

## DECLARATION OF RESTRICTIONS

### LINDO MAR ADVENTURE CLUB, LTD.

This Declaration of Restrictions (the "Declaration") is made as of this 15th day of December, 1986 by Promociones Costa Pacifico, S.A. De C.V. (hereinafter referred to as "Declarant").

#### RECITALS

A. Declarant is the MASTER LESSEE of the certain real property ("property") commonly known as LINDO MAR which is a partially developed nine-story, forty-eight (48) unit condominium project designated as Lot No. 11 of Manzana 533 of the Conchas Chinas Section of the Municipality of Puerto Vallarta, Jalisco, between Capracorn at the North and Lot No. 10 to the South with an area of 888.27 sq. meters with the following dimensions: On the North, a boundary of 43.12 meters bordering on Lot No. 9 to the South, 16.46 meters bordering on Lot No. 10, to the Southeast 35.30 meters bordering on the Federal Road to Barra de Navidad and, on the West 32.47 meters bordering on the Federal Maritime Zone.

B. Declarant has created LINDO MAR ADVENTURE CLUB, LTD. An OREGON nonprofit mutual benefit corporation ("Club"). Declarant or its nominee or assignee intends to offer for sale memberships in the Club ("Memberships") as set forth in the Club's Bylaws, pursuant to which the person ("Member") purchasing the Membership shall have certain rights to use the Property, Common Areas, and Common Furnishings, including the right to occupy a specific Unit and the Common Furnishings therein and to use the Common Areas during a specific week ("Use Periods"), and reserving to the Declarant the exclusive right to use and occupy the Property during all other periods of time, subject to the restrictions set forth in this Declaration.

NOW, THEREFORE, in furtherance of such intent, the Declarant hereby declares that the Property shall be possessed, conveyed, hypothecated, mortgaged, encumbered, used and occupied subject to the conditions and restrictions set forth and contemplated in this Declaration, as this Declaration may from time to time be further amended, all of which conditions and restrictions are declared to be in furtherance of the plan established herein for the purpose of enhancing and protecting the value, desirability and enjoyment of the Property and the interest or interests therein to be conveyed or reserved. These restrictions shall be binding upon and for the benefit of the Declarant and all Members, including without limitation the heirs, executors, administrators, successors and assigns of any such parties.

#### ARTICLE I

## DEFINITIONS

In addition to other definitions provided for herein, the following terms shall have the following meanings.

**Section 1.01. Annexed Units.** "Annexed Units" means any Units annexed pursuant to this Declaration.

**Section 1.02. Articles.** "Articles" means the Articles of Incorporation of the Club as the same may be amended from time to time.

**Section 1.03. Maintenance Fees.** "Maintenance Fees" means the charges against a particular Member and his Membership pursuant to Article V of this Declaration and includes both "Basic Maintenance Fees" and "Special Maintenance Fees" as defined in said Article V of this Declaration.

**Section 1.04. Board.** "Board" means the Board of Directors of the Club.

**Section 1.05. Bylaws.** "Bylaws" means the Bylaws of the Club adopted by the Board, as the same may be amended from time to time.

**Section 1.06. Check-In-Time and Check-Out-Time.** "Check-in-Time" and "Check-Out-Time" mean the times designated as such and then current Rules and Regulations.

**Section 1.07. Common Areas.** "Common Areas" means all portions of the Property other than the interiors of the Units.

**Section 1.08. Common Furnishings.** "Common Furnishings" means all furniture, furnishings, appliances, fixtures and equipment and all other personal property from time to time owned, leased or held for use by the Club and which are located in or upon the property.

**Section 1.09. Club.** "Club" means LINDO MAR ADVENTURE CLUB, LTD., An OREGON nonprofit corporation, or any successor-in-interest by merger or by express assignment of the rights of the Club hereunder.

**Section 1.10. Exchange Program.** "Exchange Program" means a service provided by an independent organization whereby Members and Exchange Users of time periods in other programs may exchange Use Periods in the Property to time periods in projects in other locations.

**Section 1.11. Exchange User.** "Exchange User" means an owner of a time period in another program who occupies a Unit and uses the Common Areas pursuant to an Exchange Program.

**Section 1.12. Maintenance Period.** "Maintenance Period" means, with respect to each Unit, the time period between Check-Out-Time and Check-In-Time reserved by the Club for the maintenance, cleaning and repair of the Unit and Common Furnishings therein.

**Section 1.13. Managing Agent.** "Managing Agent" means the agent engaged by the Board pursuant to and in the manner provided in Section 4.08 hereof.

**Section 1.14. Member.** "Member" means the Member/Owner of a Membership in the Club or Declarant with respect to any Membership not yet sold by the Club.

**Section 1.15. Membership.** "Membership" means a Member's status as a Member of the Club which includes a right to occupy a specified Unit, and the Common Furnishings related thereto and the non-exclusive right to use the Common Areas during a reserved Use Period provided such occupancy is reserved and used in accordance with the provisions of this Declaration and the Rules and Regulations. The Club shall issue no more than fifty-two (52) Memberships for each Unit owned or acquired by the Club. Each Membership shall be evidenced by a Membership certificate which shall specify the Unit and week subject to such Membership.

**Section 1.16. Membership Certificate.** "Membership Certificate" means a certificate issued by the Club identifying the person to whom it is issued as an owner of a Membership and specifying the Unit and Use Period subject to such Memberships.

**Section 1.17. Permitted User.** "Permitted User" means any person, other than an Exchange User, occupying a Unit on the Property by or through any Member, including, but not limited to, such Member's family, guests, licensees or invitees. Any act or omission by a permitted User shall be deemed the act or omission of the Member under whom such Permitted User occupies the Property.

