

**CONDOMINIUM DECLARATION**  
**FOR**  
**ARROYO DEL SOL CONDOMINIUMS**

ARROYO DEL SOL LTD. CO. ("the Declarant"), owner of the real property described in Exhibit "1" attached hereto ("the Property"), hereby makes this Declaration ("Declaration") in order to create with respect to the Property a Condominium to be known as Arroyo del Sol Condominium ("Condominium") under the New Mexico Condominium Act ("the Act").

1. SUBMISSION OF LAND TO THE ACT. The Property, together with the improvements constructed thereon, is hereby submitted to the provisions of the Act.

2. DEFINITIONS. Terms not otherwise defined herein or in the Plat ("the Plat"), the Plans ("the Plan"), or the Bylaws of the unit owners' association ("Bylaws") have the meaning specified in Section 47-7A-3 of the Act. The unit owners' association shall be known as the Arroyo del Sol Condominium Association, Inc. ("Association").

3. BUILDING AND UNITS.

A. Buildings. The location of the buildings on the Property are shown on the Plat attached hereto as Exhibit "2".

B. Units. The location and dimensions of Units within the buildings on the Property is shown on the Plans attached hereto as Exhibit "3". Attached as Exhibit "4" hereto is a list of all Units, their identifying letter, size (all as shown more fully on the Plat and the Plans), and the undivided percentage interest of each Unit Owner in the Common Elements and Common Expenses ("Percentage Interest") appurtenant to each Unit. The "size" of each Unit is the total number of square feet contained therein determined by reference to the dimensions shown on the Plat and Plans. The locations of the Common Elements to which each Unit has direct access are shown on the Plat and the Plans. Each Unit shall be allotted one vote in the Association.

C. Unit Boundaries. Each Unit consists of the space within the following boundaries:

1.) Upper and Lower (Horizontal) Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the perimetrical boundaries of the Unit or of a stairwell within the Unit:

Exhibit A

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a.) Upper Boundaries of One-Story Units. The horizontal plane of the under surface of the ceiling joists or roof joists.

b.) Lower Boundaries of One-Story Units. The horizontal plane of the upper surfaces of the floor concrete slab or floor decking.

c.) Upper and Lower Boundaries of Two-Story Units. The upper and lower boundaries of two-story units shall be the same as the upper and lower boundaries of one-story units.

2.) Perimetrical (Vertical) Boundaries. The perimetrical boundaries of the Unit shall be the following boundaries extended to an intersection with the upper and lower boundaries: The vertical planes adjacent to and which include the inner surface of the wall framing of the interior and exterior walls of the building bounding a Unit (and in the case of each Unit which has a stairwell serving it only, such boundaries shall also include the vertical planes adjacent to and which include the inner surface of the wall framing of the walls bounding such stairwell).

3.) Garage. Each Unit includes a garage as described on the Plans. The boundaries of a garage are described in the same manner as the boundaries of a one-story unit.

D. Maintenance Responsibilities. Notwithstanding the ownership of various portions of the Common Elements and the Units by virtue of the foregoing boundary description, the provisions of the Bylaws shall govern the division of maintenance and repair responsibilities between the Unit Owners and the Association provided that the Association in any event shall be responsible for maintenance and repair of all Common Elements within the Property as described in the Bylaws. The Association shall maintain all collection ponds as shown on the approved grading plan provided that until Declarant Control has been relinquished in accordance with Paragraph 11 hereof, the Declarant shall be responsible for such maintenance.

E. Relocation of Unit Boundaries and Subdivision of Units. Relocation of boundaries between Units and subdivision of Units will not be permitted.

F. Limited Common Elements. The patio or deck appurtenant to each Unit and the driveway in front of each Unit's garage are Limited Common Elements for the exclusive use of the owner of the Unit.

4. DESIGNATION OF RESERVED COMMON ELEMENTS. The Board of Directors shall have the power in their discretion to designate from time to time certain Common Elements as "Reserved Common Elements" and grant reserved rights to any or less than all of the Unit Owners and establish a reasonable charge to such Unit Owners for the use and maintenance thereof. Such designation by the Board shall not be construed as a sale or disposition of the Common Elements.

5. UNIT USE. No Unit shall be used for other than housing and the related common purposes for which the Property was designated.

6. RESERVATION OF USE BY DECLARANT. All Units shall be subject to the statutory right in favor of Declarant provided in Section 47-7B-15 of the Act. Declarant reserves the right to use any Units owned by Declarant as models, management offices, or sales offices as owner or lessee. Declarant reserves the right to relocate the same from time to time within the Property; upon relocation or sale of a model, management office, or sales office, the furnishings thereof may be removed. Declarant further reserves the right to maintain on the Property such advertising signs as may comply with applicable governmental regulations, which may be placed in any location on the Property and may be relocated or removed, all at the sole discretion of Declarant.

7. UNIT OWNERS' EASEMENTS. Each Unit Owner is hereby granted a nonexclusive easement in common with each other Unit Owner appurtenant to each Unit for ingress and egress through all Common Elements to and from Irving Boulevard subject to such reasonable rules, regulations, and restrictions as may be imposed by the Association.

