



CANDACE OWENS
COCONINO COUNTY RECORDER
OFFICIAL RECORDS OF
COCONINO COUNTY

INST: 96-12694 FEE:\$ 9.00
AT THE REQUEST OF:
CITY OF FLAGSTAFF
DATE: 04/29/1996 TIME: 08:21
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LINWOOD HEIGHTS SUBDIVISION

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

JIM JAMISON and DARLEEN JAMISON, husband and wife, are the beneficial owners (referred to as "Declarant") of certain real property situated in Coconino County, Arizona, and described as:

Lots 1 through 96 of the Linwood Heights
Subdivision as recorded in Case 6, Maps
75, 75A+75B, Coconino County, Arizona.

Declarant hereby declares that all of the property described above shall be held, leased and conveyed subject to the following covenants, conditions, charges, liens, restrictions, easements and reservations (hereinafter collectively sometimes called "restrictions"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property, and all of which are hereby declared to be for the benefit of all of the property described herein and the owners thereof, their heirs, successors, grantees and assigns. These restrictions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof.

I. OWNERSHIP

(a) The subject property has designated lots as shown on the plat of record. Each lot and its corresponding improvements may be transferred, assigned, leased, pledged or otherwise dealt with as any real property, subject to these restrictions.

(b) The area designated on the plat of record of the subject property as Tract A shall be considered common area and shall be owned in equal undivided interests by the owners of lots in the subdivision. An owner's interest in a lot and the owner's proportionate undivided interest in the common area shall not be sold or conveyed separate from each other.

(c) The maintenance and use of Tract A shall be controlled by the Linwood Heights Homeowners Association ("Association"). The Association shall not allow any structure to be erected nor roads to be built nor any other changes from the natural environment except for maintenance activity, restrooms, playground and recreation activities.

(d) Each lot owner shall be responsible for payment of his pro-rata share of the property taxes assessed against the common area. Such proportionate share of the common area property tax shall be charged directly to the lot owner by the County Treasurer.

II. PERMITTED USES

(a) Each of said lots is hereby restricted to use as a dwelling (with garage) for residential use by one family only.

(b) Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible (during the period of construction and sale of the lots) for JIM JAMISON (hereafter "Developer") or Declarant to use all property areas and to maintain such facilities as, in the sole discretion of the Developer, may be reasonably required, convenient or incidental to the construction and sale of such lots, including without limitation, a business office, storage area, construction yards, signs and sales offices.

(c) No animals, fish or fowl of any kind shall be raised, bred or kept on any of said lots, provided, however, that ordinary domestic dogs and cats will be permitted so long as (1) such cats and dogs are kept within the boundaries of the lot of their owner and do not offend or annoy other lot owners, (2) such pets are not kept, bred or maintained for any commercial purpose, and (3) no kennels, pens or similar structures or enclosures are constructed or maintained upon any of said lots within view from any street.

(d) No advertising signs or billboards shall be erected, placed or permitted to stand upon any of said lots, provided, however, that (1) the Developer reserves the right to place directional or promotional signs upon any of said lots in connection with its development and sales program, and (2) a person desiring to sell a lot may place one "For Sale" sign upon said lot which shall not be over four (4) square feet nor higher than four (4) feet.

(e) No business, professional, commercial activities of any kind whatsoever (including child care) shall be conducted on any portion of any lot or the properties if such business results in any noticeable customer or employee traffic. This provision shall not apply to Developer or other contractors in regard to the completion of construction and sale of dwellings upon the lots.

(f) No outside speakers, amplifiers or other sound producing equipment shall be permitted to be installed or maintained on any lot. No outdoor fires or burning shall be permitted on any part of the properties and no incinerators or like shall be placed, allowed or maintained upon any lot. The foregoing shall not be deemed to preclude the use in customary fashion of outdoor barbeques or grills, unless such use is prevented or restricted by fire protection rules or regulations.

(g) No tanks of any kind, elevated above the surface of the ground or visible in any manner, shall be erected, placed or permitted on any of said lots. No exterior clothesline equipment of any kind shall be permitted on any part of the properties. No satellite signal receiving dishes shall be allowed unless located or screened so as to not be visible from any street. No antenna "towers" shall be allowed. All rubbish, trash or garbage shall be kept in closed containers and not allowed to accumulate on any of said lots. Woodpiles shall be fully within the boundaries of a lot shall be covered and shall not preclude the use of the garage for two vehicles. Incineration of rubbish, trash, garbage or vegetation shall not be permitted.

