

3341

COMPARED

FILED
CASS COUNTY, NE.

2005 MAY 25 AM 8:11

EN 62 Msc.

PATRICK H. HENGINGER 128
REGISTER OF DEEDS
Doc# 3341 \$ 30.00

DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
LAKEVIEW ESTATES II, Phase 2
SUBDIVISION

Tincher Investment Co. Inc., hereinafter, called Declarant, is the Owner in fee simple of real estate located in Cass County, Nebraska, and known by the official plat designation of Lakeview Estates II, Phase 2, Lots 1-19 & Outlot A ("hereinafter "Property") of which plat is recorded in Book 16, Page 27, of the records of the Register of Deeds of Cass County, Nebraska on the 25th day of May, 2005.

For the purpose of protecting the value and desirability of the Lots or tracts constituting such Subdivision, and all future phases, Declarant declares that all of the described real property and each part of such property shall be held, sold, and conveyed only subject to the following covenants, conditions, and restrictions, which constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the described property or any part of such property, their heirs, successors, and assigns, and shall inure to the benefit of each Owner of such property. It is the intent and desire of Declarant to incorporate the LAKEVIEW ESTATES II HOMEOWNERS ASSOCIATION, INC., as a not-for-profit corporation, which Association shall have powers of maintaining and administering the common properties and facilities and enforcing the covenants and restrictions and collecting and disbursing assessments and charges.

ARTICLE ONE – DEFINITIONS

"Association" shall mean and refer to Lakeview Estates II Homeowners Association, Inc., a not-for-profit corporation, its successors and assigns.

"Declarant" shall mean Tincher Investment Co., Inc., and Declarant's successors and assigns.

"Lot" shall mean any plot of land shown on the recorded subdivision map referred to above.

"Maintenance" shall mean the exercise of reasonable care to keep roads, right of ways, and other related improvements and fixtures in a condition comparable to their original condition. Maintenance shall also mean the replacement of any portion of the existing road.

"Member" shall mean every person or entity who holds Membership in the Association.

"Owner" shall mean the record Owner, whether one or more persons or entities, of a fee simple title to any Lot that is part of the property, and shall include contract sellers, but shall not include those holding title merely as security for performance of an obligation. "Owner" and "Member" are synonymous when used herein.

"Subdivision" shall mean the subdivided real property described above and such additions to such property and/or further phases that be brought within the jurisdiction of the Association as provided in this Declaration.

ARTICLE TWO
MEMBERSHIP IN ASSOCIATION – VOTING RIGHTS

Every Owner of a Lot shall be a Member of the Association; Membership shall be appurtenant to and my not be separated from Ownership of a Lot. A Tenant may not be a Member.

The Association shall have one class of voting Members which shall be all Owners, and each Member shall be entitled to one vote for each lot owned. The Association shall include further phases of Lakeview II as may be developed by the Declarant. When more than one person holds an interest in a given Lot, all such persons shall be Members and the vote for such Lot shall be exercised as they may determine between or among themselves. In no event shall more than one vote be cast with respect to any Lot owned by Members.

ARTICLE THREE – ASSESSMENTS

Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively to promote the health, safety, welfare, and recreation of the residents in the subdivision, and for the improvement and maintenance of Joint Use Areas. Annual assessments shall be voted upon as

#3325
(4)

persons jointly interested with myself therein in doing all acts, deeds, matters, and things herein, either particularly or generally described, as fully and effectually to all intents and purposes as I could do in my own proper person if personally present, it being my intent to grant to my said attorney a general power to act for me and in my behalf, and not a limited or special power, limited to the specific acts herein described.

13. Power of attorney effective notwithstanding disability of principal; continues in effect after principal's death until notice. Pursuant to the provisions of the Uniform Durable Power of Attorney Act, Nebraska Revised Statutes, Sections 30-2664 to 30-2672, I declare that this power of attorney shall not be affected by my disability or incapacity, and that the authority granted herein shall continue during any period while I am disabled or incapacitated. Further, pursuant to said Sections, all such authority shall continue after my death, until notice of such death shall have been received by my attorney so that my attorney in fact has actual knowledge of the fact that I have died. Any action taken in good faith by said attorney during any period while it is uncertain whether I am alive, before my attorney in fact receives actual knowledge of my death, or, in any event, taken during the period while I am disabled or incapacitated, shall be as valid as if I were alive, competent and not disabled.

IN WITNESS WHEREOF, I have signed and acknowledged this instrument this ____ day of September, 1996.

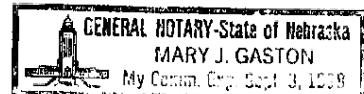
Mabel M. Walker
MABEL M. WALKER

STATE OF NEBRASKA)
) ss.
COUNTY OF CASS)

BE IT KNOWN, that on this 22 day of September, 1996 before me personally appeared Mabel M. Walker above named, who is to me known to be the person described in and who executed the above Durable Power of Attorney, and acknowledged the same to be her voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official hand and seal, the day, month, and year last above written.

