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Declaration of Horizontal Regime

AMENDMENT TO THE FIFTH AMENDED AND RESTATED
DECLARATION OF HORIZONTAL PROPERTY REGIME
TOGETHER WITH COVENANTS, CONDITIONS AND
RESTRICTIONS FOR
ARROYO ROBLE RESORT,
A TIME-SHARED RESORT

This amendment to the Fifth Amended and Restated Declaration of Horizontal Property Regime and Together with Covenants, Conditions and Restrictions for Arroyo Roble Resort made this 6th day of September, 1989 by the owners of more than fifty percent (50%) of the property, and amends the Fifth Amended and Restated Declaration of Horizontal Property Regime Together with Covenants, Conditions and Restrictions for Arroyo Roble Resort, a Time-Shared Resort dated October 20, 1986 and recorded on November 3, 1986 in Docket 1123, Page 215 through 262 inclusive, Official Records of Coconino County, Arizona and any amendments thereto (hereinafter "Declaration").

WHEREAS, Article VI, Section 6 of the Declaration provides for amendment of the Declaration;
and,

WHEREAS, the undersigned representing the owners of more than fifty percent of the real property described in the Agreement desire and intend to amend the Declaration;

NOW THEREFORE, the Declaration is hereby amended as follows:

I. The existing Article VI, Section 2(a) shall be amended to add at the end of the last sentence of the subsection the following:

"For purpose of this Subsection only the definition of Property shall include all real property and fixtures, and personal property including but not limited to furniture, furnishings, window coverings, linens, dishes, pots and pans, equipment and vehicles."

FIFTH AMENDED AND RESTATED DECLARATION
OF HORIZONTAL PROPERTY REGIME
TOGETHER WITH COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
ARROYO ROBLE RESORT,
A TIME-SHARED CONDOMINIUM

This Fifth Amended and Restated Declaration is made on the 20th day of October, 1986, by Arroyo Roble Development Corporation as owner of 75% of the property, and supersedes in its entirety the amended Declaration of Horizontal Property Regime recorded on June 2, 1983, in Docket 928, pages 793-838, inclusive, records of the Coconino County Recorder, and supersedes the Second amendment to Declaration of Horizontal Property Regime recorded on December 23, 1983, in Docket 958, pages 814-822, inclusive, records of the Coconino County Recorder, and supersedes the Third Amended Declaration of Horizontal Property Regime recorded on February 20, 1985, in Docket 1017, Page 882-927, inclusive, records of the Coconino County Recorder and the Fourth Amendment to Declaration of Property Regime, recorded on April 12, 1985, at Docket 1025, Pages 160-166, inclusive, records of Coconino County Recorder.

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ARTICLE I

DECLARATION OF HORIZONTAL PROPERTY REGIME

Section 1. DESCRIPTION. Declarant is the owner of real property in Coconino County, Arizona, described in Exhibit A, attached hereto and by this reference incorporated herein, which shall be the initial Covered Property under this Declaration, and of the real property which may, from time to time, be annexed pursuant to this Declaration and become a part of the Covered Property. This Declarant "A" is platted as a Horizontal Property Regime according to the plat recorded in the office of the County Recorder of Coconino County, Arizona, in Case 4 of Maps at Pages 46, 46A, and 46B thereof, a reduced copy of which is attached hereto as Exhibit "B." Said plat of horizontal property regime is hereby adopted and ratified by Declarant as though originally executed by Declarant.

Section 2. DECLARATION. Pursuant to Chapter 4.1, Article I, Sections 33-551 to 33-561, inclusive, Arizona Revised Statutes, 1962, and Chapter 20, Article 9, Ariz. Rev. Stat. Ann. §§ 32- 2197, et seq., 1982, Declarant does hereby submit said Covered Property, including the Improvements to be constructed thereon, and all easements, rights and appurtenances belonging thereto, all of which may hereinafter be referred to as the "Property," "Covered Property," or "Condominium Property," to a Time-Shared Horizontal Property Regime, and said Declarant does further hereby declare that all of such Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions and restrictions, all of which are declared to be in furtherance of a plan for the improvement, development and sale of said Property and are established for the purpose of enhancing and perfecting the value and desirability of said Property and every part thereof. No property other than that described in Exhibit "A" above is deemed subject to this Declaration unless and until specifically made subject thereto, as provided herein.

Section 3. DESCRIPTIONS.

(a) **SPACE OF THE BUILDING.** There shall be seven (7) multi-unit Buildings of two stories each in the Horizontal Property Regime. The cubic content space of each Building with reference to its location on the land is as more fully set forth and described in the recorded amended plat referred to in Section 1 above.

(b) **SPACE OF DWELLING.**

(1) The Horizontal Property Regime initially shall

be composed of seventy-two (72) individual Dwelling Units. Each Dwelling in the Horizontal Property Regime shall be numbered as shown on the amended plat referred to in Section 1 above. The cubic content space of each Dwelling is as is more fully set forth and described in the recorded amended plat referred to in Section 1 above.

(2) The number and designation of Dwellings which are time-shared will vary from time to time. A document shall be appropriately recorded whenever a Unit is sold as a Unit not divided in time and whenever a Unit previously designated as not divided in time is subsequently time-shared, pursuant to the Article titled, "Restrictions on Use," Section titled, "Restriction on Further Subdivision.

(c) **TIME-SHARE INTERVALS.**

(1) At the option of Developer, any Units may be sold to Owners as entire Units, subject to the limitations set forth herein.

(2) The Declarant's initial intent is to develop the Covered Property as a time-sharing resort condominium; however, any property or portion thereof now within the Covered Property or brought within the Covered Property by the Declarant, may, at the sole option of Declarant, be developed as a condominium without division by time or Interval Units.

(3) Each Interval Unit shall be given a separate, consecutive identifying number. Such number shall be issued, to the extent reasonably possible, in the order of purchase. Fifty-two numbers shall be assigned for every Unit which is time-shared. Thus, in the event all seventy-two Units in the Initial Covered Property are time-shared and none are sold as entire Units, the identifying numbers shall be 1 to 3,744 inclusive. The said identifying numbers shall be a part of the legal description of each Interval Unit.

(4) Any Unit within the Property may be sold subsequently by the Developer as a Unit not divided in time; therefore no Interval Owner is assured of ever being able to use a specific Dwelling. No more than four (4) Dwellings in any Building shall be sold as Units not divided in time until twenty-four (24) Dwellings have been sold as Units not divided in time. Once twenty-four (24) such Units have been sold, additional Dwellings in each Building may be sold as Units not divided in time, to the extent that no Building has more than two (2) such Units more than any other Building in the Initial Covered Property.

(5) One Interval Week for each Unit which is time-shared shall not be sold to an Owner, but shall be conveyed to the Council as a "Maintenance Week" for the purpose of performing general maintenance and routine repairs to the time-shared Units. Such Maintenance Week shall be conveyed to the title company/fiduciary which acts as a depository for the escrow of Interval Units of Arroyo Roble Resort, which shall record such conveyance in its name. Upon the closing of the sales of each fifty-one Interval Weeks, except for Units not time-shared, but in no event later than the fourth anniversary of the date of the first public report for the subdivision, the title company shall convey title to the Maintenance Week then standing in its name to the Council of Co-Owners.

(6) A Maintenance Week shall not be subject to assessment, shall have no voting rights associated with it, and shall be disregarded in computing the obligation to pay assessments and the right to receive benefits from insurance and condemnation. Such Maintenance Week shall have appurtenant thereto an undivided interest in the Common Elements equivalent to the undivided interest in the Common Elements appurtenant to any Interval Week.

(7) It is recognized herein that in some years there will be a 53rd week. When such 53rd week occurs, the same shall belong to the Council on the same terms and conditions as for a Maintenance Week.

(d) GENERAL COMMON ELEMENTS. The General Common Elements shall include all of said Property referred to in Section 1 above, including the land upon which the Dwellings are located, the Buildings, all bearing walls, columns, vertical supports, roofs, floors, foundations, slabs, all waste, water and gas pipes, ducts, flues, chimneys, conduits, wires, all recreation facilities, landscaping, fences, trash collection bins, walkways, streets, private drives, parking spaces, utility meters and all other devices and premises designed for common use or enjoyment by more than one Owner or Owners of a single Dwelling, all as is more fully set forth and described herein and in the recorded plat as referred to in Section 1 above, and except for a Dwelling as defined, and except for the outlets of utilities when located within a Dwelling. The Common Elements shall remain undivided; and no Owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Elements, which shall be owned in common by the

Interval Unit Owners hereof. Said ownership shall be evidenced by the deed of ownership for each of said Interval Units.

(e) FRACTIONAL INTEREST.

(1) Until or unless changed, pursuant to the Article entitled "Integrated Nature of the Covered Property," each Interval Unit shall bear an undivided fractional interest in the Common Elements as set forth hereinafter: 1/3744. Each Unit not divided in time shall bear an undivided fractional interest in the Common Elements as set forth hereinafter: 1/72. As additional Units or Interval Units are brought within the Horizontal Property Regime the fractional interest of each shall be represented by a fraction with "1" as the numerator and the denominator determined as follows: for each Unit not divided in time, the denominator shall be the total number of Units, whether such Units are divided in time or not. For each Interval Unit the denominator shall be the product of 52 times the total number of Units whether such Units are divided in time or not. Such change shall be set forth in the Supplementary Declaration pursuant to Article III.

(2) Each Interval Unit Owner shall own, in common with all other Interval Unit Owners, an undivided fractional interest in all of the Dwellings, except for those Dwellings conveyed as Units not divided in time. The fractional interest of any Interval Owner in the time-shared Dwellings and the number and designation of Dwellings owned in common by the Interval Owners is subject to change, pursuant to this Declaration. Said fractional interest in the time-shared Dwellings for each Interval, at any time, shall be a fraction with a numerator of one and a denominator which is 52 times the remainder of: The total number of Dwellings minus the number of Dwellings conveyed as entire Units. Said fraction shall represent the Interval Owner's interest in the time-shared Dwellings only, and shall have no effect on the fractional interest in the Common Elements. The fractional interest in the time-shared Dwellings and the apartment number of Dwellings so owned, need not be set forth specifically in the deed, and are subject to change, pursuant to the subsection of this Section titled, "Space of Dwelling."

