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	REQUEST OF:
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	DATE: 09/06/91 TIME: 12:10
	FEE: 28.00 SC: 4.00 PT: 1.00
	BOOK 2395 PAGE 261 PAGES: 028

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**THE ARROYO SECO  
RESIDENTIAL COMMUNITY  
SEDONA, ARIZONA**

**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
AND HOMEOWNER BENEFITS AND ASSURANCES**

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**DECLARATION OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
AND  
HOMEOWNERS BENEFITS AND ASSURANCES**

THIS DECLARATION is made this 4th day of September, 1991, by ARROYO SECO DEVELOPMENT, an Arizona limited partnership, ("Declarant") by B & B DEVELOPMENT COMPANY, INC., an Arizona corporation as General Partner of Declarant.

**RECITALS:**

- A. Declarant is the record owner of real property in the City of Sedona, Yavapai County, Arizona which is described in Book 29 of Maps and Plats, Page 5, records of Yavapai County, Arizona (the "Property").
- B. Declarant intends to sell and convey the Property, or portions thereof, and in doing so, desires to subject and place upon the Property mutual and beneficial assurances, restrictions, covenants, conditions, reservations, easements, liens, charges and development standards, hereinafter collectively the "Declaration", under a general plan of improvement for the benefit of the Property and its owners.
- C. Declarant has incorporated, as a not for profit corporation, THE ARROYO SECO COMMUNITY ASSOCIATION, for the purpose of the efficient preservation of the values and amenities of the Property and to which is delegated the power of maintaining and administering the Common Area and exterior of residences, administering and enforcing this Declaration and collecting and disbursing the assessments herein created.

NOW, THEREFORE, Declarant declares that the Property shall be held, sold, conveyed, used and improved subject to this Declaration which is for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property, all of which is hereby declared to be for the benefit of the Association, the Property and the owners thereof, their heirs, successors, grantees and assigns. This Declaration establishes a general plan for the improvement and development of the Property and its use, occupancy and enjoyment. All of the provisions hereof shall be construed as covenants running with the land and equitable servitudes for the benefit of and binding upon all parties having or acquiring any right, title or interest in the Property or any portion thereof, irrespective of whether or not this Declaration is referenced in a deed or other applicable instrument of conveyance.

**1 DEFINITIONS**

- 1.01 **"Declarant"** shall mean ARROYO SECO DEVELOPMENT, an Arizona limited partnership, its successors and assigns.
- 1.02 **"Property"** shall mean and refer to all of the property described in the subdivision plat recorded in Book 29 of Maps and Plats, Page 5, records of Yavapai County, Arizona or as the same may be amended (sometimes herein referred to as the "Plat").
- 1.03 **"Declaration"** shall mean the provisions herein set forth in this document, as and if amended, together with any and all declarations which may appear on the plat.
- 1.04 **"Improvements"** shall mean the buildings, garages, streets, roads, driveways, parking areas, fences, walls, hedges, plantings, trees and shrubs, and all other structures or landscaping of every type and kind located on the Property.
- 1.05 **"Lot" or "Unit" or "Garden Home"** shall be synonymous and shall mean and refer to a separately designated and legally described freehold estate consisting of any plot of land and the improvements thereon designated as such on the Plat.
- 1.06 **"Common Area"** shall mean all property to be owned by the Association for the mutual use and enjoyment of the Owners together with the improvements, fixture, equipment and personal property located on or used in conjunction therewith. The Common Area encompasses all of the Property so designated on the Plat or located in the Common Area, and shall include, without limitation, the roadways, sidewalks, curbs, gutters, parking areas, trails, drainage courses (whether on or under the ground), natural areas, swimming pools, waste water treatment facilities, and all utility lines and systems located on the Property but shall not include any portion of the Property designated as a Lot as shown on the Plat.
- 1.07 **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same shall be merged) of any Garden Home. "Owner" shall include the purchaser of a Garden Home under an executory contract for the sale of real property. "Owner" does not include persons or entities who hold an interest in any Garden Home merely as security for the performance of an obligation.
- 1.08 **"Association"** shall mean and refer to THE ARROYO SECO COMMUNITY ASSOCIATION, an Arizona not for profit corporation, its successors and assigns.

- 1.09 "Articles" shall mean the Articles of Incorporation of the Association which are, or shall be, filed with the Arizona Corporation Commission, as and if amended.
- 1.10 "By-laws" shall mean the Bylaws of the Association, as and if amended.
- 1.11 "The Arroyo Seco Rules" shall mean the rules adopted by the Association as provided in Section 5.03.
- 1.12 "Board" shall mean the Board of Directors of the Association.
- 1.13 "Member" shall mean any person, corporation, partnership, joint venture or other legal entity who is a member of the Association as provided in Section 5.05.
- 1.14 "Designated Person" shall mean that person to whom the joint owners of any Lot have delegated the rights and duties as set forth in Sections 5.06(c) and 7.07.
- 1.15 "Assessment Rate" shall be the pro-rata portion of assessments to be borne by a Unit as provided in Section 7.06.
- 1.16 "First Mortgage" shall mean any mortgage, deed of trust or agreement of sale made in good faith, for value and duly executed and recorded so as to create a lien that is prior to the lien of any other mortgage, deed of trust or agreement for sale. The mortgagee, beneficiary and vendor of a mortgage, deed of trust or agreement for sale, respectively, shall be referred to as the "mortgagee."

## 2. PLAN OF DEVELOPMENT

- 2.01 Declarant intends to develop Arroyo Seco in accordance with the general plan depicted on the Plat whereby the Property shall be developed as a planned community with a mixture of Garden Homes mutually utilizing the Common Area.

## 3. USES

- 3.01 Residential. Each Garden Home shall be used, improved and devoted exclusively to first class residential use and no gainful occupation, profession, trade, business, religion, or other nonresidential use shall be conducted upon or from any Garden Home. Garages and other areas within a Lot and not initially designed as a living area shall not be used as a living area regardless of the presence or absence of alterations therein. Public or private auctions, garage sales and similar events and activities shall be prohibited. The roofs of the Garden Homes are not designed to be and shall not be used as walk decks,

sun decks or the like and no persons shall be permitted on the roofs except for such time as is required for repair and maintenance. No Garden Home shall be used for hotel or other lodging or transient service or purpose. No Garden Home shall be leased or rented except in its entirety and for a term of not less than thirty (30) days. Any such leasing or renting of a Garden Home shall be in full compliance with the Arroyo Seco Rules which, among other things, shall require notification to the Board prior to any such leasing or renting and shall contain information about the proposed lessee or tenant and the written agreement of such party to abide by the terms of this Declaration and the Arroyo Seco Rules in effect at such time, or as the same may be amended thereafter. Owners are responsible for the conduct of lessees, tenants, guests, children and other family members, agents, contractors and all others in, on or about a Garden Home or any part of the Property at the request, invitation or sufferance of an Owner such that any violation of this Declaration or The Arroyo Seco Rules by any such person shall constitute a violation by such Owner.

