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JEANNE HICKS, CLERK
BY *[Signature]*

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8 IN THE SUPERIOR COURT OF ARIZONA
9 COUNTY OF YAVAPAI

10 **JOHN B. CUNDIFF** and **BARBARA C.)**
11 **CUNDIFF**, husband and wife; **ELIZABETH)**
12 **NASH**, a married woman dealing with her)
13 separate property; **KENNETH PAGE** and)
14 **KATHRYN PAGE**, as Trustee of the Kenneth)
15 Page and Catherine Page Trust,)
16 Plaintiffs,)
17 vs.)
18)
19 **DONALD COX** and **CATHERINE COX,**)
20 husband and wife,)
21 Defendants.)

Case No. CV 2003-0399

Division 3

Verified Application for
Preliminary Injunction

22 Plaintiffs, John and Barbara Cundiff, Kenneth and Kathryn Page, pursuant to Rule 65(a),
23 Ariz.R.Civ.Proc., by and through undersigned counsel hereby moves this Court for its order
24 preliminarily enjoining Defendants, Donald and Catherine Cox, their officers, agents, servants,
25 employees, and any and all persons in active concert or participation with them, from expanding or
26 otherwise increasing development of their current business located at 7325 North Coyote Springs
Road, Prescott Valley, Arizona. This application is supported by Plaintiffs' First Amended
Complaint, the following memorandum of points and authorities and exhibits attached hereto, as well
as the entire record in this proceeding.

RESPECTFULLY SUBMITTED this ___ day of April, 2004.

FAVOUR, MOORE & WILHELMSSEN, P.A.

By *[Signature]*
David K. Wilhelmsen

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Statement of Relevant Facts**

3 Plaintiffs and Defendants are owners of real property located in Coyote Springs Ranch,
4 Yavapai County, Arizona. The common grantors of Coyote Springs, prior to conveying deeds to
5 subsequent grantees, recorded Declaration of Restrictions that govern, in relevant part, the permissible
6 uses of lots located in Coyote Springs Ranch. *See* Coyote Springs Ranch, Declaration of Restrictions,
7 recorded June 13, 1974 (a true and correct copy attached hereto and by this reference incorporated
8 herein as Exhibit "1.") Plaintiffs relied upon the recorded Declaration of Restrictions in purchasing
9 their land. Further, Defendants had notice of the Declaration of Restrictions, and the covenants
10 contained therein, by virtue of the recording of the Declaration.

11 The recorded covenants and restrictions preclude property in the subdivision from being used
12 for commercial or business enterprises, and limits permissible use to one single-family residence per
13 deeded lot.

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

16 * * *

17 7. (e) No structure whatsoever other than one single family dwelling or mobile
18 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.

19 *See* Declaration of Restrictions, pp. 1, 2 at ¶¶2 and 7(e) (Exhibit 1.) Additionally, the recorded
20 covenants preclude the installation and maintenance of outdoor toilets and/or other sanitary facilities
21 of like nature.

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

24 *See* Declaration of Restrictions, p.2 at ¶15 (Exhibit 1).

25 Defendants have violated these relevant covenants by establishing and maintaining a
26 commercial nursery on their land in the subdivision as an "expansion" of their business, Prescott

1 Valley Growers. As well, Defendants have erected more than one single-family residence on the
2 subject property, and maintain impermissible outdoor bathroom facilities on the property. Further,
3 on or about July 29, 2002, Defendant Catherine Cox evidenced her intent to expand the current non-
4 permissible use of the property for the "production of the following items: annuals, perennials,
5 vegetables, fruit trees, shade trees and ornamental and native shrubs and trees." See Letter of Intent,
6 signed by Catherine Cox, July 29, 2002 (a true and correct copy attached hereto and by this reference
7 incorporated herein as Exhibit "2.") This expansion of Defendants' business enterprise will include
8 the storage of irrigation water in "an above ground storage tank." *Id.* Said containers also constitute
9 a separate violation of the covenants and restrictions. See Declaration of Restrictions, p. 2 at ¶16
10 (Exhibit 1.)

