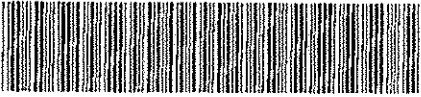


1293 107 MISC



07278 99 107-113

Nebr Doc  
Stamp Tax

Date

\$

By

RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

99 MAY 14 AM 10:22

RECEIVED

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF ELKHORN  
RIDGE ESTATES, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA

THIS DECLARATION, made on the date hereinafter set forth, is made by ELKHORN RIDGE GOLF PARTNERSHIP, a Nebraska General Partnership, hereinafter referred to as the "Declarant", and is consented to by the owners of all lots within Elkhorn Ridge Estates.

PRELIMINARY STATEMENT

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

Lots 1 through 26, inclusive, in Elkhorn Ridge Estates, a Subdivision, as surveyed plated and recorded in Douglas County, Nebraska, hereinafter referred to collectively as the "Lots" and individually as each "Lot".

The Lots are situated in Elkhorn Ridge Estates, a residential subdivision situated in part of the North 1/2 of Section 18 T15N, R11E, 6th P.M. in Douglas County, Nebraska and herein referred to as "Elkhorn Ridge Estates".

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 the Lots. 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. The Lots are, and each Lot is and shall be subject to all and each of the following conditions and other terms:

ARTICLE I.

RESTRICTIONS AND COVENANTS

1. Lot 1 shall be used exclusively for a Commercial Golf Course, Driving Range, and Batting Cages. The owners of Lot 1 shall be entitled to build additional buildings on Lot 1 for the operation of the golf course, driving range and batting cages, and all buildings built after the execution of this agreement shall be of such type and materials as to match or exceed the buildings located on Lot 1 at the execution hereof. Lots 2-20 shall be used exclusively for single-family residential purposes for which they are currently zoned as single family residences; and Lots 21-24 shall be used exclusively for single-family residential purposes even though they are currently zoned as two family residence. Lots 25 and 26 may be used for single family residences or two family residence townhomes/duplexes, as they are currently zoned.

2. Only one single-family residence shall be created, altered, placed or permitted to remain on Lots 2-24 which shall not exceed two and one-half stories in height. Duplexes or townhouses, for two family residences shall be permitted on Lots 25 and 26, but nothing herein shall prohibit single family residences on Lots 25 and 26.

3. No residence, building, fence, wall, driveway, patio enclosure, swimming pool, basketball backboard, doghouse, pool house, flag pole, or other external improvement, including landscaping, above or below the ground (herein all referred to as any "Improvement") shall be constructed, 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 on any Lot shall deliver two sets of construction plans, detailed landscaping plans, and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address.

7278 B M-16225  
4800  
FEE 4800 FB  
BKP Comp C/O COMP VP  
DEL SCAN DC FV

(b) Declarant shall review such plans in light of the conditions and restrictions in Article I of this Declaration and in relation to the type and exterior of improvement which have been 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 Elkhorn Ridge Estates subdivision and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. By way of illustration, and not of limitation it is intended that the architecture of the residential structures constructed shall be consistent with the architecture found in the Pacific Springs subdivision in Douglas County, Nebraska. Unusual improvements and home designs such as dome houses, A-frame houses, log cabins or split entry designs will not be approved. If Declarant determines that the external design and location of the proposed Improvement does not conform with the standards or requirements of this Declaration, does not conform with the surrounding improvements and topography or will not protect and enhance the integrity and character of all the Lots as a quality residential community, Declarant may refuse approval of the proposed Improvements.

(c) Written Notice of any approval of a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans. Such notice shall be mailed, if at all 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 to be 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 the approval or disapproval of 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 Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

(e) For approval, the minimum finished square footage of any residence approved for construction on Lots 2-24 shall be:

2 Story - 1,500 finished square footage on the main level and  
1,500 finished square footage on the upper level.

1.5 Story - 1,600 finished square footage on the main level  
1,000 finished square footage on the upper level

Ranch - 1,800 finished square footage

Minimum square footage of single family residences constructed on Lots 25 & 26 shall conform to the above square footage requirements. Minimum square footage of two family residences on Lots 25 & 26 shall be 50 percent of the above square footage requirements for each of the two family residences, with a total square footage of 100 percent of the above square footage requirements.

(f) Construction of any residence on Lots 2-26 shall be at the front yard set-back line as set forth in the zoning regulations of the City of Elkhorn, to create uniformity of location of residences within the subdivision. On lots where the location of the set-back line is in dispute due to curved street frontage, the decision of the engineer of Declarant as to location of the set-back line shall be final.

4. The exposed foundation walls must be constructed of or faced with brick, simulated brick or siding. All driveways must be constructed of concrete, and asphalt drives are specifically prohibited, as are asphalt overlays for driveways. All decks must be constructed of cedar wood, or alternate material specifically approved by Declarant and identified in the plans submitted to the Declarant. Exposed fireplace chimneys shall be covered with brick, except chimneys exposed solely above the roofline, which may be sided to match the siding of the home. The roof of all Improvements shall be covered with wood cedar shakes or asphalt 'heritage' or 'shake' style shingles, or other material approved in writing by Declarant. Hardboard, pressed wood, bonded wood, and the like will not be approved by Declarant for coverage of any roof.

5. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except

3

one sign per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale"; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. The foregoing restriction in this Article I, Section 5 shall not apply to the signs of Declarant, or its agents and assigns, during the development and sale of Lots.

6. No exterior television or radio antenna, of any type shall be permitted on any Lot. Satellite receiving dishes which do not exceed 36 inches in diameter shall be permitted, but shall be located at the rear of the residence. Exterior solar heating or cooling devices shall be mounted flush with the roofline of the home and shall not be installed on the front roof of any building, and shall not be permitted on any structures built on Lots 2-11.

7. 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 the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

8. No boat, camper, trailer, motor home, 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 within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors, semi-tractors and/or trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Article I, Section 8 shall not apply to trucks, tractors or commercial vehicle which are necessary for the construction of residential dwellings during construction. All residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Elkhorn, Nebraska.

9. Garbage and trash containers may not be stored outside, but may be left at the street curb the night before the regular trash pickup for that residence. No incinerator, trash burner or fuel tank shall be permitted on any Lot. 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 clothes line shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be planted and maintained in rear yards. THE RESTRICTIONS AS TO OUTSIDE TRASH CONTAINERS, FUEL TANKS AND STORAGE OF MOWING EQUIPMENT SHALL NOT APPLY TO LOT 1.

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

11. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line unless otherwise approved by the Declarant. No fence may be installed without the prior approval of the Declarant. In all events, installed fences must comply with the applicable set back requirements imposed by the City of Elkhorn. No fences shall be erected on Lots 2-11. Fences on all other Lots shall be wrought iron, cedar, or other type of material approved by Declarant. No chain link fences shall be allowed, except the owner of Lot 1 may be permitted to use chain link fence on the east boundary of Lot 1, which does not abut adjacent lots within this subdivision, and except for other existing chain link fence on Lot 1. No fences or walls shall exceed a height of six (6) feet unless otherwise approved by Declarant.

12. No tennis courts shall be allowed on any residential lots. No swimming pool may extend more than one foot above ground level, and swimming pools are not permitted on Lots 2-11, although hot tubs shall be permitted on Lots 2-11. Pools and hot tubs shall be installed directly behind the residence and shall not extend past the point which is an extension of the sides of the residence.

13. Construction of any Improvement shall be substantially completed within one (1) year from the date of commencement of excavation or construction of the Improvement. Grading plans must be submitted to and approved by Declarant prior to commencement of Improvements to any Lot.

Declarant shall review the grading plans in light of commercially recognized development and engineering standards. See paragraph 21 regarding silt fences.

14. Upon completion of construction of any Improvement on a Lot, a public sidewalk constructed of concrete four (4) feet wide by four (4) inches thick shall be installed and maintained in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed four (4) feet from the street curb line. The sidewalk alignment shall be approved by Declarant prior to construction. After approval of the sidewalk alignment, the sidewalk shall be constructed by the owner of the Lot prior to occupancy of the main structure.

15. 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 or driveways shall be permitted on any lots.

16. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on an Lot, except for one dog house per residential Lot which is constructed for one (1) dog. Dog houses shall be permitted only if located with 10 feet of the rear of the residence, concealed from public view. Kennels located on Lots 2-11 shall be constructed to match the exterior of the rear of the residential structure on the lot. No dog runs or kennels may be constructed or installed on any Lot and chain link enclosures are specifically prohibited. No livestock or agricultural-type animals shall be allowed in Elkhorn Ridges Estates subdivision, including pot-bellied pigs. Storage sheds on Lots 2-11 shall be located at least 30 feet from the rear lot line, and shall be constructed of materials and painted so as to match the residential building, and portable toilets on Lot 1 shall be screened from view by lattice work fencing.

17. Any exterior air conditioning condenser unit shall be placed in the rear yard between the extension of lines from the sides of the residence. 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.

18. No Residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one owner of such Lot, except if parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot on the original plat and is as large in area as the smallest Lot in the original plat.

19. No temporary structure of any character, and no carport, trailer, modular home, open basement, or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. An owner may erect a swing set, playground equipment, pool house or other non prohibited structure on a Lot only after securing the prior written approval of Declarant. No structure or dwelling shall be moved from outside Elkhorn Ridge Estates to any Lot without the written approval of Declarant.

20. All utility service lines from each lot line to a dwelling or other Improvement shall be underground.

21. Owners of all lots shall install siltation fences and/or other erosion control devices during construction and until their Lots are sodded, with siltation fences and/or erosion control devices installed in a manner which will eliminate or substantially reduce erosion and runoff of soil onto Lot 1, adjoining Lots or into the streets. Declarant hereby reserves the right to require Owners to install siltation fences or erosion control devices and measures in such locations, configurations, and designs as it may determine appropriate in its sole and absolute discretion.

ARTICLE II.  
EASEMENTS AND RESTRICTIONS  
RELATING TO THE GOLF COURSE

1. Declarant owns a golf course constructed on Lot 1, and related amenities and facilities with a common boundary with the Lots 2-11[Golf Lots]. Declarant anticipates that the proximity of the golf course to the Golf Lots will enhance their desirability and value to purchasers, their

successors and assigns. Nevertheless, purchasers and owners of Lots 2-11 should be aware that: (i) golfers will from time to time hit golf balls from the golf course onto the Lots; and (ii) normal operation and maintenance of the golf course will involve operation of mowers and other power equipment during the evening and early morning hours.

2. The Declarant hereby declares, grants and establishes easements on the Lots in favor of the Grantees (defined below) for: (i) intrusion of golfers to retrieve errant shots onto the Golf Lots; and (ii) intrusion of noise from mowing and other power equipment during all hours of the day and night. For this purpose, an "errant shot" shall refer to a golf shot which is hit onto any Golf Lot. Nothing herein shall be construed as to grant an easement for golfers and or their golf equipment to damage property on the Golf Lots. See Paragraph 4 Below.

3. The easements granted in this Article are for the use and benefit of the owner of Lot 1, its successors and assigns in ownership of the Lot 1, and any lessee, licensee, permittee or invitee of the owner of Lot 1, which is Elkhorn Ridge Golf Partnership (collectively the "Grantees"). Without limitation of the foregoing, the Grantees shall include any person or entity which contracts to operate a golf course, driving range or batting cages on Lot 1, and any golfer who has permission to play golf on Lot 1.

4. Declarant and the owner of Lot 1 shall not have any liability, obligation or expense to the owner of a Golf Lot, their family or invitees in respect of any personal injury, bodily injury or property damage occurring as a result of an errant shot which is (i) negligently, intentionally or recklessly hit onto a Lot; or (ii) hit in violation of the rules established by any operator of a golf course or driving range on Lot 1. By accepting title to a lot, each owner hereby covenants that it will not sue Declarant or the owner of Lot 1 for property damage, personal injury or bodily injury which results directly or indirectly from such an errant shot, presently or in the future. All Owners, by acceptance of delivery of a deed, assume all risks associated with errant golf balls as to Declarant and the owner of Lot 1 only, and all owners agree and covenant not to make any claim or institute any action whatsoever against Declarant, the golf course designer, the golf course builder, the golf course owner, or the engineers of Declarant, resulting from any errant golf balls, for any damages that may be caused thereby. These covenants are not intended to restrict the owner of a Golf Lot from pursuing legal recourse against an invitee of Lot 1 for damages actionable at law for actions by said invitee.

5. The owner of the Golf Lots may from time to time change the configuration and layout of the golf courses on the Golf Lots. Such changes may affect the frequency, trajectory and velocity of errant shots which pass onto any individual Lot. Nevertheless, no Owner of a Golf Lot shall have any right to object to, or in any manner limit changes to the golf course on Lot 1, and the easements granted in this Article shall remain fully effective as to all of the Lots after such changes.

6. The golf course on Lot 1 is private property. Owners of the Golf Lots and their invitees shall comply with all the rules & regulations of the operator of the golf course on Lot 1 relating to use of and play on Lot 1, and shall not use the golf course without payment of regular green fees, or without the prior, written consent of the operator of the golf course.

#### ARTICLE III UTILITY EASEMENTS AND CHARGES

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, U.S. West telephone company, and any company which has been granted a franchise to provide a cable television system within the Lots, Metropolitan Utilities Company, and Sanitary and Improvement District No. 293 of Douglas County, 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 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 subdivision. 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. A perpetual easement is further reserved for the Metropolitan Utilities District of Omaha, their successors and assigns to erect, install, operate, maintain, repair and renew pipelines, hydrants and other related facilities, and to extend thereon pipes, hydrants and other related facilities and to extend therein pipes for the transmission of gas and water on, through, under and across a five (5) foot wide strip of land abutting all streets; this license being granted for the use and benefit of all present and future owners of these Lots. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easement ways but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. The easements are provided for in the final plat of Elkhorn Ridge Estates which is filed in the Register of Deeds of Douglas County, Nebraska at Book 2119, Page 574.

ARTICLE IV  
GENERAL PROVISIONS

1. Except for the authority and powers specifically granted 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 damages or other dues 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.

2. The covenants and restrictions of this Declarant shall run with and bind the land in perpetuity. This Declaration may be amended by ELKHORN RIDGE GOLF PARTNERSHIP, a Nebraska partnership, or any person, firm, corporation, partnership, or entity designated in writing by ELKHORN RIDGE GOLF PARTNERSHIP, in any manner which it may determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than sixty percent (60%) of the Lots covered by this Declaration.

3. By written consent of the Declarant for a period of five (5) years from the date hereof, any or all of the covenants, condition, restrictions, and easements as they apply to the Lots may be waived, modified, or amended for any Lot or Lots, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver, modification or amendment will have on the Elkhorn Ridge Estates subdivision and the Owner requesting the waiver. Declarant's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any requested waiver, modification, or amendment.

4. ELKHORN RIDGE GOLF PARTNERSHIP, a Nebraska partnership, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant.

5. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 30<sup>th</sup> day of APRIL, 1999.

ELKHORN RIDGE GOLF PARTNERSHIP, a GEORGE STRYKER  
Nebraska partnership,

By Paul Wortman  
Paul Wortman - Partner

George M. Stryker  
LINDA STRYKER

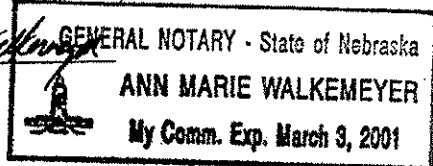
By Dan Stoller  
Dan Stoller - Partner

Linda Stryker  
American Interstate Bank,  
Paul R. Kuby  
President

STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of May, 1999, by GEORGE STRYKER and LINDA STRYKER, who acknowledge same as their free and voluntary act and deed.

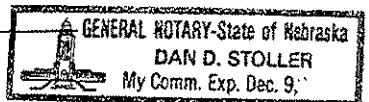
Ann Marie Walkemeyer  
Notary Public



STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of APRIL, 1999, by Neil Kirby, President of American Interstate Bank, as the beneficiary of a Deed of Trust, on behalf of American Interstate Bank, as the free and voluntary act and deed of the bank.

Dan D. Stoller  
Notary Public



STATE OF NEBRASKA )  
 ) ss:  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of April, 1999, by Dan Stoller and Paul Wortman, sole partners of ELKHORN RIDGE GOLF PARTNERSHIP, a Nebraska partnership, on behalf of the partnership, as the free and voluntary act and deed of the partnership.

Neil Kirby  
Notary Public



NOTARIAL SEAL AFFIXED  
REGISTER OF DEEDS.

RETURN TO: DAN STOLLER  
Box 622  
ELKHORN, NE 68022