(h) No housetrailer, mobile home, motorized motor home, camper, truck, tent, trailer, boat or bus or similar facility or vehicle shall be at any time lived in on any of said lots, parking spaces or streets. Nor shall any vehicle, equipment, furniture or other objects be repaired, modified or otherwise worked on at any time upon any of said lots, parking spaces or streets. Any boat, unattached camper, trailer, snowmobile or equipment must be kept within the owner's garage and not on the street, parking spaces, and not in any yard area. No vehicle may be parked anywhere than in a designated parking space or garage. No vehicles shall be parked on the streets of the subdivision. No vehicle will be allowed to park within the subdivision, except while rendering services, unless such vehicle is capable of being parked in a typical garage with the door closed.

(i) No noxious or offensive activity may be carried on or permitted on any part of the properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood, including without limitation annoying or offensive sounds or odors. No hazardous activities shall be conducted upon any part of the properties, nor shall any improvements or conditions which are unsafe or hazardous to any person or property be permitted.

(j) No boarders or renters of a portion of any of said lots shall be permitted. No fraternity nor sorority nor other group or association shall use any lot as its residential headquarters. However, this paragraph shall not preclude the rental of an entire unit for single family use

(k) No lot owner shall maintain any flammable materials or otherwise use his lot in a manner which would create a fire danger.

(l) Electric, telephone, water, sewer, cable television and other utility lines (used for the general benefit of the lot owners) and other utility or service lines of every kind or character (whether or not hereafter invented or used) shall be placed and kept underground up to the walls of the buildings on the premises (except to the extent, if any, such underground placement may be prohibited by law or, by the nature of the service to be rendered, such underground placement prevents the lines from being functional).

(m) No garage may be converted to a living area unless a new garage is added.

III. REMOVAL OF TREES

Except for trees removed by the Developer during the construction of original improvements, no tree may be removed at any time without approval of the Association and the City of Flagstaff. Removal of any such tree could result in civil and criminal penalties by the City of Flagstaff.

IV. MEMBERSHIP IN HOMEOWNERS ASSOCIATION

(a) Every owner of a lot in this subdivision shall be a member of the Linwood Heights Homeowners Association. Membership shall be appurtenant to any and may not be separated from ownership of any lot. Any conveyance (except a lease) of any lot shall be an implied conveyance of the seller's interest in the Association.

(b) Each owner, including the Developer, shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members in the Association. The vote for such lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any lot.

V. ASSESSMENTS BY THE HOMEOWNERS ASSOCIATION

(a) The Declarant, for each lot owned within the properties, hereby covenants, and each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to agree to pay to the Association as provided in the Bylaws of such organization: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and

collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made and any other legal or equitable interest of that lot owner in any property located in this subdivision. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of a lot at the time when the assessment became due. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of annual or special assessments, fees or otherwise) and may carry forward as surplus any balances remaining (rather than apply such surplus to reduction of the annual assessment in future years) in such amounts as the Association, in its discretion, may determine to be desirable for the greater financial security of the Association.

(b) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the subdivision and for the improvement, maintenance and operating expenses in connection with the common areas of the subdivision.

(c) An annual assessment amount shall be established by the Association of the second Tuesday in January of each year, or as soon thereafter as the Association can meet and decide. The initial annual assessment shall be \$50.00 per lot and shall remain at that amount until changed by the Association. The effective date of the initial assessment shall be January 1, 1997. Each lot owner shall be obligated to pay to the Association his annual assessment on an annual, quarterly or monthly basis as determined by the Association. Notices of changes in the annual assessment and a report of the income and expenses for the prior year will be mailed to each lot owner as his address appears on the records of the Coconino County Assessor or at such address as he shall designate.

(d) A lot owner shall become obligated to begin paying the annual assessment at such time as he acquires legal or equitable title and there is a completed residence on the property certified by the City of Flagstaff for occupancy or actually occupied. The annual assessment shall be pro-rated if it first accrues after January 1 of any year. In consideration of the common area improvements installed by Declarant, Declarant shall be exempt from all assessments.

(e) In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying in whole or in part, the costs incurred in that assessment year if the intent and purpose of such assessment is consistent with the purposes set forth above.