11 The Declaration of Restrictions are valid and enforceable covenants:

12 17. The foregoing restrictions and covenants run with the land and shall be binding
13 upon all parties and all persons claiming through them until June 1, 1994, at which
14 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.

15 See Declaration of Restrictions, p.2 at ¶17 (Exhibit 1). Any landowner in the sub-division to which
16 the Declaration of Restrictions pertains may seek enforcement of the covenants "at law or in equity"
17 against the violator:

18 19. If there shall be a violation or threatened or attempted violation of any of said
19 covenants, conditions, stipulations or restrictions, it shall be lawful for any person or
20 persons owning said premises or any portion thereof to prosecute proceedings at law
21 or in equity against all persons violating or attempting to, or threatening to violate any
22 such covenants, restrictions, conditions or stipulations, and either prevent them or him
23 from so doing or to recover damages or other dues for such violations. No failure of
24 any other person or party to enforce any of the restrictions, rights, reservations,
25 limitation, covenants and conditions contained herein shall, in any event, be construed
26 or held to be a waiver thereof or consent to any further or succeeding breach or
violation thereof. The violation of these restrictive covenants, condition or stipulations
or any 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.

See Declaration of Restrictions, p.3 at ¶19 (Exhibit 1).

Plaintiffs, neighboring homeowners, object to Defendants' non-permissible use of their

1 property for a commercial enterprise in violation of the recorded covenants and restrictions on the
2 land, and object to any intended future expansion of the business currently existing on the subject
3 property.

4 **II. Defendants' Current Business Operation and Intended Expansion**
5 **in Violation of the Declaration of Restrictions**
6 **Poses Immediate, Irreparable Harm to Plaintiffs**

7 A. Violation of Restrictive Covenant and Injunctive Relief

8 A recorded declaration of restrictions constitute "a covenant running with the land and form
9 a contract between the subdivision's property owners as a whole and the individual lot owners."
10 *Arizona Biltmore Estates Assoc. v. Tezak*, 177 Ariz. 447, 448, 868 P.2d 1030, 1031 (App. 1993)
11 (internal citation omitted). Where, as here, one purchases real property subject to recorded covenants
12 and restriction, the owner has constructive (if not actual) notice of the restriction, and is subject to a
13 suit for injunction for violation of the covenant. *Heritage Heights Home Owners Assoc. v. Esser*, 115
14 Ariz. 330, 333, 565 P.2d 207, 210 (App. 1977) (enforcement of restrictive covenants by injunction);
15 *Murphey v. Gray*, 84 Ariz. 299, 327 P.2d 751 (1958) (grantee with notice of restrictions is "deemed
16 to assent to be contractually bound by the restrictions as if he had individually executed an instrument
17 containing them.")

18 In this case, the recorded Declaration of Restrictions evidences that development of Coyote
19 Springs Ranch was for rural, residential purposes. Paragraph 1 of the Declaration of Restrictions
20 expressly states that "[e]ach and every parcel" in the subdivision "shall be known and described as
21 residential parcels...." *Declaration of Restrictions*, Coyote Springs Ranch, recorded June 13, 1974 at
22 ¶1; and, ¶6(e) (allowing only one single family dwelling per lot); see ¶3 (no parcel or lot shall contain
23 less than 9 acres). Consequently, the covenants and restrictions specifically prohibit the operation of
24 any "trade, business, profession or any other type of commercial or industrial activity" in the
25 subdivision. *Id.* at ¶2.

