

MISC 2014078034



OCT 03 2014 09:56 P 10

Fee amount: 64.00
FB: OC-00936
COMP: SB

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
10/03/2014 09:56:08.00



2014078034

**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR LOTS 1 THROUGH 127, ARBOR VIEW, A SUBDIVISION
IN DOUGLAS COUNTY, NEBRASKA**

THIS DECLARATION, is made this 1st day of October, 2014, by CHARLESTON HOMES, LLC, a Nebraska limited liability company, hereinafter referred to as "Declarant".

PRELIMINARY STATEMENT

WHEREAS, Declarant is the owner of the real estate legally described as follows:

Lots 1 through 127, inclusive, in Arbor View, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

Such lots are herein referred to herein collectively as the "Lots" and individually as each "Lot"; and

WHEREAS, Declarant desires to provide for the preservation of values and amenities of the Lots, and for the maintenance of the character and residential integrity of the Lots.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the owners of the Lots. These covenants, conditions, restrictions and easements shall run with the Lots and shall be binding upon all properties having or acquiring any right, title or interest in any Lot, or any part thereof, as more fully described herein. Each Lot shall be subject to all and each of the following conditions and other terms set forth herein:

Return to: Mark J. LaPuzza
10250 Regency Circle, Suite 300
Omaha, NE 68114

ARTICLE I.
DEFINITIONS

1. Association shall mean and refer to the Arbor View Homeowners Association, a Nebraska non-profit corporation to be formed by the Declarant, its successors or assigns.
2. Bylaws shall mean and refer to the Bylaws adopted by the Association as they may exist or are as amended from time to time.
3. Committee shall mean and refer to an architectural control committee as appointed by the Declarant, its successors or assigns.
4. Common Facilities shall mean and refer to parking, dedicated and non-dedicated roads, paths, ways and green areas, signs, common interests and other real estate owned by the Association or easements in favor of the Association.
5. Owner shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot, including contractor purchasers, but excluding those having such interests mainly as security for the performance and obligations. If there is more than one owner of any Lot, any co-owner may act on behalf of all owners of such Lot for the purposes of action by the Association.

ARTICLE II.
ASSOCIATION MEMBERSHIP AND VOTING

1. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from Ownership of any Lot. Membership of any Owner shall terminate on conveyance of the interests of such person in a Lot to a new Owner.
2. The Association shall have two (2) classes of voting membership as follows:
 - A. Class A. Class A Members shall be all Owners with the exception of the Declarant. Each Class A Member shall be entitled to one (1) vote for each Lot owned. When more than one person owns an interest in any Lot, all such persons shall be Members, but in no event shall more than one vote be cast with respect to any Lot. The vote of such Lot shall be as precise as determined among the Owners of such Lot.
 - B. Class B. Class B Members shall be the Declarant, its successors and assigns, and Declarant shall be entitled to twenty (20) votes for each Lot owned. The Class B Membership shall cease and shall be converted to Class A Membership upon either the written direction of the Declarant or fifteen (15) years following date of recording of this Declaration.

ARTICLE III.
COVENANT FOR ASSESSMENTS

1. Creation of Lien and Personal Obligation of Assessment. Each Lot, and the Owner of each Lot, by acceptance of an instrument or conveyance thereof, whether by deed, lease, land contract or otherwise, and whether or not it shall be so expressed in such instrument of conveyance, is deemed to covenants and agrees to pay to the Association: (i) annual assessments; (ii) special assessments for capital improvements, as establishing collective as hereinafter provided; and (iii) monetary fines as established by the Association. Annual and special assessments, as well as fines, shall accrue interest from the date due at the rate of twelve percent (12%) per annum, together with reasonable late fees as shall be set by the Association from time to time. All such assessments, fines and charges shall be charged upon the land and shall be in continuing lien upon the Lot against which such assessment is made. Each such assessment or fine, together with late fees and interests, shall also be the personal obligation of the Owner of the Lot at the time the assessment became due. The personal obligation for delinquent assessments, fines and associated charges shall not pass to an Owner's successor in title unless expressly assumed.

2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively to promote the residential and recreational purposes, health, safety and welfare of the Owners and their guests and for the improvement and maintenance of the common facilities. The annual assessment shall be used, among other things, to pay the costs of operating and maintaining the common facilities, obtain general public liability hazard insurance, directors and officers liability insurance, workmen's compensation insurance, and other types of appropriate insurance; upkeep and maintenance of common areas, wages, payroll taxes, license and permit fees, security, professional services, repair, replacement, maintenance supplies and such other items as may be determined by the Association as necessary and appropriate for the purposes of the Association. The Association shall have an obligation to maintain the landscaping, and signage for the common entryway of the development in generally good and neat condition.

