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Attorney Box



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CC&R's LINWOOD HEIGHTS HOMEOWNERS' ASSOCIATION

**COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R'S)**

**FOR**

**LINWOOD HEIGHTS HOMEOWNERS' ASSOCIATION**

**FLAGSTAFF, ARIZONA**

**Prepared and Approved by:**

**Linwood Heights Homeowners' Association  
Board of Directors**

**Revision 1 Approval Date: July 14, 2002**



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## COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R'S) FOR

### LINWOOD HEIGHTS HOMEOWNERS' ASSOCIATION

#### INTRODUCTION

The lot owners, as members of the Linwood Heights Homeowners' Association (hereinafter referred to as the 'Association'), hereby declare that the CC&R's apply to the following real property:

Lots 1 through 86 of the Linwood Heights Subdivision as recorded in Case 6, Maps 75, 75A and 75B, Coconino County, Arizona.

The lot owners declare 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 referred to as 'CC&R's'), 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 CC&R's 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.

#### SECTION 1. OWNERSHIP

##### a. Designated Lots.

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 CC&R's.

##### b. Common Areas

The areas designated on the plat of record of the subject property as Tracts A, B, C and D shall be considered common areas and shall be owned in equal, undivided interest 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 areas, shall not be sold or conveyed separately from each other.

##### c. Tracts A, B, C and D Maintenance and Use

The maintenance and use of Tracts A, B, C and D shall be controlled by the 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, rest rooms, playground and recreation activities.

##### d. Common Areas Property Taxes

Each lot owner shall be responsible for payment of his/her pro-rata share of the property taxes assessed against common areas A and C. Such proportionate share of the common areas A and C property tax shall be charged directly to the lot owner by the Coconino County Treasurer. Taxes for common areas B and D are charged directly to the Association by the Coconino County Treasurer and are paid by Association funds.

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## SECTION II. MEMBERSHIP

### a. Membership with Lot Ownership

Every lot owner in this subdivision shall be a member of the Linwood Heights Homeowners' Association ('Association'). Membership shall be appurtenant to, 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. Votes

Each lot owner shall be entitled to one vote for each lot owned when lawful business is conducted. When more than one person holds an interest in any lot, all such persons shall be members of the Association. The single vote for such lot, however, shall be exercised as they among themselves determine; but in no event shall more than one vote be cast with respect to any lot.

## SECTION III. MEETINGS

### a. Annual Meeting

The Association's annual meeting shall be the third Saturday in June, at a place in or near Flagstaff, Arizona as determined by the Association's Board of Directors.

### b. Special Association Meetings

Special Association meetings (not related to the annual meeting), or any meeting called by the Board of Directors for special assessment ratification, must be requested in writing by at least five (5) Board of Directors members, or at least five (5) Association members not members of the Board of Directors, or a combination thereof. Written notice of special meetings shall be sent to all Association members per procedure of paragraph (c) below. Quorum and voting rules for conducting official business shall be per paragraph (a) below.

### c. Meeting Notices

Notice for any Association meeting, called for the purpose of taking any action authorized under these CC&R's shall be sent to all lot owners not less than 30 days nor more than 60 days in advance of the meeting.

### d. Fiscal Year and Assessment Determination

The fiscal year of the Association shall begin on July 1 and extend through June 30 of the following calendar year. An annual assessment amount shall be determined by the Association's Board of Directors prior to the annual meeting. If the annual assessment does not exceed ten (10) percent of the previous year's value, the assessment may be approved unilaterally by the Board of Directors. If the annual assessment value exceeds ten (10) percent of the previous year's value, the annual assessment amount must then be ratified, or changed, at the annual meeting by majority vote of the Association, as defined in paragraph (a) below.

### e. Meeting Quorums and Voting Rules

The quorum for business to be conducted at any Association meeting shall be the sum of (1) those lot owners in attendance plus (2) proxy votes received prior to the meeting. All business matters shall be decided by simple majority vote.

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## SECTION IV. ASSESSMENTS

### a. Annual and Special Assessments.

Each lot owner in the subdivision, whether or not it shall be so expressed in such property deed(s), is deemed to agree to pay to the Association as provided in the Bylaws of this 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. Both annual and special assessments must be fixed at a uniform rate for all lots.

### b. Spending Limitations

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). The Association 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, at its discretion, may determine to be desirable for the greater financial security of the Association.

### c. Assessment Purpose

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, liability and operating expenses in connection with the common areas of the subdivision.

### d. Assessment Notices

#### (1) Annual Assessment.

Once the annual assessment has been properly approved per Section III, paragraphs c, d and e above, assessment notices shall subsequently be mailed, to lot owners of record, on or before August 1 following the annual meeting. Annual assessments are due in full on September 1. Annual assessments shall be considered delinquent after October 1, at which time a late notice shall be mailed to the lot owner of record, advising accrual of a late charge per Arizona Revised Statutes A.R.S. 33-1801 et seq. on the assessed amount, retroactive to October 1.

#### (2) Financial Statement

Included with the annual assessment notice shall be a report of the income and expenses of the Association for the prior year. Assessment notices and fiscal reports shall be mailed to each lot owner at his/her address appears on the records of the Coconino County Assessor, or at such address as the lot owner shall designate.

#### (3) Special Assessments

In addition to the annual assessment specified above, the Association may levy, in any assessment fiscal year, a special assessment applicable to that fiscal year only, for the purpose of defraying, in whole or in part, expenses incurred in that assessment year if the intent and purpose of such assessment is consistent with the Association's purposes set forth in paragraph (c) of this Section. If a special assessment is deemed necessary by the Association's Board of Directors and has been properly approved per Section III, paragraphs (b), (c) and (e) above, assessment notices shall subsequently be mailed, to lot owners of record, within 45 calendar days following the meeting at which the special assessment was

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approved. Special assessments shall be due in full within 30 calendar days following the notice mailing. Special assessments shall be considered delinquent after 60 calendar days have elapsed following the notice mailing, at which time a late notice shall be mailed to the lot owner of record, advising accrual of a late charge per Arizona Revised Statutes A.R.S. 33-1801 et seq. on the assessed amount, retroactive to the delinquent date of 60 calendar days following the notice mailing.

e. Assessment Obligations

(1) A lot owner shall become obligated to pay to the Association his/her annual assessment at such time as he/she acquires legal or equitable title to the lot. In case of a sale of a lot, the annual assessment (plus special assessment, if applicable) in that year shall be divided as follows: (1) The selling lot owner shall be responsible for the annual/special assessments from July 1 preceding the date of sale through the month of sale; and (2) the person buying the lot shall be responsible for the annual/special assessments beginning with the month after purchase through the following June 30, the end of the fiscal year.

(2) In consideration of the common area improvements installed by the Developer, the Developer shall be exempt from all assessments.

f. Legal Matters

The Association may bring an action at law against the lot owner personally obligated to pay either assessments or late charges, 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/her 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. Subordination of Lien

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. Certificates For Assessments Paid

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.

SECTION V. PERMITTED PROPERTY USES

a. Primary Lot Restriction

Each of said lots is hereby restricted to use as a dwelling (with garage), for residential use by one (1) family only.



**b. Pets**

(1) Lot owners must comply with all City of Flagstaff ordinances.

(2) City of Flagstaff ordinances notwithstanding, it is prohibited to raise, breed or keep any of the following animals within the subdivision: swine, cattle, mules, burros, sheep, goats, poultry, wild fowl, rabbits or guinea fowl.

(3) Domesticated Animals - Horses.

Owners of lots 28, 29, 79, 80, 91, 92, 93, 94, 95 and 96 only may have up to four (4) horses for the first acre of property, plus one (1) horse for each additional acre, and may have on the property the necessary pens, corrals, enclosures, and feeding and watering facilities. No commercial activity may be conducted in regard to such horses.

(4) Domesticated Animals - Other Animals, Etc.

Other than horses on certain lots, other domesticated animals or fish may be raised, bred or kept on any lot in the subdivision provided:

(a) They are kept within the boundaries of the lot(s) of their owners and do not offend or annoy other lot owners, and

(b) They are not kept, bred or maintained for any commercial purposes, also,

(c) Kennels, pens or similar structures used for their housing and containment may not be built, installed or maintained in the front of a house built on that lot. Birds, such as parrots, parakeets and the like, may be kept and maintained in cages within a house.

**c. Advertising on Lots**

No advertising signs or billboards shall be erected, placed or permitted to stand upon any of said lots, provided, however, that a person desiring to sell a lot may place one (1) "For Sale" sign upon his/her lot which shall not be over four (4) square feet in size nor higher than four (4) feet in elevation when erected. In addition, lot owners may place warning (e.g. no trespassing) signs, security signs, seasonal decorations and construction signs during construction periods, on their property when or where appropriate.

**d. Businesses, Professional or Commercial Activities**

No business, professional or 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 and/or employee traffic. This provision shall not apply to contractors in regard to the completion or construction and sale of dwellings upon the lots.

**e. Sound-Producing Equipment**

No outside loudspeakers, amplifiers or other sound-producing equipment, except security alarms, shall be permitted to be installed, used or maintained on any lot.