(3) As additional Dwelling Units are brought within the Horizontal Property Regime, if the cubic content space of the new Units varies from the cubic content space of the original Units by twenty percent (20%) or more, in that event:

(i) The interest of each Unit and Interval Unit in the Common Elements shall be represented by a fraction determined as follows: The denominator shall be the total maximum occupancy as set by the covenants, conditions and restrictions, for all Units within the Covered Property, multiplied by 52. The numerator for an Interval Unit shall be the maximum occupancy for that Unit. The numerator for a Unit not divided in time shall be the maximum occupancy for that Unit multiplied by 52.

(ii) The fractional interest of each Interval Owner in the time-shared Dwellings shall be a fraction determined as follows: The denominator shall be the total maximum occupancy for all time-shared Units multiplied by 52. The numerator shall be the occupancy specified for one Unit available for purchase at the time the Interval was first sold to an Owner.

(iii) In the alternative, the Interval Units may be restricted to use of the time-shared Dwellings in the Initial Covered Property and the fractional interest in the time-shared Dwellings shall not change, but shall be limited to the Initial Covered Property. All fractions may be reduced.

(4) Each owner hereby appoints the Declarant his or her attorney-in-fact to amend this Declaration, to create new or additional entities for the care, operation and management of the Property, to sign all documents and to do all things necessary for further development of the Initial Covered Property and subsequent Covered Property, as Declarant shall deem appropriate for the development of a resort facility.

(f) **FURNISHINGS.** Personal property, including furnishings, dishes, linens and utensils, will be provided to Interval Units as set forth on Exhibit C. The Board may revise Exhibit C without amending this Declaration.

Section 4. VERTICAL DIMENSION. All reference to vertical dimensions made in this document or on the recorded plat referred to above, shall be based upon a bench mark being a one-half inch iron pin in concrete near the southeast corner of Unit 15, elevation 100.00 feet, assumed datum.

ARTICLE II

DEFINITIONS

Section 1. "Annexation Property" means any real property contiguous to the Initial Covered Property which contiguous property is owned by Declarant, or by an entity in which some or all of the ownership is held by one or more of the officers or shareholders in Declarant.

Section 2. "Articles" means the Articles of Incorporation of the Arroyo Roble Resort Council of Co-Owners which are or shall be filed in the office of the Corporation Commission of the State of Arizona, or its successor, as said Articles may be amended from time to time.

Section 3. "Board" means the Board of Directors of the Arroyo Roble Resort Council of Co-Owners.

Section 4. "Building" means and refers to the structures designated as Buildings on the recorded plat referred to in Section 1 of Article I above, in accordance with Ariz. Rev. Stat. Ann. § 33-551(2) (1962).

Section 5. "Bylaws" means the Bylaws of the Arroyo Roble Resort Council of Co-Owners, as such Bylaws may be amended from time to time.

Section 6. "Co-Owner" means a person, corporation, partnership or other legal entity capable of holding or owning an interest in real property who owns all or an interest in a Unit or Interval Unit as described herein (sometimes referred to herein as "Owner"), and shall enjoy all the privileges thereof.

Section 7. "Co-Owner's Interest" means the fractional or percentage interest in the Common Elements ascribed to each Unit or Interval Unit by this Declaration, and for a Co-Owner of an Interval Unit also includes the fractional or percentage interest in common with other Interval Owners of all of the time-shared Dwellings.

Section 8. "Council" means all of the Owners of the Units and Interval Units, pursuant to Ariz. Rev. Stat. Ann. § 33-551(5) and 32-2197.04 and refers to the Arroyo Roble Resort Council of Co-Owners, an Arizona nonprofit corporation, formed as an entity pursuant to Ariz. Rev. Stat. Ann. § 10-1002, et seq., through which the Owners shall act as a Council of Co-Owners in accordance with Arizona law permitting Horizontal Property Regimes, Real Estate Time Shares, and the organization and management thereof.

Section 9. "Covered Property" means all the real property described on Exhibit A hereto and,

subsequent to the annexation thereof pursuant to the Article of this Declaration entitled "Integrated Nature of the Covered Property," any real property which shall become subject to this Declaration.

Section 10. "Declarant" means Arroyo Roble Development Corporation, its successors in interest and assigns.

Section 11. "Declaration" means this document, as same may be amended and supplemented from time to time.

Section 12. "Developer" means Arroyo Roble Development Corporation, its successors in interest and assigns, other than a purchaser of one Unit or one or more Interval Units, not for resale.

Section 13. "Dwelling" means a separate freehold estate consisting of an airspace defined as follows:

(a) The lower vertical boundary is the top of the finished but undecorated floor thereof.

(b) The upper vertical boundary coincides with the underside of the finished but undecorated ceiling or ceilings thereof.

(c) The lateral boundaries are the interior of the Unit's outside finished but undecorated walls, windows and doors and the plane of the undecorated walls or edges of such Unit's appurtenant patio or balcony.

(d) Each such Dwelling includes the surfaces so described, and the airspace contained within said boundaries. Each such Dwelling shall also include the fireplace, if any, range, garbage disposal units, other household appliances, hot water heater, furnace and air conditioner lying within said boundaries or appurtenant areas.

(e) The airspaces for patios and balconies are, where so designated, part of the Dwelling.

(f) Unless otherwise indicated, all airspace boundary lines intersect at right angles.

The following are not part of a Dwelling: Structural parts of the Building, bearing walls, columns, vertical supports, roofs, floors, foundations, slabs, all waste, water and gas pipes, chimneys, ducts, flues, conduits, wires and other utility and installation lines wherever located, except the outlets and traps thereof when located within the Dwelling. In interpreting deeds, plats, declarations, and plans, the existing physical boundaries of a Dwelling or a Dwelling reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the description expressed in the deed, plat, plan or Declaration, regardless of settling or lateral

movement of the Building, and regardless of minor variances between the boundaries as shown on the plan or in the deed and Declaration and those of the Building.

Section 14. "General Common Elements" means all the General Common Elements for the common use or enjoyment by more than the Owner or Owners of a single Unit or Interval Unit, as described in Article I, Section 3(c) above and in Ariz. Rev. Stat. Ann. § 33-551(6) (1962) , and includes all of the Property except for Units 1 through 72, inclusive. The General Common Elements may sometimes hereinafter be referred to as "Common Elements."

Section 15. "Improvement" means all physical structures including, but not limited to, the buildings, private drives, parking areas, fences and walls, recreation building, tennis courts, cabana, swimming pool, barbeque facilities, other recreational facilities, if any, and all landscaping, including, but not limited to, hedges, plantings, trees and shrubs of every type and kind.

Section 16. "Interval" means an annually reserved time period of one week from 4:00 p.m. local time in Sedona, Arizona, on any day of the week through 4:00 p.m. on the same day of the week one week later. Intervals may be reserved in separate one day increments, and will be referred to as "Part Intervals" or "Days." See, however, provisions for Maintenance Time which limit or prohibit use by an Owner during a portion of each Interval.

(a) "Part Interval" means two or more consecutive days but less than an Interval.

(b) "Day" means a single day of an Interval.

(c) All provisions of this Declaration, the Bylaws, rules and regulations pertaining to use and reservation of an Interval shall also apply to use and reservation of a Part Interval or Day, and all references to a "Part Interval" shall include "Day" unless the context clearly requires otherwise.

Section 17. "Interval Ownership" means a conveyance in fee simple absolute of an undivided interest in the Common Elements owned as tenants in common with all other Unit and Interval Unit Owners of an undivided interest in the time-shared Dwellings with all other Interval Owners and a right to use a Dwelling annually for a stated period of time in accordance with this Declaration, the Bylaws and rules of the Council.

Section 18. "Interval Time" refers to any time-shared use of a Dwelling, whether one or more days or one or more weeks.

Section 19. "Interval Unit" means and refers to a fee simple interest consisting of a right to use an Interval in a Dwelling, plus the "Co-owner's Interest," as such terms are defined herein, and an unseverable membership in the Council. As used herein, "Interval Unit" may also include "Unit" if the context so indicates.

Section 20. "Lease" means and refers to any agreement for the leasing or rental of the Unit or Interval Unit whether written or oral and includes any agreement written or oral for the exchange or use of a Unit or Interval Unit by one other than the Owner whether payment of rental is a provision or not.

Section 21. "Maintenance Time" means and refers to the last six hours of every Interval, or Part Interval or Day, during which time the Council has the exclusive right to use the Unit for maid service, maintenance, repairs and replacements.

Section 22. "Maintenance Week" means and refers to the unsold fifty-second Interval for every time-shared Unit, which Interval shall belong to the Council.

Section 23. "Member" means any person, corporation, partnership, joint venture or other legal entity which is a member of the Arroyo Roble Council of Co-Owners, is synonymous with "Owner" and "Co-Owner," and includes "Interval Owner."

Section 24. "Mortgage", "Mortgagor" and "Mortgagee" mean and refer to all instruments establishing a security interest, including Deed of Trust, and do include Trustors, Trustees and Beneficiaries under Deeds of Trust.

Section 25. "Property" means and refers to the land, whether committed to the Horizontal Property Regime in fee or as a leasehold interest, the Buildings, all other Improvements located thereon, and all easements, rights and appurtenances belonging thereto.

Section 26. "Unit" means and is synonymous with "Dwelling."

Section 27. "Unit not divided in time" means and refers to a Unit which is conveyed to an Owner as an entirety notwithstanding that the division of such Unit into Intervals was approved by the Real Estate Department of the State of Arizona.