**Section 1.18. Personal Charges.** "Personal Charges" shall mean a charge against a particular Member and his Membership, directly at the cost incurred by the Club for corrective action performed pursuant to the provisions of this Declaration, or a reasonable fine or penalty assessed by the Club, plus interest and other charges thereon as provided for in this Declaration. Personal Charges shall also include telephone charges, and other special charges or supplies attributable to the occupancy of a Unit during such Member's Use Period.

**Section 1.19. Purchase Agreement.** Means the "Purchase Agreement" by which a person(s) or entity(s) named therein as the "Member(s)" purchase one or more Memberships.

**Section 1.20. Rules and Regulations.** "Rules and Regulations" means the Rules and Regulations adopted from time to time.

**Section 1.21. Unit.** "Unit" means any separate living unit subject to the Declaration which is designated in a Member's Purchase Agreement in which the Member is entitled to a Use Period. "Unit" shall include the Common Furnishings in such Unit as described in Section 1.08 above and "Annexed Units" as defined in Section 1.01 above.

**Section 1.22. Use Period.** "Use Period" means the time periods during which a Member has the exclusive right to use and occupy a specified Unit in accordance with the provisions of this Declaration and the Rules and Regulations. Each Use Period shall consist of a period of seven (7) consecutive days and shall commence each Saturday at 4:00 p.m. local time and shall terminate at 11:00 a.m. local time on the following Saturday.

## ARTICLE II OCCUPANCY RIGHTS AND RESTRICTIONS

**Section 2.01. Occupancy Rights of Members.** Subject to all the terms and conditions contained in this Declaration and in the Rules and Regulations, each owner of a Membership shall have the exclusive right, for each Membership owned, to occupy and use the designated Unit and the Common Furnishings contained within such Unit, and the non-exclusive right to use and enjoy the Common Areas for the Use Period within such Member's Designated Fee; provided, however, that such Member shall have reserved such use and occupancy in accordance with the requirements and procedures for the making of reservations set forth in the then operative Rules and Regulations. No use or occupancy by any Member will be permitted if such Member (1) is not registered as a Member of the Club, (2) does not possess a Membership Certificate issued by the Club, or (3) is delinquent in the payment of any amounts owed to the Club or owed under the Purchase Agreement for such Member's Membership at Check-In-Time at the commencement of such Member's Use Period.

**Section 2.02. Occupancy Restrictions.** Each Member shall keep the Unit occupied by him and the Common Furnishings therein in good condition during his Use Period, vacate the Unit at the expiration of his Use Period, remove all persons and personal property therefrom, excluding only the Common Furnishings therein in good and sanitary condition and otherwise comply with such check-out and other regulations as may be contained in the Rules and Regulations. Any Member may permit a Permitted User to exercise such Member's Use right of the purposes permitted by this Declaration during his Use Period, but such Member shall be responsible for any loss, damage, or violation of this Declaration or the Rules and Regulations which occurs during such occupancy as if such Member were

occupying the Unit. Except as required to prevent damage or injury to persons or property in an emergency, no Member shall make or authorize any alterations to a Unit or its Common Furnishings; paint or otherwise refinish or redecorate the inner surfaces of the walls, ceilings, floors, windows or doors bounding any Unit which such Member may from time to time occupy, or remove, alter or replace any portion of the Common Furnishings without the prior written consent of the Club. The right to perform all of the foregoing acts has been retained by the Club, unless otherwise expressly stated in this Declaration. The foregoing prohibitions, however, shall not modify or affect the obligation of each Member for the prudent care and ordinary maintenance and upkeep of all property subject to his use. No animals shall be allowed or kept in or upon any Unit.

**Section 2.03. Failure to Vacate.** If any Member or Permitted User fails to vacate a Unit at the end of his Use Period, or otherwise makes unauthorized use or occupancy of a Unit during a period other than his Use Period or prevents another Member, Permitted User or Exchange User (the "Detaining Member") or Permitted User (the "Detaining User") shall (a) be subject to immediate removal, eviction or ejection from the Unit wrongfully used or occupied; (b) be deemed to have waived any notice required by law with respect to any legal proceedings regarding removal, eviction or ejection; (c) reimburse the Club and the Detained Member or Detained User for all costs and expenses incurred by him as a result of such conduct, including, but not limited to, costs of alternate accommodations, travel costs, court costs and reasonable attorneys fees; fees incurred with connection with removing, evicting or ejecting the Detained Member or Detained User from such Unit and costs (Including reasonable attorney's fees) incurred in collecting such amounts, and (d) pay to the Detained Member or Detained User entitled to use and occupy the Unit during such wrongful occupancy, as liquidate damages (in addition to the costs and expenses set forth in Section 2.03 (c) above), a sum equal to two hundred percent (200%) of the fair rental value per day of the Unit for each day or portion thereof, including the day of surrender, during which the Detaining Member or Detaining User prevents determining the "fair rental value" of a Unit. "Fair rental value" for a Unit shall be based upon the costs of renting comparable accommodations located in the vicinity of the Property. The Club shall use reasonable efforts to remove such Detaining Member or Detaining User from the Unit, to assist in the Detained Member or Detained User in finding alternate accommodations during such holdover period, or to secure, at the expense of the Club, alternate accommodations for any Detained Member or Detained User. Such alternate accommodations shall be as near in value to the Detained Member's or Detained User's Unit as possible and the cost thereof shall be assessed to the Detaining Member as a "Personal Charge" (as hereinafter defined). If the Club, in its sole discretion, deemed it necessary to contract for a period greater than the actual period for which the use is prevented in order

to secure alternate accommodations as set forth above, the cost of the entire period shall be assessed to the Detaining Member as a Personal Charge. By accepting issuance of a Membership Certificate, each Member agrees that, in the event of a wrongful occupancy or use by him or his Permitted User, damages would be impractical or extremely difficult to ascertain and that the measure of liquidated damages provided for herein constitutes a fair compensation to those who are deprived of occupancy. If a Member or his Permitted User by intentional or negligent act renders a Unit uninhabitable for one or more successive Use Periods, or any portion thereof, then (i) such Member shall be deemed a Detaining Member, (ii) the foregoing provisions of this Section 2.03 shall apply, and (iii) such Member shall be liable to any Member or Permitted User during any such successive Use Period just as if such Member had refused to vacate the Unit at the end of his Use Period. For the purposes of this Section, the act or negligence of a Permitted User shall be deemed to be the act of a Member authorizing the Permitted User to use such Member's Membership rights.