**f. Fire Prevention**

(1) No outdoor fires or burning shall be permitted on any part of the properties, either designated lots or Tracts A, B, C or D, and no incinerators or like items shall be placed, operated or maintained upon any lot. The foregoing shall not be deemed to preclude the use of, in customary fashion, outdoor barbecues, grills or space heaters, unless such use is prevented or restricted by government fire protection rules or regulations.



(2) An exception to paragraph (1) above is a forest management program conducted by the City of Flagstaff Fire Department. Consult Section VII, paragraph d below for details.

g. External Equipment

(1) Tanks. 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.

(2) Clotheslines. No exterior clothesline equipment of any kind shall be permitted on any part of the properties.

(3) Satellite Dishes and Other Antennas. No satellite signal-receiving dish shall be placed, operated or maintained upon any lot, unless its size is 36 inches in diameter or less. No antenna "towers" of any kind shall be allowed.

(4) Rubbish, Trash, or Garbage. All rubbish, trash or garbage shall be kept in closed containers and not allowed to accumulate on any of said lots.

(5) Woodpiles. Firewood may be neatly stacked on any lot.

(6) Solar Panels and Windmills. No free-standing solar panels or windmills shall be allowed on any lot. It is permissible, however, to integrate these items into the design of a house or garage.

h. Motor Vehicle Restrictions

(1) Habitation. No automobile, house trailer, travel trailer, mobile home, motorized motor home, camper, truck (including tractor or truck trailer), tent, trailer, boat or bus, or similar facility or vehicle, shall be at any time lived in on any of said lots Tracts A, B, C or D, parking spaces or streets. However, a camper or a tent may be erected on any lot (not Tracts A, B, C or D), for recreational purposes, for a duration not to exceed three (3) consecutive days.

(2) Storage. These aforementioned facilities or vehicles, motorcycles, ATVs and snowmobiles included, may not be stored anywhere within the subdivision except in a lot owner's garage.

(3) Parking. These aforementioned facilities or vehicles, motorcycles, ATVs and snowmobiles included, may not be parked anywhere within the subdivision except in a designated parking space (such as a driveway) or garage. No motor vehicles shall be parked on the streets of the subdivision except while their operators are rendering services to, or visiting, lot owners.

(4) Off-Road Restrictions. Motor vehicles of all types are restricted to operation on posted, maintained and existing roadways, including the roads inside Jesse Gregg Park leading to (a) the playground behind Lots 10 and 11 (b) the road up the hill to the two Tract A pavilions, and (c) the road connecting the two Tract A pavilions. Motorized vehicles of all types are prohibited off-road in these areas.

i. Repairs, Modifications or Maintenance Work

No motor vehicle, equipment, furniture or other objects shall be repaired, modified, maintained or otherwise worked on at any time upon any of said lots, Tracts A, B, C or D, parking spaces or streets, except for community property in the common areas.



**J. Offensive or Hazardous Activities**

(1) No noxious or offensive activities 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 other lot owners, including without limitation annoying or offensive sounds or odors.

(2) 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.

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

**k. Boarders or Renters**

No boarders or renters of a portion of any of said lots shall be permitted. No fraternity, society, or other group or association shall have the use of any lot as its residential headquarters. However, this paragraph shall not preclude the rental of an entire unit for single family use.

**i. Utility Connections**

Electric, telephone, water, sewer, natural gas, 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, that 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. Garage Conversion**

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

**SECTION VI. PROPERTY RIGHTS**

Every lot owner shall have the right to enjoy, and to have convenient access to, the common areas. This right shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

**a. Suspension of Voting Rights and Privileges**

The Association shall have the right to suspend the voting rights of a lot owner, and the right to use the recreational facilities by a lot owner, for any period during which any assessment against his/her lot remains unpaid. The Association shall also have the right to suspend the use of the recreational facilities by a lot owner, for a period not to exceed 60 days, for any infraction of these CC&R's.

**b. Dedicating or Transferring Parts of the Common Areas**

The Association shall have the right to dedicate or transfer all or any part of the common areas, i.e. Tracts A, B, C and D, 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, has been signed by persons representing 75 percent of the lots and has been duly recorded.

**c. Delegation of Common Area Rights**

Any lot owner may delegate his/her right of enjoyment to the common areas and facilities to the members of his/her tenants.

