

THE STATE OF TEXAS

COUNTY OF EL PASO

**FIRST AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
WESTERN SKIES PATIO HOMES**

THIS FIRST AMENDMENT to the Declaration of Covenants, Conditions and Restrictions for WESTERN SKIES PATIO HOMES is made this 30th day of November, 2006, by the WESTERN SKIES PATIO HOMES OWNERS ASSOCIATION, INCORPORATED, as allowed by the Declaration of Covenants, Conditions and Restrictions of Western Skies Patio Homes dated January 15, 1981 and recorded in Volume 1148, Page 182, Real Property Records of El Paso County, Texas, (hereinafter the "Declaration"), and pursuant to the provisions of Article XIII, Section 2 of the Declaration.

**ARTICLE I**

**DEFINITIONS**

The following definitions are amended to read as follows:

(a) "Association" shall mean and refer to WESTERN SKIES PATIO HOMES OWNERS ASSOCIATION, INCORPORATED, a non-profit corporation incorporated under the laws of the State of Texas for the purpose of effecting the intents and objectives herein set forth, its successors and assigns.

The following definitions are added to Article I of the Declaration:

(j) "Fence" shall mean any unroofed structure separating one area from another, and shall include, but not be limited to rock walls, brick walls, outside walls separating one Lot from another, and any unroofed structure erected for the purpose of separating or dividing areas.

(k) "Party Walls" shall mean the interior walls separating Patio homes into two residential dwellings and garages, and the exterior walls of Patio Homes and garages that also serve as parts of enclosures for unroofed areas on adjoining Lots.

(l) "Patio Home" shall mean any residential dwelling located on a Lot, to include the garage or carport related to such dwelling.



(m) "Pets" are defined as animals normally classified as household animals including domestic dogs, cats, birds not normally edible, and fish. The term does not include animals normally classified as exotic or wild animals, or farm animals such as horses, cows, chickens, goats, sheep, rabbits or pigs.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 3, Quorum, Notice and Voting Requirements, is amended to read as follows:

"(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 duly called for that purpose, written notice of which shall be given to all members not less than ten (10) days nor more than fifty (50) days in advance of the meeting and shall set forth the purpose of the meeting."

"(b) At the initial meeting called, the presence at the meeting of members, or proxies, entitled to cast sixty per cent (60%) of total qualified votes in the Association shall constitute a quorum, unless otherwise specified in these Covenants for a particular action. If the required quorum is not present at the initially called meeting, then an additional meeting may be called, subject to the same notice requirements set forth above; and at such additional meeting the presence of Members, or proxies, entitled to cast thirty percent (30%) of all the votes shall constitute a quorum. If a quorum is not present at the second meeting, then the Board of Directors of the Association shall be empowered to convene the meeting and take all actions with respect to the matters before the meeting, provided that such actions by the Board of Directors are by unanimous vote of the Directors."

The following provision is added to Article III, Section 3 of the Declaration:

(e) Proxies shall not be used for any vote to amend the Declaration.

### **ARTICLE V**

#### **COVENANTS FOR ASSESSMENT**

Section 2, Purpose of Assessment is amended to include as additional purposes (i) the establishment and maintenance of a reserve fund to be used for unanticipated expenses of the Association, and (ii) provide for the costs and maintenance of improvements to the Common Properties.

Section 4, Basis and Amount of Annual Maintenance Assessments, at subsection (b), is amended to add the following at the end of Subsection (b):



"Effective January 1, 2007, any increase in annual assessments of more than twenty per cent (20%) above the amount of annual assessments for the preceding assessment year shall require approval of two thirds (2/3) vote of the Members at a regular or special meeting."

Section 5, Special Assessments, is amended to read as follows:

"Special assessments shall be made in accordance with the following. If the Board of Directors of the Association determines that the amount collected or to be collected from regular assessments will be inadequate for their purpose due to the cost of any construction, unexpected repair or replacement of capital improvements upon the Properties or Common Properties, at for any other reason, the Board of Directors shall make a special assessment for any amount needed. Such special assessments shall be levied and collected in the same manner as regular assessments. In the event that an emergency expenditure requires any special assessment in excess of fifteen per cent (15%) of the annual regular assessment for the year, a Notice of Special Assessment shall be delivered to the Members within fourteen (14) days from the date of such emergency expenditure, and the special assessment shall not be effective until thirty (30) days from the date such Notice of Special Assessment was delivered to the Members. The Board of Directors may levy special assessments against Members for repairs or cleanup costs and expenses to the Properties or the Common Properties occasioned by the acts of such Member or such Member's invitees or licensees.

Section 10, Effect of Nonpayment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of the Association, at subsection (b), is amended as follows:

"(b) The Association shall notify any Member whose regular or special assessment not paid within fifteen (15) days from its due date. Any assessment not paid within thirty (30) days from its due date shall thereafter bear interest at the maximum interest rate allowed by law,"

Section 10, Effect of Nonpayment of Assessment: The Personal Obligation of the Owner; the Lien; Remedies of the Association, at subsection (c), is amended as follows:

"(c) The Association is authorized to recover all costs of collection of delinquent assessments, including its reasonable attorney's fees, and such costs and fees shall be added to the amount of the delinquent assessment. The Association may enforce its assessment lien through any available remedy, including non-judicial foreclosure pursuant to Texas Property Code Section 51.002. The Owners expressly grant to the Board a power of sale, through a trustee designated in writing by the Board, in connection with any such liens. The Association may also bring an action at law against any delinquent Owner, and in the event that a judgment is obtained against the owner in such action at law,



said judgment shall include interest at the above interest rate, together with reasonable attorney's fees and costs of court.

## ARTICLE IX

### USE OF PROPERTIES AND LOTS - PROTECTIVE COVENANTS

The following sections are added to Article IX of the Covenants, as follows:

Section 14. Pets and Animals. The Association is authorized to control the keeping and handling of pets but may not prohibit the keeping of pets. No other animals shall be kept on the properties.

Section 15. Business Activities. No business activity shall be conducted in any residence without obtaining a *Homeowners Business Occupants License* from the City of El Paso, Texas.

Section 16. Parking. The Association is authorized to control the use, parking and/or storage of any type of wheeled vehicle or boat on the *individual* properties or any object or material on the common areas.

Section 6, Paragraph (iii) of Article IX is amended to read as follows:

"(iii) for sale or for rent signs of not more than five (5) square feet may be used on the lots."

Section 7, Fences, is amended by adding the following at the end of the existing paragraph:

"All originally installed or subsequent Association-installed exterior fences in the common area shall be maintained by the Association. In the event that any such fence is damaged or destroyed through the negligence or culpable carelessness of any Owner, his guests, his family or tenants, then the owner damaging the fence shall be responsible for its repair. If the owner does not complete the repair to such fence within sixty (60) days following notice from the Association, the Association may undertake repairs and subject the negligent owner to a special assessment for reimbursement of the actual expenses of making such repairs."

## ARTICLE X

### **ARCHITECTURAL AND EXTERNAL APPEARANCE CONTROL COMMITTEE**

The fifth paragraph of Article X is amended to read as follows:

"No change, addition to, nor removal of any improvement, hereinafter called "change" on the property shall be made until the plans, specifications and descriptions showing the nature, kind, shape, height, color, materials, and location of the change shall have been submitted in writing by the owner, and





approved in writing as to the harmony of external design and location in respect to surrounding structures and topography by the board of directors, which may delegate such authority to the Architectural and External Appearance Control Committee. Improvements shall include, but not be limited to, patio homes and all other buildings, walls, fences, lights, landscaping, lawns, streets, and signs. Exempted from this provision are the interiors of patio homes and the landscaping of that portion of each lot maintained by the owner when such change shall be made in accordance with this covenant, the Bylaws, and other published rules and regulations of the Association. Maintenance of changes made on patio homes or lots and parts of patio homes or lots requiring maintenance due to changes, shall be the responsibility of the owners and future owners of the patio home or lot."

**ARTICLE XIII** of the covenants is renumbered to **ARTICLE XIV**, and the following new **ARTICLE XIII** is inserted into the covenants:

### **ARTICLE XIII**

#### **INTERIOR AND EXTERIOR MAINTENANCE**

Section 1. Exterior Landscape Maintenance. The Association shall provide exterior maintenance and repair upon each lot which is subject to assessment hereunder, as follows: care for trees, shrubs, and grass in front and common side yards and for other improvements. Exterior maintenance shall not include light bulbs or other owner-installed items. A license is hereby expressly reserved to the Association for ingress and egress across the lots for exterior maintenance purposes. In the event that the need for maintenance or repair is caused through the willful or negligent act of an owner, his family, guests, agents, tenants, lessees or licensees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

Section 2. Interior and Other Maintenance. Each owner shall be responsible for the upkeep and maintenance of the interior of his patio home, individual patios, and all other areas, additions, features, or parts of his patio home and property not otherwise maintained by the association. All fixtures and equipment within a patio home unit commencing at a point where the utility lines, pipes, wires, conduits or other systems enter the exterior walls of a patio home unit, shall be maintained and kept in repair by the owner thereof. Owner shall do no act or any work that will impair any easement or right nor do any act or allow any condition to exist which will adversely affect the other patio homes and their owners.



## ARTICLE XIV

### GENERAL PROVISIONS

As above-stated. Section XIII of the Covenants is hereby renumbered Section XIV and is amended as follows:

Section 2, Amendments, is amended to read as follows:

"These Covenants, Conditions, and Restrictions may be amended and/or changed in part with the consent of the owners entitled to cast 60% of the votes of the Association. All amendments shall be evidenced by a document in writing bearing each of the signatures of the members voting for such amendment. All amendments shall be recorded in the office of the County Clerk of El Paso County, Texas. No amendment shall be effective unless it is approved in writing by the holders of the majority of the mortgage indebtedness secured by all or any portion of the properties.

Section 3, Enforcement, is amended to read as follows:

"The Association or any owner shall have the right to enforce by any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or an owner to enforce any covenant or restriction shall in no event be deemed a waiver of the right to do so thereafter. For the purpose of obtaining compliance with any applicable provision of the El Paso City Code, the City of El Paso may enforce these covenants for the benefit of any owner or the Association, or under its general zoning authority."

The following sections are added to Article XIV:

Section 10. Counterparts. Any document, which, pursuant to the terms of this Declaration, requires more than one signature, may be executed in multiple counterparts, each of which shall be deemed an original.

Section 11. Paramountcy of Covenants. The provision of these covenants shall be paramount over the Bylaws of the Association. Rules and regulations contravening the provisions of this Declaration shall be null and void.

Section 12. Indemnification. The Association shall indemnify any member of the Board of Directors or officers of the Association against loss by litigation or otherwise resulting from action taken in performance of duties as directors or officers. The Association shall not indemnify directors or officers for losses resulting from that directors or officer's malfeasance or gross negligence.

Except as herein amended, all other provisions of the Declaration shall remain in full force and effect.



The above and foregoing has been approved by Owners representing not less than sixty six and two thirds percent (66 2/3rds%) of the Owners entitled to cast votes of the Association, as required by Article XIII, Section 2 of the Declaration, at a meeting duly called on the 30<sup>th</sup> day of November, 2006 for the purpose of amending the Declaration, which is hereby so amended.

Signed this 30<sup>th</sup> day of November, 2006.

WESTERN SKIES PATIO HOMES OWNERS  
ASSOCIATION, INCORPORATED

By: [Signature]  
President

BEFORE ME, the undersigned authority, on this day personally appeared HECTOR PORRAS, President of WESTERN SKIES PATIO HOMES OWNERS ASSOCIATION, INCORPORATED, known to me to be the person whose name has been subscribed to the foregoing instrument, and acknowledged to me that the foregoing instrument was executed for the purposes and consideration herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 30<sup>th</sup> day of November, 2006.



[Signature]  
NOTARY PUBLIC, State of Texas



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Filed & Recorded in  
Official Records of  
EL PASO COUNTY  
DELIA BRIONES  
COUNTY CLERK  
Fees \$48.00

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



EL PASO COUNTY, TEXAS

*Delia Briones*

