner an easement and right of overhang to overhang each Lot with the roof of any patio home to be constructed on any adjacent Lot as any such roof is originally constructed or substantially repaired by necessity, but not otherwise.

Section 3. Ingress and Egress by the Association. Full rights of ingress and egress shall be had by the Association at all times over and upon each Lot for the maintenance and repair of each Lot in accordance with the provisions hereof, and for the carrying out by the Association of its functions, duties and obligations hereunder, provided, that any such entry by the Association upon and Lot shall be made with as little inconvenience to the Owner(s) as practical, and any damage caused thereby shall be repaired by the Association at the expense of the maintenance fund.

#### ARTICLE XII

##### PARTY WALLS

In the event that any party walls are constructed within the Properties, the following provisions shall apply to such party wall(s):

Section 1. Maintenance. A party wall may be erected for the benefit of the Owner(s) of the patio home on either side of the center line of such wall, and, in such

event, each such Owner shall maintain that portion of such party wall or party walls within the boundaries of his patio home at all times in good order and repair, and no party wall, its footings or any portion thereof, shall be removed, damaged, injured, or destroyed, nor shall the same be altered, added to, enlarged or extended except only for the purpose of maintaining or repairing the same unless upon the prior consent of the Board of Directors. In the event of the failure of any Owner or Owners properly to maintain the party wall, the Association may perform all works of restoration and repair as may be necessary in the sole discretion of its Board of Directors.

Section 2. Cost of Repair. The cost of repair or re-erection of a party wall shall be borne by the Owners of the patio home on either side thereof proportionately, based upon the extent and nature of such repair or re-erection, and in the event of a dispute between the responsible parties as to the apportionment of such costs, the Board of Directors of the Association shall fix and apportion them to and between the responsible parties and the determination of the Board of Directors shall be conclusive and binding.

Section 3. Assessment of Repair. In the event that any responsible party should fail to pay for such repair or re-erection of his proportionate share thereof as provided above (whether such repair or re-erection was done or caused to be done by the responsible party or parties or by the Association), the patio home of the responsible party or parties shall be subject to and the Association shall fix and establish a special charge and assessment for the payment of such costs as provided in Article V of this Declaration.

Section 4. Easement. In the event that there shall be located within any party wall pipes, vents, outlets, or other structures serving more than one patio home, the Owner(s) of each patio home so served shall have and enjoy a perpetual easement for the maintenance and use of any such pipe, vent outlet or other structure.

Section 5. Foundations. Should the foundation or footing supporting any party wall be damaged or destroyed, the repair and restoration thereof shall be in accordance with Article VII hereof.

Section 6. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

## ARTICLE XIII

### GENERAL PROVISIONS

Section 1. Duration. The Covenants, Conditions and Restrictions of this Declaration shall run with and bind the land subject to this Declaration, and shall inure to the benefit of and be enforceable by the Association and/or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date that this Declaration is recorded in the office of the County Clerk of El Paso County, Texas, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument is signed by the Owners entitled to cast sixty-six and two-thirds percent (66-2/3%) of the votes of the Association and recorded in the Deed Records, El Paso County, Texas, agreeing to abolish the same Covenants, Conditions and Restrictions in whole or a substantial portion thereof, prior to the effective date of such extension. Notwithstanding the foregoing, the Covenants, Conditions and Restrictions of this Declaration may be abolished at any time after ten (10) years from the date that this Declaration is recorded in the office of the County Clerk of El Paso County, Texas by an instrument signed by the Owners entitled to cast eighty percent (80%) of the votes of the Association and recorded in the Deed Records of El Paso County, Texas.

Section 2. Amendments. Notwithstanding Section 1 of this Article, the Covenants, Conditions and Restrictions of this Declaration may be amended and/or changed in part with the consent of the Owners entitled to cast eighty percent (80%) of the votes of the Association, if amended and/or changed during the first twenty-five (25) year period of this Declaration, and thereafter with the consent of the Owners entitled to

cast sixty-six and two-thirds (66 2/3%) of the votes of the Association, and in each case such amendment shall be evidenced by a document in writing bearing each of their signatures. All amendments, if any, shall be recorded in the office of the County Clerk of El Paso County, Texas. No amendment within the first twenty-five (25) year period shall be effective unless and until it is approved in writing by the holder(s) of the majority of the mortgage indebtedness secured by all or any portion of the Properties.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate them, or to recover damages, or to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The City of El Paso, Texas, is specifically authorized to enforce these covenants and restrictions in accordance with (i) VATS Article 974a-1, or (ii) other similar state or local laws or ordinances, or (iii) the applicable provisions set forth within this Declaration.