ARTICLE III

INTEGRATED NATURE OF THE COVERED PROPERTY

Annexation Property may be annexed to and become subject to this Declaration by any of the methods set forth hereinafter in this Article, as follows:

Section 1. DEVELOPMENT OF THE COVERED PROPERTY. Developer may sequentially develop the Covered Property and the Annexation Property, if any, on a phased basis; however, Developer or Declarant may elect to annex such real property to this Declaration in increments of any size whatsoever, or to develop more than one such increment at any given time and in any given order. Moreover, Declarant reserves the right to subject all or any portion of the Annexation Property to the plan of this Declaration or one or more separate declarations of covenants, conditions and restrictions which subject said property to the jurisdiction and powers of a council of co-owners, homeowners' association or other entity with powers and obligations similar to the Council and which is not subject to the provisions of this Declaration. Although Declarant shall have the ability to annex the Annexation Property as provided in this Article, Declarant shall not be obligated to annex all or any portion of such property, and such property shall not become subject to this Declaration unless and until a Supplementary Declaration shall have been so executed and recorded.

Section 2. SUPPLEMENTARY DECLARATIONS. A Supplementary Declaration shall be a writing in recordable form regardless of name or title, which annexes real property to the plan of this Declaration and which incorporates by reference all of the covenants, conditions, restrictions, easements and other provisions of this Declaration and shall describe the Buildings to be erected or which are erected, shall describe the Units contained therein, shall set forth the maximum number of occupants allowed in each Unit thereof, shall publish and declare that such land and any Improvements thereon and the Owners and others having interest therein are brought within this Declaration and shall set forth the necessary adjustments in fractional interest or ownership of the Common Elements applicable to each Unit and shall describe the change in fractional interest of Dwellings, if affected. Upon the recordation of such supplement to this Declaration in the Official Records of the County Recorder of Coconino County, Arizona, any such subjection of property therein to the provisions of this Declaration shall be effective automatically, as though originally included herein.

Section 3. VARIATION IN SUPPLEMENTARY DECLARATION. Such Supplementary Declarations contemplated in Section 2 above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration, or any merger or consolidation, revoke, modify or add to the covenants established by this Declaration with respect to previously Covered Property.

Section 4. ANNEXATION WITHOUT APPROVAL AND PURSUANT TO GENERAL PLAN. All or any part of the Annexation Property may be annexed to and become subject to this Declaration and subject to the jurisdiction of the Council without the approval, assent or vote of the Council or its Members, provided that a Supplementary Declaration covering the portion of the Annexation Property to be annexed, shall be executed and recorded by or with the approval of Declarant; provided, however, no Supplementary Declaration shall be so executed and recorded pursuant to this Section more than seven (7) years (i) subsequent to the recordation of this Declaration or (ii) subsequent to the last recordation of a Supplementary Declaration, whichever of (i) or (ii) shall have later occurred. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the said real property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Council, and thereafter said annexed real property shall be part of the Covered Property and all of the Owners of Units and Interval Units in said annexed real property shall be Members automatically.

Section 5. ANNEXATION PURSUANT TO APPROVAL. Upon approval in writing of the Council, by more than fifty percent (50%) of the votes entitled to be cast, or the written assent of such Members, Declarant or Developer may add real property, other than the Annexation Property to the plan of this Declaration and to subject such property to the jurisdiction of the Council, by filing of record a Supplementary Declaration. The provisions of this Section shall also apply to the Annexation Property subsequent to the expiration of the power of Declarant to annex such property without the approval of the Members as provided in this Article. The certificate of the President and the Secretary of the Council attached to any Supplementary Declaration recorded pursuant to this Section certifying that the required percentage of the voting power of Members has approved the recordation of such Supplementary Declaration, shall be deemed conclusive proof thereof.

Section 6. MERGERS OR CONSOLIDATIONS. Upon a merger or consolidation of the Council with another council, the Council's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated council, or, alternatively, the properties, rights and obligations of another council may, by operation of law, be added to the properties, rights and obligations of the Council as a surviving corporation pursuant to a merger. The surviving or consolidated council may administer the covenants, conditions and restrictions established by this Declaration within the Covered Property, together with the covenants, conditions and restrictions established upon any other property as one plan.

Section 7. DEVELOPMENT OF RECREATIONAL FACILITIES.

(a) It is recognized and acknowledged by every Owner that any recreational facilities shall be developed sequentially as Units are constructed and that some recreational facilities will not be available for use until all seventy-two (72) Units are completed.

(b) The recreational facilities consist of an indoor/outdoor swimming pool, two tennis courts, and a recreational building which contains the following facilities: 2 racquet courts, billiard room, exercise room, sauna, steam room, whirlpool and 2 dressing rooms. Developer, in its sole discretion, or the Council, may provide more recreational facilities.

Section 8. NON-EXCLUSIVE RIGHT TO RECREATIONAL FACILITIES.

(a) It is recognized and acknowledged that the recreational facilities, as planned by the Developer, may accommodate more people than are likely to participate from a seventy-two (72) Unit Condominium.

(b) In consideration for the grant of easement referred to in Article titled "Restrictions on Use, Section titled "Easements" paragraph titled "Access Easement to Covered Property," which easement provides an alternate, more direct access to the Property, the Arroyo Roble Hotel Partnership, its successors and assigns, is granted twenty (20) family memberships in the recreational facilities. Such recreational memberships shall endure as long as the Arroyo Roble Resort Condominium continues to exist, by whatever name, or until the Arroyo Roble Hotel, hereinafter hotel, is converted to a Condominium and each Unit in said Condominium is brought within the Covered Property, is subject to assessments, and is entitled to full use of the recreational facilities.

(c) Each of the memberships granted to the Arroyo Roble Hotel Partnership may be used at any one time by the occupants of one (1) room or suite in the hotel, to a maximum of four (4) persons to one (1) membership at any time. Such guests shall abide by the posted and printed rules of the Council regarding use of the facilities. Any hotel guest who abuses such rules shall not be entitled to the notice and hearing provided to Owners, but may be ejected summarily by the attendant on duty, hotel staff or agent, if such ejection may be effected without a breach of the peace. Nothing herein shall prevent the use of any other remedy against any hotel guest.

(d) The Declarant, Manager, or Board, as the case may be, may offer a reasonable number of annual family memberships in the recreational facilities to persons other than Owners. Initially, a reasonable number of such family memberships shall be presumed to be no less than one hundred (100). The annual membership fee for such memberships shall be set to achieve a reasonable balance between maximum financial base for the recreational facilities and the minimum degradation of use and enjoyment of the facilities by the Owners. It is specifically recognized that the fee charged may be less than a membership's pro rata share of the costs. Income from family memberships shall be paid to the Council to defray costs of operating and maintaining the recreational facilities.

(e) As additional property is brought within the Covered Property, the Board may reduce the number of annual memberships deemed to be a reasonable number without amending this Declaration.

Section 9. AMENDMENT BY THE DEVELOPER. At any time prior to sale of seventy-five percent (75%) of the Covered Property, Developer may amend this Declaration to facilitate compliance with requirements of any state or local government or lending institution, or to improve marketability of the Property. Such amendment shall be signed by Developer and recorded with the County Recorder of Coconino County, in addition to other requirements of Arizona law. Upon recordation, the Amended Declaration shall be binding on all Owners.

ARTICLE IV

PROPERTY RIGHTS

Section 1. OWNER'S RIGHT OF ENJOYMENT. Each Owner shall have the right to use the Common Elements in common with all other Owners within the Covered Property as may be required for the

purposes of access and ingress and egress to, and use and occupancy and enjoyment of, the respective Interval Unit reserved by such Owner and the personal property furnishing and equipping such Unit, and for such other related purposes as from time to time may be prescribed by the Board. Such right to use the Common Elements and Units shall extend to each Owner and the agents, servants, tenants, family members, and invitees of each Owner. Such rights to use and possess the Common Elements and Units shall be subject to all of the easements, covenants, conditions, restrictions and other provisions of record, shall be governed by this Declaration, the Articles and Bylaws, and the rules and regulations promulgated by the Board, and shall be subject to the following:

(a) The right of the Council, its agents and employees to exclusive possession of a Unit between 10:00 a.m. and 4:00 p.m. on the ending day of each Interval or occupancy. When consecutive Intervals of a Unit are occupied by one Owner, the Council will endeavor to effect weekly maid service and maintenance with a minimum of inconvenience to the Interval Owner, although the council's right to exclusive possession during the Maintenance Time shall not be waived thereby. The Board or the managing agent of the Board may revise the schedule for maintenance, linen service and maid service without amending this Declaration.

(b) The right of the Council to limit the number of guests of Owners and to restrict or prohibit the use of the recreational facilities by persons not in possession of a Unit, but owning an interest.

(c) The right of the Council to establish reasonable rules, regulations and fees for use of Common Elements including, but not limited to, recreational facilities.

(d) The right and discretion of the Council to reassign temporarily any Interval Owner to another Unit as comparable as is reasonably possible, when the Interval Owner's reserved Unit requires repair or replacement which cannot be effected within one (1) working day; and the right and discretion of the Council to use and occupy the reserved Interval of an Interval Owner for such purpose when such reserved Interval is not in use by the Owner or the Owner's agents, servants, tenants, family members or invitees. It is contemplated that such use will benefit all Owners; therefore, no payment will be made for such use of vacant Units, nor for Intervals not used, nor will assessments be reimbursed. The right to use an Interval Unit in one calendar year may not be carried over to a subsequent calendar year, except that upon availability as determined by the Council the right to use an Interval Unit may be carried over to January or February of the

subsequent year. Any Interval Unit not reserved may be rented by the Council 14 days or less prior to use. Later reservations from Owners will be accepted on an availability basis.

(e) The right and discretion of the Council to assign any Owner to any Unit available regardless of the Unit requested or reserved.

(f) The right and discretion of the Council to rent any unoccupied or unreserved Unit for transient use for the benefit of the Council.