26 Defendants having purchased the property with at least constructive notice of the recorded
restrictions, have nevertheless clearly violated the single-family residence scheme of the subdivision

1 by operating a "satellite" nursery for their commercial enterprise, Prescott Valley Growers.
2 Furthermore, in operating their impermissible business, Defendants have violated other provisions of
3 the recorded covenants, including but not limited to: outdoor sanitary facilities, in violation of ¶15;
4 and, erecting buildings used in their business (in violation of ¶6(e). Defendant's "Letter of Intent,"
5 establishes that expansion of the business would entail the storage of irrigation water using above-
6 ground containers. This structure constitutes a violation of ¶16, prohibiting the erection of containers
7 above-ground or otherwise visible to adjoining properties.

8 Defendant Catherine Cox in her July 29, 2002 "Letter of Intent," states that intended expansion
9 of Defendants' current commercial business on the property is permissible due to "the fact that other
10 agricultural businesses were already operating in the area." Assuming only for the sake of argument
11 that this allegation is correct, Defendants cannot rely upon this premise to support a defense of waiver
12 or abandonment of the restrictions and covenants to allow them to either continue or expand their
13 current business operations. In *Camelback Del Este Homeowners Assoc. v. Warner*, 156 Ariz. 21, 749
14 P.2d 930 (App. 1987), the appellate court phrased the test for determining whether covenants and
15 restrictions are enforceable when the claim is raised that a change in the neighborhood obviates the
16 purpose of the restrictions:

17 ...the test for determining whether restrictive covenants should be enforced is "whether
18 or not the conditions have changed so much that it is impossible to secure in a
substantial degree the benefits intended to be secured by the covenants."

19 *Id.* at 24-25, 749 P.2d at 933-34 (quoting *Decker v. Hendricks*, 7 Ariz.App. 162, 163, 436 P.2d 940,
20 934 (1968)). Arizona, similar to the position adopted by the majority of courts, are reluctant to find
21 a waiver or abandonment of a restriction governing the use of property even though there has been
22 some violation by lot owners. In a case where a company sought relief from a residential-only
23 restrictive covenant where the land was of greater value if used for commercial purposes, the Arizona
24 Supreme Court stated:

25 It is also a matter of common knowledge and accepted human experience that, if the
26 restrictive bars were let down for [the business owners] in this case, the business
encroachment on the remained of the addition would be a matter of gradual yet steady

1 development against which the home owners would be helpless, and the benefits and
2 protection of the restrictive covenants would eventually be lost to all the co-owners
therein.

3 *Continental Oil Company v. Fennemore*, 38 Ariz. 277, 285, 299 P. 132, 135 (1931). Arizona courts
4 continue to adhere to the principles stated by the Supreme Court in *Continental Oil*:

5 We adhere to the doctrine that the lot of [the business owner] cannot be considered
6 separate and apart from its relation to the entire restricted addition. Though there may
7 be a fringe of property all around the borders of a restricted addition which would be
more valuable for business than for residential purposes, this fact alone is not sufficient
to warrant the breach of restrictions by these owners.

8 *Id.* at 286, 299 P. at 135. The supreme court further stated:

9 The policy of the courts of this state should be to protect the home owners who have
10 purchased lots relying upon, and have maintained and abided by, restrictions, from the
11 invasion of those who attempt to break down these guaranties of home enjoyment
under the claim of business necessities.

12 *Id.* at 286, 299 P. at 135.

13 In *Whitaker v. Holmes*, 74 Ariz. 30, 243 P.2d 462 (1952), the Arizona supreme court dealt with
14 the issue of whether homeowner's in a division to which a residential-only use covenant applied were
15 estopped or otherwise barred in their litigation to enjoin a business operation in the division where
16 they had failed to object to a similar business operating in the area. In that case, "Plaintiffs did not
17 at any time complain or seek to enforce the covenant as against the seven prior violators. Plaintiffs are
18 now seeking to enjoin these defendants" from their use of the property in violation of the recorded
19 covenants. *Id.* at 31, 243 P.2d at 463. The defendant asserted the defense of estoppel, to which the
20 Arizona supreme court rejected, relying upon an exception to the general rule:

21 "An important limitation to the general rule is recognized in many decisions to the
22 effect that a person entitled to enforce a restrictive covenant may have notice of
23 violations which inflict no substantial injury on him without losing the right to enforce
the restriction in case of a substantially injurious violation by failure to take steps to
restrain the first mentioned class of violations."