**3.02 Construction.** No building or structure of any kind may be erected, placed or maintained on any Lot unless of new construction. All Garden Homes shall be constructed with uniform garage doors and shall be maintained with the same. Trailers, mobile homes, modular homes or prefabricated structures of any kind; structures of a temporary character used as a residence either temporarily or permanently; unsightly window coverings such as aluminum foil, reflective coatings, newspaper, cardboard, or the like; metal patio covers, sunscreens, covers or screen doors; and hospitals, sanitariums or other places for the care of treatment of the sick or disabled, mentally or physically, are all prohibited. Prefabricated fireplace flues (treated architecturally with lath and plaster), wood shutters, timber lattices and canvas awnings will be permitted with the prior approval of the Declarant or the Board.

**3.03 Accessories.** Evaporative coolers, pre-coolers and the like shall be prohibited. No clotheslines, service yards, wood piles, basketball apparatus, free-standing mailboxes or newspaper receptacles, exterior storage areas, sheds or structures, heating or air conditioning equipment, or other exterior fixtures, machinery or equipment shall be permitted except with the prior written approval of the Declarant or the Board. Any such use or equipment as is approved and authorized shall be attractively screened or concealed subject to all required approvals as to architectural control. No automobile, truck or other vehicle, regardless of ownership, age, condition or appearance, shall remain on the Property in any manner which could be construed as being stored, neglected, abandoned or otherwise not in active use.



- 3.04 Utilities.** All gas, electric, power, telephone, water, sewer, television and other utility and service connections and lines serving the Property shall be located either underground or concealed within or under buildings or other structures, except when prohibited by law. Service pedestals, transformers, switch cabinets and similar installations may be located above ground. Radio, television and other receivers, transmitters and antennas shall be prohibited. No outside speakers or amplifiers shall be permitted except with the prior approval of the Declarant or the Board. All speakers, amplifiers, radios and other means of emitting sound, whether located inside or outside of a Garden Home, shall be subject to regulation by the Association as to noise levels and time or use. All outside lighting, except porch lights and other customary, indirect noncolored lighting, shall be subject to prior approval by the Declarant or the Board.
- 3.05 Signs.** No advertising sign, "For Sale," "For Rent," "For Lease," or other sign, billboard or display of any kind shall be permitted on the Property except for such sign or signs as the Declarant and its sales agent may place on the Property during the time that Declarant is selling Units, and when Declarant has sold all of the Units no such sign shall be permitted on the Property, including any sign placed in the windows of Units, but an Owner desiring to sell or lease his Garden Home may place a notice not to exceed 8" x 11 1/2" on the bulletin board located in the Common Area. Street and Unit names and numbers, mailing addresses and other identifications and directory designations, markings and insignia shall be permissible only as installed by the Declarant or as approved by the Board.
- 3.06 Bulletin Board.** Declarant shall place one bulletin board in a location on the Common Area which may be used by the Association for meeting notices and the like, and which may be used by an owner for sale or lease purpose as stated in Section 3.05.
- 3.07 Walls.** Walls and fences shall be of uniform heights and shall remain in design, material and color as originally constructed by the Declarant. No entry, ornamental or sign wall constructed or installed by Declarant may be altered or removed.
- 3.08 Planting and Gardening.** Except in the individual patio areas of a Garden Home no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the property by an Owner except such as are installed in accordance with the initial construction of a Garden Home or other buildings located on the Property or as approved by the Board. No planters or planter boxes shall be placed so as to overhang the exterior of

any patio area of a Garden Home and no tree, shrub, or other landscaping shall overhang or otherwise encroach upon any sidewalk, street or any portion of the Common Area without the prior written consent of the Board. No deciduous trees shall be permitted without the prior written approval of the Board. No Owner shall allow any condition which shall induce, breed or harbor plant disease or noxious insects.

**3.09 Waste Disposal.** No garbage, rubbish, trash or debris shall be placed or allowed to accumulate on the Property and shall be placed in the garbage container to be supplied for each unit by the waste disposal company selected by the Board. The placement and maintenance of such containers shall be subject to regulation by the Board. Natural areas and drainage courses within the Common Area shall not be used for dumping or vehicular traffic and shall be maintained fully open, unobstructed and watered by the sprinkling system where installed by Declarant. No Garden Home shall be allowed to present an unsightly appearance, endanger the health of Owners, emanate offensive noises or odors or constitute an aggravation, annoyance or nuisance.

**3.10 Vehicles - Boats - Parking - Garages.** Motor vehicles shall be parked and kept only in garages or designated parking areas. On-street parking shall be restricted to deliveries and short term guests. The parking of trucks, buses, commercial vehicles, recreational vehicles, trailers, boats, dune buggies, and the like shall not be permitted except for limited time periods as set forth in the Arroyo Seco Rules. The interiors of all garages shall be maintained in a neat, clean and sightly condition. Garage doors shall remain closed at all times except when in actual, active use to permit ingress and egress of vehicles.

**3.11 Architecture.** No structures, improvements, pools, courts, additions, changes, expansions, alterations, repairs, painting, landscaping, excavation or other work which in any way affects or alters the exterior appearance of any Garden Home or any improvement on the Common Area shall be initiated without the prior written approval of the Board. No excavation, fill or other alteration of the topography or drainage of any Garden Home shall be initiated without the prior written approval of the Board. Pursuant to its rulemaking power, the Board shall establish a procedure for the preparation, submission and determination of applications for any such work. The Board shall have the right to refuse to approve any plans or specifications or grading plan, which are not suitable or desirable, in its sole opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications or grading plans, and without any limitation of the foregoing, it shall have

the right to take into consideration the suitability of any change from the original development plan of Declarant. In granting approval, the Board may impose such conditions and stipulations as it may deem appropriate including, without limitation, requirements concerning restoration or natural terrain, landscaping of fill slopes, restrictions against interference with drainage, burial and camouflage of utility lines, duration of construction activities (not to exceed ninety days from commencement to completion) and the like. All subsequent additions to, changes or alterations in any Improvements, including exterior texture or color scheme (exterior colors shall not be changed from the used by Developer), shall be subject to the prior approval of the Board. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Board. All decisions of the Board shall be final and no Owner or other party shall have recourse against the Board for its approval or disapproval of any plans and specifications.

- 3.12 Mining.** No exploration or mining operations of any kind shall be permitted by Declarant or an Owner whether involving discovery, exploration, location, removal, milling or refining and whether relating to water, oil, gas, hydrocarbons, gravel, uranium, geothermal steam or otherwise.
- 3.13 Animals.** Except as provided below in this sub-section no animals, including but not limited to dogs, cats, reptiles, birds, fowl, poultry, fish or livestock shall be permitted or kept on or in connection with any Garden Home or the Property. However, an owner may have as a household pet or pets: (a) one or two cats; or (b) one cat and one small dog; or (c) two small dogs provided that no dog shall weigh over thirty pounds. In addition, commonly accepted household pets such as birds and fish in reasonable numbers may be maintained within a Garden Home. All such animals shall be for domestic but not commercial purposes.
- 3.14 Subdivision.** No Garden Home shall be further subdivided or separated into smaller or different portions or conveyed or encumbered in less than the full original dimension as set forth on the plat. Dedication, conveyance or the granting of easements to public utilities or other public or quasi-public entities may be permitted with the prior approval of the Board.
- 3.15 Compliance.** No Garden Home shall be used or maintained in violation of any applicable statute, ordinance, code or regulation of any governmental authority, the provisions of this Declaration or the rules and regulations of the Association.