(g) The right of the Council to suspend the right of an Owner to use the Common Elements or any portion thereof designated by the Board during any time in which any assessment against his Unit or Interval Unit remains unpaid and delinquent or for any single infraction of the rules and regulations of the Council, provided that any suspension of such right to use such Common Elements, except for failure to pay assessments, shall be made only by the Council or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws. The Council shall not have the right hereunder to suspend any Owner's right to use any portion of the Common Elements necessary for such Owner to gain access to his Unit during the time he is entitled to such access.

Notwithstanding the foregoing, the Council may refuse to reserve accommodations for an Interval Unit which is delinquent in payment of assessments of any nature, and, upon 14 days' notice to the Owner, may cancel reservations previously made for any such Interval Unit. No Interval Unit may be used unless the assessments of every kind for the calendar year have been paid in full. If the annual assessment of any Interval Unit is not paid by the twentieth day of January, any and all reservations outstanding for the Interval Unit shall be cancelled without notice to the Owner. Notwithstanding other definitions herein of "notice," "payment," or "receipt," payment must be in hand at the Council place of business prior to January 20th of the year in which the assessment comes due.

(h) The right of the Council to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility, for such purposes and subject to such conditions as may be agreed to by the Members. Except for utility easements, no such dedication or transfer shall be effective unless an instrument signed by the Owners of a majority of the Interval Units to such dedication or transfer has been recorded.

Section 2. DELEGATION OF USE. Any Owner may delegate his right of enjoyment to the Common Elements to the members of his family or his tenants

who reside in his Unit, or to a reasonable number of guests, subject to the provisions of this Declaration, the Articles, Bylaws and rules and regulations adopted by the Council.

Section 3. LIMIT ON OCCUPANCY. No more than six (6) persons may occupy a Unit in the Initial Covered Property at any time.

Section 4. DEVELOPER'S RIGHTS.

(a) The Developer shall have the right while any Units or Interval Units remain unsold to use a portion of the Common Elements for the purpose of aiding in the sale of Units and Interval Units, including the right to use portions of the Condominium Property for parking for prospective purchasers and such other persons as Developer determines and including the right to use any of the Property for office and sales purposes until the entire Covered Property is sold. The foregoing right shall mean and include the right to display and erect signs, billboards and placards, and to store, keep and exhibit the same, and to distribute audio and visual promotional materials upon the Common Elements. Operating expenses for any Common Element occupied exclusively by Developer, shall be paid for by Developer during such period of exclusive use.

(b) The Developer shall have the right to retain Units and Interval Units for rental as transient or resort accommodations and shall pay assessments as for a Time-Shared Unit or as for a Unit not divided in time, depending on the services and furnishings required, on the same basis as other Owners.

ARTICLE V

COUNCIL OF CO-OWNERS

Section 1. PURPOSE. It is desirable for the efficient management of the Covered Property and the preservation of the value, desirability and attractiveness of the Covered Property to create a corporation to which shall be delegated and assigned the powers of managing the Common Elements of the Covered Property, maintaining and administering the Common Elements, maintaining, cleaning, furnishing, and providing maid service, linens, dishes and utensils for the Interval Units and administering and enforcing these covenants, conditions and restrictions and collecting and disbursing funds pursuant to the assessments and charges hereinafter created and referred to and to perform such other acts as shall generally benefit the Covered Property.

Section 2. FORMATION. In furtherance of the purposes set forth in Article I, the Developer shall cause the Arroyo Roble Resort Council of Co-Owners, an Arizona corporation not for profit, formed as an entity pursuant to Ariz. Rev. Stat. Ann. § 10-1002 et seq., to be incorporated, through which the Owners shall act as a Council of Co-Owners in accordance with Arizona statutes permitting Horizontal Property Regimes and the organization and management thereof.

Section 3. POWERS OF THE BOARD OF DIRECTORS.

(a) The governing body of the Council shall be empowered to determine and decide all questions regarding enforcement of these restrictions and assessments or charges necessary for maintenance of Common Elements, for the use and benefit of all Owners, except as provided in the Bylaws, including, but not limited to, time and manner of payment of assessments and time and manner of making, changing, keeping and canceling reservations. The Board shall also be empowered to adopt all rules and regulations not specifically prohibited herein or by law.

The Board shall further be empowered to change the date on which assessments become delinquent, the time and the manner of making, canceling and changing reservations, and the charges and restrictions on use of the facilities, by amendment of the Bylaws. The Bylaws shall be controlling in any inconsistency thereby created between this Declaration and the Bylaws, notwithstanding the general rules of interpretation included in any of the constituent documents.

(b) The Board of Directors of the Council shall have the right to contract for services or to transfer to any other corporation, person or partnership, all of its rights and obligations hereunder, but upon such transfer and the assumption of such obligations by the transferee, the enforcement of covenants shall remain the sole responsibility of the Council unless the Council is dissolved.

(c) In addition to other powers and duties set forth in this Declaration, the Board shall have all authority for operation of any recreational facilities, but may, at its option, form a committee comprised of Owners and recreational members, if any, in proportions established by the Board, which committee shall have such powers and duties as are designated by the Board.

Section 4. TIME OF ANNUAL MEETINGS.

The first annual meeting shall be held within thirteen (13) months of the conveyance of the first Unit or Interval Unit to an Owner. Sub-sequent annual meetings shall

be held on the second Wednesday in November. A change in the annual meeting date shall not require an amendment to this Declaration.

ARTICLE VI

COVENANT FOR ASSESSMENTS

Section 1. PERSONAL OBLIGATION OF ASSESSMENTS.

Each Owner of any Unit or Interval Unit, by acceptance of an instrument, conveyance or encumbrance therefor, except as provided for in this Article, whether or not it shall be so expressed in such instrument, is deemed to covenant and agree to pay to the Council: (1) general assessments for utilities, insurance, maintenance, management, and other general expenses, hereafter referred to as "general assessments"; (2) special assessments for capital improvements, such assessments to be established and collected as provided in the Articles and Bylaws; and (3) individual assessments for special expenses incurred by the Council because of acts or omissions for which the Owner of a Unit or Interval Unit is responsible. The annual, special and individual assessments, late payment penalties, if any, together with interest, costs, and reasonable attorney's fees, shall be a lien upon the Unit or Interval Unit and the Owner's Interest as such lien is created by this Declaration, the Articles or Bylaws. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Unit or Interval Unit at the time the assessment was levied. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them, or unless prior to the transfer of title as evidenced by the records of the County Recorder or other appropriate governmental agency, a lien for such assessment shall have been filed or recorded.

Section 2. PURPOSE OF ASSESSMENTS.

The assessments levied by the Council shall be used exclusively to promote the recreation, health, safety, and welfare of all owners, for the improvements and maintenance of the Common Elements, and for all purposes set forth in the Articles, including but not limited to, management fees, insurance premiums, expenses for maintenance, repairs and replacements of Common Elements; replacement, renovation, repair, redecorating, and refurbishing of Units which are divided into Intervals; reserves for contingencies; charges for all utilities for the Property, except where individually metered and charged; taxes and enforcement of this Declaration, the Articles, Bylaws and rules.

(a) The Council shall establish and maintain a reserve fund for replacements by the allocation and payment annually to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be deposited in a special account with a safe and responsible depository, and may be in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by the United States of America. The reserve fund is for the purpose of effecting replacement or repair because of damage, depreciation or obsolescence to the Property.

(b) By appropriate action of the Board of Directors, the Council may establish and maintain an operating reserve account by allocation and payment thereto of an amount not to exceed 3% of the general assessments chargeable to the Owners pursuant to the Bylaws. This reserve shall remain in a special account and may be in the form of cash deposit or invested in obligations of or fully guaranteed to principal by the United States of America, and shall at all times be under the control of the Council.

(d) Units not divided in time shall be assessed fifty-one (51) times the amount of general and special assessments charged to an Interval Unit, except that expenses for furnishings, interior maintenance and services to which the Unit is not entitled, as set forth in Section 8(a) of this Article, shall not be assessed against such Units. The Board may make special arrangements with the Owner of a Unit not divided in time, which arrangements vary from the provisions of this Article, on a fair and equitable basis.

Section 3. UNIFORM RATE OF ASSESSMENT.

(a) Both annual and special assessments must be fixed at a uniform rate for all Interval Units and at fifty-one (51) times such rate for all Units not divided in time, except as provided in the preceding Section of this Article and in Paragraph (b) of this Section and shall be collected on an annual basis for Interval Units and shall be collected on either an annual or monthly basis for Units not divided in time. Assessments shall be due on the first day of the calendar year, except as provided in Article IV, Section 1(g) and in Section 4 of this Article.

(b) In the event Units or Interval Units are brought within the Covered Property, the undivided fractional interest of which are determined pursuant to Article I, Section 3(e) (2), the assessments for each Unit and Interval Unit shall be in proportion to the Ownership Interest, and the provisions of this Declaration shall be interpreted to achieve that result.

Section 4. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS.

(a) The annual assessment for each Unit not divided in time in the Initial Covered Property shall commence as to such Unit on the first day of the month following the conveyance of a Unit to an individual Owner. The assessment as to Units not divided in time in annexed areas, if any, shall commence with respect to such Unit on the first day of the month following the conveyance of such Unit to an individual Owner.

(b) As long as the annual due date for assessments is January 1, the annual assessment for each Interval Unit shall commence and shall be collected at close of escrow, if close of escrow occurs prior to September 1 of the year of sale. For any first Interval sale occurring on or after September 1, the first annual assessment shall commence and shall be due on or before the date a reservation is made for the use of any facilities on the Property during the year of sale. If no reservation is made for the use of the facilities during the year of sale, the first annual assessment shall not commence and need not be paid, if close of escrow occurred on or after September 1. The assessment as to Interval Units in annexed areas, if any, shall commence with respect to each such Interval Unit within each such annexed area or phase of such area on the same basis.

Section 5. DEVELOPER'S ASSESSMENT.

From the time assessments commence, for any Unit, Interval Unit or phase of the Covered Property, Developer shall pay no assessment for any Unit owned within the Covered Property or phase, except that during such time as any unsold Unit is inhabited for the benefit of the Developer, Developer shall pay a full assessment. Developer may furnish services and management in lieu of assessments in a reasonably equivalent amount.

