

When Recorded, Return To:

James E. Marsh
Lynch-Marsh LLC
2525 E. Camelback Rd.
Suite 530
Phoenix, AZ 85016



CANDACE OWENS
COCONINO COUNTY RECORDER
OFFICIAL RECORDS OF
COCONINO COUNTY

INST: 97-15434 FEE:\$ 11.50
AT THE REQUEST OF:
CITY OF FLAGSTAFF
DATE: 06/06/1997 TIME: 09:25
DKT: 1991 PG: 560 PAGES: 014

HIGHLAND MESA TOWNHOMES

HOMEOWNERS ASSOCIATION

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

1991-560

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
HIGHLAND MESA TOWNHOMES

This Declaration is made on this Firstday of April, 1997 by Lynch Marsh L.L.C., An Arizona Limited Liability Company, hereinafter referred to as "Declarant".

Declarant, is the owner of that certain real property in the City of Flagstaff, County of Coconino, State of Arizona, more particularly described as follows:

Highland Mesa Townhomes
the plat thereof, recorded with the County Recorder according to Case 7 as shown on
records of Coconino County, Arizona. Map 30

Declarant intends by this Declaration to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of residential Lots within the Property. Declarant desires to provide a flexible (yet common) and reasonable procedure for the overall development of the Property, and to establish a method for administration, maintenance, preservation, use and enjoyment of the Property.

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of and which shall run with the real property now and hereafter subjected to this Declaration and which shall be binding on all parties having any right, title or interest in said real property or any part thereof, and their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner of all or any part thereof.

ARTICLE 1

DEFINITIONS

As used in this Declaration, the following capitalized terms shall have the meanings set forth in this Article:

- 1.1 "Architectural Control Committee" means the committee established by the Board pursuant to Article 8 of this Declaration.
- 1.2 "Articles" means the Articles of Incorporation of the Homeowners Association which have been or will be filed in the Office of the Corporation Commission of the State of Arizona, said articles may be amended from time to time.
- 1.3 "Assessment" means the annual and special assessments levied and assessed against each Lot pursuant to Article 3 of this Declaration.
- 1.4 "Assessment Lien" means the lien granted to the Homeowners Association by this Declaration to secure the payment of Assessments and all other amounts payable to the Homeowners Association.
- 1.5 "Board" means the Board of Directors of the Homeowners Association.
- 1.6 "Building" means any combination of dwelling units attached (via a common wall) to one another.
- 1.7 "Bylaws" means the bylaws of the Homeowners Association, said bylaws may be amended from time to time.
- 1.8 "Common Area" means all real property, and all improvements located thereon, owned by the Homeowners Association for the common use and enjoyment of the homeowners.
- 1.9 "Common Wall" means any wall separating two units which is used jointly by both units.
- 1.10 "Declarant" means Lynch Marsh LLC., an Arizona Limited Liability Company, their successors and any person to whom it's rights may be assigned under this Declaration.
- 1.11 "Declaration" means this Declaration of Covenants, Conditions and Restrictions, as it may from time to time be amended.
- 1.12 "First Mortgage" means any mortgage of deed of trust on a Lot which has priority over any and all other mortgages or deeds of trust recorded against that Lot.

1.13 "Homeowners Association" means Highland Mesa Townhomes Homeowners Association, the Arizona nonprofit corporation to be organized by the Declarant to administer and enforce this Declaration.

1.14 "Improvement" means buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

1.15 "Lot" means and refers to each numbered lot into which the Property is subdivided as set forth in the plat. In no event shall the term "Lot" mean or refer to all or any part of the Common Area.

1.16 "Member" means any owner of a Lot which is part of the Property.

1.17 "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those holding only security interests, lessees, tenants, or other occupant of a Lot.

1.18 "Property" means the real property which is the subject of this Declaration.

1.19 "Rules and Regulations" means those rules and regulations adopted by the Homeowners Association, as may be amended from time to time.

ARTICLE 2

ORGANIZATION, MEMBERSHIP AND VOTING RIGHTS

2.1 The Homeowners Association shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation, the Bylaws, and these Declarations together with such rights, powers, and duties as may be reasonably necessary to effectuate the objectives and purposes of the Homeowners Association.