8. ACCESS. Declarant reserves in favor of Declarant and any managing agent or other person authorized by the Board of Directors a right of access to any Unit as provided in Section 47-7C-7 of the Act and Article V, Section 9 of the Bylaws. In case of emergency, such entry shall be immediate whether the Unit Owner is present at the time or not.

9. DECLARANT'S RIGHT TO LEASE. Declarant shall retain title to each Unit not sold to any purchaser. Declarant retains the right to enter into leases with any third parties for the occupancy of any of the Units retained by Declarant and not sold to any purchaser.

10. RESERVED DEVELOPMENT RIGHTS.

A. Additional Land. Declarant hereby expressly reserves the rights, until the seventh anniversary of the recordation hereof, to add up to all of the balance of land now owned by or hereafter acquired by the Declarant contiguous with the Property

("additional land") to the Condominium and to create upon such additional land up to 200 units including the units described in Exhibit "4" in accordance with Section 47-7B-10 of the Act without the consent of any Unit Owner or mortgagee. This development right may be exercised with respect to different portions of the additional land at different times. No assurance is given as to the boundaries of any of the additional land with respect to which the Declarant may exercise its development rights nor the order in which any portion may be subject to the exercise of such right. If the development right is exercised as to any portion, the development right is not required to be exercised with respect to any other portion. Should Declarant exercise the right to add additional Units to the Condominium, the Percentage Interest of each Unit may be computed on the basis of size as specified in Paragraph 3B above or may be uniform, but in any event each Unit shall be allocated one vote in the Association. Since the total Percentage Interest of the Condominium shall always equal 100%, the total Percentage Interest allocated to Units listed in Exhibit "D" will be readjusted accordingly.

B. Declarant's Easement. Whether or not Declarant exercises the right under subparagraph A above, Declarant does hereby reserve the right of way for ingress and egress over the Property to and from the additional land and a right to connect with, make use of, and maintain, repair, and replace utility and drainage lines within the Property and to grant such easements for roadways and utilities as may be necessary to complete the development or improvement of the additional land.

C. Exercise. If the development right is exercised as to any portion of the additional land, the date the amendment to the Declaration is filed pursuant to Section 47-7B-10A shall be the effective date for granting voting rights and for assigning assessments to the annexed units. All future improvements on the additional land will be consistent with the initial improvements in terms of quality of construction.

11. DECLARANT CONTROL. Until no later than the earlier of (a) four months after 75% of the Units (including those to be constructed on the additional land) have been conveyed to Unit Owners or (b) five years after the first Unit is conveyed to a Unit Owner, the Declarant may appoint and remove the officers and members of the Board of Directors of the association, subject to the limitations in Section 47-7C-3 of the Act.

12. RIGHTS OF SECURED LENDERS.

A. Priority. Except as specifically provided in the Act, this Declaration, and the Bylaws, no provision therein shall be construed to grant to any Unit Owner, or to any other person, any priority over any rights of mortgagees.

B. Restrictions.

1.) No material provisions in the Declaration or the Bylaws of the Association may be amended without approval of 51% of the holders of mortgages secured by Units. Implied approval may be assumed if a mortgagee fails to submit a response to a written proposal for an amendment within 30 days after the proposal is made. A change to any of the following would be considered as material:

- voting rights;
- assessments, assessment liens, or subordination of assessment liens;
- reserves for maintenance, repair, and replacement of common elements;
- responsibility for maintenance and repairs;
- reallocation of interests in the general or limited common elements, or rights to their use;
- boundaries of any Unit;
- convertibility of Units into common areas or vice versa;
- expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;
- insurance or fidelity bonds;
- leasing of Units;
- imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- a decision by the Owners' Association to establish self-management when professional management had been required previously by an eligible mortgage holder;
- restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;
- any action to terminate the legal status of the project after substantial destruction or condemnation occurs; or

- any provisions that expressly benefit mortgage holders, insurers, or guarantors.

2.) Termination of the legal status of the Property for reasons other than substantial destruction or condemnations shall not be effective without the approval of 67% of the holders of mortgages secured by Units.

13. AMENDMENT. Subject to the provisions of paragraph 12 above, this Declaration may be amended only by a vote or agreement of Unit Owners or Units to which at least sixty-seven percent (67%) of the votes in the association are allocated.

14. TAXATION. Each Unit and its percentage of undivided interest in the common elements shall be deemed a parcel subject to separate assessment and taxation.

IN WITNESS WHEREOF, Declarant has executed this Declaration this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

ARROYO DEL SOL LTD. CO.  
By: JMS Construction Corporation, Manager

By: \_\_\_\_\_  
Steve Abraham, President

STATE OF NEW MEXICO       )  
                                      ) ss.  
COUNTY OF BERNALILLO    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_, by Steve Abraham, President of JMS Construction Corporation, a limited liability company on behalf of said corporation as Manager of Arroyo del Sol Ltd. Co. a limited liability company.

\_\_\_\_\_  
Notary Public

My Commission Expires: