

BY-LAWS
OF
ARCADIA SQUARE
HOMEOWNER'S ASSOCIATION, INC.

ARTICLE I
DEFINITIONS AND APPLICABILITY

Section 1.01. Definitions. In these By-Laws, unless the context otherwise requires;

A. "Articles" shall mean the Articles of Incorporation of the Association and Amendments thereto which are, or shall be filed in the office of the Arizona Corporation Commission.

B. "Association" shall mean and refer to the ARCADIA SQUARE HOMEOWNER'S ASSOCIATION, INC., an Arizona Non-profit Corporation, which shall be formed prior to the conveyance of the first lot, its successors and assignees.

C. "Board" shall mean the Board of Directors of the Association.

D. "By-Laws" shall mean the By-Laws of the Association, together with any amendments thereto.

E. "Common Area(s)" or "Common Property" shall mean all real property designated as Common Areas A and B on the plat (less any easements or property falling within the provisions of 3.04 and 3.06 of the Declaration), whether improved or unimproved, owned by the Association for the common use and enjoyment of the owners. The common area includes, but is not limited to, all recreational

facilities, community and commercial facilities, if any, swimming pools and private streets. Common property shall also include any real or personal property now or hereafter owned by or leased by the Association.

F. "Declarant" means TRANSAMERICA TITLE INSURANCE COMPANY, a California Corporation, as Trustee under Trust No. 8152, its nominees, successors or assignees while title holder of any dwelling unit either as the original owner or owner by reacquisition.

G. "Declaration" or "Restrictions" shall mean the Declaration of Covenants, Conditions and Restrictions of ARCADIA SQUARE, and any amendments thereto, recorded in Book 6245 at pages 830 through 880, inclusive in the office of the County Recorder of Pima County, State of Arizona.

H. "Developer" shall mean CIENEGA CORPORATION, an Arizona Corporation, its successors or assignees.

I. "Dwelling Unit" shall mean the real property outlined on the plat and encompassed within the boundary line surrounding the numbered designation for that dwelling unit as shown on the plat together with any improvements placed within the confines of that boundary.

J. "Member" shall mean and refer to every person and/or entity who holds membership in the Association.

K. "Mortgage" shall mean any Mortgage, Deed of Trust or other security instrument by which a dwelling unit or any part thereof is encumbered and the term "first mortgagee" shall mean

the holder of any mortgage under which the interest of any owner of a dwelling unit is encumbered and which mortgage has first and paramount priority, subject only to the lien of general or ad valorem taxes and assessments.

L. "Owner(s)" or "Homeowner" shall mean and refer to (1) the record owner whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any dwelling unit or as the case may be (2) the purchaser of a dwelling unit under a recorded executory contract for the sale of real property. The foregoing does not include persons or entities who hold an interest in any dwelling unit merely as security for the performance of an obligation, or a lessee or tenant of an owner as defined above, or a purchaser or vendee under an executory contract of sale which has not "closed" and/or been recorded in the office of the County Recorder of Pima County, Arizona.

M. "Plat" shall mean the subdivision plat covering the property under the name "ARCADIA SQUARE", recorded in Book 32 of Maps and Plats at page 34 in the office of the County Recorder of Pima County, Arizona.

N. "The Property" or "The Subdivision" shall mean all that real property identified in the plat.

O. "The Rules" shall mean the rules adopted by the Board pursuant to these By-Laws.

ARTICLE II

MEMBERSHIP AND VOTING

Section 2.01.

A. Qualifications. Each owner (including Declarant) of a

dwelling unit, by virtue of being such an owner and for so long as he is such an owner, shall be deemed a member of the Association. The foregoing is not intended to include persons or entities who hold an interest in a dwelling unit merely as security for the performance of an obligation, or a lessee or tenant of an owner or a purchaser or vendee under an executory contract of sale which is not "closed" and/or been recorded in the office of the County Recorder, Pima County, Arizona. No owner shall have more than one (1) membership for each lot owned.

B. Certificates of Membership. Each owner is automatically a member of the Association. The Association shall, upon incorporation, issue the same number of certificates of membership in the Association as there are dwelling units to owners (other than Declarant) reflecting their voting status as provided for in the Declaration. In the event any dwelling unit is owned by two (2) or more persons, a single certificate shall be issued in the name of all of said persons, and said persons shall designate to the Association, in writing the one of their number authorized to vote said certificate at any and all meetings of the Association. No certificate shall be transferred to any person or persons other than another owner of record. Any member who has disposed of all his interest in any dwelling unit shall forthwith surrender his certificate evidencing membership in the Association, and a new certificate shall be issued in the name of the person or persons or entity acquiring his interest in a dwelling unit. Failure to

surrender such certificate shall, nevertheless, upon the sale by a member of his interest in any dwelling unit void his certificate and all of his rights as a member of the Association. Notwithstanding the foregoing, upon the sale of a dwelling unit by Declarant, Declarant shall retain such voting rights as well as any other rights in the Association as hereinafter specified.

C. Transfer of Membership. Membership of each owner (including Declarant) in the Association shall be appurtenant to the dwelling unit owned and shall not be transferred, pledged or alienated in any way except upon the transfer of ownership to said dwelling unit, and then only to the transferee thereof. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership of a dwelling unit shall operate automatically to transfer said membership to the new owner thereof.

Section 2.02. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A: Class A members shall be all owners, with the exception of Declarant, and shall be entitled to one (1) vote for each dwelling unit owner. When more than one (1) person holds an interest in any dwelling unit, all such persons shall be members. The vote for such dwelling unit shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any dwelling unit.

Class B: The Class B member shall be Declarant, and shall be

entitled to three (3) votes per each dwelling unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of one of the following events, whichever occurs earlier:

(a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) On date as set forth in the Declaration.

Section 2.03. Proxies. Votes may be cast by proxy provided that proxies are filed with the Secretary of the Association on or before the appointed time of the meeting.

ARTICLE III

ADMINISTRATION

Section 3.01. Association Responsibilities. The Association shall have the responsibility of administering the common area(s) or the common property, approving the annual budget, establishing and collecting assessments together with such other responsibilities as set forth in these By-laws and the Declaration. In general, the Association shall be the representative of each owner (including Declarant) for every problem which affects more than one dwelling unit. The Association shall be legally constituted and in existence prior to the conveyance of the first lot by Declarant.

Section 3.02. Annual Meetings of Owners. There shall be an annual meeting of the owners on the second Tuesday in January of each year at such time and place convenient to the owners as

may be designated by the Board of Directors. The Board of Directors may designate another date for such annual meeting not more than thirty (30) days before or after the date fixed for said annual meeting by written notice of the Board given to the owners not less than ten (10) nor more than thirty (30) days prior to the date fixed for said annual meeting specifying the date, time and place thereof.

Section 3.03 Special Meetings of Owners. A special meeting of the owners (including Declarant) may be called at any reasonable time and place by written notice of the Board of Directors or by the owners having one-fifth (1/5) of the total votes and delivered notice to all other owners not less than ten (10) days nor more than thirty (30) days prior to the date fixed for said meeting, specifying the date, time and place thereof, and the nature of the business to be undertaken. No business shall be transacted at a special meeting except as stated in said notice unless by consent of a majority of owners present, either in person or by proxy.

Section 3.04. Notice of Meeting. It shall be the duty of the Secretary of the Association to mail or deliver a notice of each annual or special meeting within the time period specified above stating the purpose thereof as well as the date, time and place where it is to be held to each owner of record. The mailing or delivery of such notice to each owner shall be considered notice served.

Section 3.05. Quorum and Adjourned Meeting. The presence at any meeting, in person or by proxy, of the owners (including Declarant) entitled to vote at least a majority of the total votes shall constitute a quorum. If any meeting cannot be held because a quorum is not present, the owners present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours nor more than thirty (30) days from the time the original meeting was called, at which meeting the quorum requirement shall be the owners present either in person or by proxy entitled to vote at least twenty-five percent (25%) of the total votes. Except as otherwise provided herein, any action may be taken at any meeting of the owners upon the affirmative vote of the owners having a majority of the total votes present at such meeting either in person or by proxy.

Section 3.06 Order of Business. The order of business at all regular annual meetings of the Association shall be as follows:

- A. Roll call.
- B. Proof of notice of meeting or waiver of notice.
- C. Reading of minutes of preceding meeting.
- D. Report of officers.
- E. Report of committees.
- F. Election of Directors.
- G. Unfinished business.
- H. New business.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.01. Number and Qualifications. The affairs of the Association shall be conducted by a Board of Directors, who need

not be owners, comprised of not more than nine (9) persons, nor less than three (3) persons.

Section 4.02. Election and Term of Office. Subject to the requirements of Section 4.01 of these By-Laws, the Directors shall be elected in a regular annual meeting of the Association by a vote of a majority of owners (including Declarant) present either in person or by proxy, constituting a quorum, for a term until the next regular annual meeting, unless a longer or shorter term is authorized as hereinafter provided and shall hold office until their successors are elected and qualify. The members of the Board may succeed themselves indefinitely, but in no instance shall there be more than one (1) board member from each dwelling unit.

The Board of Directors prior to a regular annual meeting shall appoint a nominating committee to obtain a list of names of owners who desire to serve on the Board of Directors to be elected at the forthcoming regular annual meeting and the nominating committee shall inform the owners that it is accepting names of persons to serve on the Board of Directors. After the nominating committee has determined which owners are willing to serve on the Board of Directors, it shall prepare a list of such names and submit it at the next regular annual meeting for a vote of the owners. An owner may be elected to the Board of Directors even though his name does not appear on the list prepared by the nominating committee. The nominating committee shall count and verify the ballots collected at the regular annual meetings.

Section 4.03. Vacancies. Vacancies in the Board of Directors caused by any reason other than the removal of a Director by vote of the owners shall be filled by vote of the majority of the remaining Directors, even though they constitute less than a quorum; and each person so elected shall be a Director until a successor is elected at the next regular annual meeting of the Association.

Section 4.04 Removal of Directors. At any regular or special meeting duly called, any one or more of the Directors may be removed with or without cause by a majority of the owners and a successor may then and there be elected to fill the vacancy thus created. Any Director whose removal has been proposed shall be given an opportunity to be heard at the meeting.

Section 4.05 Organization Meeting. The first meeting of a newly elected Board of Directors shall be held within ten (10) days of election at such place as shall be fixed by the Directors at the meeting at which such Directors were elected, and no notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided a majority of the whole Board shall be present.

Section 4.06 Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors, but at least two (2) such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given to each Director, personally, by mail or telephone at least three (3) days prior to the day set for such meeting.

Section 4.07 Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) day's notice to each Director, given personally, by mail or telephone, which notice shall state the date, time, place and purpose of the meetings. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of at least two (2) Directors. Notwithstanding the foregoing, a majority of the Directors may waive the three (3) day's notice requirement for calling a special meeting and convene a special meeting as such date, time and place as agreed upon by the majority of Directors.

Section 4.08 Board of Director's Quorum. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting, from time to time. At any such adjourned meeting, providing a quorum is present, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

Section 4.09. Powers and Authority of the Board. The Board of Directors shall have all the powers of an Arizona non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Association's Articles of Incorporation, these By-Laws and the Declaration. The

Board shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under and by virtue of said Articles, these By-Laws and the Declaration, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers of the Association. Without in any way limiting the generality of any of the foregoing provisions, the Board shall have the power and authority at any time to do the following:

A. Care, upkeep, repair and supervision of the common areas and facilities. The Board shall determine all maintenance and repair expenses on the basis of at least three (3) independent bids, whenever possible; the bids shall be submitted by reputable contractors or persons in the business of performing said maintenance and repairs. The Board shall select the best bid which need not be the lowest bid and the Board's decision in this regard shall be final and conclusive.

B. Collection of assessments from owners.

C. Designation and dismissal of personnel necessary for the maintenance and operation of the common property.

D. To maintain insurance coverage as provided for in Section 4.05 of the Declaration and to use the insurance proceeds to repair and replace any damage or destruction of property, real or personal, covered by such insurance and pay any balance remaining to the Declarant and owners and their mortgagees as their interest may appear.

E. To grant and convey to any person easements, rights-of-way, parcels or strips of land in, on, over or under any common areas for the purpose of constructing, erecting, operating or

maintaining thereon, therein and thereunder (1) roads, streets, walks, driveways, parkways, and park areas; (2) temporary overhead or permanent underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, telephone, cable T.V., and other purposes; (3) sewers, storm drains and pipes, water systems, water, heating and gas lines or pipes; and (4) any similar public or quasi-public improvements or facilities.

F. To retain and pay for legal and accounting services necessary or proper in the operation of the common areas and facilities, enforcement of these By-Laws and the Declaration, or in any of the other duties or rights of the Association.

G. To maintain and repair drainage and other easements, private pedestrian walkways, roads, roadways, roadway rights-of-way, parking lots, median strips, entry details, walls or other areas not maintained by governmental entities or owners.

H. To obtain or pay for, as the case may be, any other property, or services, which the Board deems necessary including security services for the common areas and facilities.

I. To enter at any reasonable time upon any exterior portion of any dwelling unit for the purpose of carrying out its duties and obligations for exterior maintenance and landscaping pursuant to Section 4.04 of the Declaration.

J. In the event any property owned by the Association is damaged or destroyed by an owner or any of his guests, agents or members of his family, such owner does hereby irrevocably authorize the Association to repair said damage, and the Association

shall so repair said damage in a good workmanlike manner in conformance with the original plans and specifications. Said owner shall then repay the Association in the amount actually expended for said repairs.

In the event of a dispute between an owner and the Board of Directors with respect to the cause of damage or the extent of repairs necessitated or with respect to the cost thereof, then upon written request of the owner delivered to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three (3) arbitrators, one chosen by the Board of Directors, one chosen by said owner and these two arbitrators shall choose a third arbitrator. If the two arbitrators cannot agree as to the selection of the third arbitrator, then the same shall be selected by the presiding Judge of the Superior Court of Pima County, Arizona. A determination by any two of the three arbitrators shall be binding upon said owner and the Association who shall share the cost of arbitration equally. In the event one party fails to choose any arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then said other party shall have the right and authority to choose both arbitrators.

K. To regulate the use and provide for appropriate safety measures for all common areas including, but not limited to, private roadways and parking areas.

L. To maintain all common areas in a neat and attractive manner.

M. To construct new improvements or additions to the common areas or demolish or replace existing improvements; provided that in the case of any improvements, additions or demolition (other than maintenance or repairs to existing improvements and reconstruction made pursuant to Section 4.16 hereof) involving a special assessment, the vote of owners having two-thirds (2/3) of the total vote present, voting either in person or by proxy at an annual or special meeting called for the purpose of approving plans and a maximum total cost therefor shall first be obtained. The Board shall levy a special assessment on all owners for the cost of such work pursuant to these By-Laws and the Declaration.

N. To assign parking spaces.

O. To utilize water metered to the dwelling units for watering of the plants, trees and shrubs in the common area; provided, however, and on the condition, the Association reimburses owners on a fair and equitable basis for the cost of water so utilized. The Board's determination of the amount to be reimbursed for such use of water shall be final and conclusive.

P. To select and employ a Trust Company, Bank, or Professional Property Management Company, in Tucson, Arizona, to collect and disburse funds of the Association under such terms and conditions approved by the Board.

Section 4.10. Management. The Board shall control, maintain, manage and improve the common property as provided in these By-Laws, the Articles and the Declaration. Such right and power of control and management shall be exclusive. In managing the common property, the Association hereby accepts all responsibility for the control, maintenance, safety and liability of such common property including but not limited to collecting and paying taxes on common areas, which shall be assessed by the County Assessor. Any agreement for professional management of the subdivision, or any other contract providing for services of the Developer shall not exceed three (3) years. Any such agreement shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

Section 4.11. Taxes. Owners shall pay all real estate and personal property taxes which may be assessed against their respective dwelling units. The Association shall pay all taxes levied upon any property conveyed, leased or otherwise transferred to the Association, to the extent not assessed to owners.

Section 4.12. Fidelity Bonds. The Board of Directors shall have the authority to require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate bonds. The premiums on such bonds shall be paid by the Association.

Section 4.13. Assessments. The Board of Directors shall levy and collect assessments pursuant to the provisions of these

By-Laws and Article VI of the Declaration. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the members and their guests, for the improvement and maintenance of the common areas and for all purposes set forth in the Articles, By-Laws and this Declaration. The Board of Directors of the Association shall provide that Association dues, charges or assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the common areas and common property owned by the Association that must be replaced on a periodic basis. All such dues, charges and assessments imposed by the Association shall be paid on a periodic basis in regular installments rather than by special assessments.

A. The Board of Directors shall keep books with detailed accounts affecting the administration of the common property specifying the maintenance, repair and replacement expenses thereof and any other expenses incurred. The books and vouchers shall be made available for examination to any of the owners at convenient hours on working days. At the Annual Meeting, the Board shall make available to the members of the Association, a complete financial report pertaining to the Association's financial condition. Upon the vote or written request of 25% of the Association's members, the Board shall appoint a committee of at least 3 members to audit the books or in the alternative shall contract with a private accounting firm to audit same.

B. Until January 1 of the year immediately following the conveyance of the first dwelling unit to an owner, the maximum

annual assessment shall be _____
(\$ _____) Dollars per dwelling unit as adjusted, payable
in monthly installments. Within thirty (30) days prior to the end
of each calendar year (January 1 through December 31), the Board
of Directors shall estimate the total charges to be paid during
the forthcoming year to determine the annual assessment (including
a reasonable reserve for contingencies and less any expected sur-
plus from the prior year). Notwithstanding the preceding sen-
tence, the Board of Directors shall have the authority to revise,
periodically within each calendar year, the annual assessment to
reflect the then current operating costs of the Association.

C. In the event the insurance proceeds paid for the damage
or destruction by fire or other casualty to any dwelling unit
covered by insurance written in the name of the Association are
insufficient to pay all the costs of repairing and/or rebuilding
to the same condition as formerly, the Board shall levy a special
assessment against the dwelling unit owner at fault for the damage
or destruction, if determinable, and if said fault is not deter-
minable, then the Board shall levy a special assessment against
all owners in the same proportion as their regular assessment to
make up any deficiency. The owner at fault or the owners, which-
ever is the case, shall pay such special assessment in such
amounts and at such times as the Board determines to such deposi-
tory as may be designated by the Board.

Section 4.14. Authorized Payments by the Association. The

Board of Directors shall have the exclusive authority to make payments out of the Association's funds for the benefit of each owner; this authority shall include but shall not be limited to the following:

A. Water service for the common areas.

B. Utility service for the common areas.

C. All goods, materials, supplies, labor, services, maintenance, repair, alterations, reconstruction and insurance which the Board of Directors is authorized to obtain and pay for pursuant to these By-Laws and the Declaration or which are authorized by the owners for the convenient operation of the common property.

D. Workmen's Compensation Insurance to the extent necessary to comply with any applicable laws.

E. Professional management services as provided herein, legal, accounting and other services contracted for by the Board of Directors if it is deemed necessary by them for the operation and maintenance of the common property, protection of any of the common property or in the best interest of the owners.

F. As provided in Section 4.04 A of the Declaration, maintenance, repair, upkeep and repainting of dwelling units, including perimeter yard walls and any other improvements on a lot is the sole responsibility of each owner. In the event any owner fails to maintain his lot or the exterior of his/her dwelling unit or any other improvement on a lot in a manner in keeping with the general neighborhood, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right,

through its agents or employees, to enter upon the subject property, and repair, maintain and restore the lot, any improvements erected thereon, and the exterior of the dwelling unit including but not limited to repainting the dwelling unit and any improvements on the lot. The cost of such repair and maintenance shall be added to and become part of the assessment to which such lot is subject. The Board in its sole discretion shall have the right to determine whether or not a lot or the exterior of a dwelling unit and any improvements erected on a lot is in need of maintenance, repair and upkeep in order to conform to the standards of the general neighborhood, and the Board shall use a reasonably high standard to determine whether such maintenance, repair and upkeep is required so that the dwelling units as a whole will reflect a high pride of ownership.

G. All costs of enforcing the provisions of these By-Laws and the Declaration, including attorney's fees and court costs provided that all costs incurred for the enforcement of the provision of these By-Laws and the Declaration against any owner shall be assessed especially against such owner.

Section 4.15. Rules and Regulations. The Board of Directors shall have the power to adopt and publish rules and regulations governing the use of the common property, and such rules and regulations shall be binding upon the members of the Association.

Section 4.16. Damage and Destruction. In the case of damage by fire or other casualty to the common property or exteriors of dwelling units:

A. Destruction - Insurance Proceeds. If insurance proceeds do not exceed the sum of Twenty-five Thousand and No/100 Dollars (\$25,000.00), and the cost of repairing or rebuilding does not exceed the amount of available insurance proceeds by more than Five Thousand and No/100 Dollars (\$5,000.00), such insurance proceeds shall be paid to the Association, which thereupon shall contract to repair or rebuild the damaged property; and if the insurance proceeds are insufficient to pay all of the costs of repairing or rebuilding the damaged property, the Board shall levy a special assessment as provided for in Section 4.13 of these By-Laws to make good any deficiency.

B. Reconstruction. If insurance proceeds exceed Twenty-five Thousand and No/100 Dollars (\$25,000.00) or the cost of repairing or rebuilding exceeds available insurance proceeds by more than Five Thousand and No/100 Dollars (\$5,000.00), then:

1. The insurance proceeds arising out of damages to said property shall be paid to such bank or other trust company as may be designated by the Board, to be held in separate trusts for the benefit of owners and their mortgagees, as their respective interests shall appear. The Board is authorized to enter, on behalf of the owners, into an agreement with such insurance trustee relating to its powers, duties and compensation, on such terms as the Board may approve consistent herewith.

2. The Board shall obtain firm bids from two (2) or more responsible contractors, to rebuild any portions to said property in accordance with the original plans and specifications

with respect thereto and shall, as soon as possible thereafter, select the best bid which need not be the lowest bid.

3. Upon acceptance of a bid, the Board shall levy a special assessment or special assessments on the owners pursuant to these By-Laws and the Declaration to make up any deficiency between the total insurance proceeds and the contract price of repairing or rebuilding the damaged property and such assessment or assessments and all insurance proceeds, whether or not subject to liens of mortgagees, shall be paid to said insurance trustee to be used for such rebuilding. If two (2) or more assessments are levied, such assessments may be made due on such dates as the Board may designate over a period of not to exceed twenty (20) years and the Board may borrow money to pay the aforesaid deficiency, and may secure such borrowing by an assignment of the Association's right to collect such assessments, or by a pledge of any personal property held by it in trust for the owners, or by both.

Section 4.17. Personal Liability. No member of the Board or any Committee of the Association or any officer or employee of the Association, or the Declarant, 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, or any representative or employee of the Association, or any 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, without willful or intentional misconduct.

ARTICLE V

OFFICERS

Section 5.01. Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary and Treasurer, all of whom shall be Directors. Any number of offices, except the offices of President and Secretary, may be held by the same person, unless the Articles or these By-Laws otherwise provide.

Section 5.02. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

Section 5.03. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

Section 5.04. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of President of a corporation, including but not limited to the power to appoint committees from among the owners

from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 5.05. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 5.06. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the Association; the Secretary shall have charge of such books and papers as the Board of Directors shall direct, and shall in general perform all the duties incident to the office of Secretary.

Section 5.07. Treasurer. The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association unless such function is delegated by the Board of Directors to a trust company, a bank or a professional property management company as authorized under Section 4.09. P. of these By-Laws. The Treasurer shall be responsible for the deposit of all monies and other valuable effects which he personally collects in the name, and to the credit of the Association in such depositories as may from time to

time be designated by the Board of Directors. All funds of the Association over which the Treasurer has direct control shall only be withdrawn upon his/her signature; the Board may require the signature of one other member of the Board for disbursement of Association funds.

ARTICLE VI

OBLIGATION OF HOMEOWNERS

Section 6.01. Assessments.

A. Personal Obligation and Non-Exemption. All owners except Declarant shall be personally obligated to pay annual and special assessments imposed by the Association to meet all common expenses, which shall include, but not be limited to: Insurance premiums; maintenance upkeep and replacement of the common property; reserve contingencies; taxes and utilities for the common areas; and any other charges agreed upon by a vote of the owners, No owners except Declarant may exempt himself from contributing toward such expenses by waiver or non-use of the common property or by abandoning his dwelling unit. The assessments shall be made in the manner provided in Section 4.13 of these By-Laws and Article VI of the Declaration.

B. Charges for Repairs. Each owner agrees that the charges for repairs as determined pursuant to Section 4.09. J., of these By-Laws if not paid within ten (10) days after completion of the work, shall become a lien upon said owner's dwelling unit and shall continue to be such a lien until fully paid. The amount owed by said owner to the Association shall be a debt, and shall

be collectible by any lawful procedure allowed by these By-Laws and the Declaration. Nothing contained in this paragraph 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 had not this paragraph been inserted.

C. Late Charge and Default. If any assessment assessed to any owner is not paid within five (5) days after it is due, the owner may be required by the Board of Directors to pay a late charge of such amount as the Board may designate from time to time as set forth in the Rules adopted pursuant to Section 4.15 of these By-Laws. An assessment shall be considered in default if not received by the Association within five (5) days after the due date.

D. Effect of Nonpayment of Assessments; Remedies of the Association. Each owner shall be deemed to covenant and agree to pay to the Association the assessments provided for herein, and agrees to the enforcement of the assessments in the manner herein specified. All delinquent assessments shall bear interest at the maximum interest rate permitted by law and late payments shall first be credited toward interest due, then toward assessments first due. In the event the Association employs an attorney for collection of any assessments, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, or for any other purpose in connection with the breach of this Declaration, each

owner agrees to pay reasonable attorney's fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said owner. In the event of a default in payment of any such assessment when due, in which case 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, or without any limitation of the foregoing, by either or both of the following procedures:

1. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the maximum rate permitted by law from the date of delinquency until paid, court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent owner or member.

2. Enforcement by Lien. There is hereby created a right of claim of lien, with power of sale, on each and every dwelling unit to secure payment to the Association of any and all assessments levied against any and all owners together with interest thereon at the maximum rate permitted by law per annum from the date of delinquency until paid, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. At anytime within one hundred twenty (120) days after the occurrence of any de-

fault in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the default owner, on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such a written demand being made, the Association may elect to file such a claim of lien on behalf of the Association against the dwelling unit of the defaulting owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information.

- (1) The name of the delinquent owner;
- (2) The legal description of the dwelling unit against which claim of lien is made;
- (3) The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees (with any proper offset allowed);
- (4) That the claim of lien is made by the Association pursuant to this Declaration; and
- (5) That a lien is claimed against said dwelling unit in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said owner, the lien claimed therein shall immediately attach and become

effective in favor of the Association as a lien upon the dwelling unit. Such a lien shall have priority over all claims of liens created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any dwelling unit, assessments on any dwelling unit in favor of any municipal or other governmental assessing unit, and the lien of any first mortgage. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any dwelling unit. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each owner hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 6.02. Maintenance and Repair.

A. Each owner must perform promptly all maintenance and repair work within his own dwelling unit, which if neglected would affect the property in its entirety or in part belonging to Declarant or other owners, being expressly responsible for the damages and liabilities that his failure to do may engender.

B. All the repairs of internal installations of the dwelling

units, such as water, light, gas, power, sewage, telephones, air conditioners, heating equipment, roof, doors, windows, lamps and all other internal accessories belonging to that dwelling unit shall be at the owner's expense. In addition, owners shall bear the expense and responsibility for all glass surfaces, exterior T.V. antennas, common walls as provided for in Section 3.03 of the Declaration, and landscaping in the general patio area of the dwelling units.

C. Each owner shall reimburse the Association for any expenditures incurred in repairing or replacing any portion or all of the common area and facilities damaged through his fault, except to the extent covered by insurance.

D. Owners shall not, without the written consent of the Board of Directors, make any structural alterations in the common areas or facilities or remove any improvements or fixtures therefrom.

ARTICLE VII

AMENDMENTS

Section 7.01. Articles of Incorporation and By-Laws. Until such time as Declarant has sold all the dwelling units, the Association shall have no authority to amend these By-Laws or the Articles of Incorporation without the approval of Declarant, which approval shall not be unreasonably withheld.

Upon the sale of all of the dwelling units by Declarant, these By-Laws or the Articles of Incorporation may be amended in whole or in part by the Association in a duly constituted meeting

held for such purpose by a vote of the then owners of not less than three-fourths (3/4) of the total number of dwelling units covered by the Declaration.

ARTICLE VIII

MORTGAGES

Section 8.01. Mortgage Protection. First mortgagees are hereby granted the right to jointly, or singly pay taxes or other charges which are in default and which may or have become a charge against any common areas or other common property owned by the Association, and such first mortgagees may, jointly or singly, pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common areas or common property and any first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

Nothing in these By-Laws shall in any manner be deemed to give a dwelling unit owner, or any other party, priority over any rights of a first mortgagee of a dwelling unit pursuant to the terms of such first mortgagee's mortgage in the case of a distribution to a dwelling unit owner of insurance proceeds or condemnation awards for losses to or a taking of common areas or other common property owned by the Association.

Each first mortgagee shall, upon notice to the Association, be entitled to a written notification from the Association of any default in the performance by the owner of a dwelling unit encumbered by the mortgage in favor of such mortgagee or any obligation

under these By-Laws or under the Declaration, Articles of Incorporation, Rules and Regulations of the Association which is not cured within sixty (60) days.

Section 8.02. Notice to Association. An owner who mortgages his dwelling unit shall notify the Association through the management agent, if any, or the President or the Board of Directors in the event there is no management agent, giving the name and address of his mortgagee; and the Association shall maintain such information in a book entitled "Mortgagees of Dwelling Units".

Section 8.03. Notice of Unpaid Assessments. The Association shall, at the request of a mortgagee of a dwelling unit, report any unpaid assessments due from an owner.

ARTICLE IX

GENERAL PROVISIONS

Section 9.01. Conflict. In the event of any conflict or inconsistency between the provisions of these By-Laws and the Declaration of Covenants, Conditions and Restrictions of ARCADIA SQUARE, recorded in the office of the County Recorder, Pima County, Arizona, in Docket 6245 at pages 830 through 880, inclusive, or with the Rules, Regulations and Requirements of the Federal Home Loan Mortgage Corporation, the terms and provisions of the Declaration and the Rules, Regulations and Requirements of the Federal Home Loan Mortgage Corporation shall prevail and supersede such conflicting or inconsistent provisions of these By-Laws. Neither the Association nor the Board of Directors, nor any agent or employee shall be authorized or empowered to take any

action inconsistent with the provisions of the above referenced Declaration of Covenants, Conditions and Restrictions.

Section 9.02. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

Section 9.03 Captions. All captions and titles used in these By-Laws are intended solely for the convenience or reference purposes only and in no way define, limit or describe the true intent and meaning of the provisions hereof.

IN WITNESS WHEREOF, the Association, a non-profit Arizona Corporation, has hereunto caused its corporate name to be signed, its corporate seal affixed, and the same to be attested by the signature of its duly authorized officer this 15th day of April, 1980.

ARCADIA SQUARE HOMEOWNER'S
ASSOCIATION, INC.

By _____
President

ATTEST:

Secretary

AZ. CORP. COMMISSION
FOR THE STATE OF AZ.
FILED
APR 14 '80
APPR. M. HACKWELL
DATE APPR. 4/16 FILE # _____
TERM _____
DATE _____ TIME _____

ARTICLES OF INCORPORATION
OF

ARCADIA SQUARE HOMEOWNER'S ASSOCIATION, INC.

504199

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned have this day associated ourselves together for the purpose of forming a non-profit corporation under and pursuant to the laws of the State of Arizona and for that purpose do hereby adopt these Articles of Incorporation.

ARTICLE I

Name

The name of the corporation is ARCADIA SQUARE HOMEOWNER'S ASSOCIATION, INC., hereafter called the "Association".

ARTICLE II

Place of Business

The principal place of business of the Association shall be Tucson, Pima County, Arizona, with its known place of business at 5151 East Broadway, Suite 580, Tucson, Pima County, Arizona, 85711, c/o Cienega Corporation.

ARTICLE III

Purpose

This Association does not contemplate pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are: To promote the health, safety and welfare of its members and to provide for maintenance, preservation and architectural control of certain residence lots and ownership,

maintenance, preservation and architectural control of certain common areas within the subdivision in Pima County, Arizona, known as ARCADIA SQUARE; to have and to exercise all powers, rights and privileges which a non-profit corporation of the State of Arizona may by law now or hereafter have or exercise and to do and perform any and all acts and things to transact any business not inconsistent with law, which may be necessary, incident to or convenient in carrying out any of the purposes of the association. The Association in the fulfillment of its purposes shall have those powers enumerated in A.R.S. Section 10-1005 and the Declaration of Covenants, Conditions and Restrictions of ARCADIA SQUARE as recorded March 27, 1980 in Book 6245 pages 830 thru 880 inclusive in the office of the County Recorder of Pima County, Arizona ("the Declaration"). The Association shall not carry on any activities not permitted to be carried on by a homeowner's association exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1954 or the corresponding provisions of any future United States Revenue law.