## SECTION VII. TREE REMOVAL

Except for trees removed by the Developer during the construction of original development improvements, all subsequent tree removal must adhere to the following requirements:

- a. City of Flagstaff Ordinance Section 10-06-005-0002: Tree Cutting, Removal and Protection.
- b. Linwood Heights Subdivision development plat map note: "All areas outside of the development pad, except an additional 5000 square feet to be used for driveways and utility service corridors, are deemed perpetually protected resource areas and openspace easement."
- c. Trees with a DBH (diameter at breast height) less than six (6) inches may be removed with no approval required of the lot owner. Removal of other trees, which are dead, dangerous or diseased, or predominantly within the drip lines of larger healthy trees, may be removed given City approval.
- d. The Flagstaff Fire Administration Office offers a tree thinning/cutting consultation to the lot owner at no cost. This is the recommended approach for tree removal.

## SECTION VIII. ENFORCEMENT OF CC&R's

- a. Prosecution for Injunctive Relief, et al

The Association Board of Directors and/or any lot owner working in conjunction with the Board may, in addition to any other remedies 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 Board and/or lot owner(s) does (do) hereby agree that, in addition to the relief asked for in such action, the defaulting lot 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 CC&R's or charges herein contained shall not constitute a waiver or the right to do so thereafter.

- b. Processing of Alleged CC&R Violations

Alleged violation(s) of any of the CC&R's contained herein shall be processed pursuant to the following:

- (1) Any lot owner may complain in writing to the Board of Directors that a violation of one or more of the CC&R's contained herein has occurred. Such complaint shall contain specific facts of the alleged violation and refer to a specific section(s) of the CC&R's. Such complaint may be anonymously made at the discretion of the lot owner.
- (2) The Board shall make a determination of whether or not a violation has occurred. If, in the Board's judgment, no violation has occurred, the issue is terminated.
- (3) If the Board determines that a violation has occurred, the Board shall advise the offending lot owner of the violation in writing, requesting correction within thirty days. If the lot owner makes the required correction in the time allowed, the issue is terminated.
- (4) If, in the opinion of the Board, the required correction is not achieved within thirty days, the Board shall send a second letter to the offending lot owner after this thirty day period (1) restating the subject violation and correction required and (2) requiring payment of a \$100.00 fine per violation plus penalty per Arizona Revised Statutes A.R.S. 33-1801 et seq., said penalty to accrue thirty days after the date that the second letter was sent. If the offending lot owner then makes the required correction and pays the required fine, plus any penalty due, the issue is terminated.

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(5) If, in the opinion of the Board, the required correction is still not achieved within thirty days after the second letter was sent, the Board shall send a third letter to the offending lot owner (1) restating the violation and correction required, (2) requiring payment of a \$100.00 fine per violation plus penalty per Arizona Revised Statutes A.R.S. 33-1801 et seq., and (3) advising the offending lot owner that legal action, per paragraph (a) in this Section, may follow.

(6) Within this enforcement process, the offending lot owner shall have the right to appeal by advising the Board in writing of his/her intention to do so, then stating his/her case in person not later than the Board's next meeting. In cases of appeal, time extensions for correction may be granted by the Board if deemed appropriate under the circumstances.

#### SECTION IX. MISCELLANEOUS

##### a. Intent of Covenants Herein

All covenants in these CC&R's 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. Independence of Provisions

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not effect the validity or enforceability of any other provision hereof.

##### c. Applicability of Provisions

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

##### d. Partitioning of Common Property

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

##### e. Liability Insurance

The Association shall maintain, to the extent available at reasonable cost, comprehensive general liability insurance, including medical payment insurance, in an amount determined by the Board, but not less than \$3,000,000.

#### SECTION X. AMENDMENTS

##### a. Automatic Renewal of CC&R's

These CC&R's shall remain in effect until July 1, 2007. They shall then be automatically renewed for five (5) 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 75 percent of the lots in the subdivision.



b. Routine Amendment Process

These CC&Rs may be amended at any time by the Association at any meeting, in advance of which all lot owners were mailed written notice of said meeting per requirements of Section III, paragraph c above. Quorum and voting rules for this meeting shall be per requirements of Section III, paragraph e above.

DATED this 5 day of August, 2002.

By Toni Kohibeck  
Toni Kohibeck, President, Board of Directors

By Wayne Stoltz  
Wayne Stoltz, Vice President, Board of Directors

By Susan Slasor  
Susan Slasor, Secretary, Board of Directors

By Elisa Sykes  
Elisa Sykes, Treasurer, Board of Directors

STATE OF ARIZONA )  
                          ) ss  
County of Coconino )

Acknowledged before me this 5th day of August, 2002, by Toni Kohibeck, Wayne Stoltz, Susan Slasor and Elisa Sykes, known to me to be the persons whose names are subscribed to this instrument and acknowledged that they executed the same.



[Signature]  
Notary Public