**3.16 Exemption.** In developing the Property and constructing Garden Homes, Declarant shall not be subject to the limitations of Section 3 and nothing contained in the Declaration shall prohibit or interfere with such activities by Declarant or its agents. Declarant may utilize any portion of the Property (except Garden Homes previously conveyed to Owners other than Declarant) for any and all construction and sales activities. During such time as it retains ownership, all Garden Homes owned by Declarant are free of the use and other restrictions of this Declaration and Declarant may make such use of its Garden Homes as is permitted by law notwithstanding that such use otherwise would be prohibited by this Declaration. All Improvements constructed or installed by Declarant expressly shall be permissible without necessity for approval by the Board or others and notwithstanding any restriction or prohibition to the contrary anywhere set forth herein.

**4. PARTY WALLS.**

The rights and duties of Owners of Garden Homes containing party walls, partitions, dividers, or fences, shall be as follows:

**4.01 Definition.** Each wall, including a patio wall, which is constructed so that any part is placed on or as the dividing line between separate Garden Homes, shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume the burdens and be entitled to the benefits of these provisions, and, to the extent not inconsistent herewith, the general rules of law regarding party walls and of liability for negligent or willful acts or omissions shall be applied thereto. Walls separating adjacent property not included within the Property are not party walls and shall be the responsibility of the Owner of the Garden Home containing the wall.

**4.02 Damage.** In the event any party wall is damaged or destroyed through the act of an adjoining Owner, or any of his guests, tenants, licensees, agents or members of his family (whether or not such act is negligent or otherwise culpable) then such Owner shall forthwith proceed to rebuild and repair the same in as good a condition as formerly without cost to the adjoining Owner.

**4.03 Repairs.** In the event any party wall is damaged or destroyed (including ordinary wear and tear and deterioration from lapse of time), by some cause other than the act of an adjoining Owner, his agents, tenants, licensees, guests or family, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good a condition as formerly at their joint and equal expense.

**4.04 Negligence.** Notwithstanding any other provision herein, an Owner who by his negligent or willful act or omission

causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and repairing damage caused thereby.

**4.05 Alterations.** In addition to meeting the other requirements of this Declaration, any Owner proposing to modify, make additions to or rebuild his Garden Home in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining Owner and the Board. As constructed by Declarant, the party walls are not retaining walls and shall not be altered to become retaining walls whether through filling above the foundation line or other means or methods.

**4.06 Arbitration.** In the event of any dispute between Owners with respect to the repair or rebuilding of a party wall, upon written request of one of such Owners addressed to the Board, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If such rules have not been adopted by the Association, then the matter shall be submitted to three arbitrators, one chosen by each of the Owners and the third by the two so chosen, or if the two arbitrators cannot agree as to the selection of the third arbitrator within ten days, then by any Judge of the Superior Court of Yavapai County, Arizona. A determination of the matter signed by any two of the three arbitrators shall be binding upon the Owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten days after receipt of a request in writing for arbitration from the other party, then the other party shall have the right and power to choose both arbitrators.

**4.07 Application.** The right of any Owner to contribution from any other Owner under this Section 4 shall be appurtenant to the Garden Home and shall pass to and be binding upon such Owner's heirs, assigns and successors in title.

## **5. THE ARROYO SECO COMMUNITY ASSOCIATION**

### **5.01 Organization.**

**(a) The Association.** The Association shall be a not for profit Arizona corporation charged with the duties and invested with the powers prescribed by law and as set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. The Association shall comply with the provisions of §528 of the Internal Revenue Code of 1954, as amended, so as to attain and continue the status of a tax exempt "Residential Real Estate Management Association."

(b) **Subsidiary Associations.** The Association shall have the right to form one or more subsidiary associations for any purpose or purposes deemed appropriate by the Board. Without limiting the generality of the foregoing, one or more subsidiary associations may be formed for the operation and maintenance of any specific area located within Arroyo Seco. However, such subsidiary associations shall be subject to this Declaration and may not take any action to lessen or abate the rights of the Owners.

(c) **Board of Directors and Officers.** The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and the Bylaws.

**5.02 Powers and Duties of the Association.** The Association shall have such rights, duties and powers as are set forth herein and in the Articles and Bylaws.

**5.03 The Arroyo Seco Rules.** By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as "The Arroyo Seco Rules." The Arroyo Seco Rules may restrict and govern the use of any Common Area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that The Arroyo Seco Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of The Arroyo Seco Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Upon such recordation, the Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. The Board shall have the right to impose fines and penalties for violations of this Declaration and The Arroyo Seco Rules and if such fines or penalties are not paid within ten days after written notice to the Owner in violation, the fines or penalties shall become a lien on the Garden Home of the Owner and be enforceable as any other lien created by Section 7. The fines and penalties shall be in an amount of \$100.00 for each offense, or such other amount as the Board may determine. Each occasion of violation and each day during which such violation continues shall be deemed a separate offense subject to a separate fine and penalty.

**5.04 Personal Liability.** No member of the Board, any Committee of the Association, any officer of the Association, any compensated or voluntary manager, or any employee or agent shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the

Board, the manager or any other representative or employee of the Association, any other committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith and without willful or intentional misconduct. Officers and Directors of the Association shall be indemnified against personal liability for acts or omissions in the manner set forth in the Articles.

**5.05 Membership.** Every Owner of a Garden Home shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of the Garden Home. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership of the Owner's Garden Home and then only to the transferee of ownership of such Garden Home. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a Garden Home shall operate to transfer membership to the new Owner.

**5.06 Voting Rights.** The Association shall have two classes of voting:

**Class A.** Class A shall consist of all Owners except Declarant and each shall be entitled to one vote for each Unit owned.

**Class B.** Class B shall be the Declarant which shall be entitled to forty six votes for each Unit owned. The Class B membership shall cease and be converted to Class A membership on the first to occur of the following events:

- (i) Upon conveyance to an Owner other than Declarant of the last Unit owned by Declarant; or
- (ii) When Declarant gives written notice to the Board and the Class A members that Declarant has voluntarily converted its Class B membership to Class A membership; or
- (iii) Ten years from the date of Recordation of this Declaration.

**(a) Joint Ownership.** The votes for each Unit must be cast as a whole and fractional votes shall not be allowed. In the event any Unit is owned by two or more persons, whether by joint tenancy, tenancy in common, community property or otherwise, the membership as to each Unit shall be a single membership and such joint owners shall designate to the Board in writing prior to any meeting of the members of the Association which of the joint owners (the "Designated person") shall be entitled to cast the vote for such Unit provided, however, that if joint owners have failed to notify the Board of the name of such Desig-

nated Person and if one of such joint owners casts a ballot representing a certain Unit, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Unit. In the event that more than one ballot is cast for a particular Unit, none of said votes shall be counted and said votes shall be deemed void.

**(b) Corporate or Partnership Ownership.** In the event a Unit is owned by a corporation, partnership or association, the corporation, partnership or association shall be a Member and shall designate in writing to the Association at the time of acquisition of the Unit, the name and title of a person who shall have the power to vote the membership of the corporation, partnership or association in the Association. The person so designated shall be the only person who shall be entitled to cast the vote for the Unit owned by such corporation, partnership or association. If the corporation, partnership or association fails to designate the person who shall have the right to vote the membership of the corporation, partnership or association, then until such designation is made, such corporation, partnership or association shall lose its right to vote and it shall not be considered a Member for the purpose of determining the requirement for a quorum or any other purpose requiring the approval of a person entitled to cast the vote for the Unit owned by such corporation, partnership or association.

**(c) Suspension of Rights.** In the event any Owner of a Unit is in arrears in the payment of any Assessment or other amounts due under the terms of this Declaration for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be automatically suspended and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current and for a period not to exceed sixty (60) days for any infraction of this Declaration or the Arroyo Seco Rules.

**(d) Articles and Bylaws.** Each member shall have such other rights, duties, and obligations as are set forth in the Articles and Bylaws.

**6. COVENANT FOR MAINTENANCE.**

The Association shall be responsible for and bear the expense of the repair and maintenance of the following:

**(a) The Common Area - Waste Water Treatment Facilities.**

- (i) The Common Area and facilities including the waste water collection, treatment and disposal



facilities, sewer and water lines, booster stations and pumps serving the Property but excluding that portion of the Property within the lot lines of a Garden Home; and signs, street signs, sign walls and the like as installed by Declarant even if not located in the Common Area.

- (ii) At such time as the City of Sedona or other governmental authority has made available a municipal or district sewer system to serve the Property and proper connections have been made to such system, the waste water treatment plant on the Property shall be abandoned.

(b) **Garden Home Exteriors.** The Association shall be responsible for and bear the expense of the repair and maintenance of all Garden Homes up to and including the exterior wall surfaces, including the exterior of patio walls thereof. Such exterior maintenance and repair shall include lawns and landscaping, painting, repairing, replacing and caring for the roofs, awnings, gutters, downspouts, pipe, sewer, water and other utility lines; but shall exclude windows, window and door fixtures and bulbs.

(c) **Standard of Maintenance.** The Board shall use a high standard of care in providing for the repair, management and maintenance of the Common Area and exterior of Garden Home's so that the Property will reflect a high pride of ownership.

(d) **Costs and Expenses of Maintenance and Repair.** The costs and expenses of the repair and maintenance undertaken by the Association shall be distributed and allocated among the Owners pursuant to the provisions of Section 7, except that if the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, the cost of such maintenance or repairs shall be added as a separate and individual charge to and become a part of the assessment to which such Owner's Unit is subject.

## **7. COVENANT FOR ASSESSMENTS.**

**7.01 Creation of Lien and Personal Obligation.** The Declarant, for each Garden Home within Arroyo Seco, hereby covenants and each Owner of any Garden Home by acceptance of such Garden Home whether or not it shall be so expressed in the instrument of conveyance, is deemed to covenant and agree to pay to the Association:

- (a) regular assessments and charges;
- (b) costs which may occur resulting from the abandonment of the waste water treatment plant including

the costs of connecting to a municipal or district sewer system, as mentioned in Section 6.01(a)(ii), above: and

- (c) special assessments for capital improvements and other association purposes.

Assessments and charges shall be established and collected as hereinafter provided. The assessments, together with interest, costs and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Garden Home against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees shall also be the personal obligation of the Owner of such property at the time the assessment is made. The personal obligation for delinquent assessments shall not pass to successors in title unless expressly assumed by them, or unless prior to such transfer of title, a lien for such assessments shall have been recorded with the Yavapai County Recorder or other appropriate governmental agency. The obligation of an Owner to pay assessments shall not be affected by the incompleteness of or any diminished use with respect to the Common Area or the abandonment of a Garden Home.

**7.02 Purpose of Assessments.** The assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the owners, and for the improvement and maintenance of the Garden Homes and the Common Area including, without limitation, the payment of taxes and governmental assessments, insurance premiums, repair, maintenance and construction costs, and supervision, management and related expenses.

**7.03 Establishment of Regular Assessments.** Declarant as record title holder and each Owner, for themselves, their heirs, successors and assigns covenant that each Garden Home shall be subject to regular assessment in an amount to be determined by the Association in the following manner:

(a) **Repair and Maintenance.** Each Garden Home's pro rata share of the actual cost to the Association of the repair and maintenance to be performed by the Association as provided in Section 6.

(b) **Operations.** Each Garden Home's pro rata share of the actual cost to the Association of the operation, maintenance and security of the Common Area and such additional portions of the Property as are to be repaired and maintained by the Association as provided in Section 6.

(c) **Taxes and Insurance.** Each Garden Home's pro rata share of the actual cost to the Association of taxes and governmental assessments on the Common Area and insurance to be maintained by the Association.

(d) **Utilities.** Each Garden Home's pro rata share of the actual cost to the Association of water and other systems and services, if any, not separately metered or charged directly to a Garden Home.

(e) **Reserves.** Each Garden Home's pro rata share of the sums determined by the Board to be prudent for the establishment of reserves for repair, maintenance, taxes, insurance, capital improvements and other charges for the benefit of the Owners and the Property.

(f) **Miscellaneous.** Each Garden Home's pro rata share of such additional sums as the Board may determine to be necessary to fulfill the purposes of the Association.

**7.04 Procedure.** Regular assessments shall be determined by the Board in such manner as shall be set forth in the Bylaws. Written notice of the amount of assessments and the due dates for payment shall be provided to the Owners not less than ten days prior to the date the first monthly payment is due, but failure to provide such notice shall not relieve any Owner from the obligation to pay such assessment. The first assessment period shall not commence earlier than the first day of the first month following conveyance of the first Garden Home to an Owner. Upon demand and for a reasonable charge, the Board shall furnish to any Owner a certificate setting forth whether the assessments and charges on his Garden Home are paid and, if unpaid, the amount unpaid. The certificate when signed by an officer or director shall be binding upon the Association as of the date of issuance.

**7.05 Special Assessments.** In addition to regular assessments, the Board shall have the right and power to provide for the construction of additional recreational and other common facilities, or the alteration, demolition, removal or reconstruction of existing recreational and other common facilities, from time to time, as in their discretion appears to be in the best interest of the Association and the Property. Any such alteration, demolition, removal, construction, or addition shall be authorized by an affirmative vote of two-thirds of the Board at a duly called meeting at which a quorum is present, and ratified and approved by the affirmative vote of two-thirds of the Members present in person or by proxy at a duly called meeting at which a quorum is present. For purposes of this paragraph, the presence at a duly called meeting of Members or of proxies entitled to cast fifty percent of the votes of each class of membership shall constitute a quorum. If the required quorum is not present at any meeting, another meeting may be called by sending written notice to all Members not less than ten days nor more than thirty days in advance of the meeting, setting forth the purpose of the meeting, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. Special assessments shall be payable at

the same time and in addition to regular assessments or, at the option of the Board, at different times or in one installment.