24 *Id.* at 33-34, 243 P.2d at 464 (quoting 32 C.J., Injunctions, §326 at p.211; internal case citations
25 omitted in original). Thus, the supreme court held in *Whitaker* that a homeowner's failure to object
26 to other businesses operating in the subdivision in violation of the restrictions and covenants, did not

1 bar the homeowner's suit for injunctive relief against another business. "To let these defendants
2 continue to operate this business contrary to the restrictive covenant and to the detriment of the
3 plaintiffs is a gross violation of the covenant and one which the framers of the covenant had in mind
4 when it was incorporated into the deeds." *Id.* at 34, 243 P.2d at 465. Similarly, in this case, any
5 alleged failure by Plaintiffs not to object to any other violation of the covenants (whether of the same
6 or a different type) by any other property owner does estop Plaintiffs from seeking injunctive relief
7 against Defendants' use of their land for a business enterprise.

8 Several courts from other jurisdictions that have dealt with similar issues as presented in this
9 case have consistently upheld the homeowner's right to enforce a residential-use restriction. Viewing
10 the issue as one whether the restrictions have been abandoned due to a substantial change in the
11 neighborhood, the Illinois appellate court upheld enforcement of a use restriction against business
12 enterprises in a residential subdivision:

13 In accord with equitable principles, a covenant will not be enforced when there has
14 been such a change in the character and environment of the property that the object of
15 the restrictions cannot be accomplished by their enforcement, or if by such changes it
16 would be unreasonable or oppressive to enforce them. Under this doctrine the
17 character and condition of the adjoining property must have been so changed as to
18 render the restrictions inapplicable according to the spirit of the contract.

19 *The Exchange National Bank of Chicago v. The City of Des Plaines*, 32 Ill.App.3d 722, 733-34, 336
20 N.E.2d 8, 16-17 (1975) (internal case citations omitted).

21 The Supreme Court of Utah recently phrased the test for a finding of abandonment or waiver
22 of a restrictive covenant as:

23 Restrictive covenants are a common method of effectuating private residential
24 developmental schemes. Property owners who purchase land in such developments
25 have a right to enforce such covenants against other owners who violate them.

26 * * *

The case law is uniform that before an abandonment of a covenant may be found
there must be "substantial and general noncompliance" with the covenant....The
violations must be so substantial as to destroy the usefulness of the covenant and
support a finding that the covenant has become burdensome. If the original purpose
of the covenant can still be accomplished and substantial benefit will continue to inure
to residents, the covenant will stand.

* * *

1 “Before a change will vitiate a covenant, it must be of such a magnitude as to
2 neutralize the benefits of the restriction, to the point of defeating the object and
3 purpose of the restrictive covenant. The change required to afford relief is reached,
4 where the circumstances render the covenant of little or no value....”

5 *Swenson v. Erickson*, 387 Utah Adv.Rep. 12, 998 P.2d 807, 813 (2000) (internal citations omitted;
6 quoting *Papanikolas Brothers Enterprises v. Sugarhouse Shopping Center Associates*, 535 P.2d 1256,
7 1261 (Utah 1975)). This test is in accord with that applied in Arizona. *Camelback Del Este*
8 *Homeowners Assoc. v. Warner*, 156 Ariz. 21, 24-25, 749 P.2d 930, 933-34 (App. 1987).