**Section 2.04. Maximum Occupancy Limitations.** The maximum occupancy of each Unit shall be limited to four (4) persons in a one bedroom Unit, six (6) persons in a two bedroom Unit, and eight (8) persons in a three bedroom Unit. In no event shall the maximum occupancy limitations described above be exceeded.

**Section 2.05. Rights of Entry.** Without limitation thereto, the Club, on behalf of itself, its successors and assigns, and its and their respective agent, employees and other authorized personnel, retains the right to enter the Units and the Common Areas, for the purposes of performing its administrative, maintenance and other obligations under this Declaration. The Club's exercise of such rights shall not unreasonably interfere with or diminish the rights of Members to occupy Units in accordance with this Declaration and the Rules and Regulations.

**Section 2.06. Rental of Units by the Declarant.** Declarant shall have the exclusive right to occupy the Units and to rent such Units to the general public at all times other than during properly reserved Use Periods. Any rentals received by Declarant shall inure to the benefit of Declarant.

**Section 2.07. Transfer or Encumbrance of Memberships.** (a) A Member may transfer his Membership provided that such Member sells, conveys, or encumbers not less than all of his interest in any single Membership. Any sales, conveyance or encumbrance by any Member of less than all of his interest in a Membership shall be null, void and of no effect. If a Member ("Selling Member") sells, transfers or assigns a Membership, any buyer, transferee or assignee ("Buying Member") shall specifically agree in writing to abide by the Declaration, the Bylaws, and the

Rules and Regulations. No sale, transfer or assignment shall be valid until any amounts due to the Club from the Selling Member have been paid and until the Buying Member has furnished a written statement to the Club of his name, address and telephone number and delivered to the Club the Buying Member's agreement to pay the balance, if any, due under the Selling Member's Purchase Agreement. On satisfaction of the requirements for transfer set forth in this Section, the Club shall issue a new Member Certificate to the Buying Member and cancel the Membership Certificate of the Selling Member.

(b) Each Member shall have the right to encumber all, but not less than all, of his Membership. Any such encumbrance shall be subordinate to all of the provisions of this Declaration. This Declaration shall be binding upon any Member whose title is derived through the enforcement of a security interest held in a Membership by any action, public or private. Notwithstanding any other provision of this Declaration, no breach of the provisions herein contained, nor the enforcement of any security interest created pursuant to the provisions hereof shall defeat or make invalid a purchase money security interest in any Member's Membership if the same is given in good faith and for value.

**Section 2.08 Transfer or Encumbrance of Club Property.** The Declarant hereby covenants not to sell, exchange or encumber the Property unless such encumbrance is first approved in writing by the Members representing at least two-thirds (2/3) of the voting power of the Club residing in all Members.

**Section 2.09. Protection of Memberships.** Except as provided in Section 2.08(b) above, no Member shall permit his Membership to be subject to any lien, claim or charge, the enforcement of which may result in a sale or threatened sale of the Membership or any part therein, or any other Member or in any interference in the use or enjoyment thereof by any other Member. In addition, no Member shall seek or obtain judicial partition, or the equivalent of such remedies, of the Property or a sale of a Membership in lieu of partition.

### **ARTICLE III THE CLUB**

**Section 3.01. Club.** LINDO MAR ADVENTURE CLUB, LTD., An OREGON nonprofit mutual benefit corporation, shall be the Club.

**Section 3.02. Membership in the Club.** Each owner of a Membership shall be a Member of the Club and shall remain a Member thereof until he ceases to so own a Membership. The Membership of each Member in the Club shall be evidenced by and is connected to and inseparable from his ownership of a Membership Certificate.

**Section 3.03. Types of Membership/Voting.** In accordance with provisions of the Bylaws, the Club shall have one class of membership. Members shall be entitled to one (1) vote for each Membership owned, provided, when more than one person or entity owns a Membership, all such persons and entities shall be Members and the vote for such persons and entities shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Membership. All votes required for action by the Club set forth in this Declaration shall require the prescribed percentage of the voting power of the Club and where specified the prescribed percentage of voting power of Members other than the Declarant. Where the voting percentages are not specified, voting shall be in accordance with the Bylaws.

**Section 3.04. Board of Directors.** The number of directors shall be specified in the Bylaws. The Board shall initially consist of the persons appointed by the incorporator of the Club.

### **ARTICLE IV MANAGEMENT**

**Section 4.01. Powers and Duties Generally.** The Club, acting along (through its Board, its officers, or other duly authorized agents or representatives) may, subject to the provisions of the Trust, the Articles, the Bylaws and this Declaration, exercise any and all of its rights and, except as specifically limited herein, all of the powers of a nonprofit mutual benefit corporation formed under the laws of the State of Oregon.

**Section 4.02 Specific Powers and Duties of the Club.** The management, operation, and maintenance of the Property, the acquisition (by purchase or lease), maintenance, and replacement of the Common Furnishings, the use and occupancy of the Units and payment of expenses and costs covered by in this Declaration shall be the duty of the Club. The Club shall have the duty to administer the membership plan and to levy, collect and enforce the maintenance fees provided for in this Declaration. The Club shall have exclusive possession of each Unit during the Maintenance Periods for maintenance and repairs on such Unit. The Club shall not make any commercial use of the Roster or information contained therein except as necessary to carry out its duties under the Declaration. The Club shall have the power to do all things that are required to be done by it pursuant to this Declaration. Without limitation of the above powers and duties, the Club is expressly authorized in its discretion and on behalf of the Members to do any of the following:

**(a) Maintenance and Repair.** The Club shall maintain the Property, the Units and the Common Furnishings in the same or substantially the same original appearance, design and quality, and in so doing

shall repair, repaint, furnish or refurnish any part of the Property, the Units and the Common Furnishings; to establish reserves for anticipated costs, including the costs of acquisition and replacement of Common Furnishings, and to buy materials, supplies, furniture, furnishings, labor or services which the Club deems necessary or proper for the operation, maintenance and repair of the Property and Common Furnishings.

**(b) Taxes and Maintenance Fees.** The Club shall be responsible for the payment of all taxes and maintenance fees, and other costs affecting or relating to the Property or the Common Furnishings; and to discharge or contest liens or charges affecting the Property.

**(c) Utilities.** The Club shall obtain and maintain electrical, gas, telephone and other utility services for the Property.

**(d) Rules and Regulations.** The Club shall adopt, publish and enforce from time to time, Rules and Regulations relating to the possession, use and enjoyment of the Property, which Rules and Regulations shall be consistent with this Declaration. In the event of a conflict between the terms and conditions of the Rules and Regulations and this Declaration, this Declaration shall prevail.

**(e) Legal and Accounting.** The Club shall obtain legal and accounting services necessary or proper in the operation of the Property and the enforcement of this Declaration and the Bylaws and the Rules and Regulations.

**(f) Insurance.** The Club shall ensure that the following insurance is obtained pursuant to the Prior Agreements or by it covering the Property and/or the agents of the Club (i) insurance covering the Property and the Common Furnishings against loss or damage by fire and other hazards customarily covered by fire insurance policies written with extended coverage, (ii) general comprehensive public liability insurance against claims for personal bodily injury, death or property damage with limits with regard to injury or death insuring against liability for bodily injury, death and property damage arising from the use, occupancy and maintenance of the Property, the Project and the Common Furnishings, and (iii) any other insurance or additional coverage or limits of liability deemed necessary or desirable by the Club. Except as otherwise specified in this subsection, the policies of insurance shall cover such risks, be written by such insurers, and be in such amounts as the Club shall deem proper under the circumstances.

**(g) Levy and Collection of Maintenance Fees.** The Club shall levy, collect and enforce Maintenance Fees against the Members in the manner provided in Articles V and VI hereof in order to pay the

expenses of the operations and to enforce each Member's obligations.

**(h) Financial Statements and Accounting.** The Club shall cause to be prepared regularly and distributed to all Members an annual report, which shall be distributed, within ninety (90) days after the end of each fiscal year, consisting of the following: (1) a balance sheet as of the last day of each fiscal year, (2) an operating statement for such fiscal year, (3) a statement of changes in financial position for the fiscal year, (4) a statement of the place where the Roster showing the names and addresses of the current Members of the Club may be found, and (5) a list of the names, mailing addresses and telephone numbers of the Members of the Board. If the annual report is not prepared by an independent accountant, the annual report shall be accompanied by the certificate of an authorized officer of the Club that the Statements were prepared without audit from the books and records of the Club. The Club shall also cause to be prepared and distributed to all Members within sixty (60) days of the beginning of each fiscal year, a pro forma operating statement ("the "Budget") for that fiscal year.

**(i) Bank accounts.** To deposit (a) all funds collected from Members pursuant to Article V hereof and Section 2.03, and (b) all other accounts collected by the Club in connection with its rights and duties provided herein, as follows:

(1) Except as provided for in section 4.02 (i) (2) below, all funds shall be deposited in a separate bank account or accounts (the "General Account(s)") may be used by the Club only for purposes for which such funds have been collected.

(2) Funds which the Club shall collect for "Reserve Expenses" [as defined in and collected pursuant to subsection 5.03 (b) shall within 10 days after deposit in the General Account, be deposited in an interest bearing account (the "Reserve Account") with a bank and the Club shall keep accurate books and records reflecting the amount in the Reserve Account. Funds deposited in the Reserve Account shall be used by the Club only for the specific purposes for which such funds have been collected.

**(j) Statement of Status.** The Club shall upon the request of any Member, purchaser or other prospective transferee of a Membership Certificate, issue a written statement setting forth any amounts unpaid with respect to the Membership Certificate and the use entitlement for the remainder of the current year. Such statement, for which a reasonable fee may be charged, shall be binding upon the Club in favor of any person who may rely on it in good faith.

**(k) Cleaning and Maid Service.** The Club shall provide for cleaning and maid service upon the departure of each Member or other occupant of the Unit

and during Maintenance Periods so that the Units are maintained in good order and repair.

**(l) Rights of Entry.** The Club shall have the right of entry in and upon the Property and the interiors of all Units for the Purpose of inspecting the Property, the Units and the Common Furnishings, and taking whatever corrective action may be deemed necessary or proper by the Board of Directors, consistent with the provisions of this Declaration. Without limiting the generality of the foregoing, the Club shall have a right of entry into any Unit occupied by a Member, a Permitted User, or an Exchange User upon reasonable notice to such occupant for any purpose reasonably related to the Club's performances of its duties hereunder. The Club's right of entry shall be exercised so as to avoid any unreasonable interference with the enjoyment or occupancy of a Unit by any Member, Permitted User or Exchange User.