- 7.06 Maximum Assessment.** Until January 1 of the year immediately following the conveyance of the first Garden Home by Declarant to an Owner, the maximum assessment, regular and special, for a Garden Home shall be \$100.00. Notwithstanding any other provision herein to the contrary, Garden Homes, whether improved or unimproved, owned by Declarant shall not be subject to assessment of any kind or in any amount until a Certificate of Occupancy for such Garden Home has been issued by the City of Sedona (or other governmental authority having jurisdiction) and at such time Declarant shall commence paying assessments the same as any other Owner; provided however, that any funds which the Declarant may have loaned to the Association for the purposes stated in Section 6 hereof shall be a credit to Declarant regarding assessments which may become due to the Association.
- 7.07 Assessment Rate.** The pro rata share of the total assessment to be borne by each Garden Home shall be the Assessment Rate for that Garden Home. The Assessment Rate shall be equitably apportioned among the Owners on the ratio that the square footage of each Garden Home bears to the total square footage of all forty-six (46) Garden Homes which are to be constructed on the Property. All assessments must be uniform for all Garden Homes, except when penalty assessments are issued because of maintenance or other expenses incurred by the Association as a result of neglect by an Owner.
- 7.08 Payment of Assessments.** In cases where a Garden Home is owned by more than one person such owners shall arrange between themselves as to which one of them (the "Designated Person") shall make payments of assessments so that only one payment is made to the Association. Under no circumstances shall the Association be required to accept multiple checks or partial payments of assessments from joint owners.
- 7.09 Delinquent Payments - Late Charges.** Any assessment which has not been paid by the Owner of a Garden Home within ten (10) days after the due date expressly agrees to pay a late charge of **FIVE DOLLARS PER DAY** commencing on the 11th day after the due date and for each day thereafter until such assessment is fully paid.

**7.10 Remedies of the Association.** Each Owner shall be deemed to covenant and agree to pay to the Association the assessments provided for herein on or before the due date thereof as established by the Board and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs attorneys for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, each Owner shall pay reasonable attorney's fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against such Owner. In the event of a default in payment of any assessment when due, the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity.

**7.11 Notice of Assessment and Lien.** The Board may, in its discretion from time to time, place of record with the Yavapai County Recorders Office such notice or notices of regular or special assessment and lien claims as the Board may deem necessary or desirable for the best interests of the Association.

**7.12 Subordination of Lien.** The lien for the assessments provided for herein shall be subordinate to the lien of the First Mortgage on a Garden Home. Sale or transfer of any Garden Home shall not affect the assessment lien. However, the sale or transfer of any Garden Home pursuant to mortgage foreclosure or any proceeding similar to or in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Garden Home from liability for any assessments thereafter becoming due or from the lien thereof. Sale or transfer shall not relieve the previous Owner from personal liability for assessments that became due while such Owner was the Owner.

**8. PROPERTY RIGHTS AND EASEMENTS.**

**8.01 Owner's Easements of Enjoyment - Common Area.** Every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Garden Home, subject to the following provisions:

**(a) Fees.** The right of the Association to limit the number of guests of the Owners or to charge reasonable admission and other fees for the use of any portion of the Common Area except private streets and walks; provided, however, that the Association shall not charge an aggregate amount of such admission or other fees which, when taken together with all other items of "nonexempt

function income" of the Association for the taxable year thereof, exceeds 30 percent of the gross income of the Association for the such taxable year, and shall not permit any part of such admission or other fees, "nonexempt function income" or net earnings of the Association to inure to any Member or other parties, such that the Association shall in all events comply with the provisions and restrictions of §528 of the Internal Revenue Code of 1954, as amended, to the end that the Association shall attain and continue the status of a tax exempt "Residential Real Estate Management Association" within the meaning thereof.

(b) **Suspension.** The right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any assessment against his Garden Home remains unpaid and for a period not to exceed sixty days for any other infraction of this Declaration or The Arroyo Seco Rules.

(c) **Dedication.** The right of the Association to dedicate or transfer all or any part of the Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Board.

(d) **Conveyance.** The right of Declarant or the Association to create easements and right-of-use appurtenant to and for the benefit of properties in the vicinity of Arroyo Seco or one or more Garden Homes whether for parking, access or otherwise.

(e) **Delegation.** Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, guests, tenants or invitees.

**6.02 Blanket Easement.** There is hereby created a blanket easement upon, across, over and under the Property and Units for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephone, electricity, television cable or communication lines and systems. By virtue of this easement, it shall be expressly permissible for the providing utility, service company, the Association or its agents to install and maintain facilities and equipment on the Property and to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of Garden Homes. Notwithstanding anything to the contrary contained herein, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated except as initially programmed and approved by the Declarant or the Board. This easement shall in no way affect any other recorded easements. There shall be an access easement over the Common Area for the delivery and collection of the

U.S. Mail. Each Garden Home and Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs, and to an easement for drainage and runoff from other Garden Homes or the Common Area, as the Garden Homes and the Common Area are originally designed and constructed. A valid easement for encroachments and for the maintenance of same shall and does exist and shall include, without limitation, all patio extensions or other improvements appurtenant to a Garden Home as initially constructed by Declarant. In the event any structure is partially or totally destroyed and then rebuilt, each Owner agrees that minor and reasonable encroachments on parts of such Owner's Garden Home and/or the adjacent Garden Homes or Common Area due to construction shall be permitted with approval of the Board and that a valid easement for encroachment and the maintenance thereof shall exist. The Association and Declarant shall have an easement upon, across, over and under the Property and Garden Homes to repair, maintain and operate those areas and facilities described in Section 6.

**8.03 Common Driveways.** As the Garden Homes are originally designed and constructed by Declarant, each Owner is to have vehicular access to his Garden Home by means of a driveway. Some of the driveways will be located within the exterior unit lines of the applicable Garden Home while others may be common driveways located wholly or partially upon an adjacent Garden Home or the Common Area. Each Owner of a Garden Home served by a common driveway shall have and is hereby granted a nonexclusive easement for free and unrestricted pedestrian and vehicular access to his Garden Home by means of any such common driveway. This easement shall be for the benefit of and appurtenant to each Garden Home served by any such common driveway. Neither the Association nor any Owner of any Garden Home over which any portion of a common driveway traverses shall in any way interfere with the easement or access thereby. Except with respect to the foregoing easement, the existence of a common driveway shall not affect ownership or maintenance rights or responsibilities and each Owner (or the Association as to that portion of a common driveway located within the Common Area) shall own and maintain that portion of the common driveway located within an Owner's exterior Unit lines with no right of contribution from any other Owner sharing the common driveway.

**8.04 Title to Common Area.** In its discretion, Declarant may deed and convey the Common Area, or any other property, to the Association at any time. Declarant may deed and convey the Common Area to the Association within one year following the conveyance to an Owner other than Declarant of the last Garden Home owned by Declarant or ten years from the date of recordation of this Declaration, whichever occurs first.