9 In this case, the purported commercial activity allegedly conducted by other landowners in
10 Coyote Springs Ranch fails to meet the standard that there has been “substantial and general
11 noncompliance” with the restrictive covenants to such an extent that it can be said that the benefits
12 of the covenant have been “destroyed.” At most, the evidence establishes only that Defendants are
13 conducting a business enterprise that clearly violates the recorded Declaration of Restrictions
14 prohibiting commercial or business enterprises on any lot. The other alleged violations Defendants
15 have pointed to reveal only that other homeowners are parking their business vehicles at home, or
16 otherwise utilizing their property in a manner consistent with the intent of the recorded covenants.
17 Furthermore, paragraph 19 of the recorded Declaration of Restrictions expressly provides that a failure
18 to enforce any of the restrictions by any property owner against another shall not constitute a “waiver
19 thereof or consent to any further or succeeding breach or violation thereof.” *Id.*

20 *B. Expansion of Current Business Operations by Defendants*

21 As for the issue of expansion of a non-conforming use in violation of a restrictive covenant
22 running with the land, the Florida Supreme Court, in a case factually analogous to the instant action,
23 held that a homeowner was not barred from seeking enforcement of a residential-only use restriction
24 where the defendant, who owned and operated a motel in violation of the restriction sought to further
25 expand the hotel operations. *Wood v. Dozier*, 464 So.2d 1168 (Fla. 1985). The Florida supreme court
26 further rejected the defendant’s position that the restrictive covenants had been waived as other
business pre-existed in the subdivision:

1 [A] purchaser cannot rely on violations of deed restrictions to support a claim for relief
2 therefrom if the violations occurred prior to his taking title.

* * *

3 This holding that a property owner cannot rely on changes occurring in a neighborhood
4 before his own acquisition of title in seeking to remove a deed restriction has been
5 uniformly followed. (internal case citations omitted).

6 We find no reason for changing this well established principle of law. Persons who
7 purchase property subject to restrictive covenants cannot expect to have the covenants
8 invalidated simply because the covenants have been previously violated and not
9 enforced against others. Where a purchaser of land intends to use it for a purpose not
10 allowed by a restrictive covenant, he should seek to have the deed restriction removed
11 before purchasing the property. Restrictive covenants serve a valid public purpose in
12 enabling purchasers of property to control the development and use of property in the
13 surrounding environment....

14 In this case, the Woods' motel is the only major structure that was built in violation
15 of the restrictive covenants. To allow them to expand the motel in further violation of
16 the restrictive covenant would only open the door to even more violations, eventually
17 resulting in the complete circumvention and abandonment of the restrictive covenants.

18 *Id.* at 1169-70. The Florida appellate court also declined to allow an expansion of a non-conforming
19 use by a homeowner of his property in violation of the recorded restrictions. *Siering v. Bronson*, 564
20 So.2d 247 (Fla.App. 1990).

21 In another case dealing with the issue of expansion by a landowner of a non-conforming use,
22 the Missouri appellate court ruled in favor of the homeowner who sought to enforce a residential-only
23 covenant pertaining to the land. *Viridon v. Horn*, 711 S.W.2d 205 (Mo.App. 1986). The plaintiffs
24 granted permission to a prior landowner to use the property for a business purpose, but later revoked
25 that permission to a subsequent purchaser of the land. *Id.* at 206-07. Nevertheless, the subsequent
26 purchaser continued to use the land for business purposes, and sought to expand the scope of their
business operations. *Id.* at 207. The Missouri court of appeals rejected the subsequent purchaser's
defense of estoppel or waiver, holding:

Restrictions which, as here, are adopted for the purpose of preserving beauty and
enhancing the value of residential property are valid, and injunction is the proper
remedy for their violation.

Id. at 207 (internal case citations omitted).

Therefore, in accordance with these legal principles, even if Defendants can successfully assert

1 a waiver or an estoppel defense in this case, it would not permit them to expand their business
2 operations beyond their current scope.