(f) Any assessment not paid within thirty (30) days after the due date shall accrue a late charge of 5% of the amount due per month. The Association may bring an action at law against the owner personally obligated to pay the same, and/or foreclose the lien against the lot pursuant to Arizona law pertaining to foreclosure of realty mortgages. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his lot. The proceeds of a judicial sale following the foreclosure of such assessment lien shall first be paid to discharge court costs, other litigation costs including but not limited to reasonable attorney's fees, all interest accruing thereon, and all other expenses of such sale and then to the unpaid assessments. Any balance of proceeds after satisfaction of such amounts and all other amounts due shall be paid to the lot owner, and the lot owner may redeem such lot after the foreclosure sale as provided by law.

(g) The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

(h) The annual assessment may be increased by the Board of Directors if such increase will not exceed five percent. Any increase in the annual assessment in excess of five percent or any special assessment requires the approval of two-thirds of the lots represented in person or by proxy at a duly noticed meeting for such purpose.

(i) Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies representing sixty percent of all lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

(j) Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

(k) The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

VI. ENFORCEMENT

The Developer, Association or any lot owner, or any combination thereof may, in addition to any other remedy available at equity or law, prosecute an action for injunctive relief, specific performance, damages, a judgment for payment of money and collection thereof, or the appointment of a receiver to take possession of the improvements upon such lot. By the acceptance of a deed to any lot, or by signing a contract or agreement for the purchase of the same, the Association and each lot owner does hereby agree that in addition to the relief prayed for in such action, the defaulting owner shall be liable for all court costs and reasonable attorney's fees incurred in the prosecution of such action. Failure by anyone to enforce any condition, restriction, covenant or charges herein contained shall not constitute a waiver of the right to do so thereafter.

VII. GENERAL TERMS

(a) All covenants in these Restrictions are intended to and shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and are intended to and shall be binding upon any present or future owner of any interest in and to said property.

(b) The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity or enforceability of any other provision hereof.

(c) These provisions shall be for the benefit of and be binding upon the heirs, legatees, devisees, executors, administrators, guardians, conservators, successors, purchasers, lessees, donees, grantees, mortgagees, lienors and assigns of and from the parties hereto.

(d) Each property owner specifically waives any right to a partitioning of the common property by division of the property or liquidation.

VIII. AMENDMENTS

(a) These covenants, conditions and restrictions shall remain in effect until January 1, 2005. They shall then be automatically renewed for five year successive periods in their form at the end of each period unless no more than 60 days before the end of each period a notice of termination is recorded in Coconino County signed by the authorized representative of seventy-five percent of the lots in the subdivision.

(b) These covenants, conditions and restrictions may be amended at any time by the Association at any meeting where all lot owners are mailed written notice of said meeting at least 20 days in advance; where the proposed amendment is set forth in the notice and is in substantially the same form as later adopted and where the amendment is approved by three-fourths of the lots represented at said meeting.

(c) These covenants, conditions and restrictions may not be amended so as to apply to less than all lots or so as to apply differently to different lots.

IX. PROPERTY RIGHTS

Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

(b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by persons representing seventy-five percent of the lots have been recorded.

(c) Any owner may delegate his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

X. DEVELOPER'S RESERVATIONS

(a) Notwithstanding any other provision contained herein to the contrary, the developer shall have the right to make minor changes in the locations of the lots where the developer makes a finding that the size or location of any such lot would work an undue hardship, or where a variation thereof would be in the best interests of the lot owner or the subdivision as a whole, for causes including without limitation uneven terrain, large trees or soil conditions; provided, however, that the developer shall not increase the total number of lots.

(b) Developer reserves all easements depicted or referred to in the plat of the subdivision for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including but not limited to, water, sewer, gas, telephones, electricity, and television. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said properties except as initially platted and approved by the developer or thereafter approved by the Association.

DATED this 25 day of April, 1996.

By [Signature]
Jim Jamison

By [Signature]
Darleen Jamison

STATE OF ARIZONA)
)ss.
County of Coconino)

Acknowledged before me this 25 day of April, 1996, by Jim Jamison and Darleen Jamison, known to me to be the persons whose names are subscribed to this instrument and acknowledged that they executed the same.

[Signature]
Notary Public

My commission expires:

