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CASS COUNTY, NE.

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ENK 4069 MISC 995  
PATRICIA MEISINGER  
REGISTER OF DEEDS  
#4069 \$32.50

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
BURR OAK ACRES SUBDIVISION  
& Tax Lot 19 in NW 1/4, NE 1/4, Section 20-11-14, Cass County

COMPANY

T & F LAND DEVELOPMENT, LLC, called Declarant, is the Owner in fee simple of real estate located in Cass County, Nebraska, and known by the official plat designation of Burr Oak Acres, Phase 1, Lots 1-24 ("hereinafter called "Property") of which plat is recorded in Book 63, Page 104, of the records of the Register of Deeds of Cass County, Nebraska on the 24th day of June, 2005 and includes the official plat designation of Tax Lot 19 located in the NW 1/4, NE 1/4 of Section 20, Township 11, Range 14, Cass County, Nebraska which is recorded in Book 16, Page 23A of the records of the Register of Deeds of Cass County, Nebraska on the 6 day of May, 2005.

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

ARTICLE ONE – DEFINITIONS

"Association" shall mean and refer to Burr Oak Acres Homeowners Association, its successors and assigns.

"Declarant" shall mean T & F Land Development, LLC and Declarant's successors and assigns.

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

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

"Member" shall mean every person or entity that holds membership in the Association.

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

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

ARTICLE TWO  
MEMBERSHIP IN ASSOCIATION – VOTING RIGHTS

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

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

ARTICLE THREE – ASSESSMENTS

Purpose of Annual Assessments. The annual assessments levied by the Association shall be used exclusively to promote the health, safety, welfare and recreation of the residents in the subdivision. And for the improvement and maintenance of Joint Use Areas. Annual assessments shall be voted upon as provided in the Bylaws. Annual assessments shall include, and the Association shall acquire and pay for out of the funds derived from the annual assessments the following:

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

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

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

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

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

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

## **ARTICLE FOUR** **EASMENTS AND USE RESTRICTIONS**

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

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

## **ARTICLE FIVE – GENERAL PROVISIONS** **BYLAWS**

**Enforcement.** The Executives of the Association, as a body, have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association to enforce any covenant or restrictions contained in this Declaration shall in no event be deemed a waiver of the right to do so at a later date. Any violations within the members must be submitted within the Executives of the Association for further considerations.

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

**Amendments.** Covenants and restrictions of this Declaration may be amended by duly recording an instrument executed and acknowledged by not less than two-thirds of the Members.

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

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

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

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

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

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

## **ARTICLE SIX** **COVENANTS AND RESTRICTIONS**

1. Each Lot shall be used exclusively for single-family residential purposes.
2. No structure or improvement requiring a permit shall be erected, placed, or altered on any lot until the structure or improvement plans, specifications and plot plan showing the location of the structure or improvement have been approved in writing as to conformity and harmony of external design with existing structures in the development by Declarant. In the event the Declarant fails to approve or disapprove such design or location within 30 days after the required plans and specifications have been submitted or if no suit to enjoin the erection or a structure or improvement has been commenced prior to the completion thereof, such approval will not be required and this covenant will be deemed to have been fully complied with.
3. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall anything be done on any Lot constituting an annoyance or nuisance to the neighborhood.
4. No outdoor repair of any boats, automobiles, motorcycles, trucks, campers, snowmobiles, recreational vehicles or similar vehicles requiring a continuous time period in excess of two weeks shall be permitted on any lot. No boat, camper, trailer, mobile home, truck, aircraft, or similar chattel shall be maintained or stored outdoors on any lot in a manner that is noxious, offensive or a nuisance. All maintenance and storage shall be in as neat or inconspicuous a manner as possible. This section shall not apply to the equipment and vehicles necessary for the construction of residential dwellings during the period of construction.
5. Fences must be constructed and maintained to enhance the property. No interior lot fences of barbed wire are permitted.
6. The erection or construction of a swimming pool must comply with all applicable State and Local laws and include adequate security fencing subject to the approval of the elected Executive Members as stated in Section Two.
7. Consistent with rural character of Burr Oak Acres, owners shall be permitted to maintain animals on a Lot under the following terms and conditions.
  - a. All animals on the property shall be kept in accordance with requirements of Nebraska law and applicable zoning ordinances of Cass County Nebraska. All structures used for the housing or maintenance of animals, and any areas where animals are maintained or kept shall be maintained at all times in a neat, clean, and orderly manner. The maintenance of swine, including potbellied pigs of any type shall not be permitted on the property. Birds, horses, cats, dogs, or other domestic animals may be kept, provide that they are not raised, bred, or maintained for any commercial purpose. At no time shall the property contain more than one animal per acre.

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

8. Gardens are permitted on Lots if they are located in an area that is suitable in relation to the street and residences on adjoining Lots. All gardens shall be maintained in a visibly pleasing manner. Commercial sales of garden produce shall not take place on a lot or within Burr Oak Acres.

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

10. No Lot within Burr Oak Acres shall be subdivided.

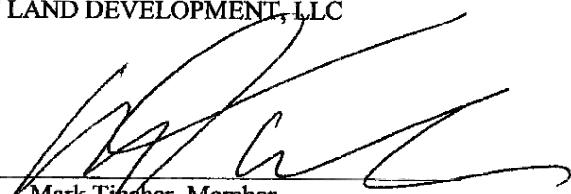
11. No structure or dwelling shall be moved from outside Burr Oak Acres to an Lot without the Members approval as provided in Article Two. House trailers are not permitted.

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

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed this 15 Day of June, 2005 by its proper officer.

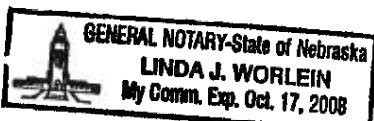
T & F LAND DEVELOPMENT, LLC

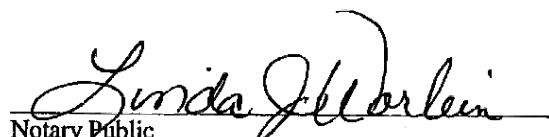
By:

  
Mark Tincher, Member

STATE OF NEBRASKA )  
: ss.  
COUNTY OF CASS )

The foregoing instrument was acknowledged before me this 15 day of June, 2005  
By Mark Tincher.



  
Linda J. Worlein  
Notary Public

FILED  
CASS COUNTY, NE.

2010 JUL 13 PM 2:16

OK 71 MISC PG 551

*David J. Ulrich*

REGISTER OF DEEDS  
#3508 \$5.50

Waiver of covenants, conditions and restrictions of:  
BURR OAK ACRES SUBDIVISION - LOT 24

I hereby waive the following covenants, conditions and restriction: ARTICLE FOUR  
"Use Restriction" - Each Lot shall be used as a resident for a single family and for no  
other purpose, and ARTICLE SIX (1) - Each Lot shall be used exclusively for single-  
family residential purposes. This waive is only applicable to LOT 24 BURR OAKS,  
ACRES SUBDIVION. (Rplot 1)

COMPARED

T & F LAND DEVELOPMENT, LLC

*James R. Ulrich*  
MANAGER

DATED 7/7/10

STATE OF COLORADO  
COUNTY OF SUMMIT

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME. THIS 7 DAY OF JULY BY T & F LAND DEVELOPMENT LLC.

NOTARY PUBLIC, STATE AND COUNTY AFORESAID

*Jon David Ulrich*  
NOTARY SIGNATURE  
NOTARY PRINT SIGNATURE

12/30/2012

MY COMMISSION EXPIRES:

