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K. Mortenson

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9
10 **IN AND FOR THE COUNTY OF YAVAPAI**

11 JOHN B. CUNDIFF and BARBARA C.
12 CUNDIFF, husband and wife; ELIZABETH
13 NASH, a married woman dealing with her
14 separate property; KENNETH PAGE and
15 KATHRYN PAGE, as Trustee of the Kenneth
16 Page and Catherine Page Trust,
17
18 Plaintiffs,
19
20 v.
21
22 DONALD COX and CATHERINE COX,
23 husband and wife, et al.,
24
25 Defendants.

Case No. P1300CV20030399
Division 4
**DEFENDANT'S VERES RESPONSE TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT FILED 12-28-
12;
AND
JOINDER**
(Assigned to Honorable Kenton Jones)
(Oral argument requested)

22 Defendant Robert D. Veres (hereinafter, "**Defendant**" or "**Veres**"), through his undersigned
23 attorneys Musgrove, Drutz & Kack, P.C., pursuant to Ariz. R. Civ. P. 1, 7.1, 56, and any other
24 applicable rule or law, opposes Plaintiffs' Motion for Summary Judgment filed on December 28,
25 2012¹, as set forth below. Defendant joins in Defendants' Cox response to Plaintiffs' Motion for
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¹ Hereafter, "**Plaintiffs' Rule 56 Motion.**"

1 Summary Judgment filed on or near 02-01-13, and, further, joins the Coxes' Motion to Strike and
2 Motion *in Limine* filed 01-22-13.

3
4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. OVERVIEW**

6 This case involves a dispute concerning real property in Coyote Springs Ranch subdivision
7 (also, "CSR"). At issue is whether the Declaration of Restrictions recorded June 13, 1974, at Book
8 916, Page 680, Official Records of Yavapai County, Arizona ("**Declaration**") is enforceable. As
9 discussed herein, the evidence of record weighs heavily in favor of a determination the Declaration
10 has been abandoned, which would render it un-enforceable.
11

12 Relying on the conclusory, drive-by DVDs attached to their Statement of Facts in Support of
13 Plaintiffs' Motion for Summary Judgment filed 12-28-12 ("**PSOF**"), Plaintiffs make a quantum leap
14 of logic that 'covenant-violations' and parcel-size are mutually *exclusive* concepts. As the evidence
15 readily demonstrates, not only is there a dispute concerning whether there have been parcel splits of
16 less than nine acres within CSR, parcel-size is not a reliable predictor of covenant violations.
17

18 Moreover, Plaintiffs' reliance upon the College Book Centers, Inc. v. Carefree Foothills
19 Homeowners' Assoc., 225 Ariz. 533, 241 P.3d 897 (App. 2010) opinion is a non-starter, because (i)
20 the test for abandonment is un-changed since the Court entered its April 4, 2005 Under Advisement
21 Ruling and (ii) the instant case is easily distinguished, where there is a demonstrable 90% violation
22 rate of non-vacant properties. (See Veres' Response to Plaintiffs Statement of Facts and
23 Controverting Statement of Facts ("**VSOF**"), ¶ 1 and Veres' Controverting Statement of Facts
24 ("**CSOF**"), ¶ 1).
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1 Thus, at best from *Plaintiffs'* perspective, abandonment of the Declaration of Restrictions
2 recorded June 13, 1974, at Book 916, Page 680, Official Records of Yavapai County, Arizona
3 (“**Declaration**”) remains a question of fact for the jury. A copy of the Declaration is attached hereto
4 for the Court’s convenience.
5

6 **II. THE TEST ANNOUNCED IN THE TRIAL COURT’S APRIL 4, 2005 UNDER**
7 **ADVISEMENT RULING HAS NOT CHANGED AND REMAINS THE LAW OF THE**
8 **CASE.**

9 Citing Burke v. Voicestream Wireless Corp., 207 Ariz. 393, 87 P.3d 81, ¶ 26 (App. 2004), the
10 Court in this case (*Cundiff v. Cox*):

11 recognized the longstanding test for a complete abandonment of deed restrictions as
12 follows:

13 “Whether the restrictions imposed upon the use of lots in this
14 subdivision have been so thoroughly disregarded as to result in such a
15 change in the area as to destroy the effectiveness of the restrictions,
16 defeat the purposes for which they were imposed and consequently
amount to an abandonment thereof.” Citing *Condos v. Home
Development Company*, 77 Ariz. 129, 133, 267 P.2d 1069, 1071 (1954).

17 The Court finds **that there is a material factual issue regarding whether the**
18 **restrictions in this case have been so thoroughly disregarded as to result in a**
19 **change in the area that destroys the effectiveness of the restrictions, defeats the**
20 **purpose for which they were imposed and amounts to an abandonment of the**
21 **entire Declaration of Restrictions. The Plaintiffs are not entitled to summary**
22 **judgment** regarding the enforcement of the non-waiver clause.

23 **THEREFORE, IT IS ORDERED** Plaintiffs’ Motion for Summary Judgment re:
24 Waiver of Restrictive Covenants Prohibiting Business and Commercial Enterprises is
25 **DENIED.**

26 Under Advisement Ruling, filed 04-04-05 (“**2005 UAR**”). [emphasis added]. (VSOF, ¶ 1).
27 See also Fernandez v. Garza, 93 Ariz. 318, 320, 380 P.2d 778, 779 (1963) (denial of a motion for
28 summary judgment is *not* appealable). The appellate court’s opinion left intact the foregoing portion

1 of the 2005 UAR. See Court of Appeals Memorandum Decision dated 05-24-2007 (“**Memo Dec.**”)²,
2 ¶ 32 (“A ruling in this case that the restrictions have been abandoned and are no longer enforceable
3 against the Coxes’ property would affect the property rights of all other owners subject to the
4 Declaration.”).

5
6 Contrary to Plaintiffs’ position, the College Book Centers opinion operates in favor of
7 *Defendants*, not Plaintiffs, because the test for abandonment of the Declaration remains intact.
8 Contra Plaintiffs’ Rule 56 Motion, pp. 7-8. Precisely as this Court did in its 2005 UAR, the appellate
9 court in College Book Centers cites to the Burke opinion, which quotes the 1954 Condos opinion,
10 as follows:
11

12 Complete abandonment of deed restrictions occurs when “the restrictions imposed upon
13 the use of lots in [a] subdivision have been so thoroughly disregarded as to result in such
14 a change in the area as to destroy the effectiveness of the restrictions [and] defeat the
15 purposes for which they were imposed.” [Burke] (quoting *Condos v. Home Dev. Co.*,
77 Ariz. 129, 133, 267 P.2d 1069, 1071 (1954).

16 College Book Centers, Inc. v. Carefree Foothills Homeowners’ Association, 225 Ariz. at 539 ¶ 18,
17 241 P.3d at 903. Therefore, it is not necessary for the Court ‘to have the benefit of’ the Court of
18 Appeals decision in College Book Centers. Cf. Plaintiffs’ Rule 56 Motion, p. 7:13-15. The Court
19 has already announced the applicable law, which is the same as the applicable law announced in
20 College Book Centers.
21

22 **II. PLAINTIFFS HAVE FAILED TO PRESENT ANY ADMISSIBLE EVIDENCE**
23 **ENTITLING THEM TO SUMMARY JUDGMENT.**

24 Plaintiffs anchor their entire Rule 56 Motion to parcel-size, stating that “death knell for the
25 Coxes’ abandonment argument is the fact that the nine acres restrictions has not been violated,” and
26

27 ² The Memo Dec. is attached as Exhibit “1” to Statement of Facts in Support of Plaintiffs’
28 Motion for Summary Judgment filed 12-28-12 (“PSOF”).

1 that the Declaration at issue has not been abandoned or waived. Plaintiffs' Rule 56 Motion, pp.
2 10:16-17, 9:24-25, 7:11. First, with regard to parcel sizes in CSR, Plaintiffs' assertions are
3 inaccurate. (VSOF ¶ 2; CSOF ¶ 1). Next, as demonstrated herein, Plaintiffs are mistaken in their
4 contention that they are entitled to summary judgment because "[t]here are not any material facts at
5 issue regarding the physical appearance of the Coyote Springs Ranch subdivision and the size of the
6 lots contained therein." Cf. Plaintiffs' Rule 56 Motion, at p. 10:19-20. Stated another way, even
7 assuming, *arguendo*, that no material facts are at issue regarding the physical appearance of Coyote
8 Springs Ranch subdivision, Plaintiffs are not entitled to summary judgment.³ See Executive Towers
9 v. Leonard, 7 Ariz. App. 331, 334, 439 P.2d 303, -- (1968) (even where the facts are undisputed, a
10 genuine dispute as to conflicting inferences to be drawn from them precludes an award of summary
11 judgment). Disregarding the issue of whether Plaintiffs' proffered DVDs -- with limited/obscured
12 property views -- accurately portray the physical appearance of the properties in the Coyote Springs
13 Ranch subdivision (also, CSR"), even a superficial review of Plaintiffs' Rule 56 Motion reveals the
14 flawed logic therein.

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18 Take, for example, the provision of the subject Declaration that provides "[n]o trade, business,
19 profession or any other type of commercial or industrial activity shall be initialed or maintained
20 within said property or any portion thereof." Declaration, ¶ 2. [emphasis supplied]. The documented
21 'activity' taking place at CSR is not as readily apparent as it is in Times Square, or even the Prescott
22 Downtown Courthouse Square, with high-density retail shops. However, the record on file with the
23 Court bolsters strong support for the conclusion that businesses operations *are* the status quo in CSR,
24
25

26
27 ³ Plaintiffs have offered no admissible evidence demonstrating that the physical
28 appearance or characteristics of CSR are unchanged since its inception in 1974. Plaintiffs' conclusory statements are insufficient to sustain summary judgment.

1 as described in the Affidavit of Sheila M. Cahill. (VSOFF, ¶¶ 1-2; CSOF, ¶ 1); 2005 UAR. See
2 Lincoln Bldng. Assoc. v. Barr, 149 N.Y.S.2d 460, 417 (9th Distr. New York City Municipal Court,
3 Manhattan Borough 1956) (judicial notice dictates an acceptance of the fact that the center of
4 business activity of all kind is in the Borough of Manhattan). Stated slightly differently, even
5 assuming, *arguendo*, that “the lots in CSR contain no less than nine acres⁴” (PSOF, ¶ 5), Plaintiffs’
6 reliance on the appellate Memo Dec. actually supports the conclusion that parcel size bears
7 absolutely *no* relationship to any violations occurring within CSR, including business activity. The
8 foregoing conclusion is supported by the appellate court’s discussion concerning the Defendants’
9 Cox Application to Yavapai County for an ‘Ag Exempt’ status of their CSR property. As reflected
10 in the Memo Dec. of the Court of Appeals, Yavapai County defined Agricultural Property as
11 “property used for the purpose of agronomy, horticulture or animal husbandry: *** [i]n which the
12 property is capable of being utilized solely for it’s [sic] agricultural abilities to **sustain economic**
13 **self-sufficiency and return a nominal profit.**” Memo Dec., ¶ 3, cited at p. 2 of Plaintiffs’ Rule
14 56 Motion. [emphasis supplied]. The Coxes’ property exceeds nineteen (19) acres. (CSOF, ¶2). Yet,
15 the Memo Dec. reflects that the Coxes applied to Yavapai County to utilize their acreage for
16 agricultural activities to ‘sustain economic self-sufficiency and return a nominal profit.’ Moreover,
17 Plaintiffs contend in their Rule 56 Motion that the Coxes’ use of their property (19 acres) violates
18 paragraph 2 of the Declaration, as follows:
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23 In their complaint against the Coxes, Cundiffs alleged that Coxes’ use of the subject
24 property violates section two of the Declaration (Plaintiffs’ First Amended Complaint
25 ¶¶ 16-18.
26

27 ⁴ As discussed in VSOFF, ¶ 2, certain CSR parcels governed are *less* than nine (9) acres.
28 (VSOFF, ¶ 2). Therefore, this statement is disputed.

