

RECORDER NOTE

Indexed against
PTSE 3-13-119 lot 3
Smith Acres
W 1-30-07

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2007-02978

2007 JAN 30 A 11:33

Steven J. Stastny
REGISTER OF DEEDS

COUNTER	<i>ah</i>	S.E.	<i>ah</i>
VERIFY	<i>ah</i>	D.E.	<i>ah</i>
PROOF	<i>ah</i>		
FEE \$	<i>31.00</i>		
CHECK #	<i>8439</i>		
CHG		CASH	
REFUND		CREDIT	
SHORT	<i>500</i>	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, STE 1109

PAPILLION, NE 68046-2895

402-593-5773

pk
Mike Smith

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**SMITH ACRES SUBDIVISION
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This declaration made this 27 day of ~~December, 2006~~ ^{Jan 2007} by Paul R. Smith and Mary Ann Smith, hereinafter referred to as "Declarants" hereby declares that the following covenants are to run with the land and shall be binding on all present and future owners or all or any part of the following described real estate known the West 1/2 of the Southeast 1/4 of Section 3, Township 13 North, Range 11 East of the 6th P.M., Sarpy County, Nebraska, excluding Lot 1 of Smith Acres, but including the remainder of said West 1/2 of the Southeast 1/4 of Section 3, Township 13, Range 11 East of the 6th P.M., including any future subdivision or parcel currently within the above described real estate.

WHEREAS, Declarants are the owners of and desire to sell lots thereof with certain restrictions.

WHEREAS, Declarants desire to subject the above named real estate to these covenants, conditions and restrictions in order to enhance and preserve the orderly development of the property.

NOW THEREFORE, Declarants declare that the real property described above is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions and restrictions set forth below:

**ARTICLE I.
RESTRICTIVE COVENANTS**

The following restrictions are hereby imposed upon all of the Lots, or any part thereof, described above for the mutual benefit of the owner and future owners of the said real estate, and may be enforced by any current or future owner of any lot within the Smith Acres subdivision.

If the present or future owners of any of said lots or their grantees, heirs, or assigns, shall violate or attempt to violate any of these covenants, it shall be lawful for any other person or persons owning any part of said real estate to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages or other dues for such violation.

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

A. The Lots shall be used only for single-family residential purposes, except those properties or portions there of which shall be conveyed or dedicated for public use by the Declarants or their assigns or successors-in-interest.

B. No obnoxious or offensive trade or activity, in the opinion of Declarant, shall be conducted on any property, nor shall any nuisance or annoyance be permitted thereon. All lots shall be kept free of trash and debris.

C. The owner of each property shall be responsible for the maintenance and upkeep of the

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property prior to or after completion of the building(s) on the property. The owner of each property shall control noxious weeds on the property and maintain proper ground cover to prevent erosion. No alteration to existing waterways shall be made that will impede or restrict the flow of water through the property. Storm water runoff must be dispersed, to the degree possible, on the property.

- D. No trailer, basement, tent, shack, garage, barn, shed or other out-building erected on said property shall at any time be used as a residence temporarily or permanently, nor shall any structure of temporary character be used as a residence; and, prior to occupying any building as a residence, the entire building must be substantially complete and the exterior of same shall be fully complete. Upon the commencement of construction of any residence or building, the residence building must be completed within twelve (12) months thereafter.
- E. The minimum dwelling sizes in Smith Acres shall contain not less 1,500 square feet of finished living area on all floors above ground level. All homes shall have an attached or built-in garage for two or more cars. All accessory buildings shall be of a useful purpose and be constructed of colored metal, brick, wood, and/or cedar siding and kept painted. Prior to any construction, owners agree to comply with all zoning regulations of governing jurisdiction. No dwelling constructed at another location shall be moved to any lot within this subdivision. The owner of each property shall be responsible for the upkeep and maintenance of said property prior to and after building completion. The owner shall take whatever steps are necessary to control noxious weeds on his property and shall maintain necessary ground cover in order to prevent erosion. No well or septic tank within 50 ft of boundary of property.
- F. Declarant further reserves a perpetual license and easement of 15 feet along the side of each lot for the installation, operation, maintenance, repair and replacement of all utilities, including electric, phone, gas, cable and other utilities. These easements are granted for the use and benefit of all present and future owners of properties within the subdivision. Declarant reserves a perpetual license and easements for the use of Declarant and Declarants' Assigns.
- G. Animals. Shall comply with Sarpy County Zoning Ordinances regarding type and number of allowed animals, as the same are amended from time to time.

**ARTICLE II.
HOMEOWNERS ASSOCIATION**

1. Prior to or upon sale of the fourth Lot Declarants will cause the incorporation of the SMITH ACRES HOMEOWNERS ASSOCIATION (hereinafter, the "Association"), a not for profit corporation. The Association has as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of Smith Acres including:

a) The acquisition, construction, landscaping, maintenance, operation, repair, upkeep and placement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities shall include entrance areas, dedicated roads, community wells, green areas, signs for Smith Acres and other physical assets of this nature as may be set aside for the for the exclusive use of Members, their families and invited guests.

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b) The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any of the Common Facilities, for the protection and maintenance of the rural residential nature of Smith Acres, provided always that such rules are uniformly applicable to all Members.

2. **Membership and Voting.** The homeowners association shall be comprised of the owners of the real estate set out in Exhibit "A". The Owner of each Lot, as approved in the Final Plat plus one lot for the residence of Declarer, whether one or more persons or entities, shall be entitled to one (1) vote on each matter brought to the members of the Association.

3. **Duties and Responsibilities.** The Declarant or their designated successor or assign shall exercise and administer all powers and duties of the Association as described herein, until such are released or relinquished by Declarant

As Declarant shall release such powers and duties, they shall be thereafter exercised and administered by the Board of Directors of the Association. At such time as Declarant no longer holds title to any subdivision Lot, any powers and duties not previously released shall be deemed to have been released and relinquished and Declarant will remain solely as a member of the Association with one (1) vote. Thereafter the Board of Directors of the Association shall have all powers conferred upon not-for-profit corporations by the Nebraska Non-Profit Corporation Act and shall be responsible for the administration and maintenance of the Association. The powers and duties to be exercised shall include, but not be limited to the following:

a) The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities inclusive of assessment for and payment of any tax liability attributable to the Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities..

b) The fixing, levying, collecting, abatement and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration or the Association, such charges to be levied against Owners of Lots within the subdivision only after such time as they have been sold by Declarant and the title transferred to the new Owner(s).

c) The expenditure, commitment and payment of Association funds to accomplish the purposes of the association, including, but not limited to, acquisition, by purchase or otherwise of real or personal property, and payment for purchase of insurance covering any Common Facility against property damage and casualty, and purchase of liability insurance coverages as deemed necessary for the Association.

d) The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds, certificates of deposit and other such investments.

e) The employment of consultants, firms and individuals to advise and assist the Officers and Board of Directors of the Association in matters pertaining to the operations, maintenance and ongoing care of the matters of the Association.

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f) The performance of such acts, and the execution of such instruments and documents, as may be necessary to properly administer and manage the affairs of the Association.

4. Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments which shall be set from time to time and shall be payable at the times and in the manner specified. These dues and assessments, together with interest thereon and reasonable attorney's 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 and shall also be a charge and continuing lien up the Lot to 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. Annual dues per Lot shall not exceed 125% of the annual dues charged in the previous year unless Special Assessments are levied for Common Facilities.

5. Purpose of Dues. The dues and any special assessments collected by the Association may be expended or committed to accomplish the purpose of the Association described above, including maintenance of Common Facilities, government assessments of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement or replacement of any Common Facility. Special Assessments may be levied by a vote of 60% or more of the Owners of the Lots. Dues and Assessments shall be fixed at a uniform rate per Lot unless otherwise agreed to by the Owners of the affected Lots.

6. Nonpayment of Dues and Assets: Any installment of dues or assessments which are not paid when due shall be delinquent. Delinquent dues or assessments shall bear interest from the due date at the rate of 15% per annum, compounded annually. The Association may bring legal action against the Lot Owner personally or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association, in addition to the dues and assessments that are due, may recover interest and the costs and reasonable attorneys' fees incurred by the Association in recovering the overdue charges. No Owner may waive or otherwise claim non-liability for any charge and lien referred to above by nonuse of the Common Facilities or abandonment of their 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 its rights with respect to such lien and right

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of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

7. 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 purchase or home improvement loan. Sale or transfer of any Lot shall not affect or terminate any dues and assessment lien(s).

Nothing herein contained shall in any way be construed as imposing upon the undersigned Declarant any liability, obligation or requirement to enforce any of the provisions contained herein. The rights, powers and responsibilities of the undersigned Declarant as outlined and contained herein may be assigned and delegated by the undersigned Declarant. Until such time as all tracts are improved, the undersigned Declarant shall have the right, in his discretion, to waive any one or more of the covenants, conditions or restrictions herein contained for hardship or other just cause.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 27 day of Jan, 2007

Paul R. Smith
Paul R. Smith

Mary Ann Smith
Mary Ann Smith

Acknowledged before me this
27 day of January 2007

M. J. [Signature]
1.27.07

