

2017-05093

03/06/2017 1:50:24 PM

Lloyd J. Dowding

REGISTER OF DEEDS



COUNTER	<u>P</u>	C.E.	<u>P</u>
VERIFY	<u>P</u>	D.E.	<u>P</u>
PROOF	<u>P</u>		<u>P</u>
FEE \$	<u>64.00</u>		
CHECK#	<u>182</u>		
CHG		CASH	
REFUND		CREDIT	
SHORT		NCR	



**THIS PAGE ADDED
FOR RECORDING
INFORMATION.**

**DOCUMENT STARTS ON
NEXT PAGE.**

LLOYD J. DOWDING

SARPY COUNTY REGISTER OF DEEDS

Steven J. Stastny, Deputy

1210 GOLDEN GATE DRIVE, # 1230

PAPILLION, NE 68046-2842

402-593-5773

*McAune Development
11550 I St. #200
Omaha, NE 68137*

A

**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF COVINGTON 2, A SUBDIVISION
IN SARPY COUNTY, NEBRASKA**

THIS DECLARATION, made on the date hereinafter set forth, is made by McCune Development L.L.C., a Nebraska limited liability company, hereinafter referred to as the "Declarant."

PRELIMINARY STATEMENT

The Declarant is the owner of certain real property located within Sarpy County, Nebraska and described as follows:

Lots 64 through 105, all inclusive, in Covington 2, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

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

The Declarant desires to provide for the preservation of the values and amenities of Covington 2, for the maintenance of the character and residential integrity of Covington 2, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of Covington 2. As used herein, the term "Common Facilities" shall mean all recreational facilities, dedicated and nondedicated roads, paths, ways and green areas, signs and entrances for Covington 2, as well as any and all other facilities acquired, constructed, improved, maintained, operated, repaired, or replaced by the Association for the general use, benefit and enjoyment of the members of the Association.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions 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 residents of Covington 2. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as is more fully described herein. Each Lot is and shall be subject to all and each of the following conditions and other terms:

**ARTICLE I.
RESTRICTIONS AND COVENANTS**

1. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or as a church, school, park, golf course or for non-profit use.

2. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, dog house, tree house, pool house, antenna satellite receiving station or "discs," flag pole or any other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, reconstructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

A. An Owner desiring to erect an Improvement shall deliver one set of construction plans, landscaping plans and plot plans to Declarant at michelle@mccunedevelopment.com, (herein collectively referred to as the "plans"). Such plans shall include a description of the type, quality, color and use of

materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, the Owner shall notify the Declarant of the Owner's mailing address.

Architectural Control Committee will have sole discretion on approving plan size and appearance.

B. Declarant shall review such plans in light of the conditions and restrictions of Article I of this Declaration and in relation to the type and exterior of improvements constructed, or approved for construction, on the Lots. In this regard, Declarant intends that the Lots shall be developed as a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within Covington 2 Subdivision and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. If Declarant determines that the proposed Improvement does not conform with the surrounding improvements or topography or will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Declarant may refuse approval of the proposed Improvement.

C. Written Notice of any approval of a proposed Improvement shall be emailed to the Owner within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant.

D. No Lot Owner or combination of Lot Owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Paragraph, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

E. At such time as there shall be a completed single family residence constructed and occupied on ninety percent (90%) of all Lots or ten (10) years from the date hereof, whichever shall occur first, all discretions of Declarant under this Article I, Paragraph 2 shall transfer to the Association and shall be administered pursuant to the provisions of Article III, Homeowners Association, herein.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling that does not exceed two and one-half stories in height.

4. Minimum setbacks for residential lots in Covington 2, Zoned R-1, have been established and are outlined below:

- a. Front Setback 25 ft.
- b. Back Yard Setback 25 ft.
- c. Interior Side Yard 7 1/2 ft.
- d. Side Yard Facing Street 25 ft.

All Improvements constructed on any lot shall comply with the foregoing minimum setback requirements.

5. Minimum square footage requirements for residence constructed on Lots 64 through 105, inclusive, shall be as follows:

- a. Ranch 1,600 sf (exclusive of garage) with 3 car garage or more
- b. 1 1/2 Story 1,800 sf above grade with 3 car garage or more

c. Two Story 1,950 sf above grade with 3 car garage or more

6. The exposed front foundation walls and any foundation walls facing any street of all main residential structures must be constructed of or faced with brick or other material approved by Declarant. The front elevations of each residential structure must be at least (30%) constructed of or faced with brick, stone, stucco or other approved material. No vinyl siding will be allowed. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. All driveways must be constructed of concrete or other approved material. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Direct vent fireplaces are permitted. Any fireplace chimneys extending above the roofline shall be covered with brick, stone, stucco or other material approved in writing by Declarant. Unless otherwise approved by the Declarant, roofs of all Improvements shall be covered with architectural shingles, weathered wood or black in color. All other external materials of any Improvement shall be of white, off-white grey or earth-tone. All tie walls must be of brick, concrete, concrete pavers, limestone or other approved interlocking materials. No wood/railroad tie walls will be allowed.

7. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a Lot as "For Sale". No premises shall be used in any way for any purpose that may endanger the health or unreasonably disturb the Owner or Owners of any Lot or any resident thereof. No business activities of any kind shall be conducted on any Lot, provided, however, this paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, its agents or assigns, during the construction and sale of the Lots.

8. No exterior television or radio antenna or disc greater than 18" x 24" in size shall be permitted on any Lot other than in an enclosed structure hidden from public view.

9. 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 be abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on any Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

10. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be parked or stored on any part of a Lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except non-commercial vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Paragraph 10 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other improvements during the period of construction. All residential Lots shall provide at least a minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Gretna, Nebraska.

11. No incinerator, trash burner or outside fuel tank shall be permitted on any Lot. No garbage or trash can or container shall be permitted unless completely screened from view, except for pick up purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. No clothesline shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards. All Lots shall be fully sodded or hydro seeded at the time of completion of the Improvements.

12. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

13. No fence shall be permitted to extend beyond the front line of a main residential structure. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. Fences shall be composed only of black steel, wrought iron or metal fencing to match the streetscaping of the subdivision and can be 4 or 6 feet in height. No fence shall be of the chain link, privacy, wood or wire type.

14. No swimming pool may extend more than one foot above ground level.

15. Construction must commence within one (1) year from closing date and any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

16. A public sidewalk shall be constructed of concrete five (5) feet wide by four (4) inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed six (6) feet back of the street curb line and shall be constructed by the owner of the Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the City of Gretna.

17. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

18. 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 for one dog house constructed for one (1) dog; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns. Dog houses shall only be allowed at the rear of the residence. Dog runs or kennels must be approved by the Declarant and must be placed at the back of the residence and preferably located under a deck or against the residence. Kennel facilities must be properly maintained. No livestock or agricultural-type animals shall be allowed to be kept on any Lot, including pot-bellied pigs.

19. Any exterior air conditioning condenser unit shall be placed in the rear yard or a side yard so as not to be visible from the street. 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 will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or 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 vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

20. No residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one Owner of such Lot, unless parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot and is as large in area as the largest Lot.

21. No structure of a temporary character, carport, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time for a residence, either temporarily or permanently. **No storage sheds of any type will be permitted on any Lot.** Any Owner may erect a swing set or playground equipment on a Lot only after securing the prior written approval of the Declarant.

22. Except for connection and access facilities, all utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

23. No garage doors shall be permitted to remain open except when entry to and exit from the garage is required.

24. No manufactured home, as that term is defined in Section 71-4603(1) of the Nebraska Revised Statutes, 1943, shall be permitted on any Lot.

25. The Declarant will not allow any trees to be removed that are within the rear lot lines to preserve the natural tree border between Covington 2 and neighboring properties.

**ARTICLE III.
HOMEOWNERS' ASSOCIATION**

1. The Association. Declarant shall cause the incorporation of Covington 2 Homeowners' Association, a Nebraska not for profit corporation (herein referred to as the "Association"). The Association shall have as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots, including:

A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways and green areas; and signs and entrances for Covington 2. Common Facilities may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association, or on property dedicated to a Sanitary and Improvement District.

B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities to Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

C. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Covington 2; and the protection and maintenance of the residential character of Covington 2.

2. Membership and Voting. The Owner of each Lot shall be a Member of this Association. The Association shall include further phases of Covington 2 as may be developed by the Declarant. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The Owner of each Lot, whether one or more persons or entities, shall be entitled to one (1) vote on each matter properly coming before the Members of the Association, except that the Declarant shall have three votes for each Lot owned by the Declarant until the total number of Lots owned by non-Declarants equals 80% of the total number of Lots included in the Association (including further phases of Covington 2 as developed by the Declarant), at which time all Lots shall be entitled to one vote.

3. Additional Lots. Declarant reserves the right, without consent or approval of any Owner or Member, to expand the property to which this Declaration is applicable to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansion may be effected from time to time by the Declarant by recordation with the Register of Deeds of Sarpy County, Nebraska, of an Amendment to Declaration, executed and acknowledged by Declarant, setting forth the identity of the additional residential lots which shall

F

become subject to this Declaration. In addition, the Amendment to Declaration may declare that all or any part of the additional residential lots which shall become subject to the Declaration shall be Boundary Lots as that term is defined in Article II herein and such additional Boundary Lots shall be subject to all restrictions and obligations on Boundary Lots set forth herein.

Upon the filing of any Amendment to Declaration which expands the property subject to this Declaration, the additional residential lots identified in the Amendment shall be considered to be and shall be included in the "Lots" for all purposes under this Declaration, and the Owners of the additional residential lots shall be Members of the Association with all rights, privileges and obligations accorded or accruing to Members of the Association.

4. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, as in effect from time to time and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

A. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

B. The landscaping, mowing, watering, repair and replacement of parks, medians and islands in cul-de-sacs, outlots and other public property and improvements on parks or public property within or near Covington 2.

C. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

D. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverage for the Association, the Board of Directors of the Association and the Members.

E. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

F. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

G. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

H. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

I. General administration and management of the Association and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

J. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

5. Mandatory Duties of Association. The Association shall maintain and repair any entrance landscaping, entrance monuments, and signs that have been installed by Declarant in generally good and neat condition and any property or lots which the Association may own.

6. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

7. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues and assessments in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant. Lots owned by the Declarant shall not be subject to imposition of dues, assessments or Association liens.

8. Liens and Personal Obligations for Dues and Assessments. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid dues or assessments.

9. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association and to perform the powers and responsibilities of the Association described in this Article.

10. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 11 below, the aggregate annual dues which may become due and payable in any year shall not exceed the greater of:

- A. Two Hundred Dollars (\$200.00) per Lot
- B. In each calendar year beginning on January 1, 2016, One Hundred Twenty-Five Percent (125%) of the aggregate dues charged in the previous calendar year.

11. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. In addition to the annual dues fixed in accordance with Article III, Section 10, above, the aggregate assessments in each calendar year shall be limited in amount to Two Hundred Dollars (\$200.00) per Lot unless the Board decides by unanimous vote to exceed such amount.

12. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided above.

13. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and

H

assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessments shall be and become a lien as of the date such amounts first become due and payable.

14. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessments, which is not paid when due, shall be delinquent. Delinquent dues and assessment shall bear interest from the due date at the rate of Fifteen percent (15%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Facilities or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

15. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

ARTICLE IV. EASEMENTS

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, Cox and any company which has been granted a franchise to provide a cable television system or telephone service within the Lots, Black Hills Gas, and Sanitary and Improvement District No. 303 of Sarpy, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5) foot wide strip of land abutting the front and the side boundary lines of the Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior Lots that are adjacent to presently platted and recorded Lots; and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the Lots. The sixteen (16) foot wide easement will be reduced to an eight (8) foot wide strip when such adjacent land is surveyed, platted and recorded..

2. Other easements are provided for in the final plat of Covington 2 which is filed in the Register of Deeds of Sarpy County, Nebraska

ARTICLE V. GENERAL PROVISIONS

1. Except for the authority and powers specifically granted only to the Declarant, the Declarant or any Owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover all loss or damages arising out of such violation. Failure by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