Section 6. MAXIMUM ASSESSMENT. Until January 1 of the year immediately following the conveyance by Declarant of the first Interval Unit to an Owner, the maximum annual assessment shall be two hundred dollars (\$200.00) for each Interval Unit owned.

(a) From and after January 1 of the year immediately following the conveyance of the first Unit or Interval Unit to an Owner, the maximum annual assessments may be increased each year, without a vote of the membership, above the maximum assessments for the previous year in a percentage equal to the percent of increase during the preceding twelve (12) months in the Consumer Price Index in the Metropolitan Phoenix Area as determined by the United States Department of Labor, Bureau of Labor

Statistics, plus five percent (5%) . In the event the Consumer Price Index is discontinued, the Board shall select an appropriate economic indicator.

(b) From and after January 1 of the year immediately following the conveyance of the first Unit or Interval Unit to an Owner, the Owners may increase the maximum annual assessment above the amount set forth in Paragraph (a) by a vote of more than fifty percent (50%) of all votes eligible to be cast.

(c) The Board may fix the annual assessments at an amount not in excess of the maximum.

(d) In the event an Owner owes the Council annual assessments for more than one assessment period, one or more special assessments, one or more individual assessments, electric bill or any combination of the foregoing, any monies paid by that Owner shall be applied in the following order of priority: electric bill, individual assessments, special assessments, and annual assessments. If an Owner owes more than one obligation in a single category, the obligation within that category shall be paid in order of age, beginning with the oldest.

Section 7. INDIVIDUAL ASSESSMENTS. The Council is empowered, through its Board of Directors, or, if a management agreement is in effect, through the management firm, to levy against any particular Owner or Owners an individual assessment or charge for all costs, expenses, fees and charges incurred by the Council by reason of a breach on the part of such Owner or Owners, the Owner's guests, invitees, licensees or family members, of any of the provisions of this Declaration, the Bylaws of the Council, or of the rules and regulations to which the Owners are subject. Such individual assessments shall include; but not necessarily be limited to, all charges incurred by reason of the failure of any particular Interval Unit Owner or Owners, or person or persons occupying a Unit with the consent and knowledge of the Owner, to vacate the same at the conclusion of the Interval Week, Weeks, or Part Week, reserved, at 10:00 A.M. local time on the day which concludes the reserved time; all costs of damage, breakage or loss of any of the furnishings, fixtures, appliances, utensils, linens or other commonly-owned personal property beyond reasonable wear and tear; all damage, breakage or loss to any of the interior or exterior walls, windows or other surfaces of a Building attributable to such Owner or Owners, or person or persons occupying the Unit with the knowledge and consent of such Owner or Owners; and any other costs and expenses incurred by the Council which are attributable to the failure of the Owner or Owners to comply with the terms, conditions, agreements and covenants of this Declaration and the Condominium Documents.

Section 8. SEPARATE ASSESSMENT OF RESORT AND RECREATION EXPENSES.

(a) In the event Units are sold without being divided in time, the expenses for cleaning, linen change and maid service; maintaining and replacing furniture, appliances, linens, dishes, glassware and utensils; interior decorating, electrical service to the Units, reservations, and other services required by Interval Units but not by Units not divided in time, shall be calculated separately, as accurately as reasonably possible, and shall not be assessed against any Unit not divided in time, and no such Unit shall be entitled to receive such goods and services from the Council. Each such Unit shall be billed separately for the charges on that Unit's electrical meter. This subsection is subject to the provisions of Section 2, subsection (d), of this Article.

(b) In the event annual memberships are sold or Annexation Property is annexed for the purpose of recreational memberships and not for co-ownership of all of the Property, the expenses of maintaining and operating any recreational facilities so affected shall be calculated separately as equitably as possible. Such expenses shall include, but not be limited to: managers, supervisors and personnel to attend to the recreation program, equipment and facilities; cost of maintaining, repairing and replacing the swimming pool, recreation building, tennis courts, parking lot and equipment; and taxes, utilities, insurance, security, legal and accounting services for the recreational facilities and that portion of the parking facilities reasonably attributable to the recreational use.

Section 9. SUBORDINATION OF ASSESSMENT LIEN. The lien for assessments provided for herein in connection with a given Unit or Interval Unit shall not be subordinate to the lien of any Mortgage except the lien of a Mortgage made in good faith and for value that is of record as an encumbrance against such given Unit or Interval Unit prior to the sale or transfer of such given Unit or Interval Unit in the manner provided for in the Articles or Bylaws. (Such Mortgage being hereinafter referred to as a "prior mortgage.") The sale or transfer of any Unit or Interval Unit shall not affect either the assessment lien provided for herein nor the creation and enforcement thereof in accordance with this Declaration because of delinquent assessments, whether such assessments become due prior to, on or after the date of such sale or transfer, and regardless of whether or not the Owner of a Unit or Interval Unit as to which such lien is so created and enforced is personally obligated to pay any or all of the delinquent assessments as to which such lien is created. For the purposes of this Section, a sale or transfer of a Unit or Interval Unit shall occur on the date of recordation of a

deed or other instrument of title conveying record title to the Unit or Interval Unit to the purchaser or transferee.

Section 10. RATE OF INTEREST. All monies owed to the Council shall bear interest from the due date until paid at the following rate:

- (a) twenty percent (20%) per annum; or
- (b) any rate set by the Board of Directors which does not exceed, by more than two percent (2%) , the highest prime rate during the preceding two (2) years charged at Valley National Bank Main Office in Phoenix, Arizona. Any such change in rate of interest by the Directors shall not require an amendment to this Declaration; or
- (c) in the event a statutory maximum rate is effective in Arizona which is less than either of the above, such statutory maximum rate.

Section 11. CERTIFICATE OF PAYMENT. The Council shall, upon demand, furnish to any Owner liable for assessments, a certificate in writing signed by an officer or authorized agent of the Council, setting forth whether the assessments on a specified Unit or Interval Unit have been paid, and the amount of delinquency, if any. A reasonable charge may be collected by the Board for the issuance of such certificates. Such certificates shall be conclusive evidence of payment of any assessment therein stated to have been paid.

ARTICLE VII

MEMBERSHIP AND VOTING RIGHTS

Section 1. MEMBERSHIP NON-SEVERABLE. Every Owner of a Unit or Interval Unit which is subject to assessments shall be a member of the Council. Membership shall be appurtenant to and may not be separated from ownership of a Unit or Interval Unit which is subject to assessment. The rights and obligations of an Owner and membership in the Council shall not be assigned, transferred, pledged, conveyed, or alienated in any way except by transfer of ownership to such Unit or Interval Unit, whether by purchase or by intestate succession, testamentary disposition, foreclosure of a Mortgage of record, or such other legal process as is now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Unit or Interval Unit shall operate to transfer said membership to the new Owner thereof, and except for the first sale to an individual Owner, a charge of twenty-five dollars (\$25.00) shall be assessed and paid to the Council by the transferee in each such transfer. The Board may

change the amount of said charge without amending this Declaration.

Section 2. OWNERS' VOTES.

(a) All Owners shall be entitled to one vote for each Interval Unit owned. When one or more person holds an interest in any Interval Unit all such persons shall be Members. The vote for such Interval Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Interval Unit and fractional votes shall not be allowed. In the event more than one vote is cast for an Interval Unit, none of the votes for such Interval Unit shall be counted and said votes shall be deemed void, unless Arizona statutes require otherwise.

(b) All Owners shall be entitled to fifty-one (51) votes for each Unit owned with is not divided in time. All fifty-one (51) votes shall be cast as a block, and the provisions set for the in Paragraph (a) above shall pertain to the bloc of fifty-one (51) votes as though said votes were a single vote.

(c) Notwithstanding the foregoing, in the event Units or Interval Units are brought within the Covered Property, the undivided fractional interests of which are determined pursuant to Article I, Section 3(e) (3), each Interval Unit shall be entitled to as many votes as the maximum occupancy for that Unit, as determined by the Declaration. The number of votes for each such Unit not divided in time shall be fifty-one (51) times the maximum occupancy for the Unit.

(d) If this Declaration should be amended to permit sale of the 52nd week to individual Owners, each Unit not divided in time shall be entitled to 52 votes or 52 times the maximum occupancy as the case may be.

(e) Interval Units owned by the Council shall not have appurtenant voting rights.

Section 3. VOTING CONTROL IN DEVELOPER.

(a) Notwithstanding the foregoing, Developer shall have three (3) votes for every Interval Unit which has not been conveyed to an original Owner. In the event additional property is annexed to the Covered Property, voting rights for the Units within that phase shall commence upon recordation of the Supplemental Declaration for that phase, except that Developer may notify the Board of its intention to bring additional property within the Covered Property within two (2) years after said notice. Upon the recording of such a notice, specifying the property so covered and the number of Units intended, the

Developer shall then have three additional votes for each such Interval Unit or 153 votes for each Unit not divided in time, or three (3) times the number of votes as determined pursuant to Section 2(c) of this Article.

(b) In order that said Units be sold and the Common Elements be protected and that the Council become stabilized and operational, Developer or its designated agent, shall have at its option, the sole and exclusive right to manage the affairs of the Council, to make contracts or agreements on behalf of the Council, for maintenance of Common Elements and operation of the Council, provided such agreements are no more than one year or may be cancelled by either party without cause on 60 days' written notice and to do all things as authorized by this Declaration, the Articles and Bylaws until such time as seventy-five percent (75%) of the interests in Units within the Covered Property as presently or hereafter constituted, are sold, or the Developer, in its discretion, relinquishes such management to the Council.

(c) Until such time as control of the Council is passed to the Owners, all right, discretion, power and authority granted to such Council, including the right to collect assessments, shall, at the option of the Developer, remain with the Developer directly or through said Council.