**9. INSURANCE - DAMAGE OR DESTRUCTION.**

**9.01 Common Area.** The Board or its authorized agent shall have the authority to, and shall obtain insurance for all Improvements situated on the Common Area, against loss or damage by fire or other hazards under the broadest reasonably available coverage and in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any insurable hazard; shall obtain a broad form public liability policy covering all of the Common Area, and all damage or injury caused by the negligence of the Association or any of its agents in an amount not less than \$2,000,000.00; and may obtain such other insurance as it deems necessary at any time for any purpose. Premiums for all such insurance shall be common expenses subject to inclusion in the Assessment Rate pursuant to Section 7.07. All such insurance shall be written in the name of the Association.

**9.02 Garden Homes.** The Board, or its authorized agent, shall obtain insurance against loss or damage to Garden Homes by fire or other commonly insured hazards under the broadest reasonably available coverage and in an amount sufficient to cover the full replacement cost of any repair or reconstruction work and shall also obtain public liability insurance with coverage at reasonable limits but not less than \$2,000,000.00. Such insurance shall be written in the name of the Association and the Owners, respectively, and shall be for the benefit of the Owners of Garden Homes and the Association. In the event of damage or destruction to a Garden Home, the Association shall apply the insurance proceeds and contract to repair or rebuild in the manner provided in Section 9.03. In the event the insurance proceeds are insufficient to pay the costs of such repair or reconstruction, then each Owner shall bear and be liable for the costs applicable to his Garden Home, and any other property the Owner would be required to repair which arose from the negligence of such Owner, his family, guests, tenants or invitees (less the insurance proceeds received by the Association therefor), all in the manner provided in Section 9.03. Except as provided in the preceding sentence, Owners shall have no claim to the proceeds of such insurance and the premiums therefor shall be allocated among all Owners in the same manner as is provided in Section 7.07. Premiums for insurance obtained on individual Garden Homes, shall not be part of the common expense, but shall be an expense of the specific Garden Home so covered and a debt bearing 18% per annum interest owed by the Owner, and shall be collectible by any lawful procedures. In addition, if the debt is not paid within ten days after notice of such debt, such amount may, at the Board's direction, become a lien upon such Owner's Garden Home and, if so, it shall continue to be such lien until fully paid. The lien shall be



subordinate to the lien of any First Mortgage, and shall be enforceable in the same manner as any lien created by Section 7. Nothing contained herein shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies. In the event of a dispute between and Owner and the Board with respect to the extent of repairs necessitated or the cost thereof, then upon written request of either the Owner or Association, the matter shall be submitted to Arbitration in the manner provided in Section 4.6. In addition to the insurance required to be carried by the Association, any Owner may, if he wishes, at his own expense, insure his own Garden Home for his own benefit and carry any and all other insurance he deems advisable. It shall be the individual responsibility of each Owner, at his own expense, to provide as he sees fit, homeowner's liability insurance, theft and other insurance covering personal property damage and loss.

**9.03 Repair or Rebuilding - Insurance Proceeds.** In the event of damage or destruction by fire or other casualty to any Property covered by insurance written in the name of the Association, the Board shall, within thirty (30) days after the receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the Property in a good workmanlike manner in conformance with the original plans and specifications used in the construction thereof, subject to such changes as are then required by applicable laws, ordinances and governmental rules and regulations, and shall complete same in a reasonably expeditious manner not to exceed 150 days from the date of damage or destruction, except that such 150-day period shall be extended by the period of any delays resulting from occurrences or circumstances which are beyond the control of the Association and its contractor. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third of the members of the Board, or by an agent duly authorized by the Board. The Board shall contract with any licensed contractor, who may be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed buildings or Garden Homes. In the event the insurance proceeds are insufficient to pay all the costs of repairing or rebuilding to the same condition as formerly, the Board may utilize reserves, levy a special assessment in the manner provided in Section 7.05, or proceed as otherwise herein provided.

#### **10. FIRST MORTGAGE.**

Notwithstanding and prevailing over any other provisions of

of regulations, the following provisions shall apply to and benefit each holder of a First Mortgage upon a Garden Home:

- 10.01 Exoneration.** Except as hereinafter provided, the First Mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any duty hereunder except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money.
- 10.02 Substitution.** During the pendency of any proceeding to foreclose the First Mortgage, including any period of redemption, the First Mortgagee (or any receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner, including, but not limited to the right to vote as a Member to the exclusion of the Owner's exercise of such rights and privileges.
- 10.03 Acquisition.** At such time as the First Mortgagee shall become record owner of a Garden Home the First Mortgagee shall be subject to all of the terms and conditions of this Declaration, including, but not limited to, the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any Owner.
- 10.04 Foreclosure.** The First Mortgagee, or any other party acquiring title to a Garden Home through foreclosure suit or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the Garden Home free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures the payment of any assessment or charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption, except as follows: Any such unpaid assessment against the Garden Home foreclosed against may be treated as an expense common to all of the Garden Homes including the Garden Homes foreclosed against, which expense may be collected by a pro rata assessment or charge against all Garden Homes subject to assessment. Any such unpaid assessment or charge shall nevertheless continue to exist as the personal obligation to the Association of the defaulting Owner.

**11. GENERAL PROVISIONS.**

- 11.01 Enforcement.** The provisions of this Declaration shall run with the land and shall be binding upon all persons purchasing, owning, leasing, subleasing, occupying or otherwise having any right, title or interest in any of the Property, their heirs, executors, administrators, successors, grantees and assigns. After the date on which

this Declaration has been recorded, this Declaration may be enforced by any one or more of the following: The Association or its Board; Declarant; or the Owner or Owners of any Garden Home. The Declarant, may but shall have no obligation to enforce this Declaration. Prior to initiating legal action to enforce this Declaration any party desiring to initiate such action shall notify Declarant and the Association in writing of the grievance and nature of any asserted violation hereof and Declarant, and the Association shall have forty-five days thereafter within which to cure or eliminate such violation. All instruments of conveyance of any interest in all or any part of a Garden Home may contain the provisions herein by reference to this Declaration. However, the terms and conditions of this Declaration shall be binding upon all persons affected by its terms, regardless of whether referenced in the deed or other instrument of conveyance. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any provision whether to restrain violation, to recover damages or otherwise. If any party employs attorneys to enforce a lien or the collection of any amounts due pursuant to this Declaration, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the Owner and parties against whom the action is brought shall pay all reasonable attorneys' fees and costs thereby incurred by any such enforcing party prevailing in any such action. Nothing herein shall be deemed to indicate that damages at law constitute an adequate remedy for violations hereof.

**11.02 Waiver or Abandonment.** The waiver of, or failure to enforce, any breach or violation of any provision of this Declaration shall not be deemed to be a waiver or abandonment of such provision, or a waiver of the right to enforce any subsequent breach or violation of such provision. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce this Declaration) had knowledge of the breach or violation. No provision contained herein shall be deemed to have been waived or abandoned unless this Declaration is amended to delete such provision.

