

STATE OF MISSOURI)
) SS.
COUNTY OF JEFFERSON)

IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
OF MISSOURI AT HILLSBORO, JEFFERSON COUNTY, MISSOURI
DIVISION NO. II

LAKE TISHOMINGO PROPERTY)
OWNERS ASSOCIATION)
a Missouri not-for-profit)
corporation,)

Plaintiff,)

vs.)

Cause No. CV189-4328-CC-J2

STEPHEN MARLER and)
LADONNA MARLER, his wife,)

Division No. II

Defendants.)

JUDGMENT, ORDER AND DECREE

COME NOW the parties, Lake Tishomingo Property Owners Association, a Missouri not-for-profit corporation, Plaintiff and Stephen Marler and Ladonna Marler, his wife, Defendants, both in person and by and through counsel, Dennis H. Tesreau of WEGMANN, GASAWAY, STEWART, SCHNEIDER, DICKHANER, TESREAU & STOLL, P.C., for Lake Tishomingo Property Owners Association and A.W. Dieffenbach, Jr. of ANDERSON, HAMMON, DIEFFENBACH & WEGGE for Defendants and consent to the entry by this Court of the following judgment in order to resolve all issues with respect to the above-styled matter including, but not limited to, Plaintiff's Petition for Injunction and Defendants' Counterclaim seeking a prescriptive easement for the use of Lake Tishomingo Road:

WHEREAS, Plaintiff is the owner of what is commonly referred to as Lake Tishomingo Road, the same being described by General Warranty Deed dated the 12th day of February, 1973 by and



between Lake Development Enterprises, Inc., Grantor and Lake Tishomingo Property Owners Association, Grantee, the same being recorded at Book 492, page 157 of the Land Records of Jefferson County, Missouri.

and

WHEREAS, Defendants are the owners of 2 tracts of land consisting of approximately 15.41 acres, a portion of which is located adjacent to Lake Tishomingo Road, and

WHEREAS, Defendants claim to have a prescriptive easement establishing a right for Defendants to use Lake Tishomingo Road and

WHEREAS, Plaintiff wishes to cause Defendants to move certain items of junk including, but not limited to junk cars from the property owned by Defendants and

WHEREAS, Defendants seek an easement to gain access to Lake Tishomingo Road in order to construct two additional residences and in order to gain access from the residence presently owned by and occupied by Defendants to Lake Tishomingo Road and

WHEREAS, the parties wish to resolve all matters with respect to this suit,

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Defendants' property shall be divided into two separate tracts of land, one which shall be known as the commercial tract and one which shall be known as the residential tract.

2. The commercial tract referred to in Paragraph 1 is attached hereto as Exhibit A and incorporated herein by reference

as if fully set forth hereat, the same being hereinafter referred to as commercial.

3. The residential tract referred to in Paragraph 1 is the remaining 15.41 acres owned by Defendants less and excepting the property described in Exhibit A, the same being hereinafter referred to as residential.

4. That Defendants shall deed to Lake Tishomingo Property Owners Association a ten (10) foot strip of land the same being a portion of the property described on page 2 of this order, said property being described as set forth in Exhibit B and incorporated herein by reference as if fully set forth hereat.

5. That said land described in paragraph 4, which is to be conveyed by Defendants to Plaintiff is to be used for screening any development from Lake Tishomingo Road and shall be used by Plaintiffs for the purposes of growing vegetation and as a buffer area between Defendants' acreage and Lake Tishomingo Road. No party shall be permitted to build a fence directly on the ten (10) foot strip of land being conveyed to Lake Tishomingo Property Owners Association by virtue of paragraph 4 of this agreement except Defendants agree to build the fence provided for in paragraph six (6) on property to be deeded to Lake Tishomingo Property Owners Association where designated by Plaintiffs. In addition, Lake Tishomingo Property Owners Association agrees not to build a fence on the five foot strip of land owned by Lake Tishomingo Property Owners Association which is adjacent to the six (6) acre residential portion of Defendants' property. Defendants shall be permitted to remove any presently existing

gravel located on the aforesaid ten (10) foot strip of land. Further, said Agreement with respect to the use of said land, shall run with the land and shall be binding on the heirs, successors, and assigns of Lake Tishomingo Property Owners Association.

6. Defendants shall construct an eight-foot high wooden stockade fence with said materials and construction to be in accordance with generally accepted construction practices. Said fence shall begin at a point adjacent to and even with the front building line of Defendants' building located at 7683 Hillsboro-House Springs Road, with said fence to extend along the north edge of the ten (10) foot strip of land deeded from Defendants to Lake Tishomingo Property Owners Association for a distance of 800 feet. At that point, said fence shall turn North and continue for a distance of 200 feet. In addition, Defendants will construct an eight-foot high wooden stockade fence according to the same standards to run from the Lake Tishomingo Road to the front building line of the presently existing commercial building owned by Defendants. There shall be no gate or opening in any portion of said fences. The purpose of said fences is to obstruct the view of all salvage yard operations of Defendants from persons using Lake Tishomingo Road. Said fences will be constructed exclusively at the expense of Defendants and Defendants will be responsible for reasonable and appropriate maintenance to assure that they are maintained in good repair. Lake Tishomingo Property Owners Association shall have the right but not the obligation to paint or maintain that portion of any fence that faces Lake Tishomingo Road.

7. Defendants shall begin construction of the fence provided for in paragraph 6 within 15 days from the execution of this Decree by the Court and Defendants shall complete said fence within 30 days thereafter. Furthermore, within 15 days of the execution of this Decree by the Court Defendants will move all salvage, autos, parts and other associated debris and material to within 800 feet of Defendants' front building line at SteMar Auto Recyclers, 7683 Hillsboro-House Springs Road, Hillsboro, Missouri 63050.

8. The fence provided for in paragraph 6 of this agreement shall have no gates or openings at or along its Western or Eastern boundaries so as to assure that salvage operations cannot take place outside the fenced area. Provided, however, that Defendants shall be permitted to put a gate of sufficient size for an individual's use, but Defendants agree that said gate will be closed except during time of ingress and egress.

9. Defendants agree to the entry by this Court of a permanent injunction, the same to be binding on Defendants' heirs, successors and assigns, whereby Defendants will agree that they, or anyone acting at their request or on their behalf, shall be enjoined as follows:

A. Defendants, their heirs, successors and assigns or anyone acting on their behalf or at their request shall not store or stack cars, salvage materials of any type, or any other items, in any fashion such that said cars, other salvage materials, or any other items will be visible from Lake Tishomingo Road.

B. As to the commercial and residential tracts described in paragraphs 2 and 3, commercial operations of said Defendants shall take place only within the property designated as commercial in Paragraph 2 of this agreement and shall take place only within the area bound by the fence described in Paragraph 6 of this agreement.

C. Defendants or their heirs, successors and assigns or anyone acting on their behalf, agree that no signs, advertising or other commercial messages will be placed on the aforementioned fence or on Defendants' property which faces Lake Tishomingo Road with the exception of a residential real estate "For Sale" sign.

D. No auto salvage or other commercial operations will be permitted to use Lake Tishomingo Road, however, normal commercial maintenance vehicles will be permitted to provide service to Defendants' residence and to the other residences permitted by this agreement.

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E. No ^{mobile home} house or moveable trailer, ^{or} modular homes, ~~commercial buildings~~ may be built or placed on any portion of Defendants' property described herein with the exception that the commercial operation which is presently existing on said property shall be permitted to continue in accordance with the terms set forth in this agreement. Recreational vehicles shall not be permitted to be parked or located on Defendants' ~~property~~ property except when said recreational vehicle is owned by the Defendants or their heirs, successors and assigns. There shall be no more than one recreational vehicle per lot. Persons shall not be permitted to reside

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in said recreational vehicle on a permanent basis or on a temporary basis.

F. No junk cars or other salvage will be permitted on the residential portion of Defendants' property as described herein.

G. Defendants agree that they will not develop additional salvage yard operations in any location along either side of Lake Tishomingo Road including, but not limited to, acreage owned by Defendants' brother, Jimmy L. Marler.

H. After construction of the fence provided for in this Agreement by Defendants, Defendants will abandon the driveway located on the side of their commercial building parallel to Lake Tishomingo Road. Such abandonment shall coincide with the installation of culvert pipe to serve the existing Marler residence.

10. At such time as Defendants remove all junk, salvage vehicles and other items from the front of their presently existing commercial building as provided for in paragraph 19 and at such time as the fence contemplated by this agreement is started by Defendants, Lake Tishomingo Property Owners Association shall grant to Defendants an easement for ingress and egress so that Defendants will have access to their presently existing single-family residence. Said easement is not to be used to conduct commercial operations of any type. Lake Tishomingo Property Owners Association will also permit Defendants to construct a mailbox along side the easement granted herein to Defendants and two additional mailboxes along side the

additional easements provided for herein.

11. Lake Tishomingo Property Owners Association shall grant to Defendants additional easements necessary to serve two single family residential lots, said lots to consist of between two and three acres each with said lots to be a portion of the above-described residential portion of the property presently owned by Defendants. It is agreed and understood that each said lot shall be used for single family residential purposes only. The size of said easements provided for in this paragraph and in paragraph 10 shall be the minimum size determined in accordance with the Jefferson County Planning and Zoning Regulations for subdivisions. The number of easements which shall be granted by Lake Tishomingo Property Owners Association shall be the minimum number as is required by the Jefferson County Planning and Zoning Commission to serve three (3) residences without the construction of a cul de sac but in no event shall the number granted exceed two easements in addition to the easement set forth in paragraph 10.

12. Defendants agree that they or their heirs, successors and assigns shall pay a reasonable annual road usage fee for each easement granted to Defendants or their heirs, successors and assigns in order to compensate Lake Tishomingo Property Owners Association for the use of and wear and tear on Lake Tishomingo Road. The amount of assessment shall be equivalent to the then present regular assessment excluding any special assessments approved and assessed by the Lake Tishomingo Property Owners Association Board of Directors for a 50 front foot lot and in the event said assessment shall change in the future, the amount to

be paid by Defendants, their heirs, successors and assigns on a yearly basis, shall be increased to the equivalent amount assessed to all residents of Lake Tishomingo Property Owners Association based on the ownership of a 50 front foot lot. Neither Defendants or their heirs, successors and assigns shall use said Lake Tishomingo Road for an auto salvage business or for any other commercial operation.

13. The aforesaid amount set forth in the previous paragraph, shall be assessed and paid by Defendants or their heirs, successors and assigns for each such easement granted to them. The amount of the assessment shall begin on the date when the use of each such easement commences.

14. The cost of construction of said easements including, but not limited to the culvert pipe for said access shall be paid by Defendants. Construction and clean-up shall be in accordance with generally accepted construction practices. Maintenance of said culvert pipe shall be the responsibility of Defendants or their heirs, successors and assigns.

15. Lake Tishomingo Property Owners Association does not by virtue of granting the aforesaid easement, grant any rights or privileges to Defendants or their heirs, successors and assigns to use Lake Tishomingo or its common grounds or roads and Lake Tishomingo Property Owners Association only grants the right to the use of what is commonly known as Lake Tishomingo Road as described herein.

16. Defendants and their heirs, successors and assigns agree that they will not seek and will not be entitled to

additional easements beyond those stipulated and provided for in this agreement and the granting of said easements herein shall not serve as any precedent for Defendants or for any other persons to receive easements from Lake Tishomingo Property Owners Association and the same are granted in specific consideration of the agreement set forth herein by Defendants and in order to bring about an acceptable settlement to this lawsuit. The granting of these easements shall further not be considered as any legal precedent for Lake Tishomingo property owners or owners of adjacent property who may seek access to second tier lots located in Lake Tishomingo from grounds located outside said subdivision, but said easements are granted in recognition of the Defendants' allegation of a prescriptive easement and in consideration of the Agreement herein by Defendants and in order to bring about an acceptable settlement to this suit.

17. Defendants or their heirs, successors and assigns shall not have the right to grant any additional easements to anyone to use Lake Tishomingo Road and shall not have the right to permit anyone to use the easement granted to them except as specifically set forth herein.

18. In the event Defendants or their heirs, successors and assigns develop additional homes as permitted by this Agreement on the lots served by the easements which are the subject of this Agreement, such homes must be in accordance with all building requirements which govern Jefferson County and, in addition, the minimum requirement for any such new residence shall be 1,800 square feet excluding a garage. In the event a garage is constructed, the same must be attached.

19. Defendants shall, within a period of 15 days after approval of this agreement by the Court, remove all junk, salvage vehicles and other items from the front of their presently existing commercial building. At such time as the fence contemplated by this agreement is started by Defendants and the items required to be moved by this agreement are in fact moved, Lake Tishomingo Property Owners Association will remove the barbed wire fence presently located along Lake Tishomingo Road.

20. Lake Tishomingo Property Owners Association agrees to permit Defendants to add on to their presently existing commercial building on the side of said building which faces Lake Tishomingo Road, so long as said addition does not extend greater than twenty-five (25) feet in the direction of Lake Tishomingo Road. Said addition must be in accordance with the approval of the Jefferson County Building Commission and all other appropriate Jefferson County agencies.

21. Upon execution and approval by the Court, this agreement shall be recorded in the Land Records in the Recorder of Deeds Office in Hillsboro, Jefferson County, Missouri and all agreements and restrictions set forth herein (even where not specifically so designated) shall run with the land and shall be binding on the heirs, successors and assigns of all parties hereto.

22. Defendants or their heirs, successors and assigns shall not be permitted to develop the property which is owned by them set forth herein except in accordance with the specific provisions of this agreement and Defendants shall not be

permitted to build more than two additional residential buildings on the entire residential portion of Defendants' property.

23. Should Defendants violate any of the terms of this agreement in any regard, they are subject to proceedings filed for contempt of court. Defendants further agree that if Lake Tishomingo Property Owners Association takes legal action against them for violations of any or all of the conditions or restrictions set forth herein, the Defendants, or their heirs, successors and assigns will pay all reasonable attorney fees and court costs that may be incurred by Lake Tishomingo Property Owners Association in such a suit in the event Lake Tishomingo Property Owners Association is successful.

24. Lake Tishomingo Property Owners Association further agrees that if they violate the terms of this Agreement, that they will pay all reasonable attorney fees and court costs incurred by Defendants or their heirs, successors and assigns in the event Lake Tishomingo Property Owners Association is shown to have violated the terms of this agreement.

25. It is agreed that all parties hereto endorse this agreement and both will take all appropriate steps in good faith to make this agreement successful and free from controversy.

26. Should, at a later date, a Court of competent jurisdiction enter a judgment which becomes final, stating that Defendants failed to receive the grant of the easements provided for herein, then, and in such event, the parties agree as follows:

A. Lake Tishomingo Property Owners Association will pay to Stephen Marler and Ladonna Marler the amount of Five Hundred

Dollars (\$500.00) in considération for the transfer of the ten (10) foot strip of land described in Exhibit C and incorporated herein by reference as if fully set forth hereat and said fence shall be permitted to remain.

B. Lake Tishomingo Property Owners Association will pay to Defendants, Stephen Marler and Ladonna Marler the amount of Four Thousand Dollars (\$4,000.00) which represents one-half of the cost expended by Defendants for the construction of the fence provided for in Paragraph 6 of this agreement.

C. Lake Tishomingo Property Owners Association shall have no obligation to make either of the aforesaid payments to Defendants unless the specific circumstances provided for in this paragraph arise.

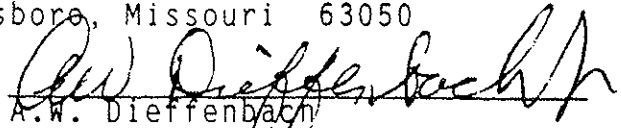
D. Lake Tishomingo Property Owners Association shall have ninety (90) days from a final Judgment holding said agreement invalid to pay the amount provided for in this paragraph.

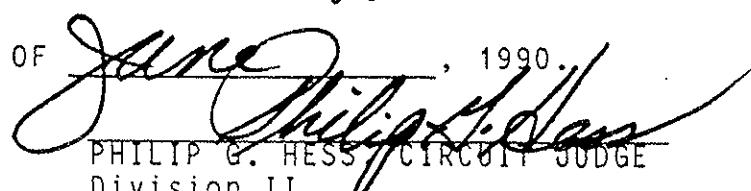
27. That in the event a Court of competent jurisdiction enters a judgment which becomes final, stating that Defendants failed to receive the grant of the easements provided for herein, then, and in such event, all other aspects of this agreement except as set forth in paragraph 26 shall be void and of no force and effect.

WEGMANN, GASAWAY, STEWART, SCHNEIDER,
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By: 
Dennis H. Tesreau 25693

ANDERSON, HAMMON, DIEFFENBACH & WEGGE
Attorneys for Defendants
P.O. Box 248
Hillsboro, Missouri 63050

By: 
A.W. Dieffenbach

SO ORDERED THIS 17th DAY OF June, 1990.