Mary J. Gaston
NOTARY PUBLIC



provided in the Bylaws. Annual assessments shall include, and the Association shall acquire and pay for out of the funds derived from the annual assessments, the following:

- a. Maintenance and repair of roads and other improvements not dedicated to the public use, or being maintained by a public entity.
- b. Any other material, supplies furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments that the Association is required to pay pursuant to the terms of this Declaration or by law.

Special Assessments for Capital Improvements. In addition to the annual assessments authorized above by the Association, any capital improvements done on an individual basis, excluding improvements to the residence and adjoining buildings, will need to be presented to and approved by the Association before these improvements can take place. No capital improvements will be paid for by the annual assessments fund.

Notice for Action Authorized Under Article Three. Written notice of any meeting called for the purpose of taking any action authorized by Article Three shall be sent to all Members in the manner provided for in the Bylaws.

Uniform Rate of Assessment. Annual assessments must be fixed at a uniform rate for all Lots. The initial annual assessment rate is \$350 per platted lot due and payable on January 1 each year. Lots purchased during a calendar year will be assessed at a rate of \$87.50 per quarter, beginning with January 1, payable at date of closing for the entire quarter and the remaining quarters in the year of closing. Rate of assessment will be adjusted yearly, if needed, due to maintenance and fees voted on at scheduled meeting as per Article Three.

Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within 60 days after the due date, shall be deemed in default and shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner or Owners personally obligated to pay such assessment, or may foreclose the lien against the property. No Owner or Owners may waive or otherwise escape liability for the assessments provided for in the Declaration by nonuse or limited use or abandonment of his or her or their Lot.

Unless a special assessment is made, an annual assessment may be levied only one time during each calendar year.

ARTICLE FOUR **EASMENTS AND USE RESTRICTIONS**

Easements. Blanket easements for installation and maintenance of utilities are noted on the recorded Final Plat. Within these easements, no structure, planting, or other material shall be placed or permitted to remain that may damage or interfere with the installation and maintenance of utilities, or that may damage or interfere with, or change the direction of flow of drainage. The easement area of each Lot and all improvements on such Lot shall be continuously maintained by the Owner or Owners of such Lot. No dwelling unit or structure of any kind shall be built, erected, or maintained on any such easement or right of way, and such easements and rights of way shall at all times be open and accessible to public and quasi-public utility corporations and to the Association, their employees and contractors, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under, and above such locations to carry out any of the purposes for which such easements, and rights of way are reserved.

Use Restrictions. Each Lot shall be used as a residence for a single family and for no other purpose. Only one single-family residence shall be allowed per Lot. Each Lot shall be kept free from debris and unsightly materials at all times. Each Lot Owner shall be responsible for maintaining his or her Lot and all improvements thereon in an aesthetically pleasing manner. Owners will, in all respects, comply with the requirements of the fire and health authorities and keep the premises clear of all rubbish, filth, obstruction and pollution. Each Owner or tenant of the Owner, at their sole cost and expense, shall maintain and repair such Owner's or tenant's residence, keeping the same in a good condition.

ARTICLE FIVE – GENERAL PROVISIONS

Enforcement. The Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association, or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so at a later date.

Severability. Invalidation of any one of the Covenants or Restrictions contained in this Declaration by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Amendments. Covenants and restrictions of this Declaration may be amended by duly recording

Subordination. No breach of any of the conditions contained in this Declaration or reentry by reason of such breach shall defeat or render invalid the lien of any deed of trust mortgage or other encumbrance. Any deed of trust or other encumbrance shall be subordinate to all the provisions of this Declaration and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived from the foreclosure whether by nonjudicial or judicial foreclosure or otherwise.

Duration. The Covenants and Restrictions of the Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or any Member thereof for a period of 10 years from the date of this Declaration, thereafter shall continue automatically in effect for additional periods of one year, unless otherwise agreed to in writing by two-thirds of the Members.

Governing Law. This Declaration shall be governed by, construed, and enforced in accordance with the laws of the State of Nebraska.

Election. Election of Board members will take place every two years. Election done at appointed meeting on two-thirds of the members' vote and also written votes for absent members.

Meetings. All members will be notified via mail by the Association for the next scheduled meeting. All minutes will be recorded by the elected secretary of the Association. All minutes recorded will be reviewed at the next meeting. Meetings will be conducted by the President and/or Vice-President of the Association.

Attorney Fees. If the Association hires an attorney to enforce any of the foregoing covenants or any other rules or regulations of the Association by reason of a breach by an Owner then all costs incurred in the enforcement, including attorney fees shall be paid by the Owner and the Association shall have a lien on the Lot for said amount.

ARTICLE SIX COVENANTS AND RESTRICTIONS

1. Each Lot shall be used exclusively for single-family residential purposes.
2. No structure or improvement requiring a permit shall be erected, placed, or altered on any lot until the structure or improvement plans, specifications and plot plan showing the location of the structure or improvement have been approved in writing as to conformity and harmony of external design with existing structures in the development by Declarant or his assignee. In the event the Declarant fails to approve or disapprove such design or location within 30 days after the required plans and specifications have been submitted or if no suit to enjoin the erection or a structure or improvement has been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with.
3. No business or commercial activity, trade or noxious or offensive activity shall be carried on upon any Lot nor shall anything be done on any Lot constituting an annoyance or nuisance to the neighborhood.
4. No outdoor repair of any boats, automobiles, motorcycles, trucks, campers, snowmobiles, recreational vehicles or similar vehicles requiring a continuous time period in excess of two weeks shall be permitted on any lot. No boat, camper, trailer, mobile home, truck, aircraft, or similar chattel shall be maintained or stored outdoors on any lot in a manner that is noxious, offensive or a nuisance. All maintenance and storage shall be in as neat or inconspicuous a manner as possible. This section shall not apply to the equipment and vehicles necessary for the construction of residential dwellings during the period of construction.
5. Each Lot Owner shall be responsible for any expenses related to the extension of utility services to their individual residence from the main utility lines provided by Declarant. All septic systems shall comply with the applicable State and Local ordinances and regulations and each Lot Owner will be responsible for any and all expenses related to the percolation test and installation of the septic system.
6. Each Lot Owner shall be responsible for any expenses related to providing vehicular access to their Lot from the platted streets. Each lot owner shall provide for the installation of culverts as may be reasonably required for proper drainage and shall keep drainage ditches, culverts and swales free, unobstructed, and in good repair.
7. Fences must be constructed and maintained to enhance the property. No interior lot fences of barbed wire are permitted.
8. The erection or construction of a swimming pool must comply with all applicable State and Local laws and include adequate security fencing subject to the approval of the elected Executive Members as stated in Article Two.
9. Consistent with rural character of Lakeview Estates II, Phase 2 shall be permitted to maintain animals on a Lot under the following terms and conditions.

#3341

a. All animals on the property shall be kept in accordance with requirements of Nebraska law and applicable zoning ordinances of Cass County Nebraska. All structures used for the housing or maintenance of animals, and any areas where animals are maintained or kept shall be maintained at all times in a neat, clean, and orderly manner. The maintenance of swine, including potbellied pigs of any type, poultry, fowl or birds of any type, shall not be permitted on the property. Horses are allowed only on lots 5, 18, & 19, provided that they are not raised, bred, or maintained for any commercial purpose. Cats, dogs, or other domestic animals may be kept, provided that they are not raised, bred, or maintained for any commercial purpose. At no time shall the property contain more than one animal per acre.

b. All animals must be maintained in such a manner that they are not free to roam outside the Lot. Manure shall be stored in such a manner as not to create a nuisance to neighboring owners.

10. Gardens are permitted on Lots if they are located in an area that is suitable in relation to the street and residences on adjoining Lots. All gardens shall be maintained in a visibly pleasing manner. Commercial sales of garden produce shall not take place on a lot or within Lakeview Estates II, Phase 2.

11. No ground cover will be grown so as to constitute a public nuisance, create a hazard, or detract from a visibly pleasing appearance. Vacant Lots shall not be used for dumping of earth or any waste materials.

12. No Lot within Lakeview Estates II, Phase 2 shall be subdivided.

13. No structure or dwelling shall be moved from outside Lakeview Estates II, Phase 2 to a Lot without the elected Executive Members approval as provided in Article Two. House trailers are not permitted.

14. Declarant reserves the right to require the installation of siltation fences or erosion control devices and measures in such location, configuration, and designs as it may determine appropriate to conserve the land, water, air, and vegetation. Such conservation will include, but not limited to, adequate controls on erosion and sedimentation, and preservation and protection of trees and other vegetation during all phases of land-disturbing activities.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed this 18
Day of May, 2005 by its proper officer.

TINCHER INVESTMENT CO., INC.

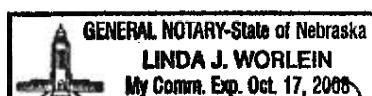
By:

Mark Tincher, President

STATE OF NEBRASKA)
: ss.
COUNTY OF CASS)

The foregoing instrument was acknowledged before me this 18 day of May, 2005

By Linda J. Worlein
Mark Tincher, Pres



Linda J. Worlein