3 C. Plaintiffs are Legally Entitled to an Award of Attorneys Fees and Costs

4 Paragraph 19 of the recorded Declaration of Restrictions provides for any party who seeks to
5 enforce the covenants to recover “damages” sustained by the person in advancing the claim at law or
6 in equity. *Id.* In Arizona, enforcement of a recorded restriction entitles the prevailing party to their
7 attorney’s fees and costs pursuant to A.R.S. §12-341.01. *Pinetop Lakes Assoc. v. Hatch*, 135 Ariz.
8 196, 198, 659 P.2d 1341, 1343 (App. 1983) (action to enforce restrictive covenant “arises out of
9 contract” under A.R.S. §12-341.01); *Heritage Heights Home Owners Assoc. v. Esser, supra.*
10 Therefore, Plaintiffs have a claim for recovery of their attorney’s fees and costs in pursuing
11 enforcement of the restrictive covenant against Defendants pursuant to A.R.S. §12-341.01.

12 **III. The Equities Mandate Issuance of a Preliminary Injunction**

13 There are four equitable factors to be considered in the issuance of a preliminary injunction:
14 “(1) a strong likelihood of success on the merits; (2) the possibility of irreparable injury not
15 remediable by damages; (3) a balance of hardships in that party’s favor; and (4) public policy favoring
16 the requested relief.” *Powell-Cerkoney v. TCR-Montana Ranch Joint Venture II*, 176 Ariz. 275, 280,
17 860 P.2d 1328, 1333 (App. 1993) citing *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App.
18 1990).

19 In this case, in light of Arizona case law on the interpretation and enforcement of recorded
20 covenants and restrictions pertaining to real property, and Defendants apparent violation of the
21 restrictions, Plaintiffs have a “strong likelihood of success on the merits.” Defendants violations
22 clearly cannot be remedied by Plaintiffs receiving compensatory damages. Consequently, the balance
23 of hardships favor Plaintiffs. Defendants unauthorized use of the real property to conduct a nursery,
24 and stated intent to expand current business operations, clearly violate numerous provisions of the
25 recorded Declaration of Restrictions. Having established their business with (at least) constructive
26 knowledge of the recorded covenants pertaining to the land, Defendants cannot assert in equity a

1 hardship in having to remove their business operation. Finally, Arizona public policy – as provided
2 by Arizona case law – favors the enforcement of covenants and restrictions.

3 **IV. Conclusion**

4 Therefore, based upon the foregoing, Plaintiffs respectfully request that this Court enter its
5 order permanently enjoining Defendants from operating and expanding their business operations in
6 violation of the recorded Declaration of Restrictions.

7 DATED this 30TH day of April, 2004.

8
9 FAVOUR, MOORE & WILHELMSSEN, P.A.

10
11
12 By _____

13 David K. Wilhelmsen
14 Marguerite Kirk
15 Post Office Box 1391
16 Prescott, AZ 86302-1391
17 Attorneys for Plaintiffs
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VERIFICATION

STATE OF ARIZONA)
) ss.
County of Yavapai)

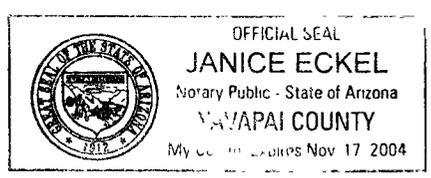
John Cundiff, being first duly sworn, declare that s/he is a Plaintiff in this action, that s/he has read the foregoing Application for Preliminary Injunction and that the substance and facts contained therein are true and accurate to the best of his/her knowledge and upon his/her information and belief.


John Cundiff

SUBSCRIBED AND SWORN TO before me this 30th day of April, 2004, by John Cundiff.


Notary Public

My Commission expires:



ORIGINAL of the foregoing

1 ORIGINAL of the foregoing
2 filed with the Clerk of the Superior
3 Court this ___ day of April, 2004

4 and a copy hand-delivered this same date to:

5 Honorable Janis Ann Sterling
6 Division 3
7 Yavapai County Superior Court
8 Prescott, Arizona 86301

9 Jeff Adams
10 Musgrove, Drutz & Kack, P.C.
11 1135 Iron Springs Road
12 Prescott, Arizona 86302

13 By: 
14 ~~David K. Wilhelmsen~~
15 Marguerite Kirk
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WITNE'S my hand and official seal the day and year first above written.
PATSY C. JENNEY, County Recorder
By Mary S. Hampton, Deputy

CUYOTE 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.

