

1 Law Office of Robert J. Launders, P. C.
2 Robert J. Launders (#16242)
3 8168 E. Florentine Rd., Ste. B
4 Prescott Valley, AZ 86314
5 Telephone: (520) 775-5409
6 Fax: (520) 775-6341
7 Attorney for: Plaintiffs

FILED
9:00 O'Clock A M
MAY 16 2003
JEANNE HICKS, Clerk
BY TERESA MENDEZ
Deputy

ARIZONA SUPERIOR COURT
YAVAPAI COUNTY

7 JOHN B. CUNDIFF and BARBARA C.
8 CUNDIFF, husband and wife, ELIZABETH
9 NASH, a married women dealing with her
10 separate property, KENNETH J. PAGE and
11 KATHERYN J. PAGE, as Trustees of the
12 Kenneth and Katheryn Page Family Trust,

Plaintiffs,

v.

13 DONALD COX and CATHERINE COX,
14 husband and wife,

Defendants.

No.: 20030399

COMPLAINT FOR INJUNCTIVE
RELIEF

Division:

17 Plaintiffs allege:

18 1. Plaintiffs and Defendants are the owners of real property located in "Coyote
19 Springs Ranch", Yavapai County, Arizona, more particularly described as:

20
21 Government Lots One (1) and Two (2) and the south half of the Northeast
22 quarter and the Southeast quarter of Section one (1); all of Section Twelve (12);
23 the East half and the East half of the Southwest quarter and the East half of the
24 East half of the Northeast quarter and the Northwest quarter of the Northeast
25 quarter of Section thirteen (13); the East half of Section Twenty-four (24); the
26 East half of Section Twenty-five (25), all in township Fifteen (15) North, Range
27 One (1) West of the Gila and Salt River Base and Meridian; and

28 All of Section Six (6); all of Section (7), Government Lots One (1), Two (2), Three
29 (3), and Four (4), and the Southeast quarter of the Southwest quarter and the
South half of the Northeast quarter of the southwest quarter of Section Nineteen
(19), all in Township Fifteen (15) North, Range One (1) East of the Gila and Salt
River Base and Meridian.

2. The acts complained of herein affect the ownership of this real property,

1 therefore, jurisdiction and venue are proper in this court.

2 3. On or about June 13, 1974, Robert D. Conlin, Margaret Dell Conlin and
3 David A. Conlin, Jr., the then owners of the real property described above, recorded a
4 "Declaration of Restrictions" in the Office of the County Recorder of Yavapai County,
5 Arizona, the same being recorded in Book 916, Official Records, Page 680-681-682
6 Records of Yavapai County, Arizona. That declaration is labeled Exhibit A and
7 attached. That declaration was created to establish the nature of the use and
8 enjoyment of the real property
9

10
11 4. Thereafter, Robert D. Conlin, Margaret Dell Conlin and David A.
12 Conlin, Jr. sold and conveyed many of the lots to many different grantees, pursuant to
13 and in accordance with the plat of the tract.
14

15 5. Pursuant to the Conlin's and Yavapai Title Company's purpose of creating
16 uniform restrictions upon the use and improvement of the tract, and for the benefit of all
17 the lots in that tract and the owners and the purchasers of lots in that tract, each and
18 every conveyance and contract of sale, contained words to the effect that such
19 conveyance or sale was subject to covenants, conditions and restrictions as may
20 appear of record. At the time Plaintiffs and Defendants acquired the real property in
21 question, there was recorded the previously referred to Declarations of Restrictions.
22 Those Declarations contained the following covenants, restrictions, and provisions, in
23 words and figures as follows:
24

25
26 2. No trade, business, profession or any other type of commercial or
27 industrial activity shall be initiated or maintained within said property or any
28 portion thereof.

29 7. (e) No structure whatsoever other than one single family dwelling or
mobile home, as herein provided, together with a private garage for not more

1 than three (3) cars, a guest house, service quarters and necessary out buildings
2 shall be erected, placed or permitted to remain on any portion of said property.

3 15. No outside toilet or other sanitary conveniences or facilities shall be
4 erected or maintained on the premises.

5 17. The foregoing restrictions and covenants run with the land and shall
6 be binding upon all parties and all persons claiming through them until June 1,
7 1994, at which time said covenants and restrictions shall be automatically
8 extended for successive periods of ten (10) years, or so long thereafter as may
9 be now or hereafter permitted by law.

10 19. If there shall be a violation or threatened or attempted violation of any
11 of said covenants, conditions, stipulations or restrictions, it shall be lawful for any
12 person or persons owning said premises or any portion thereof to prosecute
13 proceedings at law or in equity against all persons violating or attempting to, or
14 threatening to violate any such covenants, restrictions, conditions or stipulations,
15 and either prevent them or him from so doing or to recover damages or other
16 dues for such violations. No failure of any other person or party to enforce any
17 of the restrictions, rights, reservations, limitations, covenants and conditions
18 contained herein shall, in any event, be construed or held to be a waiver thereof
19 or consent to any further or succeeding breach or violation thereof. The violation
20 of these restrictive covenants, conditions or stipulations or any or more of them
21 shall not affect the lien of any mortgage now of record, or which hereafter may
22 be placed of record, upon said premises or any part thereof.

23 6. Each and all of the conveyances pursuant to which Plaintiffs and Defendants
24 respectively acquired their interests in their lots contained words to the effect that such
25 conveyance or sale was subject to covenants, conditions and restrictions as may
26 appear of record. At the time Plaintiffs and Defendants acquired the real property in
27 question, there were recorded the previously referred to Declarations of Restrictions.

28 7. Both Plaintiffs and Defendants acquired their interest in their lots with notice
29 and knowledge of the existence of those covenants, restrictions and provisions in the
conveyances, and Plaintiffs relied upon them.

8. Defendants have breached the covenants and restrictions by initiating and
maintaining a commercial activity within their property.

1 9. Defendants have breached the covenants and restrictions by having more
2 than one single-family residence on the property.

3 10. Defendants have breached the covenants and restrictions by having an
4 outdoor toilet on their property.

5 11. Defendants received notice that the commercial activity they planned and
6 then initiated and maintained on their land in Coyote Spring is in violation of the
7 covenants and restrictions. Defendants have been requested to cease and desist from
8 initiating and maintaining that business, but notwithstanding that notice and request,
9 Defendants continue to initiate and maintain commercial activity on their land.

10 12. The violations of the covenants and restrictions, if permitted to continue, will
11 inflict upon Plaintiffs and Plaintiff's land and all other lots in the tract, great and
12 irreparable damage. The introduction of commercial activity will destroy the rural and
13 residential nature of the real property involved. The placing of more than one single
14 family residence on a particular parcel will affect the residential density of the same
15 land.

16 13. As a result of Defendants conduct described above, Plaintiffs have incurred
17 attorneys fees and are entitled to recover their attorney's fees pursuant to A.R.S. §12-
18 341.01.

19 WHEREFORE, Plaintiff's pray for judgment as follows:

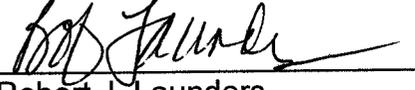
- 20 1. That this Court issue an injunction perpetually enjoining the Defendants from
21 initiating or maintaining any commercial activity within their property in Coyote
22 Springs, Yavapai County, Arizona.

- 1 2. That this Court issue an injunction ordering Defendants to remove all
2 structures from their land other than one single family dwelling or mobile
3 home, a private garage for not more than three (3) cars, a guest house, and
4 service quarters.
5
6 3. That this Court issue an injunction ordering Defendants to remove all
7 inventory of the commercial activity they maintain on their land.
8
9 4. That this court order Defendants to pay the reasonable attorney's fees and
10 costs incurred by Plaintiffs to pursue these claims.

11 Dated: May 9, 2003

12 Respectfully submitted,

13 Law Office of Robert J. Launders, P. C.

14 By: 
15 Robert J. Launders

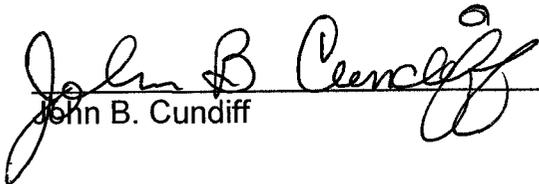
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

VERIFICATION

STATE OF ARIZONA)
) ss.
County of Yavapai)

John B. Cundiff, being first duly sworn, deposes and says:

I have read the foregoing pleading and know the contents therein, and believe them to be true.