1 (PSOF, ¶ 4). Therefore, Plaintiffs' own allegations readily defeat their Rule 56 Motion. *Parcel size*
2 *does not dictate property-use*, nor does it dictate whether there are violations of the CSR. Moreover,
3 property violations such as described in the Declaration at paragraphs 3, 4, 6, 7, 8, 9, 10, 12, 13, 14,
4 16 may, or may not, be readily apparent.

5
6 Plaintiffs' drive-by DVDs hardly constitute evidence sufficient to support summary judgment.
7 Defendants, on the other hand, have presented tangible, admissible evidence from an independent
8 investigator of pervasive and ongoing violations of the Declaration (VSOF, ¶ 1). The initial outward
9 appearance of the CSR parcels as depicted in Plaintiffs' drive-by DVDs (in which primarily
10 roadway, with merely a **glimpse** of property-frontage, is captured) do not begin to tell the whole
11 story. Cf. Memo Dec., at ¶ 26 ("The Coxes provided no evidence, however, as to when the
12 improvements were visible on the property, when the Cundiffs knew or should have known the
13 purpose of those improvements, or that the Cundiffs knew or should have known the expense the
14 Coxes had incurred in making those improvements"). Violations of the Declaration are the mode
15 du jour in CSR. In the Coyote Springs Ranch subdivision, Declaration-compliance is the exception,
16 not the rule. (CSOF, ¶ 1).

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19 Abandonment occurs when "changes in the surrounding areas are so fundamental or radical
20 as to defeat or frustrate the original purposes of the restrictions." Decker v. Hendricks, 7 Ariz.App.
21 162, 163, 436 P.2d 940, 941 (App. 1968). Presentation of evidence to this effect creates an issue of
22 fact which constrains the Court from entering summary judgment. Id. at 164, 942. In the instant
23 case, there exists abundant, admissible evidence that precludes summary judgment in the case at bar.
24 (VSOF, ¶ 1; CSOF, ¶ 1); see also 2005 UAR; Coxes' Response in Opposition to Plaintiffs' Motion
25 for Summary Judgment re: Defendants' Violations of Restrictive Covenants; Affirmative Defenses
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1 of Estoppel, Laches and Unclean Hands, filed 01-11-05, at pp. 24:17-28:2, and accompanying
2 Separate Statement of Facts filed 01-11-05, at ¶¶ 6, 26, 27, 28, 29, 30, which are incorporated herein
3 by reference. Assuming that the Declaration's intent was to "ensure . . . a rural residential
4 environment," Memo Dec., ¶ 20, then the widespread violations reported by Palmer Investigative
5 Services licensed investigator Sheila M. Cahill on or near August 26, 2004 and October 16, 2012,
6 bolster strong, if not undisputed, support for conclusion that the original purpose of the Declaration
7 has been utterly defeated. (Id.)

8
9
10 **1. The CSR Declaration non-waiver clause is different than the one at issue
11 in College Book Centers.**

12 Plaintiffs' reliance upon College Book Centers is a non-starter because it is readily
13 distinguished from the facts of the case at bar. Cf. Plaintiffs' Rule 56 Motion, pp. 7-8.

14 Plaintiffs state "[t]he language in the Coyote Springs CC&Rs is *practically* the same [as in
15 College Book Centers]." Plaintiffs' Rule 56 Motion, p. 8:1-2. [emphasis supplied]. However, there
16 is a critical difference between the CSR Declaration and the College Book Centers CC&R's. The
17 CSR Declaration at issue contains a non-waiver provision but not a non-abandonment provision,
18 *unlike* the CC&R's at issue in College Book Centers, which provided that:

19
20 The failure by an Owner to enforce any restrictions . . . shall not be deemed a waiver **or**
21 **abandonment** of this Declaration or any provision thereof.