Section 4. Severability. Invalidation of any of these Covenants or Restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

Section 5. Headings. The headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

Section 6. Notices to Member/Owner. Any notice required to be given to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mails, postage prepaid, addressed to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 7. Notices to Mortgagees. Notwithstanding any provision herein to the contrary, the holder(s) of a mortgage or deed of trust is entitled to, and shall receive, written notification from the Association of any default by the respective mortgagor/Member/Owner in the performance of such mortgagor's/Member's/Owner's obligation(s) as established by this Declaration.

Section 8. Disputes. Matters of dispute or disagreement between Owners with respect to interpretation or application of this Declaration or the Association Bylaws, shall be determined by the Board of Directors, whose reasonable determination shall be final and binding upon all Owners.

Section 9. Accounting. The Association and the Board of Directors of the Association shall provide an annual accounting of all income and expense items to all holders of mortgage indebtedness secured by any portion of the Properties. This report shall be provided without request within 60 days of the close of the fiscal year of the Association. Any such mortgagee shall be allowed access, in normal business hours, to the books of record of the Association upon proper identification of such mortgagee.

WESTERN SKIES PARTNERSHIP

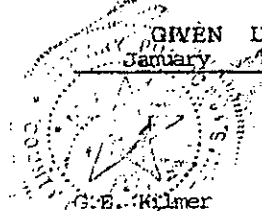
By: Gregory M. Kelly  
By: Thomas B. Henderson  
By: Jeff Beaman

THE STATE OF TEXAS

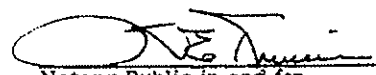
COUNTY OF EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared AMEN WARDY SR., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15th day of January, 1981.



G.E. Kellner  
My Commission Expires:  
12/23/84

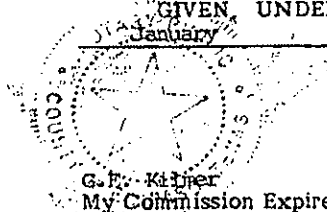
  
Notary Public in and for  
EL PASO County, Texas.

THE STATE OF TEXAS

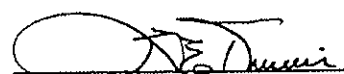
COUNTY OF EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared GERALD HARTGRAVES, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15th day of January, 1981.



G.E. Kellner  
My Commission Expires:  
12/23/84

  
Notary Public in and for  
El Paso County, Texas.




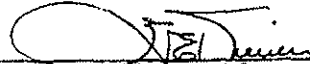
THE STATE OF TEXAS

COUNTY OF EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared JEFF BEAN, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 15th day of January, 1981.

  
G. E. Kilmer  
My Commission Expires:  
12/23/84

  
Notary Public in and for  
El Paso County, Texas.

All of WESTERN SKIES ADDITION to the City of El Paso, El Paso County, Texas, according to the map thereof on file in Book 56, Page 1, Plat Records of El Paso County, Texas,

SAVE AND EXCEPT:

A tract of land containing .059 acres, more or less, out of Tract A, Block 1, WESTERN SKIES ADDITION to the City of El Paso, El Paso County, Texas, more particularly described as follows:

BEGINNING at a point for the Northwest Corner of A.F. MILLER SURVEY NO. 213, in El Paso County, Texas;

THENCE East a distance of 1146.88 feet to the point of beginning and the Northwest corner of the tract herein described;

THENCE North  $71^{\circ} 42'$  East a distance of 150.0 feet to a point for a corner;

THENCE  $18^{\circ} 18'$  East a distance of 147.70 feet to a point for a corner on the northerly right-of-way line of Western Skies Drive;

THENCE South  $71^{\circ} 42'$  West along the northerly right-of-way line of Western Skies Drive a distance of 161.57 feet to a point for the beginning of a curve to the right, whose interior angle is  $01^{\circ} 27' 17''$  and whose radius is 1462.07 feet and whose chord bears South  $72^{\circ} 25' 39''$  West;

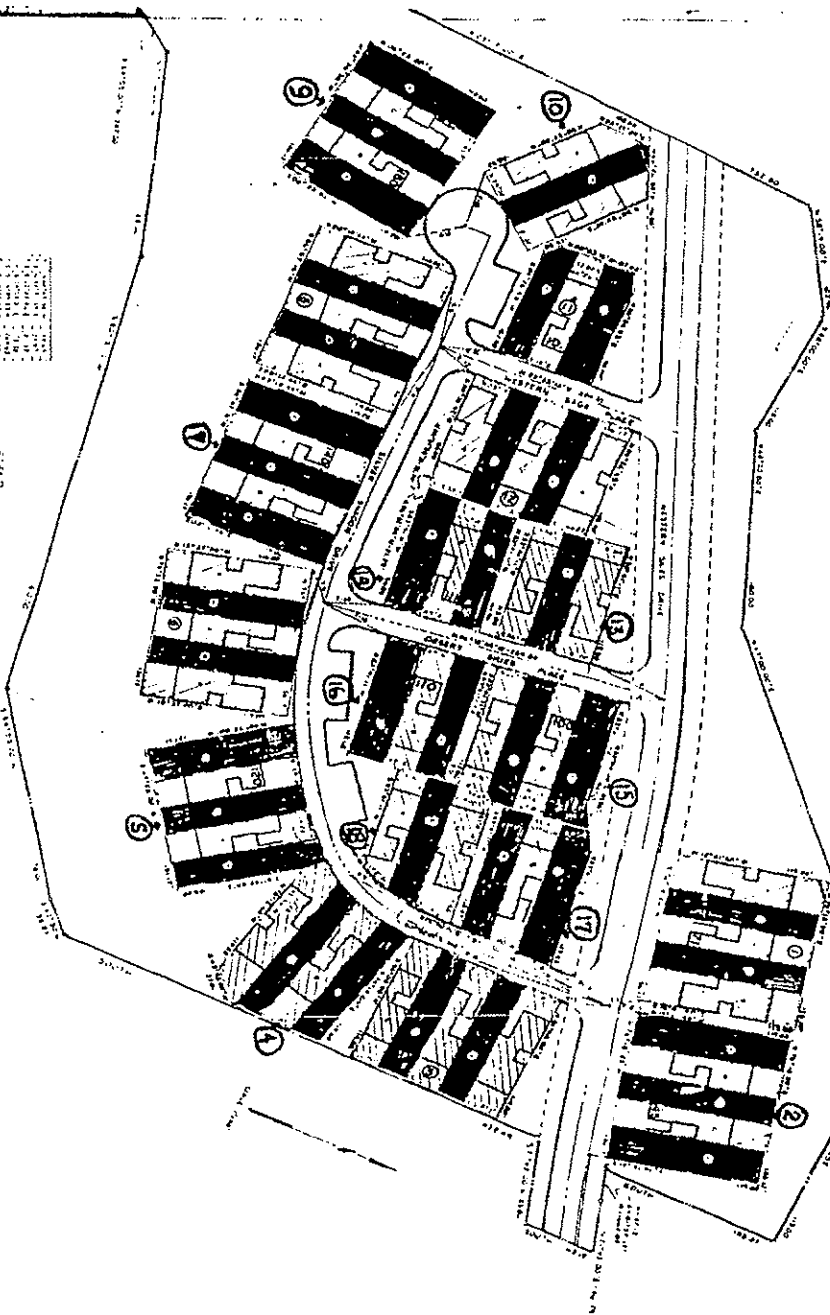
THENCE in a Westerly direction along the arc of said curve a distance of 37.13 feet to a point for a corner;

THENCE North a distance of 155.07 feet to the point of beginning, and containing .059 acres of land more or less.

1146-1245

EXHIBIT "A"

WESTERN SKIES PATIO HOMES



Lot No.	Area (sq. ft.)	Area (sq. ft.)	Area (sq. ft.)
1	1,120	1,120	1,120
2	1,120	1,120	1,120
3	1,120	1,120	1,120
4	1,120	1,120	1,120
5	1,120	1,120	1,120
6	1,120	1,120	1,120
7	1,120	1,120	1,120
8	1,120	1,120	1,120
9	1,120	1,120	1,120
10	1,120	1,120	1,120
11	1,120	1,120	1,120
12	1,120	1,120	1,120
13	1,120	1,120	1,120
14	1,120	1,120	1,120
15	1,120	1,120	1,120
16	1,120	1,120	1,120
17	1,120	1,120	1,120

EXHIBIT "B"

1. JOHN C. DAVIS, REGISTERED ARCHITECT  
 2. JOHN C. DAVIS, REGISTERED ARCHITECT  
 3. JOHN C. DAVIS, REGISTERED ARCHITECT  
 4. JOHN C. DAVIS, REGISTERED ARCHITECT  
 5. JOHN C. DAVIS, REGISTERED ARCHITECT  
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 16. JOHN C. DAVIS, REGISTERED ARCHITECT  
 17. JOHN C. DAVIS, REGISTERED ARCHITECT

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72409  
FILED FOR RECORD

'81 JAN 21 11 41 25

*James O. Montgomery*

STATE OF TEXAS      COUNTY OF EL PASO  
I hereby certify that this instrument was filed  
on the date and time stamped hereon by me and  
was duly recorded in the volume and page of the  
Official Public Records of Real Property, El Paso  
County, Texas.



JAN 21 1981

*James O. Montgomery*

COUNTY CLERK, El Paso County, Texas

1146-1247