ARTICLE IV

Initial Business

The character of the business which the corporation initially intends actually to conduct in this State is the operation of a homeowner's association.

ARTICLE V

Membership, Voting and Other Rights

The authorized number and qualification of members of the

Association; the different classes of membership, if any; voting and other rights and privileges of the members; and their liability for dues and assessments and the method of collection thereof, shall be provided for in the Declaration and as provided for in the By-Laws of the Association.

ARTICLE VI

Statutory Agent

The initial statutory agent for the Association is hereby designated as HUGH M. CALDWELL, JR., 5151 East Broadway, Suite 1600, Tucson, Arizona 85711.

ARTICLE VII

Board of Directors

The number of directors constituting the initial Board of Directors shall be five (5); the number of directors thereafter shall be fixed by the By-Laws of the Association. The names and addresses of the persons who are to serve as directors until the First Annual Meeting of Members, to be held at a time and place as provided by the By-Laws, or until their successors are elected and qualified are:

ANDREW B. KELLY
5151 E. Broadway, Suite 580
Tucson, Arizona 85711

J. DAVID HARDEN, JR.
5151 E. Broadway, Suite 580
Tucson, Arizona 85711

KEVIN OBERG
5151 E. Broadway, Suite 580
Tucson, Arizona 85711

DAVID J. MARSHALL
5151 E. Broadway, Suite 580
Tucson, Arizona 85711

CARMA ARNOLD
5151 E. Broadway, Suite 580
Tucson, Arizona 85711

ARTICLE VIII

Incorporator

The name and address of the incorporator of this Association
is:

J. DAVID HARDEN, JR.
5151 E. Broadway, Suite 580
Tucson, Arizona 85711

ARTICLE IX

Exemption

The private property of each and every officer, director, and
member of this Association shall at all times be exempt from the
debts and liabilities of the Association.

ARTICLE X

Dissolution

In the event of a dissolution or winding-up of the Associa-
tion, all the assets of the Association shall be transferred to a
transferee which is exempt from taxation under Section 501(a) to
the Internal Revenue Code of 1954 or the corresponding provisions
of any future United States Internal Revenue law.

ARTICLE XI

Governing Documents

In the event that any part or provision of these Articles of
Incorporation are in conflict or inconsistent with the Declara-
tion, or with the Rules, Regulations and Requirements of the
Federal Home Loan Mortgage Corporation, the terms and provisions

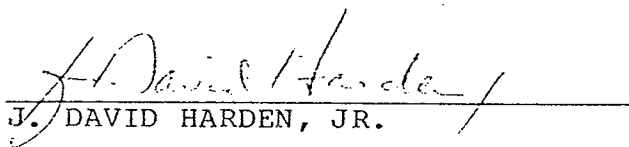
of the Declaration and the Rules, Regulations and Requirements of the Federal Home Loan Mortgage Corporation shall prevail and supersede such conflicting or inconsistent provisions hereof except as may otherwise be required by applicable law. Any provision contained in these Articles of Incorporation to the contrary notwithstanding, neither the corporation, the Board of Directors of the corporation, nor any agent or employee of the corporation shall be authorized or empowered to take any action inconsistent with the above provisions of the Declaration.

ARTICLE XII

Amendment to Articles

These Articles of Incorporation may be amended, altered or repealed only by the affirmative vote of seventy-five 75% of the members of this corporation present in person or by proxy and entitled to vote at any duly constituted and convened regular or special meeting of members, and upon ten (10) days prior written notice of the effective date of such amendment to all first mortgagees (as defined in the Declaration). No amendment shall, in any manner, serve to alter, diminish, modify or otherwise effect the rights of any first mortgagee.

IN WITNESS WHEREOF, I, the said incorporator, have hereunto set my hands this 6th day of April, 1980.


J. DAVID HARDEN, JR.

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this
10th day of April, 1980, by J. DAVID HARDEN, JR.

Patricia M. Wilder
Notary Public

My Commission Expires:
My Commission Expires Nov. 1, 1981

CONSENT OF STATUTORY AGENT

I, HUGH M. CALDWELL, JR., having been designated to act as
Statutory Agent, hereby consent to act in that capacity until
removal or resignation is submitted in accordance with the Arizona
Revised Statutes.

Hugh M. Caldwell, Jr.
HUGH M. CALDWELL, JR.