

When recorded, return to:

Old Capitol Investments L.L.C.
P.O. Box 4337
Prescott, Arizona 86302-4337
Attention: Sherry Lucas



B-4414 P-467
Page: 1 of 11
ARES 4033462



**AMENDMENT #1 TO DECLARATIONS OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR WHISPERING CANYON**

This Amendment #1 to the Declarations of Covenants, Conditions, and Restrictions of Whispering Canyon ("Amendment #1") is made as of this 26th day of May, 2006, by Old Capitol Investments L.L.C., an Arizona limited liability company ("Declarant").

RECITALS

WHEREAS, Declarant is the owner of certain interests in the real property legally described in Exhibit "A" attached hereto and incorporated herein and commonly referred to as Whispering Canyon located in the County of Yavapai, State of Arizona (the "Property").

WHEREAS, on November 19, 2002, Declarant made those certain Declarations of Covenants, Conditions, and Restrictions for Whispering Canyon ("Declaration") to establish a plan for the development, sale and use of the Property, and recorded the Declaration on December 6, 2002, in the Official Records of the Yavapai County, Arizona, Recorder as instrument #3525094, Book 3982, Page 365; and, thereafter, re-recorded such "Declaration" on January 21, 2003 as instrument #3538947, Book 3994, Page 422.

WHEREAS, Section 13.1 of the Declaration permits Declarant to unilaterally amend the Declaration for any purpose until the termination of the Class "B" Control Period, as defined in Section 2.9 of the Declaration. The Class "B" Control Period has not terminated and Declarant desires to amend the Declaration as described in this Amendment #1.

Now, therefore, the Declarant hereby gives notice that the Declaration shall be amended as described below and other provisions applicable to this Amendment are hereby adopted by Declarant:

1. Effective Date of Amendment #1. This Amendment #1 shall be effective on its recordation in the Official Records of the Yavapai County, Arizona, Recorder (the "Effective Date of Amendment #1").



2. Amendments to the Declaration. As of the Effective Date of Amendment #1, the Declaration is hereby amended as more particularly described in this Amendment #1:

a. The following shall be added to the end of Section 7.4 to the Declaration as follows:

"Notwithstanding any provision in the Governing Documents to the contrary, after termination of the Class "B" Control Period, votes allocated to a Lot may not be cast pursuant to a proxy. The Association shall provide for votes to be cast in person and by absentee ballot and may provide for voting by some other form of delivery. Notwithstanding A.R.S. § 10-3708 or the provisions of the Governing Documents to the contrary, any action taken at an annual, regular or special meeting of the Members shall comply with all of the following if absentee ballots are used:

- a. The absentee ballot shall set forth each proposed action;
- b. The absentee ballot shall provide an opportunity to vote for or against each proposed action;
- c. The absentee ballot is valid for only one specified election or meeting of the Members and expires automatically after the completion of the election or meeting;
- d. The absentee ballot specifies the time and date by which the ballot must be delivered to the Board in order to be counted, which shall be at least seven (7) days after the date that the Board delivers the unvoted absentee ballot to the Member; and
- e. The absentee ballot does not authorize another person to cast votes on behalf of the Member.

Votes cast by absentee ballot or other form of delivery are valid for the purpose of establishing a quorum. For the purposes of this Section 7.4, "Class "B" Control Period" means the time during which the Declarant or Persons designated by the Declarant may elect or appoint the members of the Board of Directors pursuant to the Governing Documents or by virtue of superior voting power."

b. Delete the phrase "fifty percent (50%)" in Section 7.5(b) and replace the deleted phrase with "twenty-five percent (25%)".

c. The following shall be added to the end of Section 7.5(c) of the Declaration:

"The failure of any Member to receive actual notice of a meeting does not affect the validity of any action taken at that meeting."



- d. A new Section 7.5(d) to the Declaration shall be added as follows:

"(d) Meetings of the Association and the Board. All meetings of the Association and the Board shall be held in the State of Arizona and are open to all Members of the Association or any person designated by a Member in writing to the Association as the Member's representative. All Members or designated representatives thereof so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings, provided, however, that the Board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a Member or Member's designated representative to speak before the Board takes formal action on an item under discussion in addition to any other opportunities to speak. The Board shall provide for a reasonable number of persons to speak on each side of an issue. Any portion of a meeting may be closed only if that closed portion of the meeting is limited to consideration of one or more of the following:

- i. Legal advice from an attorney for the Board or the Association. On final resolution of any matter for which the Board received legal advice or that concerned pending or contemplated litigation, the Board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment.
- ii. Pending or contemplated litigation.
- iii. Personal, health and financial information about an individual member of the Association, an individual employee of the Association or an individual employee of a contractor for the Association.
- iv. Matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the Association or an individual employee of a contractor of the Association who works under the direction of the Association."

- e. Delete Section 7.6(k) of the Declaration in its entirety and replace the deleted Section 7.6(k) with the following:

"Notwithstanding anything contained in the Governing Documents to the contrary, the Members, by a majority vote of Members entitled to vote and voting on the matter at a meeting of the Members called pursuant to this Section 7.6(k) at which a quorum is present, may remove any member of the Board with or without cause, other than a member of the Board appointed by the Declarant. For purposes of calling for removal of a member of the Board, other than a member appointed by the Declarant, the following apply:



- a. If the Association shall have one thousand (1,000) or fewer Members, on receipt of a petition that calls for removal of a member of the Board and that is signed by the number of persons who are entitled to cast at least twenty-five per cent (25%) of the votes in the Association or one hundred (100) votes in the Association, whichever is less, the Board shall call and provide written notice of a special meeting of the Association as prescribed by A.R.S. 33-1804, subsection B.
- b. Notwithstanding A.R.S. 33-1804, subsection B, if the Association shall have more than one thousand (1,000) members, on receipt of a petition that calls for removal of a member of the Board and that is signed by the number of persons who are entitled to cast at least ten per cent (10%) of the votes in the Association or one thousand (1,000) votes in the Association, whichever is less, the Board shall call and provide written notice of a special meeting of the Association. The Board shall provide written notice of a special meeting as prescribed by A.R.S. 33-1804, subsection B.
- c. The special meeting shall be called, noticed and held within thirty (30) days after receipt of the petition.
- d. For purposes of a special meeting called pursuant to this Section 7.6(k), a quorum is present if the number of owners to whom at least twenty per cent (25%) of the votes or one thousand (1,000) votes, whichever is less, are allocated is present at the meeting in person or as otherwise permitted by law.
- e. If a civil action is filed regarding the removal of a Board member, the prevailing party in the civil action shall be awarded its reasonable attorney fees and costs.
- f. The Board shall retain all documents and other records relating to the proposed removal of the member of the Board for at least one year after the date of the special meeting and shall permit members to inspect those documents and records pursuant to A.R.S. 33-1805.
- g. A petition that calls for the removal of the same member of the Board shall not be submitted more than once during each term of office for that member."



f. A new Section 7.6(n) to the Declaration shall be added as follows:

"(n) Conflicts of Interest. If any contract, decision or other action for compensation taken by or on behalf of the Board would benefit any member of the Board or any person who is a parent, grandparent, spouse, child or sibling of a member of the Board or a parent or spouse of any of those persons, that member of the Board shall declare a conflict of interest for that issue. The member shall declare the conflict in an open meeting of the Board before the Board discusses or takes action on that issue and that member may then vote on that issue. Any contract entered into in violation of this Section 7.6(n) is void and unenforceable."

g. A new Section 7.8(e) to the Declaration shall be added as follows:

"(e) Notices. Unless otherwise provided in the Articles or Bylaws of the Association, for meetings of the Board of Directors that are held after the termination of the Class "B" Control Period, notice to Members of meetings of the Board of Directors shall be given at least forty-eight (48) hours in advance of the meeting by newsletter, conspicuous posting or any other reasonable means as determined by the Board of Directors. An affidavit of notice by an officer of the Association is prima facie evidence that notice was given as prescribed by this Section 7.8. Notice to Members of meetings of the Board of Directors is not required if emergency circumstances require action by the Board before notice can be given."

h. A new Section 8.12 to the Declaration shall be added as follows:

"8.12 Records. The Governing Documents and all financial and other records of the Association shall be made reasonably available for examination by the Declarant and any Member or any person designated by the Member in writing to the Association as the Member's representative, during normal business hours when requested in writing. The Association shall have the right to charge for copying expenses and the reasonable cost of postage, shipping or transmission of the information requested."

i. A new Section 8.13 to the Declaration shall be added as follows:

"8.13 Recorded Notice. The Association shall Record in the office of the Yavapai County, Arizona, Recorder a notice stating the name of the Association or designated agent or Managing Agent for the Association, the address for the Association and the telephone number of the Association or its designated agent or management company. The notice shall include the name of the Association, the date of the recording and the



recorded instrument number or book and page for the main document that constitutes the Declaration. If an Association's address, designated agent or management company changes, the Association shall amend its notice or record a new notice within ninety (90) days after the change.

j. A new Section 8.14 to the Declaration shall be added as follows:

"8.14 Annual Financial Audit. The Board shall provide for an annual financial audit, review or compilation of the Association, which shall be completed no later than one hundred eighty (180) days after the end of the Association's fiscal year and shall be made available upon request to the Members within thirty (30) days after its completion. Books and records kept by or on behalf of the Association and the Board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

- a. Privileged communication between an attorney for the Association and the Association;
- b. Pending or contemplated litigation;
- c. Meeting minutes or other records of a session of a Board meeting that is not required to be open to all Members;
- d. Personal, health and financial records of an individual Member of the Association, an individual employee of the Association or an individual employee of a contractor for the Association;
- e. Records relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the Association or an individual employee of a contractor of the Association who works under the direction of the Association; or
- f. When disclosure would violate any state or federal law."

k. A new Section 8.15 to the Declaration shall be added as follows:

"8.15 Pending Sales. Except when a public report is issued pursuant to A.R.S. 32-2183 or as so a sale pursuant to A.R.S. 2181.02, the Association shall mail or deliver to a purchaser of a Lot within ten (10) days after receipt of a written notice of a pending sale of the Lot all of the following:

- a. A copy of the Bylaws and the Rules, if any, of the Association;
- b. A copy of the Declaration;
- c. A dated statement containing:
 - i. The telephone number and address of a principal contact for the Association, the Managing Agent, an



Association management company, an Officer of the Association or any other person designated by the Board of Directors;

- ii. The amount of Assessments and any unpaid Assessments, fees or charges currently due and payable from the selling Lot Owner;
- iii. Whether all or a portion of the Lot is covered by insurance maintained by the Association;
- iv. The total amount of money held by the Association as reserves;
- v. Whether the Lot Owner has any knowledge of any improvements to the Lot that violate the Declaration;
- vi. Case names and case numbers for pending litigation with respect to the Lot filed by the Association against the Lot Owner or filed by the Lot Owner against the Association. The Association shall not be required to disclose information concerning such pending litigation which would violate any applicable rule of attorney-client privilege under Arizona law;
- vii. A statement that provides "I hereby acknowledge that the Declaration, Bylaws and Rules of the Association constitute a contract between the Association and me (the purchaser). By signing this statement, I acknowledge that I have read and understand the Association's contract with me (the purchaser). I also understand that as a matter of Arizona law, if I fail to pay my Association Assessments, the Association may foreclose on my property." The statement shall also include a signature line for the purchaser and shall be returned to the Association within fourteen (14) calendar days.
- d. A copy of the current operating budget of the Association;
- e. A copy of the most recent annual financial report of the Association. If the report is more than ten (10) pages, the Association may provide a summary of the report in lieu of the entire report; and
- f. A copy of the most recent reserve study of the Association, if any.

The Association may charge the Owner a reasonable fee to compensate the Association for the costs incurred in the preparation of the information furnished by the Association pursuant to this Section 8.15. The Association shall make available to any interested party the amount of any such fee established from time to time by the Association.



Nothing in this Section 8.15 relieves the selling Owner from the obligation to disclose improvements to the Lot that violate the Declaration, nor precludes the Association from taking action against the purchaser of a Lot for violations that are apparent at the time of purchase and that are not reflected in the Association's records.

For purposes of this Section 8.15, unless the context otherwise requires, "Lot Owner" or "Owner" means the seller of the Lot title and excludes any Arizona licensed real estate salesperson or real estate broker who is acting as a salesperson or broker and also excludes a trustee of a deed of trust who is selling the Lot in a trustee's sale."

l. Add to the end of Section 9.3 of the Declaration the following:

"Notwithstanding anything to the contrary contained in the Governing Documents, the Association shall not impose a Base Assessment that is more than twenty percent (20%) greater than the immediately preceding fiscal year's assessment without the approval of the majority of the Members of the Association."

m. The following shall be added to the end of Section 9.7 as follows:

"Charges for the late payment of Assessments are limited to the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid Assessment. The Association's lien for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorneys' fees and costs incurred with respect to those Assessments may be foreclosed in the same manner as a mortgage on real estate. Fees, charges, late charges, monetary penalties and interest charged pursuant to A.R.S. §33-1803, other than charges for late payment of Assessments, are not enforceable as Assessments under this Section 9.3. The Association has a lien for fees, charges, late charges, other than charges for late payment of Assessments, monetary penalties or interest charged pursuant to A.R.S. § 33-1803 after the entry of a judgment in a civil suit for those fees, charges, late charges, monetary penalties or interest from a court of competent jurisdiction and the Recording of that judgment in the Official Records. The Association's lien for monies other than for Assessments, for charges for late payment of those Assessments, for reasonable collection fees and for reasonable attorneys' fees and costs incurred with respect to those Assessments may not be foreclosed and is effective only on conveyance of any interest in the Lot.



A lien for an unpaid Assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the Assessment becomes due.

Notwithstanding any provision in the Governing Documents or in any contract between the Association and the Managing Agent, all payments received on a Member's account shall be applied first to any unpaid Assessments, for unpaid charges for late payment of those Assessments, for reasonable collection fees and for unpaid attorneys' fees and costs incurred with respect to those Assessments, in that order, with any remaining amounts applied next to other unpaid fees, charges and monetary penalties or interest and late charges on any of those amounts.

On written request, the Association shall furnish to a lienholder, escrow agent, Member or person designated by a Member a statement setting forth the amount of any unpaid Assessment against the Lot. The Association shall furnish the statement within fifteen (15) days after receipt of the request."

IN WITNESS WHEREOF, by the Declarant's signature appearing below, Declarant hereby adopts this Amendment #1.

"Declarant"

OLD CAPITOL INVESTMENTS L.L.C., an Arizona limited liability company

By: Four Capital Group, Inc., an Arizona corporation
Its: Authorized Member

By: Robert Cole Johnson
Robert Cole Johnson, President

(SEE NOTARY ACKNOWLEDGMENT ON PAGE 10)



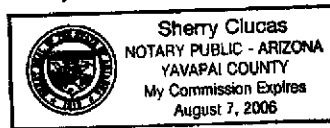
STATE OF ARIZONA)
)
County of Yavapai) ss.

On May 26th, 2006 before me, the undersigned Notary Public, personally appeared Robert Cole Johnson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed this instrument.

WITNESS my hand and official seal.

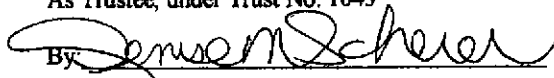
My Commission Expires:

Sherry Clucas
Notary Public



ACCEPTED AND APPROVED:

CAPTITAL TITLE AGENCY, INC., an Arizona corporation,
As Trustee, under Trust No. 1043

By 

As: Trust Officer



EXHIBIT "A"

THE PROPERTY

**Lots 1 through 36, inclusive, of WHISPERING CANYON, Phase 1; and
Lots 37 through 92, inclusive, of WHISPERING CANYON, Phase 2,** as recorded in
the office of the County Recorder of Yavapai County, Arizona, in Book 46 of Plats,
pages 33 through 36, inclusive; and thereafter Amended in Book 46 of Plats, pages 72
through 75, inclusive, records of Yavapai County, Arizona.

Lots 93 through 133, inclusive, of WHISPERING CANYON, Phase 3; as recorded in
the office of the County Recorder of Yavapai County, Arizona, in Book 57 of
Plats, pages 75 through 77, inclusive.

Lots 134 through 175, inclusive, of WHISPERING CANYON, Phase 4; as recorded
in the office of the County Recorder of Yavapai County, Arizona, in Book 57 of
Plats, pages 78 through 80, inclusive.