**11.03 Equal Protection.** This Declaration shall be applied to all similarly situated Owners without discrimination.

**11.04 Severability.** The invalidity of any one or more provisions hereof shall not affect the remaining portions of this Declaration or any part hereof, all of which are inserted conditionally on their being held valid in law, and in the event that one or more of the provisions should be invalid this Declaration shall be construed as if such invalid provision had not been inserted.

**11.05 Gender.** The singular, wherever used herein, shall be construed to mean the plural when applicable, and the

necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

11.06 **Topical Headings.** The topical headings of the Sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Sections of this declaration.

11.07 **Amendment.** This Declaration shall remain in full force and effect for a period of twenty-one years from the date hereof. Thereafter, it shall be deemed to have been renewed for successive terms of ten years, unless revoked or amended by an amendment in writing, executed and acknowledged by the then Owners of not less than three-fourths of the Garden Homes within ninety days prior to the expiration of the initial effective period hereof, or any ten year extension. These assurances may be amended at any time by the then Owners of not less than three-fourths of the Garden Homes. Notwithstanding the foregoing, or any other provision herein to the contrary, this Declaration may be revoked or amended by Declarant acting alone, without the consent or approval of any Owner or others, at any time on or before one year after the sale of the last Garden Home to an Owner or at any time then or thereafter if required by the Federal Housing Administration (HUD) or the Veterans Administration.

DATED this 4th day of September, 1991.

ARROYO SECO DEVELOPMENT, an Arizona limited partnership

BY: B & B DEVELOPMENT CO., INC., its General Partner

By: James W. Clark  
James W. Clark, President

STATE OF ARIZONA )  
                  Maricopa ) ss:  
COUNTY OF YAVAPAI )

The foregoing instrument was acknowledged before me this 4th day of September, 1991, by James W. Clark, President of B & B Development Co., Inc., an Arizona corporation, as general partner of Arroyo Seco Development Limited Partnership, on behalf of the limited partnership.

My Commission Expires:

Catherine E. Talone  
Notary Public



3015569 BK 3550 PG 262  
 Yavapai County  
 Patsy Jenney-Colon, Recorder  
 02/19/1998 04:30P PAGE 1 OF 6  
 TRANSNATION TITLE INSURANCE CO.  
 RECORDING FEE 6.00  
 SURCHARGE 4.00  
 POSTAGE 1.00

When Recorded Mail To:  
 David K. Wilhelmson  
 Favour, Moore & Wilhelmson, P.A.  
 P.O. Box 1381  
 Prescott, AZ 86302-1381

ACCOMMODATION  
 RECORDING  
 by  
 TRANSNATION  
 TITLE INSURANCE  
 COMPANY

This document has been recorded as an ACCOMMODATION ONLY. No examination of the document has been undertaken in order to determine its accuracy or validity.

**FIRST AMENDMENT TO  
 DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
 AND HOMEOWNER BENEFITS AND ASSURANCES FOR  
 THE ARROYO SECO RESIDENTIAL COMMUNITY  
 SEDONA, ARIZONA**

This First Amendment to Declaration of Covenants, Conditions, Restrictions, and Homeowner Benefits and Assurances For The Arroyo Seco Residential Community, Sedona, Arizona is made this 4 day of February, 1998 by Arroyo Seco Development, an Arizona limited partnership ("Declarant") by B & E Development Company, Inc., an Arizona corporation as general partner of Declarant.

**RECITALS:**

1. The Declaration of Covenants, Conditions, Restrictions, and Homeowners Benefits and Assurances For The Arroyo Seco Residential Community, Sedona, Arizona dated September 4, 1991 was recorded on September 6, 1991 in Book 2395, Pages 261-288 in official records of Yavapai County, Arizona which established a general plan of development for the master planned community known as the "Arroyo Seco Townhomes."
2. Declarant represents the last Garden Home has not been sold to an Owner or has been required to be sold to an Owner by the Federal Housing Administration (HUD) or the Veterans Administration.
3. The Declarant desires to amend specific paragraphs of the Declaration of Covenants, Conditions, Restrictions, and Homeowners Benefits and Assurances For The Arroyo Seco Residential Community, Sedona, Arizona dated September 4, 1991.

**AMENDMENTS:**

The below paragraphs are replaced with the following language; make up the First Amendment to Declaration of Covenants, Conditions, Restrictions, and

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RECORDED AT 11:00 AM

**Homeowner Benefits and Assurances For The Arroyo Seco Residential Community, Sedona, Arizona; and will read as follows:**

**3. USES**

**3.01 Residential.** Each Garden Home shall be used, improved and devoted exclusively to first class residential use and no other nonresidential use shall be conducted upon or from any Garden Home. Garages and other areas within a Lot and not initially designed as a living area shall not be used as living area regardless of the presence or absence of alterations therein. Public and private auctions, garage sales and similar events and activities shall be held only after obtaining written approval for the event from the Association. Unless the roof of a Garden Home has been specifically designed, built or modified with the Associations' Architectural approval, the roof of the Garden Homes are not designed to be and shall not be used as walk decks, sun decks or the like and no persons shall be permitted on the roof except for such time as is required for repair and maintenance. No Garden Home shall be leased or rented except in its entirety. Any such leasing or renting of a Garden Home which, among other things, shall require notification to the Board prior to any such leasing or renting and shall contain information about the proposed lessee or tenant and the written agreement of such party to abide by the terms of this Declaration and the Arroyo Seco Rules in effect at such time, or as the same may be amended thereafter. Owners are responsible for the conduct of lessees, tenants, guests, children and other family members, agents, contractors and all others in, on or about a Garden Home or any part of the Property at the request, invitation or sufferance of an Owner such that any violation of this Declaration or the Arroyo Seco Rules by any such person shall constitute a violation by such Owner.

**3. Construction.** No building or structure of any kind may be erected, placed or maintained on any Lot unless of new construction. All Garden Homes shall be constructed with uniform garages doors and shall be maintained. Trailers, mobile homes, modular homes or prefabricated structures of any kind; structures of a temporary character used as a residence either temporarily or permanently; unsightly window coverings such as aluminum foil, reflective coatings, newspaper, cardboard, or the like; metal patio covers, sunscreens, and covers shall not be permitted on the premises. Prefabricated fireplace flues, (treated architecturally to match existing construction) shutters, screen doors, security doors and windows, timber lattices, and canvas awnings will be permitted with the prior approval of the Declarant or the Board.

**3.03 Accessories.** Unless screened from view and approved by the Declarant or the Board prior to installation, evaporative coolers, pre-coolers

and the like shall be prohibited. No exterior accessories such as clotheslines, service yards, wood piles, basketball apparatus, free standing mailboxes or newspaper receptacles, exterior storage areas, sheds or structures, heating or air conditioning equipment, sculptures, spas, compost bin, trash receptacles or recycling bin, or any other exterior fixtures, machinery or equipment shall be permitted except with the prior written approval of the Declarant or the Board. Any such use or equipment approved and authorized by the Declarant or the Board at its sole discretion shall be attractively screened or concealed from view to meet all other required conditions of approval prior to installation. Regardless of whether an exterior accessory is located on the home owner's lot or the common area (as in the case of a walled in patio or driveway), each home owner is fully liable for any harm caused by his/her exterior accessory. No automobile, truck or other vehicle, regardless of ownership, age, condition or appearance, shall remain on the property in a manner which could be construed as being stored, neglected, abandoned or otherwise not in active use. Driveways may only be used for occasional parking occurring on an irregular basis. If the garage cannot accommodate a vehicle, with garage door completely closed, the vehicle must be parked in one of the three common area parking spaces.

**3.04 Utilities.** All gas, electric, power, telephone, water, sewer, television and other utility and service connections and lines serving the Property shall be located either underground or concealed within or under buildings or other structures, except when prohibited by law. Service pedestals, transformers, switch cabinets and similar installations may be located above ground. Radio, television and other receivers, transmitters and antennas shall be prohibited, except for satellite dishes that can be mounted behind parapet wall and hidden from view. No outside speakers or amplifiers shall be permitted except with the prior written approval of the Declarant or the Board. All speakers, amplifiers, radios and other means of emitting sound, whether located inside or outside a Garden Home, shall be subject to regulation by the Association as to noise levels and time or use. All outside lighting, except porch lights and other customary, indirect noncolored lighting, shall be subject to prior approval by the Declarant or the Board.

**3.08 Planting and Gardening.** Except in the individual patio areas of the Garden Home, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the property by an Owner except such as are installed in accordance with the initial construction of a Garden Home or other buildings located on the Property or as approved in writing by the Board. No planters or planter boxes shall be placed so as to overhang the exterior or any patio area of a Garden Home and no tree, shrub, or other landscaping shall overhang or otherwise encroach upon any sidewalk, street or any portion of the common Area without the prior

written consent of the Board. No Owner shall allow any condition which shall induce, breed or harbor plant disease or noxious insects.

**3.09 Waste Disposal.** No garbage, rubbish, trash or debris shall be placed or allowed to accumulate on the Property and shall be placed in the garbage container to be supplied for each unit by the waste disposal company. The placement and maintenance of such containers shall be subject to regulation by the Board, refer to Section 3.03. Natural areas and drainage courses within the Common Area shall not be used for dumping or vehicular traffic and shall be maintained fully open, unobstructed and watered by the sprinkling system where installed by Declarant. No Garden Home shall be allowed to present an unsightly appearance, endanger the health of Owners, emanate offensive noises or odors, or constitute an aggravation, annoyance or nuisance.

**3.10 Vehicles - Boats - Parking - Garages.** Motor vehicles shall be parked and kept only in garages or as specified in Section 3.03. On street parking shall comply with the City of Sedona parking ordinances. The parking of trucks, buses, commercial vehicles, recreational vehicles, trailers, boats, dune buggies, and the like shall not be permitted except for limited time periods while being loaded or unloaded, or as set forth in the Arroyo Seco Rules. The interiors of all garages shall be maintained in a neat, clean and slightly condition. Garage doors shall remain closed at all times except when in actual, active use to permit ingress and egress of vehicles.

**3.13 Animals.** Animals can be kept or maintained on the premises, conditioned upon the Owner's agreement to abide by the Arroyo Seco Rules and the City of Sedona ordinances. No animal shall be maintained on premises for commercial purposes.

**3.14 Subdivision.** No Garden Home shall be further subdivided or separated into smaller or different portions or conveyed or encumbered in less than full original dimension as set forth on the Plat, unless such division becomes an extension of the neighboring lots. Dedication, conveyance or the granting of easements to public utilities or other public or quasi-public entities may be permitted with the prior approval of the Board.

## **5. THE ARROYO SECO COMMUNITY ASSOCIATION**

**5.03 The Arroyo Seco Rules.** By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as "The Arroyo Seco Rules." The Arroyo Seco Rules may restrict and govern the use of the Common Area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that The



Arroyo Seco Rules may not discriminate among owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of The Arroyo Seco Rules as they may from time to time be adopted, amended or replaced, shall be mailed or otherwise delivered to each Owner and may be recorded. Upon such recordation, the Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. The Board shall have the right to impose fines and penalties for violations of this Declaration and The Arroyo Seco Rules; and if such fines or penalties are not paid within ten days after written notice to the owner in violation, the fines or penalties shall become a lien on the Garden Home of the Owner and be enforceable as any other lien created by Section 7. The fines and penalties shall be in an amount of \$100.00 for each offense, or such other amount as the Board may determine. Each occasion of violation and each day during which such violation continues shall be deemed a separate offense subject to a separate fine and penalty. Any appeal resulting from a dispute between an Owner and the Association shall be: 1) filed in writing, 2) The Association and the Owner shall have 10 days from the date of receipt of notice to reach an agreement, 3) If no agreement can be reached within the said 10 day period then the matter will be submitted to binding arbitration with the American Board of Arbitrators and subject to their rules. The cost of such Arbitration shall be borne by the non prevailing party.

## **7. COVENANT FOR ASSESSMENTS**

**7.03 (e) Reserves.** Each Garden Home's pro rata share of the sums determined by the Board to be prudent for the establishment of reserves for repair, maintenance, taxes, insurance, capital improvements, and other charges for the benefit of the Owners and the Property. Said reserves shall be placed in an interest bearing account with all interest accruing to the Association as additional reserves for the purpose for which the reserves are collected.

**7.07 Assessment Rate.** The assessment rate for maintenance of all common elements shall be equitably apportioned among the Owners on the ratio that the square footage of each Garden Home bears to the total square footage of all forty-six Garden Homes that are to be constructed on the Property. Additionally, each Owner of a Garden Home shall be assessed the actual cost of all exterior maintenance of his or her Garden Home. All assessments must be uniform for all Garden Homes, except when penalty assessments are issued because of maintenance or other expenses incurred by the Association as a result of neglect by an Owner.

**9. INSURANCE - DAMAGE OR DESTRUCTION**

**9.04 Deductible.** In the event of any damage or destruction to a Garden Home, the Garden Home Owner will be responsible for the deductible amount of any claim pertaining to the Garden Home, or in the event of any damage or destruction to a Garden Home by another Garden Home Owner, then the Garden Home Owner causing the damage shall be responsible for the deductible amount.

Dated this 4 day of February, 1998.

Arroyo Seco Development  
By: B & B Development Co., Inc.,  
Its General Partner

By: *Bruce Bramblett*  
Bruce Bramblett, Secretary of  
B & B Development Co., Inc.

STATE OF ARIZONA )  
 ) ss.  
County of *Yavapai* )

The foregoing instrument was acknowledged before me this 4 day of February, 1998 by Bruce Bramblett, Secretary of B & B Development Co., Inc., an Arizona corporation, on behalf of the corporation and as general partner of Arroyo Seco Development, an Arizona limited partnership, on behalf of the partnership.

*Nora E. Sims*  
Notary Public

My Commission Expires:  
*June 1<sup>st</sup> 1998*