3. Annual Assessments. Beginning in 2015, the Association may establish annual assessments from time to time against the assessable Lots for the general operation and maintenance of the Association, including any capital reserves therefor. Assessments shall be uniform among the Lots, except that the Lots owned by Declarant shall not be subject to assessments and the Declarant, in its sole and absolute discretion, may abate dues with respect to any Lot. Assessments for the first year of Annual Assessments shall not exceed One Hundred Fifty Dollars and no/100 (\$150.00) per Lot. Each year thereafter, the annual assessment may increase by an amount not to exceed ten percent (10%) of the highest assessment amount in any prior year.

4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any year, a special assessment applicable to that year only, for the purposes of defraying, in whole or in part, the costs of construction, reconstruction, repair or replacement of a capital improvement upon the common ancillaries, including fixtures and personal property related thereto, in an amount determined by the Association. Such special assessments shall not be effective unless it receives the vote of two-thirds (2/3) of the votes entitled to be cast at

a meeting of the Members of the Association called for the purpose of making such a special assessment.

5. Uniform Rate of Assessment. Both annual and special assessment shall be fixed at a uniform rate among all Lots, except that the Lots owned by Declarant shall not be subject to assessment and the Declarant, in its sole and absolute discretion, may abate assessments on any Lot.

6. Date of Commencement of Annual Assessments. The annual assessments established herein shall commence as to all Lots at such time as established by the Association. The Association shall establish the due date for all assessments, and such due date shall be no sooner than thirty (30) days following the notice of the assessment to the Owners. The annual assessment and a special assessment may be collected in multiple installments if deemed appropriate by the Association. 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 under the specific Lot has been paid or the amount of such unpaid dues. A properly executed certificate of the Association as to the status of the Assessments on any Lot shall be binding upon the Association as of the date of its issuance.

7. Effective Nonpayment of Assessment and Remedy of the Association. Any assessment, or any part thereof, not paid within ten (10) days after the due date shall also bear interest at the rate of twelve percent (12%) per annum thereof. The Association may bring an action at law, against the Owner personally obligated to pay the same assessment, or may file a lien against the associated Lot. Such lien may be foreclosed in the same manner as mortgages or other liens against real property and are enforceable under the laws of the State of Nebraska as of the time such lien arises. No Owner may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot.

8. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage recorded prior to the recording date of the lien of the Association. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of the Lot pursuant to a mortgage foreclosure or any proceeding lien thereof, including a trustee's sale pursuant to a trust deed, shall extinguish the lien for such assessment which become due prior to such sale or transfer. No sale or transfer shall release such Lot from the liability for assessments thereafter becoming due or from the lien therefor.

ARTICLE IV. ARCHITECTURAL CONTROL.

1. Approval Required. No improvement may be constructed without the express approval of the Declarant. For the purposes of this Declaration, improvement shall include dwellings, buildings, fences, walls, pathways, driveways, patios, patio-covered enclosures, decks, rock gardens, treehouses, swimming pools, tennis courts, dog houses, flag poles, solar heating or cooling or electricity generating collecting panels, devices or equipment, mailboxes or other

external improvements above or below the surface of the ground. Furthermore, no grading or excavating shall be made without the approval of the Declarant.

2. Approval Process. Declarant shall consider the general appearance, exterior color or colors, architectural character, harmony of external design and location relating to surroundings, topography, location within the Lots boundary lines, quality of construction, size and suitability for residents purposes and all other matters of external appearance in review of proposed improvements. Only exterior colors of certain earth tone hues shall be accepted. In this regard, Declarant intends that the Lots shall form a developed real estate community with homes constructed of high quality materials consistent with this Declaration. The Declarant specifically reserves the right to deny approval of any plans and the permission to construct or place any improvements in any manner which it determines will not conform with the general character, plan and outline for the development of the Lots.

3. Plans. Any Owner intending to make improvements upon any Lot shall be required to submit the plan for such improvement. Documents submitted for approval shall be clear, concise, complete, consistent and legible. All drawings shall be to scale. Samples of those materials to be utilized in the improvements may be reviewed by Declarant at its discretion. Each applicant shall submit to the Declarant the following documents, materials, designs and plans (the "Plans"):

A. A set of Plans indicating specific improvement and lot number, street address, grading and location of the construction proposed for the Lot, surface drainage and sidewalk.

B. Complete construction plans, including, but not limited to, basement and upper floor plans, floor areas of each level, wall specifications, stair and fireplace specifications, exterior elevation clearly indicating flues and chimneys, type and extent of siding, roofing and other faces and/or veneer materials, exterior color or colors and landscape plans. Concurrent with the submission of the Plans, the Owner will notify the Declarant in writing of Owner's mailing address, as well as name, mailing address and telephone number for Owner's general contractor, if any.