(d) It is further recognized that if additional property is annexed to the Covered Property, management or control of the Council by the Developer is likely to continue after one hundred percent (100%) of the Units and Interval Units in the Initial Covered Property are sold.

ARTICLE VIII

RIGHTS OF LENDERS

Section 1. PRIORITY OF MORTGAGE LIEN. No breach of the covenants, conditions or restrictions herein contained, nor the enforcement of any lien provisions herein, shall affect, impair, defeat or render invalid the lien or charge of any Mortgage made in good faith and for value encumbering any Unit or Interval Unit, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or trustee's sale, or otherwise, with respect to a Unit or Interval Unit except as otherwise provided in this Article.

Section 2. RESALE. It is intended that any loan to facilitate the resale of any Unit or Interval Unit after

judicial foreclosure, deed in lieu of foreclosure or trustee's sale is a loan made in good faith and for value and entitled to all of the rights and protections afforded to other Mortgagees.

Section 3. RELATIONSHIP WITH ASSESSMENT LIENS.

(a) Any lien provided for herein shall be subordinate to the lien of any Mortgage which was recorded prior to the date any such Assessment becomes due.

(b) If any Unit or Interval Unit subject to a monetary lien created by any provision hereof shall be subject to the lien of a Mortgage: (1) the foreclosure of any lien created by anything set forth in this Declaration shall not operate to affect or impair the lien of such Mortgage; and (2) the foreclosure of the lien of said Mortgage, the acceptance of a deed in lieu of foreclosure of the Mortgage or sale under a power of sale included in such Mortgage (such events being hereinafter referred to as "Events of Foreclosure") shall not operate to affect or impair the lien hereof, except that any persons who obtain an interest through any of the Events of Foreclosure, and their successors in interest, shall take title free of the lien hereof or any personal obligation for said charges as shall be accrued up to the time of any of the Events of Foreclosure, but subject to the lien hereof for all said charges that shall accrue subsequent to the Events of Foreclosure.

(c) Any Mortgagee who obtains title to a Unit or Interval Unit by reason of any of the events of foreclosure, or any purchaser at a private or judicial foreclosure sale, shall take title to such Unit or Interval Unit free of any lien or claim for unpaid assessments against such Unit or Interval Unit which accrue prior to the time such Mortgagee or purchaser takes title to such Unit or Interval Unit, except for liens or claims for a share of such assessments resulting from a pro rata reallocation of such assessments to all Units or Interval Units within the Covered Property.

(d) Nothing in this Section shall be construed to release any Owner from his obligations to pay for any Assessment levied pursuant to this Declaration.

ARTICLE IX

RESTRICTIONS ON USE

Section 1. RESIDENTIAL USE. A Unit or Interval Unit within the Covered Property shall be used, improved and devoted exclusively to resort or residential use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any such

Property, except as is appurtenant to resort uses and as is approved by the Board or Council. Nothing herein shall be deemed to prevent any of the following:

- (a) lease of a Dwelling from time to time by the Owner subject to all the provisions of this Declaration;
- (b) any promotional, sales, leasing, construction or management activities on the Covered Property by the Developer, whether in a Unit or other structure;
- (c) Use of one or more Units as offices by a broker, manager or other agent of the Council of Co-Owners or Developer; or
- (d) operation of a pro shop, snack bar, restaurant or other resort related use.

Section 2. ANIMALS. No animals or pets of any kind shall be permitted on the Property.

Section 3. ANTENNAS. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Property whether attached to a Building or structure or otherwise, unless approved by the Board. The Board may, but is not required to, provide cable or other television service, for which a separate charge may be made, at the discretion of the Board.

Section 4. UTILITY SERVICE. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals shall be erected, placed or maintained anywhere in or upon any Property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on Buildings or other structures approved by the Board. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incidental to the construction of Buildings or structures approved by the Board, nor to abrogate any rights granted by the Section titled "Easements" of the Article herein titled "Restrictions on Use."

Section 5. IMPROVEMENTS AND ALTERATIONS.

- (a) No improvements, interior or exterior painting, landscaping, decorative alterations, or repairs shall be commenced, erected, maintained, made or done by any Interval Owner.
- (b) The Owner of a Unit not divided in time shall be responsible for maintaining and replacing the interior surfaces, plumbing fixtures, and appliances, including heating and cooling apparatus, except as may be provided otherwise by the Board pursuant to Article VI, Section 2(d). Such Owner shall not alter, remove, or improve in any manner any portion

of the Unit, Building, landscaping or other portion of the Common Elements which either is visible from another Unit or which invades the structural integrity of any Building, without approval in writing from the Board.

Section 6. TEMPORARY OCCUPANCY. No temporary buildings, tents, vehicles or structures of any kind shall be used at any time for a residence on the Property. By way of illustration, but not limitation, no recreation vehicle may be used or overnight accommodations on the Property. However nothing herein shall prevent the use of a mobile construction office, sales office and caretaker's residence during construction and sales.

Section 7. VEHICLES. No inoperable motor vehicles shall be permitted to remain on the Property nor shall be repaired on the Property except for emergency repairs required to remove the vehicle from the Property or to make the vehicle operable. No motorcycle, dirt bike, trailer, camper, boat, fifth wheeler, motor home or similar equipment other than a vehicle which is the sole transportation vehicle for all of the residents of any Unit, shall be permitted to remain upon the Covered Property, including, without limitation, private streets, alleys or driveways.

Section 8. REPAIR AND MAINTENANCE.

- (a) By The Council. The Council shall have full power to control and it shall be its duty to maintain, repair and make necessary improvements to all Improvements on the Covered Property except as set forth in Paragraph (b).. The Council shall further be empowered with the right and duty to periodically inspect all Improvements in order that minimum standards of repair, design, color, furnishings, and landscaping shall be maintained for beauty, harmony and conservation of values within the entire Property.
- (b) By The Owner. The Owner of a Unit which is not divided in time, shall be responsible for maintaining the heating and air conditioning unit, hot water heater, appliances, floor coverings and other interior surfaces of the Unit.
- (c) General Maintenance. In the event that the Council determines that the Common Elements are in need of improvement, repair, restoration or painting, or that the landscaping is in need of installation, repair or restoration, or that the Units are in need of refurbishing, repair or restoration, the Council shall undertake to remedy such condition and the cost thereof shall be charged to the Owners and shall be subject to levy, enforcement and collection by the Council in accordance with the assessment lien procedure provided for in

the Articles and Bylaws. The Council shall have a right of entry in and upon all of the Property, which shall be exercised reasonably, for the purpose of taking whatever corrective action may be deemed necessary or proper by the Council. When so required to enter a Dwelling for the purpose of performing installation, alterations or repairs to the mechanical or electrical services, including water, sewer and other utility services, reasonable requests for entry shall be made and every effort shall be made to arrange for such entry at a time reasonably convenient to the Owner whose Unit is to be entered. Whenever possible, such entry shall be made during the Maintenance Time. An Owner shall grant, and hereby does grant, the right of entry to the Council or any other Owner, or their authorized representatives, or any other person, in case of any emergency originating in or threatening said Owner's Unit, whether the Owner is present or not, and whether the said Owner's Unit is not divided in time or reserved for the Owner's use.

Section 9. NUISANCES. No nuisance shall be permitted to exist or operate upon any Property so as to be offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of the foregoing, the following shall be presumed to be a nuisance:

- (a) rubbish or debris of any kind which is placed or permitted to accumulate upon or adjacent to any Property or any odors which arise therefrom, so as to render any such Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants;
- (b) any exterior speakers, horns, whistles, bells or other sound devices, unmuffled vehicle, or any noise produced at a time and place as to be inconsistent with a vacation lifestyle.
- (c) any article which is draped, hung or attached to an exterior wall or patio enclosure so as to be visible from outside the Unit;
- (d) any change or alteration in the interior decoration of any Unit, which Unit is divided into Intervals;
- (e) any use of aluminum foil in windows;
- (f) any use of a Dwelling or use of the Common Elements which will increase the rate of insurance upon the Property; and
- (g) any use of roller skates, skateboards, two or three-wheeled vehicles or similar equipment on the Property except as used in a sports program sponsored and supervised by the Council or its agent.

The Board, in its sole discretion, shall have the right to determine the existence of any nuisance.

Section 10. TRASH CONTAINERS AND COLLECTION. No garbage or trash shall be placed or kept on the Property except in covered containers of a type, size and style which are approved and provided by the Board. In no event shall individual trash containers be maintained so as to be visible from neighboring Property.

Section 11. CLOTHES DRYING. There shall be no outdoor clothes drying on the Property, including but not limited to towels and bathing suits.

Section 12. RESTRICTION ON FURTHER SUBDIVISION. No portion less than all of the Unit or Interval Unit nor any easement or other interest therein shall be conveyed or transferred by any Owner. Any Unit conveyed as a Unit not divided in time, even though such Unit is approved for Interval sales by the Arizona State Department of Real Estate, shall not be conveyed by an Owner in intervals or any amount less than the entire Unit, and no Owner shall bring an action for partition of any such Unit or of any Interval Unit or of the Common Elements except as permitted by Sections 21, 29 and 30 of this Article. Once a Unit is conveyed as a Unit not divided in time, the Unit may be conveyed subsequently in Intervals only by the Developer or the Board. Notwithstanding the foregoing, an Owner of a Unit not divided in time may, at the request of the Board, convey any easement so requested to the Council or the members thereof.

Section 13. SIGNS. No signs whatsoever (including, but not limited to commercial, political, sale or rental and similar signs) shall be erected or maintained on any Property whether in a window or otherwise, except:

- (a) such signs as may be required by legal proceedings;
- (b) during the time of construction of any building or other Improvement, one job identification sign not larger than eighteen (18) by twenty-four (24) inches in height and width and having a face area not larger than three square feet or as required by statute; and
- (c) such signs the nature, number, and location of which have been approved by the Board in advance.

Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Developer or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development, sale, operation or other disposition of Property.

Section 14. EASEMENTS.