2.2 The affairs of the Homeowners Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint.

2.3 The Board may adopt, amend and repeal Rules and Regulations to restrict and govern the use of any area by any Owner, his family, or any invitee, licensee, or lessee.

2.4 The Board may establish an Architectural Control Committee consisting of not less than three (3) members appointed by the Board to regulate the external design, appearance and use of the Property.

2.5 All Owners of Lots, including the Declarant, shall be members of the Homeowners Association and as such shall be entitled to one vote for each Lot owned. Membership and voting rights shall be appurtenant to and may not be separated from the ownership of such Lot or Lots.

ARTICLE 3

COVENANT FOR MAINTENANCE ASSESSMENTS

3.1 Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each lot owned, hereby covenants, and each owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant, agree to pay and be individually responsible for, to the Homeowners Association as provided by the Articles and Bylaws of such organization, Owner's proportionate share of: (1) annual assessments or charges, (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided, (3) taxes on the common area, and (4) operational and maintenance costs of the common area. The annual and special assessments, taxes and cost of operation and maintenance on the common area, 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 until paid. Each such proportionate share of assessments, taxes and operational and maintenance costs, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due in addition to becoming a lien against the Owner's Lot. The Homeowners Association shall not be obligated to spend in any year all the sums received by it in such year and may carry forward as surplus any balances remaining (rather than apply such surplus to the reduction of the annual assessment in future years or return such surplus to the Owner's of the Lots) in such amounts as the Homeowners Association, in its sole discretion, may determine to be desirable for the greater financial security of the Homeowners Association.

3.2 Purpose of Assessments. The assessments levied by the Homeowners Association shall be used exclusively to promote the recreation, health, safety and well being of the residents and for the improvement and maintenance of the Common Area, including but not limited to physical maintenance, liability protection and legal defense of any and all unwarranted claims against the Property.

3.3 Special Assessments for Capital Improvements. In addition to the annual assessment authorized above the Homeowners 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 cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, if applicable, or other properties if the intent and purpose of such assessment is consistent with Article 3.2 of this Declaration, provided that any such assessment shall have the assent of two-thirds (2/3's) of the members who are voting in person or by proxy at a meeting duly called for this purpose.

3.4 Notice and Quorum for any Action Authorized Under Article 3.3. Written notice of any meeting called for the purpose of taking any action authorized under Article 3.3 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days prior to the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast two-thirds (2/3's) of all votes of the membership 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. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

3.5 Rate of Assessment for Homeowners Association.

(a) The initial annual assessment shall be \$540.00 per year. Each owner shall be obligated to pay to the Homeowners Association his annual assessment in twelve (12) equal monthly installments on or before the first day of each calendar month, beginning the first day of the calendar month following the recordation date of the deed or other conveyance to the subject Lot. Declarant shall not pay monthly assessments, but shall be required to maintain the unsold lots at his sole expense until one hundred percent (100%) of the lots are sold. In addition Declarant shall have the right but not the obligation to make up any financial shortfalls suffered by the Homeowners Association while the Declarant still owns Lots or a Lot.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to and Owner, the maximum annual Homeowners Association assessment increase shall be limited to ten percent (10%) per calendar year above the maximum assessment for the previous calendar year, provided such increase is approved by a vote of two-thirds (2/3's) of the members who are voting in person or by proxy, at a meeting duly called for that purpose.

(c) The Board may fix the annual assessment at an amount not in excess of the maximum amount allowed. All assessments must be fixed at a uniform rate for all lots and must be collected, in advance, on a monthly basis.

3.6 Date of Commencement of Annual Assessments. The annual assessment provided for herein shall commence as to all Lots sold by Declarant on the first day of the month following the close of escrow of the sale of the said Lot. The first annual assessment shall be adjusted accordingly to the number of months remaining in the calendar year. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Notices provided for in this Declaration shall be in writing and shall be addressed to the last known address of the Lot Owner. Notices shall be deemed delivered when mailed by United States Registered or Certified Mail addressed to the Lot Owner at such address or when delivered in person to such Owner. Each Owner shall be obligated to pay to the Homeowners Association his annual assessment, in advance, in twelve (12) equal monthly installments on or before the first (1st) day of each calendar month, and to pay any special assessments within thirty (30) days following their levy or at other such times as the Board may designate. All assessments shall be paid at such place as the Board shall designate. The Homeowners Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Homeowners Association setting forth whether the assessments and other charges on a specified Lot have been paid; or if not paid, such amounts owing.

3.7 Effect of Nonpayment of Assessments.

(a) Any assessment not paid within ten (10) days following the date due shall bear interest from the due date at the rate of twelve percent (12%) per annum.

(b) The Homeowners Association shall have a lien upon each Lot for all assessments, monetary penalties, court costs, reasonable attorney's fees and other fees and charges levied against the Lot or owed to the Homeowners Association by the Owner of the Lot which are not paid when due. The recording of this Declaration constitutes record notice of the assessment lien.

and no recordation of any claim or notice of the lien is required. The Homeowners Association shall have the right, but not the obligation, to record a Notice of Lien against any Lot setting forth the amount secured by the assessment lien.

(c) The Homeowners Association may bring an action at law against the Owner personally obligated to pay the same, 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 assessment provided for herein by non-use or abandonment of his Lot. The proceeds of a judicial sale shall following the foreclosure of such assessment lien first be applied for (i) tax liens for real property taxes on the lot, (ii) assessments on any lot in favor of any municipal or other government body, (iii) the lien of first mortgage, (iv) court costs, litigation costs including but not limited to reasonable attorney's fees, interest accruing and all other expense of such sale. Any balance of proceeds remaining after satisfaction of such amounts shall be paid to the Lot Owner, and the Lot Owner may redeem such Lot after the foreclosure sale as provided by law.

3.8 Subordination of the Assessment Lien to Mortgages. The assessment lien 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.

ARTICLE 4

PERMITTED USES

- 4.1 Residential Use. Each Lot is hereby restricted to use as a single family dwelling for residential use by one family only.
- 4.2 Animals. No animals of any kind shall be raised or kept on any of the Lots, however, ordinary domestic pets will be permitted so long as the number is reasonable and all Rules and Regulations of the Homeowners Association are complied with.
- 4.3 Advertising Signs and Billboards. No signs or billboards of any kind will be allowed with the single exception of one sign advertising the Lot "For Sale" or "For Lease". Such sign may not exceed four (4) square feet and must be professionally painted or lettered.
- 4.4 Business and Commercial Activities. No business, commercial or professional activities shall be conducted on any portion of any Lot. However, this provision shall not apply to the Declarant until completion of construction and sale of all Lots has been accomplished.
- 4.5 Outside Speakers and Antennas. No outside speakers or sound producing equipment shall be allowed under any circumstances. No antennas, either radio or television, shall be allowed to be installed or maintained on the exterior of any building unless specifically approved in writing by the Homeowners Association.
- 4.6 Unightly Objects. No unsightly objects of any type or kind (in the opinion of the Homeowners Association) shall be allowed. If not removed, within five days of receiving notice from the Homeowners Association to remove the offending objects, the Homeowners Association may have the objects removed at the Lot Owners expense.
- 4.7 Trailers, Trucks, Boats and Etc. No housetrailer, mobile home, motor home, camper, commercial truck, tent, trailer, boat, bus, or similar facility or vehicle and no vehicle of any type which is abandoned or otherwise inoperable shall at any time be placed on, stored or lived in on any Lot. Nor shall any vehicle, equipment, furniture or other objects be repaired, modified or otherwise worked on at any time upon said Lots.
- 4.8 Hazardous Activities. No hazardous activities shall be conducted upon any part of the Lots, nor shall any improvements or conditions which are unsafe or hazardous to any person or property be permitted.
- 4.9 Fences, Walls and Construction Deviation. No fences, walls or hedges shall be erected or maintained on any Lot except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Homeowners Association. No deviation shall be made by the Owner in construction, design or common area landscaping from the original house and common area landscaping as designed and built by Declarant.

4.10 Resource Protection. All Trees located on individual Lots outside of designated driveways or building envelopes, as shown on the recorded final plat, are designated perpetual resource protection easements and shall be the responsibility of the individual Lot owners to maintain and preserve. Resource protection areas as shown on the recorded final plat, outside of individual lots, shall be perpetually protected as resource protection easements and shall be the responsibility of the Homeowners Association to maintain and preserve. All existing trees and existing landscaping not designated within the perpetual resource protection areas shall require the approval of the Architectural Control Committee prior to the cutting, removing, relocating or trimming of such trees or landscaping.

ARTICLE 5

COMMON AREA AND EXTERIOR MAINTENANCE

5.1 Repair and Maintenance of Streets and Other Common Area. The Homeowners Association shall be responsible for the maintenance, repair and replacement of the Common Area and may, without approval of the Owners, construct, reconstruct, repair, replace, or refinish any portion of the common area. All streets are privately owned and are not City of Flagstaff streets. As such, they are common area to be maintained by the Homeowners Association. Such maintenance may include, but is not limited to, snow removal, street sweeping, pavement repairs and periodic resealing and resurfacing.

5.2 Maintenance of the Lots by the Homeowners Association. Routine maintenance of the dwelling units situated on the Lots by the Homeowners Association shall be limited to repair and replacement of roofs, roof membranes, and routine maintenance of the building exteriors. Monies for the maintenance of the roofs will NOT be collected and set aside as part of the annual assessment. All roof repairs will be done at the sole determination of the Homeowners Association and will be subject of a special assessment, on a building by building basis when deemed necessary. In the event the need for roof replacement or repair is caused by the willful or negligent act of an Owner, his family, guests, invitees or animals for whom he is legally responsible under Arizona law, the Homeowners Association shall cause the maintenance, repair or replacement to be performed and the cost thereof shall be levied against such Owner, and his Lot, and may be collected in the manner provided for elsewhere in this Declaration for the collection of assessments.

5.3 Maintenance of the Lots by the Homeowners. All exterior maintenance inside the Lot lines, with the exception of the building exterior and roofs, shall be the responsibility of the Owner of the Lot. This includes repair and replacement of glass, hardscaping, landscaping, and any other exterior improvements. Exterior maintenance upon the lots shall comply in all respects with the Rules and Regulations of the Homeowners Association regarding exterior maintenance. In the event the Owner refuses to maintain his Lot according to the Rules and Regulations promulgated by the Homeowners Association the necessary maintenance will be done for the Owner by the Homeowners Association and the cost of such maintenance together with a ten percent (10%) service charge shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE 6

PARTY WALL

6.1 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes and placed on the property line between lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

6.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall.

6.3 Non - Penetration of Party Wall. No owner shall penetrate or cause to be penetrated any party wall except as shall be necessary for the hanging of pictures and other standard wall surface hanging items in a customary manner.

6.4 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and the other Owners shall contribute to the cost of restoration thereof.

6.5 Right to Contribution Run with the Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

6.6 Arbitration. In the event of a dispute arising concerning a party wall, or under the provisions of this article, each party shall choose one arbitrator, and such arbitrator shall choose one additional arbitrator, and the decision of any two of the three arbitrators shall be final and binding upon the parties.

ARTICLE 7

EASEMENTS

7.0 Declarant reserves all easements depicted or referred to in the recorded plat of the Lots, and hereby creates a blanket easement upon, across, over and under the above described Lots for ingress, egress, installation, replacing, repairing and maintaining the exterior of the buildings. by virtue of this easement it is permissible for the Homeowners Association or its duly authorized representatives to enter onto the property for the purpose of enforcing the Rules and Regulations of the Homeowners Association and performing maintenance as required by said Rules and Regulations. This easement shall in no way affect any other recorded easements on said Lots.

7.1 Declarant hereby creates a blanket easement for the respective Lot owners, upon, across, over and under the above described lots for ingress, egress, installation, replacing, repairing and maintaining the utility lines and service. Any of above work will be the responsibility of the specific homeowner or homeowners requirement and not that of the Homeowner's Association. This easement shall in no way affect any other recorded easements on said Lots.

Any of the work for repair under this paragraph becomes the responsibility of the specific homeowner.

ARTICLE 8

ARCHITECTURAL CONTROL

Except for the original improvements constructed by the Declarant, no building, fence, wall or other structure shall be commenced, erected or maintained upon all or any portion of the Lots, nor anything affixed or attached thereto, nor shall any exterior addition to, or change or alteration therein (including without limitation paint, colors, trim, shape and character of any of the buildings or improvements upon the Lots) be made unless approved in writing by the Board or Architectural Control Committee (if one is constituted) of the Homeowners Association.

ARTICLE 9

GENERAL PROVISION

8.1 Enforcement. In the event of any violation or breach of, or any default under, any of the restrictions, conditions, covenants, reservations or other provisions contained herein, any one or more of the following remedies (as may be applicable) shall be available:

(a) In the event of any violation or breach of, or default under Article 4 hereof pertaining to danger or hazard to any other Owners of said Lots or their property, the Declarant or Homeowners Association shall have the right to go onto such Lot without notice and take such remedial action as may be necessary to alleviate such dangerous or hazardous condition, and any expense thereby incurred by the Declarant or the Homeowners Association shall become a lien upon such Lot which may be foreclosed in the manner provided for in Article 3 herein.

(b) For any other violation or breach of, or default hereunder, the Declarant or the Homeowners Association shall have the right after ten (10) days notice in writing to the defaulting Owner to go upon such Lot and take such action as may be necessary to correct the violations, breaches or defaults, including without limitation removal of any unauthorized improvements or fixtures and unauthorized personal property and placing the same in storage at the expense of the defaulting Owner, repainting the exterior of any building which has been painted in an unapproved manner or color, replacement of any trees removed without approval, and cleaning up any unsightly material or debris upon any Lot. Any expense thereby incurred by the Declarant or the Homeowners Association shall become a lien upon such lot which may be foreclosed as provided for in Article 3 herein.

(c) The Declarant, The Homeowners Association, any Owner or any combination thereof may, in addition to any other remedy available at equity or at law, prosecute an action or other proceeding against such defaulting Owner or The Homeowners Association 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 Lot. By the acceptance of a deed to any Lot, or by signing a contract or agreement for the purchase of the same, the Homeowners Association and each Owner does hereby agree that in addition to the relief payed for

such action, the defaulting Owner shall be liable for all court costs and reasonable attorney's fees incurred in the prosecution of such action.

(d) The use of any one or more of the remedies provided for in this section of Article 8 shall not defeat the lien of a purchase money or construction mortgage or deed of trust made in good faith and for value.

(e) The restrictions and burdens imposed by the covenants in these Restrictions constitute a general scheme for the benefit of all of the Owners. All such restrictions and covenants shall inure to the benefit of the Lot Owners, and shall be enforceable by every person, partnership, association, or corporation who now or at any time hereafter owns title or any interest of any kind in or to said property, and all such restrictions and covenants shall be binding upon every person, partnership, association or corporation who now or at any time hereafter owns or has any interest in said property. All covenants in these Restrictions are intended to and shall constitute covenants running with the land and are intended to and shall be binding upon any present or future owner of any interest in and to said Lots.

(f) 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.

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

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

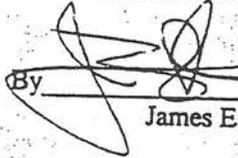
8.2 Severability. Invalidation of any of these covenants or any portion thereof, by judgment or court order shall in no way affect any other provision or any portion thereof which shall remain in full force and effect.

8.3 Amendment. The covenants and restrictions of this Restriction shall run with and bind the land, for a term of twenty-five (25) years from the date that this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

This Declaration may be amended during the first twenty-five years by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, and thereafter by an instrument signed by a majority of the Lot Owners. Any amendment must be recorded. Notwithstanding any other provisions contained herein to the contrary, the Declarant shall have the right to make changes in the locations of the Lots where the Declarant 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 Property as a whole, for causes including without limitation uneven terrain, large trees or soil conditions; provided however, that the Declarant shall not increase the total number of Lots by a number greater than ten percent (10%) of the present Lots therein.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set
its hand this 28 day of April, 1997.

Lynch-Marsh, LLC
An Arizona Limited Liability Company

By 
James E. Marsh, Member

1991-573