4. Notice of Approval. Written approval of the proposed improvements shall be mailed to the Owner at the address specified by the Owner. The Declarant shall endeavor to provide notice to the Owner within thirty (30) days of when the Plans were submitted. If written notice of approval is not mailed or delivered within such time period, the proposed improvements shall be deemed disapproved by the Declarant.

5. Assignment. Declarant shall hold all rights with respect to the review and approval of improvements under this Declaration until such time as the Declarant relinquishes such rights in writing, or until such time as the Declarant no longer owns any Lots. The Declarant may assign some or all of its rights under this Article IV. Following the termination of the rights of the Declarant hereunder, unless expressly assigned, the rights under this Article IV shall transfer to the Association.

ARTICLE V.
GENERAL RESTRICTIONS

1. Residential Purposes Only. Each Lot shall be used exclusively for single family residential purposes, except for such Lots or part thereof as may hereafter be conveyed or dedicated by Declarant, its successors or assigns, for use in connection with a common facility, or as a church, school, park or other non-profit use. Provided, however, that this prohibition shall not apply to:

A. Any building or structure that is used exclusively by a public utility company in connection with the furnishing of public utilities serviced to the properties;

B. Any portion of a building used by Declarant, its licensees or assigns, as a management office, sales office or model home; and

C. Incidental business use as approved by Declarant.

This prohibition on non-residential use shall apply to prohibit unapproved business operations, whether or not such businesses are compliant with the residential zoning of the Lots. The Declarant shall not approve any business activity on any Lot which it determines to be harmful to the residential character of the neighborhood or which create a nuisance, including increased noise or traffic.

2. Fences and Exterior Improvements. No fence shall be erected or permitted to remain in front of the minimum building setback line applicable to any Lot. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. No fences or walls shall exceed a height of six (6) feet. Any fence and the location thereof must be approved by the Declarant as set forth in Article IV of this Declaration. The portion of any fence which backs to 204th Street shall be constructed as board on board six (6) foot wood scalloped fencing or other materials as approved by Declarant. All other fences shall be constructed as metal, wood or vinyl as approved by Declarant. No chain-link fences shall be permitted on any Lot. All produce or vegetable gardens shall be maintained only in rear yards. No clotheslines or clothes hangers may be constructed or used unless completely concealed within the enclosed patio area. No swimming pool shall be permitted to extend more than one foot above ground level. No storage shed or play house shall be permitted on any Lot except as approved by Declarant.

3. Satellite Dishes and Antennae. Exterior television or radio antenna of any sort shall not be permitted on any Lot, except a satellite receiving dish not exceeding nineteen inches (19") in diameter and attached directly to the residence may be permitted, provided that the location and size of the proposed satellite receiving dish must be first approved by the Declarant. In the event that Declarant does not approve the specific location of a proposed satellite dish installation, the Owner may provide evidence to the Declarant that the proposed location is the only location which allows the satellite dish to receive a signal as required by Federal law.

4. Temporary Structure. No trailer, tent, shack, barn or other outbuilding shall, at any time, be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. Provided, however, nothing contained herein shall restrict the Declarant or its assigns from locating, constructing or moving a temporary real estate and/or construction office on any building site to the Lots to be used during the period of construction on and the sale of Lots. Declarant or its assigns may also erect and maintain model homes for sale purposes, and rental and lease purposes, and may operate such office or offices therein so long as it deems necessary for the purposes of selling, renting or leasing the Lot.

5. Livestock and Poultry Prohibited. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except a single dog house may be permitted, provided that the location, construction plans, and specifications of the proposed structure have been first approved in writing by Declarant. No animals, livestock, fowl, or poultry of any kind, shall be raised, bred or kept on any Lot, except that no more than two (2) dogs, cats, or other household pets maintained within the dwelling may be kept, provided that they are not kept, bred or maintained for any commercial purpose.

6. Billboards and Nuisances Prohibited. No signs, pictures, banners, poster or other object of any kind shall be erected, placed or displayed in the public view, or permitted to remain on any Lot except for one sign per Lot consisting of not more than six (6) square feet advertising the Lot as "For Sale". No premises shall be used in any way for a purpose which may endanger the health or unreasonably disturb the Owners of any Lots. No business activities of any kind shall be conducted on any Lot except as expressly approved by declarant.

7. Noxious Activities. No obnoxious or offensive activity shall occur on the Lots, nor shall any trash, ashes or other refuse be thrown, placed or dumped on any vacant Lot or building site, nor shall anything that could be done which may be or become an annoyance or nuisance to the Owners of the Lots. Any exterior lighting installed on any Lot shall be either indirect or of such controlled focus and intensity as not to disturb the residents of any adjoining Lot. Nothing in this section shall prevent the Declarant, its successors or assigns, from construction activities within the Lots which create noise, disturbance or refuse consistent with the construction of a residential dwelling.