(a) Utility Easements. There is hereby created an easement upon, across, over and under the Property for reasonable ingress, egress, installation, replacing, repairing and maintaining of all utilities, including, but not limited, to water, sewers, gas, telephones and electricity. By virtue of this easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Property and to affix and maintain electrical, gas and/or telephone lines, wires, conduits and circuits on, above, across and under the Common Elements, including the Buildings. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, gas lines, water lines, or other utilities may be installed or relocated on the Property except as initially programmed and approved by the Developer of the Condominium or thereafter approved by the Developer or the Board.

This easement shall in no way affect any other recorded easement on the Property.

(b) Easements Resulting from Encroachment. Each Unit and the Common Elements shall be subject to an easement for encroachments, including, but not limited to, encroachments of walls, ceilings, ledges, floors, and roofs created by construction, settling and overhangs as originally designed or constructed, or as created by discrepancies between the plat and the actual construction. If any portion of the Common Elements shall actually encroach upon any Unit, or if any Unit shall actually encroach upon any portion of the Common Elements, or if any Unit shall actually encroach upon another Unit, as the Common Elements and the Units are shown by the plat, a valid easement for any of said encroachments and for the maintenance thereof, so long as they stand, shall and does exist. In the event that any Unit or structure is repaired, altered or reconstructed, the Owners of the Units agree that similar encroachments shall be permitted and that a valid easement for said encroachments and for the maintenance thereof shall and does exist. Owners and any other parties acquiring any interest in the Property shall acquiesce and agree to the existence of such easements by accepting a deed from any seller or by acquiring any interest whatsoever in the Property.

(c) Access Easement to Other Property. By separate instrument certain easements have been established for access and ingress and egress to and from certain real property located adjacent to the Covered Property. The areas covered by said easements shall be maintained and repaired by

the Council, in accordance with the terms of the recorded easements. Neither the Council nor any Owner may impede or interfere with the use of these easement areas for their intended purposes. Nevertheless, the Council shall have the right to promulgate and enforce reasonable rules and regulations for the safety of persons and property using the said easements, but only on a uniform basis. Developer, its agents, employees and subcontractors shall have a temporary easement as is necessary for development of the adjacent property, whether such property is brought within the Covered Property or not.

(d) Access Easement to Covered Property. By separate instrument an easement has been established for access and ingress and egress to the Covered Property. It shall be the obligation of the Council to pay one-half (1/2) the cost of maintaining the driveway constructed on such easement and every Owner and Interval Owner, by acceptance of an instrument, conveyance, or encumbrance therefor, whether or not it shall be so expressed in such instrument, is deemed to covenant and agree that said driveway maintenance shall be an obligation of the Owners and Council as set forth in this Article. The Maintenance obligation referred to herein may change or increase as the Covered Property merges with or annexes adjacent property.

(e) Covenant for Maintenance of Sewage System. As long as the Covered Property or any portion thereof is served by the septic sewage system as originally planned or as subsequently built or replaced, other than by a public system, it shall be the obligation of the Council to maintain such system and every Owner and Interval Owner, by acceptance of an instrument, conveyance, or encumbrance therefor, whether or not it shall be so expressed in such instrument, is deemed to covenant and agree that said sewage system maintenance shall be an obligation of the Owners and Council as set forth in this Article.

(f) Easement for the Council to Occupy or Rent Units. There is an easement from every Owner to the Council to permit the Council to use for any purpose, including rental for transient or resort purposes, any Unit which is not reserved or occupied. Any Unit which is reserved but not occupied within 24 hours after the beginning time of the Interval shall be available for rental by the Council unless the Council is advised otherwise.

Section 15. HOLDOVER OWNERS.

(a) Each Interval Unit Owner or his lessee or other authorized user shall not occupy or attempt to

occupy his Interval Unit prior to 4:00 P.M. on the date of the commencement of such Interval, and shall vacate the same on or before 10:00 A.M. on the date upon which such Interval ends.

(b) In the event any Interval Unit Owner, his family, agent or Lessee fails to vacate a Unit at the expiration of the reserved Interval Time, the Owner of the Interval Unit shall be deemed a "Holdover Owner." It shall be the responsibility of the Council to take such steps as may be necessary to remove such Holdover Owner or occupant from the Unit, and to assist the Owner of any subsequent reserved Interval Time, who may be affected by the Holdover Owner's failure to vacate as herein required, to find alternate accommodations during such holdover period.

(c) In addition to such other remedies as may be available to it, the Council shall secure, at its expense, alternate accommodations for any Interval Unit Owner, Lessee or other intended occupant who is unable to occupy his reservation due to the failure of any Holdover Owner to vacate. Such accommodations shall be equal or greater in value to the actual Interval Unit such successive Owner or authorized user was to occupy, if possible. The Holdover Owner shall be charged by individual assessment for the cost of such alternate accommodations and any other costs incurred due to his failure to vacate, and in recognition of the disruptive effect on management of the property an administrative fee of Two Hundred Dollars (\$200.00) per day or portion of a day shall be charged by individual assessment to such Holdover Owner during the period of holding over, in addition to any other costs or charges incurred by reason of such holding over. In addition, during such period of holding over, the Holdover Owner, his family, guests, and other authorized users shall be denied the use of all recreational facilities. In the event it is necessary that the Council contract for a period greater than the actual period of holding over in order to secure alternate accommodations, as set forth above, the entire period shall be charged to the Holdover Owner, although the administrative fee of Two Hundred Dollars (\$200.00) per day shall cease upon the actual vacating of the Unit by the Holdover Owner. This assessment may be changed by the Board without amending this Declaration. The Holdover Owner shall be responsible to the Council for payment regardless of the identity of the person or persons actually holding over.

(d) The provisions of the Article hereof titled "Covenant for Assessments" pertaining to individual assessments and liens thereon are fully applicable to any individual assessments imposed in

accordance with this Article. All remedies, including special proceedings, shall be available to the Council pursuant to its right hereunder to remove a Holdover Owner, his family, agent or lessee, as agent for the Owners of succeeding Interval Units.

Section 16. CLERICAL ERROR. In the event an Interval Unit Owner, his lessee, or other authorized user is unable to occupy his Interval Time because of error of the Council or its managing agent, the Council shall secure alternate accommodations as set forth in subsection (c) of the preceding section.

Section 17. REQUIREMENT TO RESERVE TIME OF OCCUPANCY.

(a) Interval. Each Interval shall consist of seven (7) days per year. The Interval may be reserved and used as seven (7) consecutive days, as seven (7) separate days, or in any combination of days, except as set forth in (b) below. All Interval Time shall begin at 4:00 P.M. on the first day of the reservation and end at 4:00 P.M. on the last day of the reservation, with a right to exclusive use in the Council from 10:00 A.M. to 4:00 P.M. on the last day of each reservation, or every seventh day and the last day of the reservation in the event that Intervals are reserved consecutively.

(b) Reservation.

(1) Each Interval must be used between January 1 and December 31 of the year in which it accrues, except as set forth in Article IV, Section 1(d), and approved by the Council.

(2) Only two reservation per Interval per calendar year may be outstanding at one time. Thus, a reservation for Interval Time must be used, cancelled, or expire by non-use before a reservation for any other Interval Time in that Interval may be made.

(3) (A) Reservations for seven (7) or more consecutive days may be made no more than twelve (12) months in advance of the first day of the reservation.

(B) Reservations of less than seven (7) days may be made no more than four (4) months in advance of the first day of the reservation.

(C) In the event a reservation made pursuant to paragraph (A) above is subsequently changed to include a number of Interval Days less than seven (7), such change of reservation shall be treated as a cancellation and a new reservation request. Such new reservation request shall be filled as though, and given the same priority as though originally received on the date the change

of reservation was requested, subject to the provisions of sections 17(c), below.

(4) The Board may change the advance period during which reservations may be made without amending this Declaration.

(5) Any reservation including a Friday or a Saturday must include both Friday and Saturday of the same week.

(6) Only one reservation per Interval per year may include a Friday or Saturday, except as set forth in (7) below.

(7) Notwithstanding the provisions of (2), (5) and (6) of this subsection, no more than six (6) days before the first day of use, an Owner may reserve any available time for which such Owner owns Interval Time which has not been used or for which the Owner holds no other reservation.

(8) An Owner may reserve two (2) Units to accommodate up to twelve (12) persons.

(c) Any reserved Interval Time, which is not used, shall be forfeited unless a cancellation or change of reservation is received by the Association 14 days or more prior to the date not used. If the cancelled time is subsequently reserved by an Owner, the Interval Time so reserved shall be reinstated to the Owner who forfeited the time. This subsection is subject to the provisions of Article V, Section 3(a), and Section 17(b)3(c) of this Article. Use of the cancelled time through anything other than a time-share reservation shall not reinstate forfeited time. Notwithstanding any definition herein of "receipt" or "notice," to avoid forfeiture of time, the notice of cancellation or change must be physically received at the office of the Council, or bear a United States postmark dated fourteen (14) days or more prior to the date changed or cancelled.

Section 18. INSURANCE. The Board or its duly authorized agent shall have the authority to, and shall obtain insurance for all the Property against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work, and replacement of equipment and furnishings in Units divided by Intervals, in the event of damage or destruction from all reasonable hazards. The Board, or its duly authorized agent, shall also obtain a broad form public liability policy covering all Common Elements, the Units, and all damage or injury caused by the negligence of the Board or any of its agents. Said insurance may include coverage against vandalism. All such insurance coverage obtained by the Board shall be written in the name of the Council for the benefit of the Council and the Owners and their Mortgagees as their interests may appear. The Board shall hold all insurance proceeds

collected by it in trust for the purposes stated in this Declaration, including, but not limited to, rebuilding the damaged Common Elements, Dwellings, Building or Buildings, and for the benefit of the Owners and their Mortgagees. The Board shall have exclusive authority to negotiate with the insurance carrier and to adjust losses, make settlements, and give releases to the insurance carrier and to collect monies from the insurance carrier. The Board is irrevocably appointed agent for each Owner and Mortgagee subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Board and to execute and deliver releases upon the payment of claims, and the Board has full and complete power to act for the Council in this regard. In addition to the aforesaid insurance required to be carried by the Council, any Owner may, if he wishes and at his own expense, carry any and all other insurance he deems advisable. It shall be the individual responsibility of each Owner at such Owner's expense to provide, as appropriate, personal liability insurance, theft and other insurance covering personal property damage and loss. This subsection shall be subject to the provisions of Article 6, Section 2(d).

