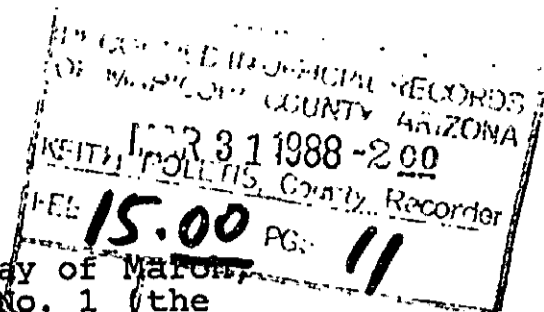


When recorded, return to:  
First American Title  
111 West Monroe  
Phoenix, Az. 85003  
Attn: RNC- Trust 7666

PROP RSTR (RS)

CLEARWATER FARMS UNIT V  
DECLARATION OF CONDITIONS  
COVENANTS AND RESTRICTIONS



THIS DECLARATION is made this 17th day of March, 1988, by Clearwater Development Joint Venture No. 1 (the "Declarant"), acting through FIRST AMERICAN TITLE INSURANCE COMPANY OF ARIZONA, an Arizona Corporation, as Trustee.

1. Declaration

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1.0 The Declarant is the owner of the second beneficial interest in Trust No. 7666 First American Title which holds legal title to that property as described on attached Exhibit A being in the Northwest one-quarter of Section 10 of the Resubdivision of Unit 46, Romola of Arizona Grapefruit Unit, according to the plat of record in the office of the Maricopa County Recorder, in Book 19 of Maps, at Page 7, with such exceptions as noted on Exhibit A., being a subdivision located in Section 10, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian. The Declarant intends to offer the lots for sale and desires to establish the nature of the use and enjoyment of the property for the benefit of all owners and to make provisions for the irrigation of the lots and the maintenance of the irrigation system and roadways shown as roadway easements on the aforesaid recorded plat which are not maintained by the county.

1.1 The irrigation system consists of ditches and underground pipelines through which water supplied by the Maricopa County Municipal Water Conservation District No. 1 ("Maricopa Water District") is delivered to each lot.

2. Establishment

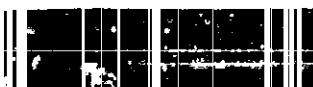
2.0 Declarant hereby declares that the irrigation system and roadways (other than County) shall be used by the owners (which term "owners" shall also include purchasers under contract, and Declarant) of the lots and their lawful permittees in benefit to each of the lots. The irrigation system, the roadways, and the owners thereof shall be subject to the obligations, liabilities, covenants, conditions and restrictions set forth in this Declaration.

3.0 Undivided Interest in System

3.0 The owners of the lots shall own the irrigation system in proportion to acreage owned as equal tenants in common so that each of the lots is irrevocably coupled with a pro rata undivided interest in the irrigation system. No undivided interest in the irrigation system shall be severed from the lot to which it is irrevocably coupled. Any conveyance, encumbrance, lien, alienation or devise of a lot shall also convey, encumber, alienate, devise or be a lien upon the undivided interest in the irrigation system whether it expressly provides so or not.

3.1 Owner's rights in the irrigation system and with regard to maintenance of the interior roadways are exercisable only through Clearwater Farms IV and V Property Owners' Association ("Association"), and in this respect are assigned to the Association and thereby an individual owner is not able, on his own, to perform any of the functions delegated to the Association including but not limited to the time and delivery of irrigation water to the land.

3.2 Owners' water allotments from Maricopa Water District are irrevocably assigned to Clearwater Farms Unit IV and V Property Owners' Association to be delivered as set forth



in the provisions of this Declaration of Conditions, Covenants and Restrictions.

#### 4. Rights to Water Use and Water Charges

4.0 Each of the lots shall be entitled to a share of the water delivered to and by the irrigation system, subject to all by-laws and rules and regulations promulgated by the Association formed under this Declaration to administer the system, and to any applicable laws and governmental rules and regulations, in proportion to acreage that a parcel bears to the whole and further provided that the assignments payable to the Maricopa Water District and for the water itself are paid. Payment of the assessments and water charges to the Maricopa Water District are each individual water owner's responsibility. The right of a buyer to a proportionate share of the water shall always be subject to and conditioned upon payment of the assessments and water charges payable to the Maricopa Water District, and the payment of any assessments made by the Association in accordance with the purposes set forth herein. Each of the lots, and the respective owner of each personally, shall be liable for payment of the Association assessments as established by the Association from time to time. Declarant shall also be responsible for lots which it owns.

If any property owner is not using his water allotment to irrigate, the Association may deliver that water where it deems appropriate in which case the Association will be responsible for redirecting the actual water charges for such delivery to any other property owner who receives that allotment.

#### 5. Liability for Expense of Operation of the System; Performance of Obligations

5.0 The Association shall maintain the irrigation system and the roadways in good condition and repair at all times and strictly perform all obligations arising under this Declaration, and the by-laws and rules and regulations promulgated by the Association. Each lot, and the respective owner of each, personally shall be liable, whether or not actually using water or the roads, for payment of an equal share of the cost thereof in proportion to the acreage owned in nonrefundable assessment to be established by the Association from time to time to create a reserve to defray these obligations. The Association obligations include, without limitation, routine maintenance, necessary repairs, replacements, additions to or relocation of ditches, and equipment, capital or otherwise, and whether resulting from damage, destruction, loss, age, obsolescence or otherwise, and payment or performance of all other charges and obligations established by the Association from time to time. To the extent that the roadways may be maintained by a governmental body at its expense, the owners shall not be liable for the cost of such maintenance. If a lot owner fails to pay his share of any assessment or charges made by the Association or Maricopa Water District, or perform his obligations, the Association may advance his share or payments, or perform his obligations, without being under any obligation to do so, such advance of substituted performance becoming a binding, personal liability of the defaulting lot owner bearing interest at the prime rate as set by the Valley National Bank, Phoenix, Arizona, but in no event less than 18% per annum from date of advance or substituted performance until payment, and may place a lien against all of the lot(s) of the defaulting lot owner, which may be foreclosed as a realty mortgage or a mechanic's lien or in any other lawful manner at the option of the Association. The defaulting lot owner shall be liable for all attorney's fees, court costs and other expenses incurred as a result of the defaulting lot owner's default hereunder. A lot owner in default by more than thirty (30) days hereunder loses

the right to water and all rights appurtenant to his ownership with respect to water delivery and shall not be reinstated until payment of such delinquent assessment, together with interest has been made up and accepted by the Association or the Maricopa Water District, as the case may be. The Association may, in an individual case, for good cause shown, enlarge the time period to cure a delinquency. The Association shall have all powers to collect said assessments and charges and any interest and shall have all rights available at law or at equity to do so in addition to those recited above.

5.1 The Declarant will assume all of the responsibilities of the Association until such time that the Association is formed.

#### 6. Automatic Membership

6.0 Owner, automatically by virtue of his purchase, becomes a member, along with all other owners of lots, in Clearwater Farms Unit IV and V Property Owners' Association. Every conveyance of a lot may expressly recite that it is subject to the provisions of this Declaration and contain the grantee's/ vendee's express written acceptance of the provisions of this Declaration, but this Declaration shall be binding upon each of the lots and the owners thereof automatically, whether or not there is such an express recitation.

6.1 Declarant reserves the right to expand the project through the comparable development of adjacent land and incorporate said expansion land within this Declaration by specific reference thereto. Any such expansion shall be subject to all the terms and conditions of this Declaration.

#### 7. Limitations on the Use of Water

7.0 Water delivered by the irrigation system shall only be used to irrigate the parcels in proportion to acreage owned, at such times and in such quantities as received from the Maricopa Water District as the Association may prescribe without discrimination.

#### 8. Association Management and Assessment

8.0 The irrigation system shall be administered and managed by the Association, which is comprised of the owners of the lots, and in accordance herewith and with the terms and conditions of the by-laws and rules and regulations of the Association. The Association shall be the sole agent of each property owner for the purpose of ordering and delivery of water from the Maricopa Water District. It is understood that the Association is a non-profit association and shall assess only such amounts as is necessary to fulfill its purposes, taking into consideration reserves for future contingencies.

8.1 The initial meeting of the Association shall be called by Declarant on or before two years from the date of this Declaration or at such earlier time as Declarant may set. At this initial meeting the owners shall elect a Board of Directors of not less than three (3) members. Declarant shall have the right to vote at this meeting or any subsequent meeting of the owners on the same basis as any other owner (See Paragraph 8.3). The Board, which shall be comprised of property owners, shall conduct the affairs of the Association. The Board shall have the power to determine when and to what extent water is to be delivered to any parcel (but without discrimination as to those property owners who are current with their payment of assessments and charges) and to make charges or assessments as provided in the Declarations. The Association shall have the right, through its Board of Directors, to promulgate rules and regulations which shall be binding upon all owners. Each year there shall be an annual

meeting which shall be held during the month of October or November as set by the Board. At the annual meeting each Board member for the ensuing year shall be elected by a majority present in person or by proxy. A majority of the Board or 25% of the owners based upon acreage owned may call a special meeting upon at least twenty (20) days notice for any purpose including enlarging or reducing the number of members on the Board of Directors, provided such purpose is stated in the notice. The Board may be expanded by a majority vote of the membership based upon acreage owned.

8.2 There shall be no association assessments prior to the time the Association becomes activated and the initial meeting thereof.

8.3 The total acreage owned by Declarant is described in Exhibit A. The owner shall have a vote in proportion to acreage owned (as reflected in the plat of said Romola of Arizona Grapefruit Unit, Unit 46). All matters are to be decided by a majority vote based on acreage.

8.4 A majority vote of the Board members shall entitle the Board to carry out any action on behalf of the owners of the lots.

8.5 The Board shall have the following rights and powers:

A. To levy the assessments, payable as determined by the Board, against each of the lots and the owners thereof.

B. To levy special assessments deemed necessary by the Board in carrying out the Association's purposes.

C. To use and expend the assessments collected to maintain, care for, improve, build, rebuild and preserve the irrigation system, roadways and easements.

D. To act as an Architectural Control Committee as referred to in Paragraph 9 of this Declaration, and in this respect establish reasonable rules and regulations.

E. To pay all taxes and all assessments levied and assessed against the irrigation system, if any.

F. To pay for any insurance and other expenses as shall be designated by the Board.

G. To enter upon the lots when necessary, and at as little inconvenience to the owners of the lots concerned as possible, in connection with the business of the Board.

H. To maintain, repair and replace ditches, pipelines and equipment and the roadways and roadway easements as necessary and convenient, in the discretion of the Board, or as required by applicable law, regulation or governmental order or requirement.

I. To provide for the construction of additions to or replacement of the irrigation system or roadways, or construction of new utilities systems from time to time, as in their discretion appears to be in the best interest of the owners of the lots. Any such construction, improvements or additions shall be authorized by a majority vote of the Board at a duly called meeting at which a quorum is present.

J. To collect delinquent assessments and charges, by suit or otherwise, and to enjoin or seek damages from the owners of the lots for violation of the Declaration and By-laws and rules and regulations of the Association.

K. To protect and defend the system and roadways from loss and damage by suit or otherwise and comply with any governmental regulations including applying for a Certificate of Conveyance and Necessity, if required.

L. To employ and dismiss workmen, and take any other necessary action to carry out the rights and powers herein granted and to purchase supplies and equipment, and to enter into contracts.

M. To make By-laws and reasonable rules and regulations, not inconsistent with the terms and spirits of this Declaration, and to amend the same from time to time, all of which shall be binding upon the lots and owners thereof.

N. To create an assessment reserve fund into which the Board shall deposit all sums collected by assessments or otherwise, the assessment reserve fund to be used and expended for the purposes herein set forth.

O. To render to the owners periodic statements of receipts and expenditures.

P. To appoint officer(s), manager(s), and agent(s) to carry out the business of the Board.

Q. To do anything else reasonably necessary to enable the Board to carry out the efficient operation of the systems.

#### 9. Use of the Lots

9.0 No lot or portion thereof shall be used except for residential or farming purposes. No building shall be erected, placed, altered or permitted to remain on any lot, or portion thereof, other than a minimum 1,600 liveable square foot residence, normal outbuildings used in conjunction with farm residences and farming or ranching operations. No mobile homes may be used as a residence. No commercial endeavors or any retail businesses, of any nature or description, shall be carried on or transacted on any portion of said property.

9.1 All plans for structures, including, but not limited to, residences, barns, outbuildings and fences must be submitted to and approved by the Architectural Control Committee to be composed of not less than three (3) members as appointed by the Association Board of Directors. Failure of the Architectural Control Committee to approve or disapprove of the submitted plans within 45 days of submittal shall be considered an approval.

9.2 No culvert of a diameter less than 12 inches shall be installed in any borrow ditch or easement along and adjacent to any property line.

9.3 No property owner shall level or clear or otherwise alter his land to reduce the amount of soil covering or overlying the irrigation pipeline easement to less than 24 inches above the top of the pipe. No property owner shall erect fences or construct walls or any other structures on any irrigation easements without the express written consent of the Property Owners Association first being obtained.

9.4 Each property owner shall retain all irrigation water delivered to his property on his property.

9.5 No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the surrounding area. No lot shall be used or maintained as a dumping ground for rubbish, or storage of non-operating vehicles. All weeds shall be kept removed. Lots, fence lines,

ditches and pipelines shall be kept free of weeds and unkempt grasses, so as not to become a fire hazard or a nuisance to adjacent properties, irrigation systems and roadways. There shall be no outside toilets. All permitted plumbing shall be connected to a septic system or some other similarly governmental-approved disposal or central system.

9.6 In the event the owner at any time fails to properly maintain his lot, the Association or Declarant, in each's sole discretion, may enter upon and correct any violations and may charge the violating lot owner for the cost of curing such violations, immediately obligating the owner for payment of such charges.

9.7 No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used as a living quarters on any lot at any time either temporarily or permanently, except upon written approval of the Property Owners Association for purposes of installation of a permanent residence. Use of such temporary structure shall not exceed six (6) months.

9.8 All animals must be fenced or kept on a leash so as not to interfere with any other lots.

No hogs or swine of any kind shall be raised, bred or kept on any lot.

Exotic animals shall not be allowed except as family pets only and shall be properly housed. There shall be no more than two (2) such animals per residence regardless of the number of acres owned.

Small meat or fur bearing animals must be properly housed and are limited to no more than a total of fifty (50) per acre.

Animal husbandry must be conducted so as to not create a noise, odor, insect or other nuisance to adjacent lots.

No more than four (4) large animals, such as horses, cattle, sheep or goats, per acre are allowed. These animals must be pastured and shall not be confined in feedlot style.

A total of not more than fifty (50) poultry or fowl per acre may be kept.

No more than four (4) adult dogs and four (4) adult cats may be kept per residence, regardless of the number of acres owned.

Aviaries can have no more than fifty (50) birds per acre.

All fences must be constructed in a workmanlike manner. No barbed wire fences are allowed.

9.9 No signs shall be placed or permitted on any lots or improvements located thereon other than one "For Sale", family name or farm name type sign, not to exceed 2 feet by 3 feet in size. The developer and/or its designated sales agent shall be exempt from this restriction.

#### 10. Enforcement of Restrictions

10.0 This declaration and all its provisions shall run with the land and shall be binding on and enforceable against all parties having any right, title or interest in or to the lots or any part thereof and the respective successors, assigns, heirs and personal representatives of each. Every party on acquisition of any right, title or interest in or to

any of the lots, or any part thereof, shall be deemed to have personally consented to the terms of this Declaration as though such party had personally contracted in writing to be bound by the terms of this Declaration.

10.1 Each owner of the lots, or any part thereof, and the respective successors, assigns, heirs and personal representatives of each, and the Association, shall be direct beneficiaries of this Declaration with the right to enforce through action for specific performance, injunction or any other right or remedy available at law, in equity or otherwise. A violation of the Declaration shall be deemed to be a nuisance and shall confer on each owner all rights and remedies available for abatement of a nuisance. Any party seeking to enforce this Declaration against a party in violation shall be entitled to recover from the party in violation reasonable attorney's fees and any court costs incurred in the enforcement hereof. A lot owner in violation hereunder loses the right to irrigation water until he completely cures the violation. All remedies shall be cumulative and not exclusive.

#### 11. Term

11. This Declaration shall continue in full force and effect until December 31, 2008, at which time it shall automatically be extended for continuous ten (10) year periods unless, prior to the termination of the initial period or renewal periods, the ownership of 75% of the acreage votes to terminate or otherwise amend, and record in the Office of the Maricopa County Recorder a document to that effect.

#### 12. Amendment

12.0 This Declaration or any provisions contained herein may be terminated, modified or amended with the written consent(s) of the owners of record of at least seventy-five percent (75%) of the acreage. No such termination, modification or amendment shall be effective until a proper instrument in writing, reflecting the required written consents, has been executed, acknowledged and recorded in the Office of the Maricopa County Recorder.

#### 13. Mortgages

13.0 The violation of any provisions, covenants, conditions or restrictions contained in this Declaration shall not restrict, impair or defeat the lien of any mortgage or deed of trust now existing or hereafter made in good faith and for value on any of the lots, or part thereof, or restrict, impair or defeat any right or power of sale contained therein or limit or prevent the foreclosure thereof; provided, however, that any subsequent owner of any of the lots, or part thereof, whose ownership was obtained by foreclosure, trustee's sale or conveyance in lieu, shall thereupon be subject to and bound by all of the provisions of this Declaration.

#### 14. Validity

14.0 The invalidity of any provision of this Declaration or any portion hereof, shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Declaration and, in such event, all of the provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

#### 15. Successors and Assigns

15.0 This Declaration, the terms and provisions hereof and amendments thereto shall run with the land, and shall be binding upon, enforceable against, and inure to the benefit of all parties having or acquiring any right, title or interest in



the lots including, without limitation, the Declarant, all owners of the lots, all leasees, the respective successors, assigns, heirs and personal representatives of all such parties. Nothing herein shall be construed as prohibiting an owner from transferring any portion of his lot in accordance with law provided that any such successor in interest shall likewise be bound by the provisions hereof in relation to acreage owned.

#### 16. Conflicts

16.0 In the event of any conflict between the provisions of this Declaration, the By-laws and the rules and regulations promulgated by the Association, the order of precedence shall be as follows: 1) Declaration; 2) By-laws; and 3) Rules and Regulations.

#### 17. Easements

17.0 Irrigation Easements. It is hereby reserved to the Declarant for the benefit of all lot owners and the Association, easements for irrigation and irrigation ditch purposes, including access for maintenance, and repairs and replacement. These easements are recorded subsequent to this document.

17.1 Public Utility Easements. It is hereby reserved to the Declarant for the benefit of all lot owners and the Association easements for public utility purposes including access for installation, maintenance and repairs. These easements are recorded subsequent to this document.

17.2 Access Easement. It is hereby reserved to the Declarant for the benefit of all lot owners, their invitees and the Association easements for access purposes including improvements, maintenance and repair thereof.

17.3 Prohibition Against Obstruction of Easements. No property owner shall erect fences or construct walls, or any other structure on any easements without the express written consent of the Property Owners Association being first obtained.


#### 18. Definition of Lot

18.0 The term "lot" as used herein shall be inclusive of any one acre "tract" or "parcel".

FIRST AMERICAN TITLE INSURANCE  
COMPANY OF ARIZONA as Trustee

By 

CLEARWATER DEVELOPMENT, INC.  
An Arizona Corporation

By   
Peter B Schust  
Secretary/Treasurer





PETER B. SCHUST, INC.  
An Arizona Corporation

By *Richard D. Schust*  
Richard D. Schust  
President

STATE OF ARIZONA            )  
  ) ss.  
COUNTY OF MARICOPA        )

Before me, the undersigned Notary Public, this 30th  
day of March, 1988 appeared Roderick Collier, an officer  
of FIRST AMERICAN TITLE INSURANCE COMPANY OF ARIZONA, for the  
purposes therein contained.

In witness whereof I hereunto set my hand and seal.

*Mary L. Ruggiero*  
Notary Public

My Commission Expires:



STATE OF ARIZONA            )  
  ) ss.  
COUNTY OF MARICOPA        )

Before me, the undersigned Notary Public, this 17th  
day of March, 1988 appeared Peter B. Schust, Secretary/  
Treasurer of CLEARWATER DEVELOPMENT, INC., an Arizona  
Corporation, for the purposes therein contained.

In witness whereof I hereunto set my hand and seal.

*Peter B. Schust*  
Notary Public

My Commission Expires:

March 6, 1992

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

Before me, the undersigned Notary Public, this 17th  
day of March, 1988 appeared Richard D. Schust, President  
of PETER B. SCHUST, INC., an Arizona Corporation, for the  
purposes therein contained.

In witness whereof I hereunto set my hand and seal.

*Robert J. Cook*  
Notary Public

My Commission Expires:

March 6, 1992

## EXHIBIT "A"

Tract A, Lots 4936 and 4955, and Tracts A through E, Lots 4931 through 4935 and 4956 through 4961, of UNIT No. 46 of ROMOLA OF ARIZONA GRAPEFRUIT UNIT, being a subdivision of Section 10, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.