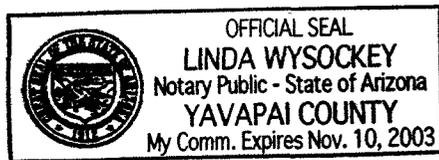

John B. Cundiff

SUBSCRIBED AND SWORN to before me on the day of 14 May 2003.

My commission expires:

Nov. 10, 2003


Notary Public



RECORDED, RETURNED
Robert D. Conlin
2233 North 7th Street

STATE OF ARIZONA County of Yavapai 17 1651

I do hereby certify that the within instrument was filed and recorded at the request of - Tom Lynch ...
June 13 A.D. 1974 at 135 o'clock P.M. Book 916. Official Records.
Page 680-681-682 Records of Yavapai County, Arizona
WITNESS my hand and official seal the day and year first above written

PATSY C. JENNEY, County Recorder
By: [Signature] & [Signature] Deputy

LUYUTE SPRINGS RANCH

DECLARATION OF RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS:

That Robert D. Conlin and Margaret Dell Conlin, his wife, and David A. Conlin, Jr., husband of Anne Conlin, dealing with his sole and separate property, being the owners of all the following described premises, situated in the County of Yavapai, State of Arizona, to-wit:

GOVERNMENT LOTS One (1) and Two (1) and the South half of the Northeast quarter and the Southeast quarter of Section One (1); all of Section Twelve (12); the East half and the East half of the East half of the Southwest quarter and the East half of the East half of the Northwest quarter and the Northwest quarter of the Northeast quarter of the Northwest quarter of Section Thirteen (13); the East half of Section Twenty-four (24); the East half of Section Twenty-five (25), all in Township Fifteen (15) North, Range One (1) West of the Gila and Salt River Base and Meridian; and

All of Section Six (6); all of Section Seven (7), GOVERNMENT LOTS One (1), Two (2), Three (3), and Four (4), and the Southeast quarter of the Southwest quarter and the South half of the Northeast quarter of the Southwest quarter of Section Nineteen (19), all in Township Fifteen (15) North, Range One (1) East of the Gila and Salt River Base and Meridian.

and desiring to establish the nature of the use and enjoyment of the premises hereinabove described, sometimes hereinafter referred to as property or premises, does hereby declare said premises subject to the following express covenants and stipulations as to the use and enjoyment thereof, all of which are to be construed as restrictive covenants running with the title to said premises and each and every part and parcel thereof and with each and every conveyance thereof hereafter made to-wit:

1. Each and every parcel of the above-described premises shall be known and described as residential parcels; that is to say, mobile, modular or permanent dwellings may be erected and maintained upon said premises, subject to limitations with respect thereto as hereinbelow set forth.
2. No trade, business, profession or any other type of commercial or industrial activity shall be initiated or maintained within said property or any portion thereof.
3. Said property or any portions thereof shall not be conveyed or subdivided into lots, parcels or tracts containing less than nine (9) gross acres, nor shall improvements be erected or maintained in or upon any lot, parcel or tract containing less than such nine (9) gross acres.
4. No structure or improvement of any kind or nature whatsoever shall be erected, permitted or maintained upon, over or across the easements or reservations for utilities or drainage, if any.
5. Residence buildings must be completed within twelve (12) months from commencement of construction. No garage, carport or other building shall be commenced or erected upon any portion of said property until the main dwelling building complying with this Declaration is under construction or has been moved onto the premises. Commencement of construction, for the purposes of this Declaration, shall be deemed to be the date material, raw or otherwise, shall have been placed or stored upon the premises.

6. All residential buildings to be erected, constructed, maintained or moved upon the premises or any portion thereof, as the case may be, shall be of new construction. Single buildings shall have concrete foundations.

7. (a) All single family residences other than mobile homes shall require 1,000 square feet of ground floor area including storage but exclusive of any portion thereof used for open porches, pergolas, patios, carports or garages, whether or not they are attached to, or adjacent to said residence.

(b) Mobile homes shall (1) contain not less than 720 square feet of ground floor area devoted to living purposes; (2) be not less than 12 feet in width; (3) be placed so that the floor thereof is not more than 8 inches above the ground level.

(c) Travel Trailers or campers may occupy homesites during vacation periods, not to exceed three (3) weeks in any one season, or during the period of residence construction.

(d) No prefabricated or pre-erected dwelling having less than the above applicable square foot requirements, exclusive of open porches, pergolas or attached garage, if any, shall be erected, permitted or maintained on any portion of said property.

(e) No structure whatever other than one single family dwelling or mobile home, as herein provided, together with a private garage for not more than three (3) cars, a guest house, service quarters and necessary out buildings shall be erected, placed or permitted to remain on any portion of said property.

8. No 'Real Estate' or 'For Sale' sign or signs exceeding 24" by 24" may be erected or maintained on said premises. No general advertising signs, billboards, unsightly objects or public or private nuisances shall be erected, placed or permitted to remain on any portion of said premises.

9. No abandoned auto or auto parts or used machinery or other salvage or junk shall be placed or permitted to remain on any portion of said premises.

10. No swine shall be raised, bred or kept upon said premises. Said premises shall not be used in any way or for any purpose that may emit foul or noxious odors.

11. No mobile home shall be used or permitted to remain upon any lot unless such mobile home shall have two hundred (200) square feet of permanent roof, exclusive of mobile home roofing, and two hundred (200) square feet of concrete flooring, including cabanas, porches, storage, carports and garages, but exclusive of any portion thereof used as flooring or base for said mobile home.

12. All structures on said lots shall be of new construction, not exceeding 35 feet in height, and no buildings shall be moved from any other location onto any of said lots with the exception of prefabricated or pre-erected dwellings where the use thereof is permitted.

13. No temporary building may be moved onto or constructed on said premises, with the exception of temporary shop or office structures erected by contractors, or buildings during the actual bonafide construction or a permitted structure upon the premises, provided the contractor or builder agrees to remove such temporary shop or office structure within five (5) days after the actual final completion date of his construction activities of the premises.

14. No construction shed, basement, garage, tent, shack or other temporary structure shall at any time be used as a residence either temporarily or permanently.

15. No residence or dwelling shall be occupied or used prior to installations therein of water flush toilets and sanitary conveniences or facilities and shall be maintained in a sanitary manner and in conformity with all applicable local, county or state laws, as the case may be. No outside toilet or other sanitary conveniences or facilities shall be erected or maintained upon said premises.

16. All garbage or trash containers, oil tanks, bottled gas tanks and other such facilities must be underground or placed in an enclosed area so as to not be visible from the adjoining properties.

17. The foregoing restrictions and covenants run with the land and shall be binding upon all parties and all persons claiming through them until June 1, 1994, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, or so long thereafter as may be now or hereafter permitted by law.

18. Invalidity of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

19. If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for any person or persons owning said premises or any portion thereof to prosecute proceedings at law or in equity against all persons violating or attempting to, or threatening to violate any such covenants, restrictions, conditions or stipulations, and either prevent them or him from so doing or to recover damages or other dues for such violations. No failure of any other person or party to enforce any of the restrictions, rights, reservations, limitations, covenants and conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof. The violation of these restrictive covenants, conditions or stipulations or any one or more of them shall not affect the lien of any mortgage now of record, or which hereafter may be placed of record, upon said premises or any part thereof.

IN WITNESS WHEREOF, the above named parties have executed the within Declaration of Restrictions this 12th day of June, A.D., 1974.

[Handwritten Signature]
Robert D. Conlin

[Handwritten Signature]
Margaret Dell Conlin

[Handwritten Signature]
David A. Conlin, Jr.

STATE OF ARIZONA)
County of Maricopa) ss.

On this, the 12th day of June, 1974, personally appeared Robert D. Conlin and Margaret Dell Conlin, his wife.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 2 7 77

[Handwritten Signature]
Notary Public

STATE OF ARIZONA)
County of Maricopa) ss.

On this, the 12th day of June, 1974, personally appeared David A. Conlin, Jr.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My commission expires: 2 7 77

[Handwritten Signature]
Notary Public