Section 19. ENFORCEMENT. The Council 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 Council or by 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.

Section 20. SEVERABILITY. Should any provision herein be held invalid or void, such invalidity shall not affect the rest of this instrument nor any valid covenant, restriction or portion thereof contained herein.

Section 21. DURATION, AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the Units, Interval Units and Common Elements for the useful life of the Buildings or until terminated pursuant to this Section or the Section of this Article titled "Damage or Destruction; Sale." This Declaration may be amended by an instrument signed by Owners of not less than a majority of the Co-Owner's Interests. Any amendment must be recorded.

(a) If "major damage" occurs as defined in the section of this Article titled "Damage or Destruction; Sale," at any time during the life of the Condominium, the Condominium Project shall be deemed subject to termination. In the event of such an occurrence, the Council is empowered to sell Interval Units retained as "Maintenance Time," if any, and to place the proceeds of all sales of Maintenance Time in

its Treasury to be utilized in payment of common expenses. If a surplus exists thereafter, the same shall be distributed to the Owners as herein provided.

(b) Termination Before Fifty Years. If all the Owners and the holders of all liens and Mortgages affecting any of the Units or Interval Units execute and duly record an instrument terminating this Condominium, this Condominium shall be terminated in the manner provided in paragraph (c) below.

(c) Termination After Fifty Years. It is understood that this Condominium and this Declaration as amended shall remain in full force and effect for a period of fifty (50) years from the date of the close of the sale of the first Unit or Interval Unit in the project, and unless extended as herein provided, the Owners shall own their undivided interest in the Condominium Property as tenants in common with the right of partition, and the Maintenance Time, if any, shall be disposed of as provided in Paragraph (a) of this Section.

The Board of Directors of the Council shall, no less than thirty (30) days, nor more than sixty (60) days, prior to the expiration of such fifty (50) year period, call a meeting of all Owners, at which meeting a vote shall be taken to decide the disposition of the Condominium. A quorum at such meeting shall be a majority of the total outstanding votes of all Owners. Unless a vote of seventy-five percent (75%) of such quorum calls for termination of the Condominium, the Condominium shall continue and this Declaration shall continue in full force and effect for a period of ten (10) additional years, at which time the process herein defined shall be repeated. This process may be repeated in ten-year increments until a vote of seventy-five percent (75%) of the quorum decides to terminate the Condominium, at which time the Council shall dispose of the Maintenance Time as herein provided, and then take the appropriate steps, including, if necessary, the filing of an appropriate action, to partition the Interval Units. A document which states that it was approved by seventy-five percent (75%) of a quorum signed by all of the Board members and recorded shall be conclusive proof that all of the requirements of this section were met for terminating the Condominium. During any additional ten-year period, the Condominium may be terminated as provided for termination prior to fifty years.

Section 22. VIOLATIONS AND NUISANCE.

Every act or omission whereby any provision of this Declaration is violated may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Developer, the Council or any Owner or Owners. However, any other provision to the

contrary notwithstanding, only Developer, the Council or the Board, or the duly authorized agents of any of them may enforce by self-help any of the provisions of this Declaration.

Section 23. VIOLATION OF LAW. Any violation of any state, county, municipal, or local law, ordinance, or regulation, pertaining to the ownership, occupancy or use of any Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 24. BINDING EFFECT. By acceptance of a deed or by acquiring any ownership interest in any of the Property included within this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, agrees to all of the provisions, restrictions, covenants, conditions, rules and regulations now or here-after imposed by or pursuant to this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered thereby and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained herein or adopted pursuant hereto shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Developer, its successors, assigns and grantees, covenant and agree that the Interval Units and the membership in the Council and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Interval Unit even though the description in the instrument of conveyance or encumbrance may refer only to the Interval Unit. Any rule or regulation duly adopted by the Board shall be enforceable in the same manner and to the same extent as any provision of this Declaration and any reference herein to the requirements of the Declaration, Articles or Bylaws shall include the provisions of the rules and regulations of the Council.

Section 25. LEASING. Every Lease, by its terms, shall require the Lessee to abide by all requirements of the Declaration, Articles and Bylaws of the Council of Co-Owners, as they may be amended from time to time, and shall provide that noncompliance by the lessee shall terminate the Lease. This provision shall be deemed to be a part of every Lease, whether oral or written.

Section 26. EXEMPTION OF OWNER.

No Owner may exempt himself from liability for his assessed contribution towards the common expenses by waiver and non-use of any of the Common Elements and facilities or by the abandonment of his Unit or Interval Unit.

Section 27. OWNER'S RESPONSIBILITY.

Each Owner shall be responsible for compliance by said Owner's agent, tenant, guest, invitee, lessee, licensee, their respective servants and employees with the provisions of this Declaration, Articles, Bylaws and Council rules as they may be amended from time to time. The Owner's failure to so insure compliance by such persons shall be grounds for the same action available to the Council by reason of said Owner's own noncompliance.

Section 28. TAXATION. Each Unit not divided in time shall be assessed separately for all taxes, assessments and other charges of or imposed by the State of Arizona, any political subdivision, special improvement or assessment district, or of any other taxing or assessing authority. For the purpose of such assessment, the valuation of the General Common Elements shall be apportioned among the Owners based upon the Fractional Interest (as defined in Article I, Section 3(e) above) assigned to each of them. The valuation of the personal property within the Units divided into Intervals shall be assessed and paid by the Council. The Board shall furnish to the County Assessor or other responsible official of any such taxing or assessing authority all necessary information with respect to the apportionment of such assessments and shall request that each Unit not divided in time be carried on the tax records as a separate and distinct parcel of property, and that the remainder of the Property be assessed to the Council. No forfeiture or sale of any Unit for delinquent taxes, assessments or other governmental charges shall divest or in any way affect the title to any other Unit or Interval Unit.

Section 29. DAMAGE OR DESTRUCTION; SALE.

(a) In the event that any Buildings and/or other Improvements are damaged or destroyed by fire or other casualty or disaster, such Buildings and/or other Improvements shall be promptly repaired, restored or reconstructed to the extent required to restore them to substantially the same condition in which they existed prior to the occurrence of the damage or destruction, with each Unit and the Common Elements having the same vertical and horizontal boundaries. Such repairs, restoration or reconstruction shall be paid for out of any insurance proceeds received on account of the damage or destruction; provided, however, that if the insurance

proceeds are not sufficient for such purpose, the deficiency shall be assessed as a Common Expense.

(b) Notwithstanding the foregoing, in the event that Buildings containing seventy-five percent (75%) or more of the Units are destroyed and the Owners by an affirmative vote of at least seventy-five percent (75%) of the total voting power file notice with the Board of Directors within ninety (90) days after such destruction that they do not desire that the Buildings be reconstructed or restored, the Board of Directors shall record, with the Recorder of Coconino County, Arizona, a notice setting forth such facts, and upon the recording of such notice:

(1) the Property shall be deemed to be owned in common by the Owners;

(2) the undivided interest in the Property owned in common which shall appertain to each Owner shall be the fraction of undivided interest previously owned by such Owner in the Common Elements;

(3) any liens affecting any of the Interval Units shall be deemed to be transferred in accordance with the existing priorities to the fraction of undivided interest of the Owner in the Common Elements;

(4) the Property shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of sale (the Property not being susceptible of fair partition without depreciating the value thereof) , together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be divided among all the Owners in proportion to their respective fractions of undivided interest in the Common Elements, after first paying out of the respective shares of the Owners, to the extent sufficient for the purpose, the amount of any unpaid liens on the Unit or Interval Unit, in the order of the priority of such liens.


Section 30. CONDEMNATION. In the event of a taking by eminent domain of part or all of the Common Elements, or for the sale made under threat thereof, the award made for such taking shall be payable to the Council. The Board on behalf of the Council shall arrange for the repair and restoration of such Common Elements and the Board shall disburse proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that Owners representing seventy-five percent (75%) of the total voting power, at a meeting duly called for the purpose of voting on repair and restoration of the Common Elements, shall disapprove said repair and restoration, the Board shall disburse

the net proceeds of such award in the same manner as it is required to distribute insurance proceeds pursuant to the preceding section titled, "Damage or Destruction; Sale."

Section 31. INTERPRETATION. The headings used herein are for convenience and shall not determine the substance of any provision. The use of one gender shall include the other genders. The singular shall include the plural and the plural, the singular. Capitalized words indicate their use in the sense as defined in Article II, unless the context clearly requires otherwise.

IN WITNESS WHEREOF, the undersigned officers of Arroyo Roble Development Corporation as Declarant have caused their names to be signed on the dates set forth below.

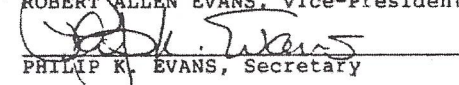
Date: 10/17/86


STEPHEN L. EVANS, President

Date: 9/26/86

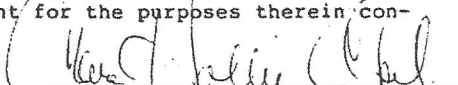

ROBERT ALLEN EVANS, Vice-President

Date: 10/17/86


PHILIP K. EVANS, Secretary

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Before me, this 17th day of October, 1986, personally appeared Stephen L. Evans, Robert Allen Evans, and Philip K. Evans, who acknowledged themselves to be the officers of the ARROYO ROBLE DEVELOPMENT CORPORATION, and that they executed the foregoing instrument for the purposes therein contained.


Notary Public

My Commission Expires:
December 11, 1987