8. Trash Incinerators. No incinerator or trash burner shall be permitted on any Lot unless the same is incorporated into the dwelling and not exposed to view from the outside of the dwelling. No garbage, trash can, container or fuel tank shall be permitted outside of any dwelling except for pick-up purposes, except as approved by Declarant. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling, except when in actual use, unless completely screened from view from all nearby streets and other Lots. No garbage, refuse, rubbish or cuttings shall be deposited on any street, road or Lot.

9. General Building Restrictions. All Lots shall be used only for detached single family residences, with no more than one single family dwelling with a garage attached to be erected, altered, placed or permitted to remain on any one said Lot. All telephone, power and other

utility lines on the Lots shall be buried. A dwelling on which construction has begun must be completed within one year from the date the foundation was dug for said dwelling except as otherwise approved by Declarant. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the contour or drainage of the Lot. No dwelling shall exceed two and one-half story in height. All homes constructed on any Lots shall have at least a two (2) car (side-by-side) garage. All homes must have a minimum building setback from the closest part of the building to the front lot line of the Lot and the rear lot line of the Lot of twenty-five (25) feet, except as approved by Declarant. All homes must have a minimum side-yard setback from the closest part of the building to the adjoining Lot of five (5) feet and to an adjacent street of fifteen (15) feet, except as approved by Declarant. All exposed foundation of each improved Lot facing the public street shall be faced in brick, stone or a comparable substance except as approved by Declarant. All other foundation shall be painted to harmonize with the exterior of the building.

10. Maintenance of Vegetation and Equipment. Any exterior air conditioning condenser unit shall be placed in the rear yard or side of the yard. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees shall be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or an undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on any vacant Lot shall be allowed to reach a height in excess of twenty-four (24) inches.

11. Vehicles, Trailer and Equipment. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time, nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on any Lot except during the actual construction operations, and only then in as neat and inconspicuous a manner as reasonably possible. No boat, camper, trailer, mobile home, truck, aircraft, camper truck or similar vehicle shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than twenty (20) days during any calendar year. No motor vehicle may be parked or stored outside on any Lot, except for vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavation equipment, tractors or semi-tractors/trailers shall be stored, parked, kept or maintained in the yards, driveways or streets. However, this Section shall not apply to trucks, trailers or commercial vehicles which are necessary for the construction of a residential dwelling on any Lot during the period of construction.

ARTICLE VI. GENERAL PROVISIONS

1. Enforcement. The Declarant, or any Owner, shall have the right to enforce in any proceeding at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure of the Declarant or of any Owner to enforce the covenants or restrictions herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. Severability. Invalidation of any one of these covenants or restrictions by judgment or Court Order shall in no way affect the other provisions of this Declaration, which shall remain in full force and effect.

3. Annexation and Additional Property. Additional phases of the Arbor View subdivision may be subjected to this Declaration as platted and recorded, in the discretion of the Declarant. Declarant may file a statement with the Register of Deeds of Douglas County, Nebraska confirming that the additional phase is subject to this Declaration, and no further action shall be required to accomplish such purpose.

4. Amendment. This Declaration may be amended by Charleston Homes, LLC, or any person, corporation, or other entity designated in writing by Charleston Homes, LLC, in its sole and absolute discretion, for a period of fifteen (15) years following the date of this Declaration. Such amendment shall be effective to amend the Declaration with respect to all or less than all of the Lots, including those which are not owned by Charleston Homes, LLC. The amendment rights set forth in this Section shall include, but not be limited to, extending the period of time for any occurrence or right of Declarant, as well as extending any time period set forth in this Section.

5. Rules and Regulations. The Association shall have the right to promulgate rules and regulations with respect to the use of the Lots and the Common Facilities, which may be enforced in the manner as provided by the Bylaws of the Association, provided, however, that no such regulation shall be effective unless it has been approved at a meeting of the Members.

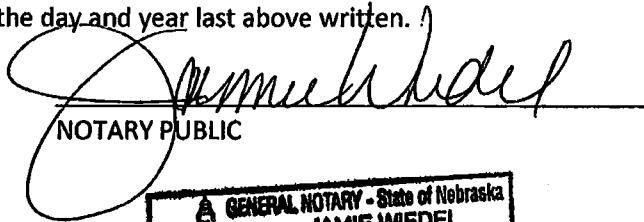
CHARLESTON HOMES, LLC, a Nebraska
limited liability company

By: 
Marc Stodola, Manager

STATE OF NEBRASKA)
)SS.
COUNTY OF DOUGLAS)

On October 1, 2014, before me, the undersigned, a Notary Public, duly commissioned and qualified in said County, personally came Marc D. Stodola, Member of Charleston Homes, LLC, a Nebraska limited liability company known to be the identical person(s) whose names(s) is affixed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.)


NOTARY PUBLIC

My commission expires: 5/2/18