**(m) Other Necessary Acts.** The Club shall do all other things or acts deemed by the Club to be necessary or desirable for the operation and maintenance of the Property pursuant to this Declaration.

**(n) Delegation.** The Club may delegate the authority and responsibilities of the Club to one or more agents, including, without limitation, the Managing Agent provided for in section 4.03 below.

**Section 4.03. Authority and duty to Enforce Managing Agent.** The Club shall use its best efforts to engage and maintain a reputable senior firm or individual as the Managing Agent for the Property pursuant to a written agreement (the "Management Agreement") meeting the requirements of this section 4.03. Each Management Agreement shall:

(a) Obligate the Managing Agent to perform all duties of the Club specified in Section 4.02 above, provided that the Managing Agent may delegate its authority and responsibilities to one or more agents for such periods and upon such terms as the Managing Agent deems proper, subject to the limitations set forth in Section 4.04 below.

(b) Provide for a term of not more than three (3) years, except that the Management Agreement may provide that the term will be automatically renewed for successive annual terms unless notice of non-renewal is given no later than ninety (90) days prior to the end of any term by either party, provided that the Club may not give notice of non-renewal unless authorized by the vote or written consent of a majority of the voting power of the Club residing in Members other than Declarant. The Management Agreement shall be subject to termination by the Club as follows:

(i) At any time for cause. If the Managing Agent shall dispute a termination by the Club pursuant to this subparagraph; the dispute shall be submitted to

arbitration in accordance with the commercial arbitration rules of the American Arbitration Association.

(ii) Without cause upon the vote or written consent of a majority of the voting power of the Club residing in Members other than Declarant.

(c) Provide that the Managing Agent may resign only upon compliance with the following conditions.

(i) The Managing Agent shall have given at least ninety (90) days prior written notice to the Club.

(ii) Prior to or at the expiration of the period of such notice the Club shall have entered into a Management Agreement with another management firm meeting the requirements of this Section 4.03 or shall have made a determination to discharge the duties delegated to Managing Agent with its own personnel. If however, the Club shall fail to make reasonable efforts to meet the foregoing requirements during such ninety (90) day period, Managing Agent's resignation shall be effective at the end of such ninety (90) days period to satisfy such requirements and has not entered into such a Management Agreement or determined to discharge the duties delegated to Managing Agent with its own personnel, the resignation of the Managing Agent shall not be effective until such a new Management Agreement is entered into between the Club and a new management firm or the Club has determined to discharge such duties with its own personnel.

(iii) On or before the effective date of the Managing Agent's resignation, the Managing Agent shall turn over all books and records relating to the management and operation of the Property to the successor Managing Agent.

(d) Provide for reasonable compensation to be paid to the Managing Agent.

**Section 4.04 Limitation on Powers of the Club and the Managing Agent.** Notwithstanding the powers of the Club as set forth herein, neither the Club (nor the Managing Agent as the delegate of the Club's powers and duties) shall enter into a contract with a third person or entity whereby such person or entity will furnish goods or services for the Property for a term longer than one year unless authorized by the vote or written consent of a majority of the Members of the Club, except for:

(a) The Management Agreement;

(b) A contract with a public utility company or utility service operated by the government or an agency thereof; and

(c) Prepaid casualty and/or liability insurance policies not to exceed three (3) years duration provided that the policy permits pro rata cancellation by the insured; and/or

(d) A lease of Common Furnishings.

**Section 4.05 Limited Liability.** Neither the Club nor the Managing Agent shall be responsible for the acts, omissions or conduct of any of the Members or Permitted Users or for the breach of any obligations hereunder of any of the Members or Permitted Users.

## ARTICLE V MAINTENANCE FEES

**Section 5.01 Creation of Personal Obligations for Maintenance Fees.** Each Member by acceptance of a Membership Certificate, hereby promises to pay the Club, for each Membership owned, the Maintenance Fees and Personal Charges. The Maintenance Fees, together with interest, costs of collection and reasonable attorney's fees, shall be the personal obligation of each Member at the time the Maintenance Fees become due and payable, shall bind such Member's successors and assigns, and shall be a lien and Charge upon the Membership against which the Maintenance Fees are made. No Member may waive or otherwise avoid liability for the Maintenance Fees by non-use or abandonment of his Membership or any part thereof.

**Section 5.02. Purpose of Maintenance Fees.** Maintenance Fees shall be used exclusively to promote recreation, health, safety and welfare of the Members, the operation and maintenance of the Property, and to reimburse the Club for expense incurred by the Club in the performance of the duties of the Club as set forth in this Declaration.

**Section 5.03. Basic Expenses.** "Basic Expenses" means the estimated aggregate amount of expenses as set forth in the Budget, to be incurred by the Club during the applicable fiscal year (a) to operate, manage, maintain, administer, improve and repair the Property, including the Units, the Common Area and the Common Furnishings, (b) to provide for reserves to ensure payment when due of the cost of capital expenditures relating to the repair or restoration of the Units and/or the Common Area and the repair and replacement of Common Furnishings or for such other purposes as are required by good business practice (the "Reserve Expenses"), (c) to provide for a fund to account for the possibility that some Maintenance Fees may not be paid on a current basis, and (d) to provide for the payment of the fee of the Managing Agent. Without limiting the generality of the foregoing, "Basic Expenses" shall include: all charges, costs and expenses whatsoever incurred by or on behalf of the Club for or in connection with (i) the administration and operation of the Property (ii) taxes assessed against the Club, the Property and/or the Common Furnishings and the maintenance fees and other similar governmental charges levied on or attributable to the Property, including, without limitation any added value, hotel transient occupancy tax or any governmental charge

levied in lieu thereof (iii) insurance, including fire and other casualty and liability insurance, obtained pursuant to this Declaration, (iv) any liability whatsoever for loss or damage arising out of or in connection with the Property or any fire, accident or nuisance therein, (v) cost of repair reinstatement, rebuilding and replacement of the Property and/or the Common Furnishings therein, (vi) the cost of all basic utility services, including water, electricity, garbage disposal, telephone and any other similar service attributable to the Units and the Common Areas, (vii) the unpaid share of any Maintenance Fee levied during the previous fiscal year against any Member who has defaulted in payment thereof to the extent that the same becomes uncollectable, and (viii) wages, accounting and legal fees, management fees, maid service, and cleaning fees, and other necessary expenses of upkeep, maintenance, management and operation actually incurred with respect to the Property. Basic Expenses shall not include any expenses constituting a Personal Charge. Basic Expenses for any applicable fiscal year subsequent to the 1986 fiscal year shall not exceed 120% of the Basic Expenses for the preceding year unless a majority of the voting power of the Club shall consent thereto by vote or written assent. The Reserve Expenses portion of the Budget shall consist of specific items and amounts for which such Reserve Expenses are being collected

**Section 5.04 Reduction of Budget.** Each Member hereby agrees that in the event the Board shall determine at any time during the fiscal year that the budget is, or will be, in excess of the amounts needed to meet the Basic Expenses (other than Reserve Expenses) for such fiscal year, the Board shall have the authority, exercisable in its sole discretion, to cause to be prepared an estimate of the amount of such excess, which excess shall then be subtracted from the previously prepared Budget for the fiscal year to which such excess is applicable. The Basic Expenses reflected in the reduced total Budget shall then be allocated among the Members as provided in Section 5.05 below. No Member shall, by reason of such reduction, be entitled to a refund of all or any portion of any Basic Maintenance Fee previously paid. Each Member hereby further agrees that any amount assessed and collected in excess of the amount required to meet the Basic Expenses (other than Reserve Expenses) shall be applied to reduce the amount assessed to meet the Basic Expenses for the next succeeding fiscal year. Any reduction in the budget, as provided herein, shall not relieve any Member from his obligation to pay any past-due Basic Maintenance Fee.

**Section 5.05. Basic Maintenance Fee.** On a fiscal year basis, an assessment for each Membership shall be determined by the Board in good faith taking into account the Basic Expenses attributable to such fiscal year and the difference in size, amenities and cost of maintenance of the Units, respectively (the "Basic Maintenance Fee"). The Basic Maintenance Fee for a Membership shall commence as of the first day of the

month following the date of issuance of the Membership and shall be prorated for the number of months from said date of January first of the next calendar year; provided, however, that the Basic Maintenance Fee on each Membership shall commence not later than six (6) months after the close of the first such date. Thereafter all Basic Maintenance Fees shall be due and payable on January first of each calendar year.

#### **Section 5.06. Payment of Basic Maintenance**

**Fee.** The Basic Maintenance Fee shall be paid in one lump sum due on or before the date determined in accordance with the provisions of Section 5.05 above. In no event shall a Member be allowed to exercise the rights of use associated with his Membership(s) prior to having paid the Basic Maintenance Fee (plus any "Late Charge", as defined below) on each of his Memberships for that fiscal year. Any Basic Maintenance Fee not paid when due shall bear interest at the maximum rate allowed by law until paid in full and shall automatically be subject to a twenty-five percent (25%) late charge (the "Late Charge").

#### **Section 5.07. Special Maintenance Fees.**

If the Basic Maintenance Fee with respect to any Membership is, or will become, inadequate to meet all expenses incurred by the Club hereunder (other than for items constituting Personal Charges) for any reason, including nonpayment by any Member of Maintenance Fee on a current basis, the Club shall immediately determine the approximate amount of such inadequacy, prepare and distribute a supplemental budget and levy (in the manner provided for in the Basic Maintenance Fee in Section 5.05 above) against each Member, a special assessment (the "Special Maintenance Fees") in an amount sufficient to provide for such inadequacy, provided however, that without the vote or written assent a majority of the voting power of the Club, Special Maintenance Fees shall not, in the aggregate, exceed 5% of Basic Expenses for the applicable fiscal year. No such vote or written assent shall be required in order for the Club to levy A Special Maintenance Fee in excess of the limitation set forth in the preceding sentence where the reason for such Special Maintenance Fee is an increase in the real property or other taxes levied against the Property. Any Special Maintenance Fee shall be payable in one lump sum or periodically (as determined by the Club) and shall be payable within thirty (30) days after receipt of a statement thereof.

**5.08. Personal Charges.** The term "Personal Charges" means any expense resulting from the act or omission of any Member, Permitted User or Exchange User, including without limitation (i) the cost of telephone charges, (ii) any special services or supplies attributable to the occupancy of the Unit during such Member's Use Period, (iii) the cost to replace or repair any damage to the Unit, any Common furnishings, or the Common Area on account of loss or damage occurring during such Member's Use Period, (iv) the cost to satisfy any expense to any other Member(s) or to the Club due to

any intentional or negligent act or omission of such Member, Permitted User or Exchange User, or resulting from the breach of such Member, Permitted User or Exchange User of any provisions of this Declaration, the Bylaws or the Rules and Regulations, (v) any Late Charges. For purposes of this Section 5.08, the act or negligence of a Permitted User shall be deemed to be the act of the Member. Such Personal Charges shall be paid by each Member as follows:

(a) If the Managing Agent is able to determine the amount of Personal Charges at Check-Out-Time (for example, Personal Charges constituting telephone charges, optional maid service, etc.), such Personal Charges shall be payable in cash or traveler's check at such Check-Out-Time.

(b) Personal Charges which are not so ascertainable shall be payable by cashier's check within thirty (30) days after receipt of a statement thereof.

(c) Notwithstanding the above, any and all Basic Maintenance Fee Late Charges shall be due at Check-In-Time.

## **ARTICLE VI ENFORCEMENT OF RESTRICTIONS**

**Section 6.01. General.** If any Member or his Permitted User fails to comply with any of the terms of this Declaration, the Bylaws and the Rules and Regulations, the Board, on behalf of the Club, shall have full power and authority to enforce compliance with this Declaration, the Bylaws and the Rules and Regulations in any manner provided for at law or in equity, including without limitation the right to enforce the Declaration, the Bylaws and Rules and Regulations by bringing an action for damages, an action to prohibit the violation or to specifically enforce the terms of this Declaration, the Bylaws and the Rules and Regulations against any Member, the Club shall be entitled to recover from the Member violating any such terms reasonable attorney's fees and costs in addition to any other amounts due. All sums payable by a Member hereunder, whether on account of Maintenance Fees, Personal Charges or otherwise, shall bear interest at the maximum rate allowable by law from the due date, or if advanced or incurred by the Club, or any other Member pursuant to authorization contained in this Declaration, from the date of such expenditure. In addition thereto, any Basic Maintenance Fee not paid by its due date, shall automatically be assessed the Late Charge as described in Section 5.06 above. All enforcement powers of this Club shall be cumulative. Each Member by acceptance of a Membership Certificate shall have promised and agreed that the Club shall have all the right, powers and remedies set forth in this Article VI and elsewhere in this Declaration. The Board shall take necessary steps to enforce this Declaration against any Member upon receipt of a petition signed by at least ten percent (10%) of the Members other than Declarant.



## **Section 6.02. Certain Specific Enforcement**

**Powers.** In amplification of, and not in limitation of the general powers specified in Section 6.01 above, the Declarant and the Club shall have the following rights and powers.

**(a) Suspension of Privileges.** If any Member or his Permitted User shall be in breach of this Declaration, the Bylaws or the Rules and Regulations, subject to the limitations set forth hereinafter in this subsection 6.02(a), the Club may, during the time such breach is not cured, suspend the right of such Member and his Permitted User(s) to occupy his Unit and the right of such Member to participate in any vote or other determination provided for herein. No such suspension, except a suspension of privileges for the failure of such Member to pay any Maintenance Fees or Personal Charges, or any portion thereof or any amount(s) due hereunder on or before the due date therefore, shall be made except in compliance with the provisions of Article X of the Bylaws and unless the approval of the Board is first obtained. The decision as to whether such privileges should be suspended shall be made by a majority of the members of the Board. Written notice of suspension, the reasons therefore and the length thereof shall be given to the suspended Member and the suspension shall be effective on the date such notice is given. If suspension of privileges is based on the failure of a Member to pay Maintenance Fees, Personal Charges or any other amount(s) due hereunder when due, the suspended privileges of such Member shall be reinstated automatically at such time as the Member shall have paid to the Club, in cash or by cashier's or certified check, all amounts past-due plus such interest and Late Charges as may have been applied as of the date of such reinstatement. If such suspension of privileges is based on any omission other than the failure of a Member to pay Maintenance Fees, Personal Charges or any other amount(s) due hereunder when due, the suspended privileges shall be automatically reinstated upon the expiration of the suspension period stated in the suspension notice.

**(b) Enforcement by Cancellation.** There is hereby created a security interest, in the form of a right to cancel a Member's Membership and accompanying use rights, securing the prompt and faithful performance of each Member's obligation under this Declaration, the Bylaws and the Rules and Regulations and the payment to the Club of any and all Maintenance Fees levied against any and all Membership under this Declaration, together with interest thereon at the maximum rate allowable under the law from the date of delinquency, and all costs of collection which may be applied or incurred by the Club in connection herewith, including reasonable attorney's fees. At any time within ninety (90) days after the occurrence of any default in the payment of such Maintenance Fee or performance secured, the Club or any authorized representative may, but shall not be required to make a written demand for payment or performance with respect to which the Member is in

default. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within a single demand. If such delinquency is not paid or default is not cured within forty-five (45) days after delivery of such demand, the Club may elect to cancel such defaulting member's membership, on behalf of the Club. Any demand shall be executed and acknowledged by any officer of the Club, and shall contain substantially the following information:

- (i) The name of the defaulting Member;
- (ii) The total amount of the delinquency, interest thereon, collection costs and reasonable attorney's fees and monetary penalties imposed by the Club;
- (iii) That demand for curing a default or notice is made by the Club pursuant to this Declaration; and
- (iv) The Membership will be canceled if the default is not cured.

Upon timely curing of any default for which a demand was made by the Club, the officers of the Club are hereby authorized to rescind such demand. Cancellation of a Member's Membership shall be effected by giving such Member notice under this Declaration after a proper demand to cure such default. Upon proper notice of cancellation hereunder the membership rights of such defaulting members shall immediately cease and such membership shall revert to the Declarant.

**Section 6.03. Subordination to Certain Mortgages.** The security interest provided for herein shall be prior to all encumbrances made by a Member or imposed by legal process upon any Member except taxes, bonds, maintenance fee and other levies, if any, which by law are prior thereto, whether the demand is made prior or subsequent to any such encumbrances, except that the demand provided for herein shall be subordinate to any first purchase money security interest (individually and collectively the "Prior Lien"). The sale or transfer of any Membership shall not defeat or affect the security interest provided for herein; provided, however, that the sale or transfer of any Membership pursuant to the exercise of a purchase money security interest shall extinguish the security interest provided for herein as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Membership or the purchaser thereof from liability for any Maintenance Fee(s) which thereafter become due.

