

CLEARWATER FARMS

DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS

THIS DECLARATION is made this 10th day of September, 1979, by Clearwater Farms, an Arizona limited partnership (the "Declarant").

I. Declaration

1.0 The Declarant is the fee owner of that property as described on attached Exhibit A being all of Resubdivision of Unit 42, Romola of Arizona Grapefruit Unit, according to the plat of record in the office of the Maricopa County Recorder, in Book 18 of Maps, at Page 40, with such exceptions as noted on Exhibit A, being a subdivision located in Section 3, Township 2 North, Range 2 West. 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 through which water is supplied by the Maricopa County Water Conservation District No. 1.

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, Declarant and Clearwater Farms) 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. 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 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 irrigating of the land.

4. Reciprocal Easements

4.0 Each of the lots and the Association shall have a non-exclusive blanket easement for the purpose of ingress and egress to, from and over those parts of the lot, roadways and irrigation system reasonably required to carry out the provisions of this Declaration, but such easements shall not unreasonably interfere with the beneficial enjoyment of the lots by the owners thereof.

5. Rights to Water Reduced by the System and Water Charges

5.0 Each of the lots shall be entitled to a share of the water delivered to an by the irrigation system, subject to all by-laws and ruled 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 assessments payable to Maricopa County Water Conservation District No. for the water itself are paid. Payment of the assessments to the Maricopa County Water Conservation District No. 1 are each individual owner's responsibility. The right of a buyer to a proportionate share of the water shall always be subject and conditioned upon payment of the Association's charges for such water delivery, 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 water delivery and maintenance charges established by the Association from time to time. Declarant shall also be so responsible for lots which it owns.

6. Liability for Expense of Operation of the System; performance of Obligations

6.0 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, the by-laws or 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 lots owned in a nonrefundable assessment to be established by the Association from time to time to create a reserve to defray these obligations. This assessment includes actual water use and delivery charges which shall be established by the Association to cover such day to day costs as utilities, water delivery and labor. It does not include the

Maricopa County Water Conservation District No. 1 assessments for the water. These above Association obligations include, without limitation, routine maintenance, necessary repairs, replacements, additions to or relocation of, pipelines, 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 of the lots shall not be liable for the cost of such maintenance. If a lot owner fails to pay his share of any assessment or charges, or perform his obligations, the Association may advance his share, 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 highest legal rate from date of advance or substituted performance until payment, and 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 attorneys fees, court costs and other expenses incurred as a result of the defaulting lot owner's default hereunder. Also a lot owner in default by more than fifteen (15) days hereunder loses the right to water and all rights of an owner shall be suspended and shall not be reinstated until payment of such delinquent assessment, together with interest. 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.

7. Automatic Membership

7.0 Owner, automatically by virtue of this purchase, becomes a member, along with all other owners of lots in Clearwater Farms 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.

8. Limitations of the Use of Water

8.0 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 Irrigation District as the Association may prescribe without discrimination.

9. Association Management and Assessment

9.0 The irrigation system shall be administered and managed by the Association, which is comprised of the owners of the lots, all in accordance herewith and with the

terms and conditions of the by-laws and rules and regulations of the Association. 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.

9.1 The initial meeting of this Association shall be called by Declarant on or before one year 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 not have a right to vote at this meeting or any subsequent meeting of the owners. The Board, which shall be composed 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 who are current in payment of this assessment) and to make charges or assessments as provided in the Declaration. 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. Any such meeting may be continued from time to time 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 a majority 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 bases upon acreage owned.

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

9.3 The total acreage in Clearwater Farms owned by Declarant is 578 acres. The owner shall have a vote in proportion to acreage owned (as reflected in the plat of said Romolo of Arizona Grapefruit Unit, Unit 42). All matters are to be decided by a majority vote based on acreage. In addition to the acreage owned by Declarant as of the date of this Declaration, as stated above, there are approximately 21 additional acres located within the resubdivision of Romolo of Arizona Grapefruit Unit which are owned by others and thereby not automatically subject to this Declaration. It is understood that the respective owners of the acreage not included in this Declaration may voluntarily join the Association and by so doing shall be subject to all the rights and obligations contained in this Declaration.

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

9.5 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 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 and roadways.
- D. To pay taxes and assessments levied and assessed against the irrigation system, if any.
- E. To pay for any insurance and other expenses as shall be designated by the Board.
- F. 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.
- G. To maintain, repair and replace pipeline, ditches and equipment and the roadways as is necessary and convenient, in the discretion of the Board, or as required by applicable law, regulation or governmental order or requirement.
- H. To provide for the construction of additions to or replacements 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.
- I. 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. (The term "Declaration" shall include any By-Laws and rules and regulation of the Associations.)
- J. to protect and defend the systems and roadways from loss and damage by suit or otherwise and comply with any governmental regulations including applying for a Certificate of Convenience and Necessity, if requires.
- K. To employ and dismiss workmen, and any other necessary to carry out the rights and powers herein granted and to purchase supplies and equipment, and to enter into contracts.
- L. To make By-Laws and reasonable rules and regulations, not inconsistent

with the terms and sprits of this Declaration, and to amend the same from time to time, all of which shall be binding upon the lots and owners thereof.

M. 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 expanded for the purposes herein set forth.

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

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

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

10. Use of the Lots

10.0 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 that one detached, single-family dwelling containing not less than 1,000 square feet, normal out buildings used in conjunction with farm residences and farming operations. No mobile homes are allowed. No commercial endeavors or retail businesses, other than farming or greenhouses, of any nature or description shall be carried on or transacted on any portion of said property.

10.1 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. 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.

10.2 No structure of a temporary character, trailer, basement, tent, shack, garage or other outbuilding shall be used on any lot at any time either temporarily or permanently.

10.3 No hogs of any kind shall be raised, bred or kept on any lot. All animals must be fenced, so as not to interfere with any other lots. All fences must be constructed of new materials.

11. Enforcement of Restrictions

11.0 This Declaration and Restrictions set forth herein 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.

11.1 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 water until he completely cures the violation, and the other owners of the lots and the Association are hereby empowered to disconnect, free of any liability whatsoever, the violating lot owner's parcel from the system until the violation is completely cured. All remedies shall be cumulative and not exclusive.

12. Terms

12.0 This Declaration shall continue in full force and effect until December 31, 1999, 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 records in the Office of the Maricopa County Recorder a document to that effect.

13. Amendment

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

14. Mortgages

14.0 The violation of any provisions, covenants, conditions or restrictions contained in the 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.

15 Validity

15.0 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 other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

16. Successors and Assigns

16.0 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 lessees, and 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.

17. Conflicts

17.0 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.

18. Easements

18.0 There is hereby reserved to Declarant for the benefit of all lot owners a 20 foot easement for ingress, egress and utility purposes over, under and across the rear of each lot, measured inward and parallel to the rear lot line.

19. Definition of Lot

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

THESE PORTIONS THEREOF conveyed to the Maricopa County Municipal Water Conservation District Number One, by Deeds recorded in Book 334 of Deeds, Page 432, described as follows:

PART OF TRACT A, Lot 4516, beginning at the Northwest corner of Lot No. 4516, said lot corner being at a point 33 feet South and 33 feet East of the Northwest corner of Section 3, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian; thence Easterly along the North boundary line of said lot No. 4516, a distance of 50 feet to a point; thence Southerly a distance of 50 feet to a point; thence Westerly a distance of 50 feet to a point on the West boundary line of said lot; thence Northerly along the West boundary line of said lot a distance of 50 feet to the point of beginning; and

PART OF Tract E, Lot 4612, beginning at the Northeast corner of Lot No. 4612, said lot corner being at a point 33 feet South and 33 feet West of the Northeast corner of Section 3, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian; thence Westerly along the North boundary line of said Lot No. 4612, a distance of 25 feet to a point; thence Southerly a distance of 50 feet to a point; thence Easterly a distance of 25 feet to a point on the East boundary line of said lot; thence Northerly along the East boundary line of said lot a distance of 50 feet to the Point of Beginning.

Sep 10 1979

STATE OF ARIZONA)

) ss

County of Maricopa)

I hereby certify that the within instrument was filed and recorded at request of

ARIZONA TITLE

in Docket 13887

on page 1009-1019

Witness my hand and official seal the day and year aforesaid.

Bill Henry

County Recorder

By _____

Deputy Recorder