*Covenants and restrictions if any, based upon race, color, religion, sex, handicap, familial status or national origin are deleted unless and only to the extent that said covenant is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

*Covenants and restrictions if any, based upon race, color, religion, sex, handicap, familial status or national origin are deleted unless and only to the extent that said covenant is exempt under Chapter 42, Section 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.

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 residence 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. Residence buildings shall have concrete foundations and hardwood or concrete floorings.

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 [REDACTED], 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.

[REDACTED] garage or trash containers, oil tanks, bottled gas tanks and other such facilities shall be underground or placed in an enclosed area so as to not be visible from the adjoining properties.

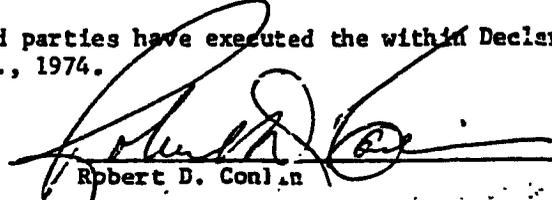
17. The foregoing restrictions and covenants run with the land and shall be binding upon all parties and all persons claiming through them until June 1, 1994, at which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years, or so long thereafter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

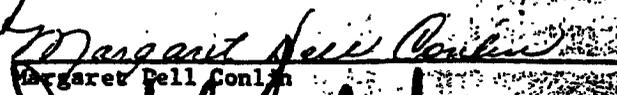
18. Invalidiation of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

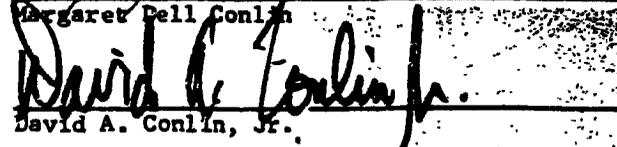
19. If there shall be a violation or threatened or attempted violation of any of said covenants, conditions, stipulations or restrictions, it shall be lawful for any person or persons owning said premises or any portion thereof to prosecute proceedings at law or in equity against all persons violating or attempting to, or threatening to violate any such covenants, restrictions, conditions or stipulations, and either prevent them or him from so doing.

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.


Robert D. Conlin


Margaret Bell Conlin

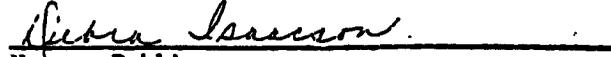

David A. Conlin, Jr.

STATE OF ARIZONA)
County of Maricopa) ss.

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

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

My commission expires: 2-20-77

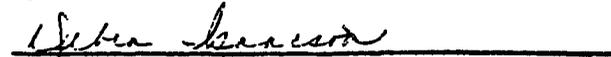

Notary Public

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: 2-20-77


Notary Public

July 29, 2002

Donald and Catherine Cox
7325 North Coyote Springs Road
Prescott Valley, Arizona 86314

LETTER OF INTENT

PRESCOTT VALLEY GROWERS began operations at 6750 North Viewpoint Drive in July 1991. Since then we have grown with the Town of Prescott Valley. In the last few years we have not been able to keep up with the demands in this area.

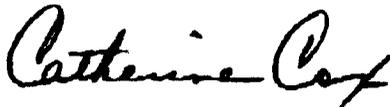
The property at 7325 North Coyote Springs Road was chosen as an expansion site due to its close proximity and the fact that other agricultural businesses were already operating in the area.

We wish to use this property for the production of the following items: annuals, perennials, vegetables, fruit trees, shade trees and ornamental and native shrubs and trees.

Drip irrigation will be the primary water delivery system. Water will be stored in an above ground storage tank to eliminate evaporation losses.

Plants will be distributed to the wholesale trade only. No public access will be allowed.

Sincerely,



Catherine Cox
Prescott Valley Growers

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