## **ARTICLE VII DAMAGE, DESTRUCTION, CONDEMNATION**

**Section 7.01. General.** In the event of any damage or destruction, whether resulting from an insured or uninsured casualty or a partial taking in eminent domain proceedings to the Property or the

Common Furnishings other than by ordinary wear and tear, the Club shall, subject to the provisions of this article, cause such damage or destruction to be repaired and shall use any available insurance or condemnation proceeds for such purpose. If the damage is not covered by condemnation proceeds or by insurance proceeds, or if available funds are insufficient, the Board shall, subject to the provisions of this Article, levy a Special Maintenance Fee at a uniform rate against all Members for the amount required to meet the cost of such repair or restoration; provided, however, if such Special Maintenance Fee is greater than ten percent (10%) of the Basic Expenses for the fiscal year, such Special Maintenance Fee must first be approved by a majority of the voting power of the Club. If the damage or destruction was caused by the act or omission of any Member or his Permitted User, the cost of such repair or the amount of such deficiency shall be a Personal Charge and paid by such Member as provided in Section 5.08 above.

**Section 7.02. Excess Insurance Proceeds.**

Any excess insurance or condemnation proceeds over the cost of repair and restoration, or any insurance or condemnation proceeds available if the Property or the Common Furnishings are not repaired or replaced pursuant to this Declaration, shall be distributed to the Members (subject to the rights of any lender) in accordance with Section 11.02 of the Bylaws provided that there shall be deducted from the amount due any Member, the amount, if any, of all sums due to the Club from such Member.

**ARTICLE VIII  
MISCELLANEOUS PROVISIONS**

**Section 8.01. Amendment.** This Declaration may be amended by the Directors at any time in order to comply with the requirements of any jurisdiction in which Memberships will be sold or where the Property is located, provided that no such amendment may adversely affect any rights or increase any obligations of the Members hereunder. For other purposes, this Declaration may be amended by the vote or written consent of at least a majority (more than half) of the voting power of the Members, unless a different percentage is required by a specific section or provision of this Declaration to amend that section.

**Section 8.02. Termination.** This Declaration shall remain in effect from the date of execution hereof until it is decided by unanimous action of the Club's Board of Directors and by the affirmative vote of at least 75% of the Club's voting power to terminate the timeshare regime created by this Declaration. Upon such decision, all Memberships in the Club and all rights of the Members to use and occupy the Units shall cease and be of no further force or effect; provided, however, the termination of this Declaration shall not alter or terminate any liability of any Member for the payment of Maintenance Fees, Special Assessments, and/or

Personal Charges accrued prior to such termination under provisions of this Declaration.

**Section 8.03. Notices.** Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given either (i) when delivered personally at the appropriate address or (ii) upon the fifth (5th) day after deposit of same in any United States postal mail system postage prepaid or (iii) upon the fifteenth (15th) day following the deposit of such notice in the mail system of a country other than the United States, postage prepaid. Any notice to a Member required under this Declaration shall be addressed to the Member at the last address for such Member appearing in the records of the Club or, if there be none, at the address of the Property. Notices to the Club shall be addressed to the address designated by the Club by written notice to all Members. Notices to the Managing Agent shall be addressed to the Property. The addresses and addresses for purposes of this Section 8.03 may be changed by giving written notice. Unless and until such written notice is received, the last address and addressee as stated by written notice or provided herein, if no written notice of change in effect for all purposes hereunder.

**Section 8.04. Notification of Sale of Membership.** Within thirty (30) days after the sale or transfer of any membership, the transferee and transferor, and the date on which such sale or transfer is to be consummated. Unless and until such notice is given, the Club shall not be required to recognize the transferee for any purpose, and any action taken by the transferee as a Member may be recognized by the Club. Prior to receipt of any such notification by the Club or Managing Agent, any and all communications required or permitted to be given by the Club shall be deemed duly given and made to the transferee if duly and timely made and given to such transferee's transferor.

**Section 8.05. Severability.** If any provision of this Declaration, or any section sentence, clause, phrase or word or the application thereof in any circumstances, shall be held invalid, the validity of the remainder of this Declaration and of the application of such provision, sentence, clause, phrase or word under any other circumstances shall not be affected thereby.

**Section 8.06. Successors.** The provisions of this Declaration shall be binding upon all parties having or acquiring any Membership or any right, title or interest therein and shall be for the benefit of each Member and his heirs, successors and assigns. Each Members (including the Declarant) shall be fully discharged and relieved of liability on the covenants herein insofar as such covenants relate to each Membership upon ceasing to own such Membership interest terminated.

**Section 8.07. Violation or Nuisance.** Every act or omission whereby any provision of this Declaration,

the Bylaws or the Rules and Regulations is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated whether or not the relief sought is for negative or affirmative action, by Declarant, the Club or any Member.

**Section 8.08. Interpretation.** The captions set forth herein are for convenience only and shall not be considered to expand, modify or aid in the interpretation, construction or meaning of this Declaration. As used herein the singular shall include the plural and the masculine shall include the feminine and neuter.

**Section 8.09. No Waiver.** The failure to enforce any provision of this Declaration shall not constitute a waiver thereof or of the right to enforce such provision thereafter.

**Section 8.10. Choice of Law.** This Declaration shall be interpreted in accordance with the laws of the State of Oregon.

**Section 8.11. Fiscal Year.** The fiscal year of the Club shall be the year beginning January 1, and ending December 31, unless and until the Board selects a different fiscal year.

IN WITNESS WHEREOF, the Declarant has here-unto caused this Declaration to be executed this 15th day of December, 1986.