PHILIP G. HESS, CIRCUIT JUDGE
Division II

3.91 Acres

Part of a larger tract of land conveyed to Stephen Marler and La Donna M. Marler, his wife, by deed dated November 10, 1987 recorded in Book 0382 at page 868 of the Jefferson County land records, located in Section 4, Township 41 North, Range 4 East, and part of Lot 13 of Lakewood Heights, being a subdivision recorded in Plat Book 14 at page 24 of the aforesaid records, described as follows: Beginning at a point in the northern boundary line of said larger tract, said point being located North 57 degrees 21 minutes East 617.10 feet distant from the northwest corner thereof; thence South 260.51 feet; thence North 57 degrees 24 minutes East 58.34 feet to a point of curve; thence Northeastwardly and to the right with a curve having a radius of 984.96 feet for an arc distance of 560.42 feet to a point of tangent; thence East 180.53 feet; thence South 10.00 feet to a point of curve; thence Northeastwardly and to the left with a curve having a radius of 40.00 feet for an arc distance of 67.00 feet to a point of tangent; thence with the western line of the County Road, North 6 degrees West 71.50 feet to the southeast corner of Lot 12 of Lakewood Heights Subdivision, as above mentioned; thence with the southern boundary line of said Lot 12, North 85 degrees 12 minutes West 221.50 feet to the southwest corner of said Lot 12; thence with the western boundary line thereof, North 6 degrees 33 minutes East 89.19 feet to the northwest corner thereof; thence North 13 degrees 05 minutes East 7.70 feet to the northeast corner of said larger tract; thence with the northern boundary lines thereof, South 89 degrees 57 minutes West 356.40 feet; thence South 57 degrees 21 minutes West 270.10 feet to the place of beginning. Said tract being subject to all easements and conditions of record, pertaining to the same.

JEFFERSON COUNTY SURVEYING COMPANY

WILLIAM HURTGEN
LESTER DOERNER
CHARLES ROTH

COMPLETE SERVICE IN LAND SURVEYING
(SINCE 1907)
PHONE 789-2360

P.O. BOX 235
HILLSBORO, MO. 63050

10 foot wide strip of land

A strip of land being part of the Southeast quarter of Section 4, Township 41 North, Range 4 East, and part of Lot 13 of Lakewood Heights, being a subdivision recorded in Plat Book 14 at page 24 of the Jefferson County land records; Said strip of land being Ten (10) feet wide, lying north of and adjoining the following described lines, to-wit: Beginning at a point in the western boundary line of the East half of the Southeast quarter of said Section 4, said point being the most southern corner of a tract of land conveyed to Stephen Marler and La Donna M. Marler, his wife, by deed dated November 10, 1987 recorded in Book 0382 at page 868 of the aforesaid records; proceed thence with the southeastern boundary lines of said Marler tract, Northeastwardly and to the left with a curve having a radius of 219.05 feet for an arc distance of 295 feet to a point of tangent; thence North 6 degrees 08 minutes East 38.64 feet to a point of curve; thence Northeastwardly and to the right with a curve having a radius of 592.99 feet for an arc distance of 530.64 feet to a point of tangent; thence North 57 degrees 24 minutes East 128.96 feet to a point of curve; thence Northeastwardly and to the right with a curve having a radius of 974.96 feet for an arc distance of 554.73 feet to a point of tangent; thence East 180.53 feet.

Said tract being subject to all easements, restrictions and conditions of record, pertaining to the same.

Prepared by The Jefferson County Surveying Company in Hillsboro, Missouri, this 12th day of June, 1990.

WILLIAM HURTGEN
LESTER DOERNER
CHARLES ROTH

JEFFERSON COUNTY SURVEYING COMPANY

COMPLETE SERVICE IN LAND SURVEYING
(SINCE 1907)
PHONE 789-2350

P.O. BOX 235
HILLSBORO, MO. 63050

10 foot wide strip of land

A strip of land being part of the Southeast quarter of Section 4, Township 41 North, Range 4 East, and part of Lot 13 of Lakewood Heights, being a subdivision recorded in Plat Book 14 at page 24 of the Jefferson County land records; Said strip of land being Ten (10) feet wide, lying north of and adjoining the following described lines, to-wit: Beginning at a point in the southeastern boundary line of a tract of land conveyed to Stephen Marler and La Donna M. Marler, his wife, by deed dated November 10, 1987 recorded in Book 0382 at page 868 of the Jefferson County land records, said point being located North 83 degrees 21 minutes East 523.10 feet distant from the northwest corner of said Marler tract; proceed thence with the southeastern boundary lines thereof, North 57 degrees 24 minutes East 64.74 feet to a point of curve; thence Northeastwardly and to the right with a curve having a radius of 974.96 feet for an arc distance of 554.73 feet to a point of tangent; thence East 180.53 feet.

Said tract being subject to all easements, restrictions and conditions of record, pertaining to the same.