22 Compare the CSR Declaration at paragraph 19, which provides that:

23 No failure of any other person or party to enforce any of the restrictions, rights,
24 reservations, limitations, covenants and conditions contained herein shall, in any event,
25 be construed or held to be a waiver thereof

26 Declaration, at ¶ 19. Thus, unlike the College Book Centers Declaration, the CSR Declaration is
27 subject to a complete abandonment, which includes abandonment of the non-waiver provision,

1 wholly consistent with the 2005 UAR. “The non-waiver provision would be ineffective if a
2 complete abandonment of the entire set of Restrictions has occurred.” Burke, 207 Ariz. 393, 399
3 ¶26, 87 P.3d 81, --. [emphasis supplied].
4

5 **2. Evidence points to a thorough disregard of the CSR Declaration, unlike**
6 **the CC&R’s at issue in College Book Centers.**

7 Relying on two (2) similar violations of the CC&R’s, plaintiff in College Book Centers
8 asserted that he was entitled to a declaratory judgment that the HOA waived the restriction at issue
9 prohibiting construction of a non-residential structure on the lots, namely a roadway. The Court
10 rejected plaintiff’s waiver argument, stating “no reasonable jury could find that the Thiele and
11 Applegate roadways, constructed in violation of the CC&Rs in the 1980s, were frequent violations
12 of the CC&Rs in Carefree Foothills’ seventy-six lot subdivision.” College Book Centers, 225 Ariz.
13 at 538, 241 P.3d at 902. Thus, violations amounted to less than 3%. Id. There is no comparison to
14 the case at bar, in which the evidence demonstrates, as recently as last year, a ninety percent (90%)
15 violation-rate! Contra College Book Centers, 225 Ariz. at 538, 241 P.3d at 902, citing Sterling
16 Cotton Mills, Inc. v. Vaughan, 24 N.C.App. 696, 212 S.E.2d 199, 204 (1975) (6% violation-rate; no
17 waiver); Pebble Beach Prop. Owners' Assoc. v. Sherer, 2 S.W.3d 283, 290–91 (Tex.Ct.App.1999)
18 (2% violation-rate; no waiver); Tanglewood Homes Ass'n, Inc. v. Henke, 728 S.W.2d 39, 43, 44
19 (Tex.Ct.App.1987) (8% violation-rate; no waiver); Raintree of Albemarle Homeowners Ass'n, Inc.
20 v. Jones, 243 Va. 155, 413 S.E.2d 340, 343 (1992) (finding that two previous violations of similar
21 nature were not sufficient to constitute waiver of deed restriction's future enforcement); Keller v.
22 Branton, 667 P.2d 650, 654 (Wyo.1983) (12% violation-rate; no waiver).
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26 As the foregoing facts and law demonstrate, at best from Plaintiffs’ perspective, the issue of
27 abandonment of the CSR Declaration is a question of fact. Summary judgment in favor of Plaintiffs
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1 should be denied. Further, Defendant requests his reasonable attorneys' fees pursuant to A.R.S. §§
2 12-341.01, 12-1840, and any other applicable rule or law.

3
4 DATED this 1st day of February, 2013.

5 MUSGROVE, DRUTZ & KACK, P.C.

6
7 By 

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12 COPY of the foregoing mailed
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Shawloops

When recorded, return to:
Robert D. Conlin
2233 North 7th Street
Phoenix, Arizona 85006

STATE OF ARIZONA, County of Yavapai. 17161
I do hereby certify that the within instrument was filed and recorded at the request of Tom Lynch
on June 13 A.D., 1974 at 1:35 o'clock P.M. Book 916 Official Records
Page 680-481-682 Records of Yavapai County, Arizona.
WITNESS my hand and official seal the day and year first above written

PATSY C. JENNEY, County Recorder
By Mary E. Hampton Deputy

COYOTE 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 carried on 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 foundation and hardwood or concrete floors.

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 premise.

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. Invalidation 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.

Robert D. Conlin
Robert D. Conlin
Margaret Dell Conlin
Margaret Dell Conlin
David A. Conlin, Jr.
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: 2-26-77

Hubert Linderson
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: 2-26-77

Hubert Linderson
Notary Public