

2021R0899

DELIA HESTON, REGISTER OF DEEDS
JEFFERSON COUNTY, KS
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**OUSDAHL SUBDIVISION NO. 2
DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS DECLARATION is made effective the 18th day of March 2021 (the “effective date”) by Ethel, LLC, a Kansas Limited Liability Company (the “**Declarant**” and “**Owner**”)

RECITALS

Declarant desires to place certain covenants, restrictions, charges and liens upon certain real property located in Jefferson County, Kansas and described in **Exhibit A** attached to and by reference made a part of this Declaration (the “**real estate**”) for the benefit of Declarant and Declarant’s successors, grantees, and assigns, and to protect the value and desirability of the real estate.

DECLARATION

NOW, THEREFORE, Declarant declares that the real estate is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, charges, and liens described in this Declaration, for the purposes of:

- (i) Enhancing and protecting the value, desirability, and attractiveness of the real estate
- (ii) Increasing the Owners benefit to be derived from the real estate
- (iii) Protecting the owners, lessees, and sub-lessees of any part of the real estate against incompatible uses of other parts of the real estate

These covenants, restrictions and conditions shall run with the real estate and shall be binding upon all parties having or acquiring any right, title or interest in the real estate or any part hereof and shall inure to the benefit of each Owner thereof.

ARTICLE I

DEFINITIONS

1. “**Declarant**” shall mean and refer to Ethel, LLC
2. “**Declaration**” means this instrument, as the same may be amended, supplemented or modified from time to time.
3. “**Driveways**” shall mean and refer to the driveway easements for vehicular and pedestrian ingress and egress
4. “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities of fee simple title to a parcel including a contract purchaser of a parcel. The term “Owner” shall not mean any mortgagee, unless and until such mortgagee has acquired fee simple title to a parcel pursuant to foreclosure or any proceedings in lieu of foreclosure.

Security 1st Title
4913 Oread West Dr.
Lawrence, KS 66049

COURTESY

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5. **“Person” or “Persons”** shall mean and refer to the individual, corporation, partnership, limited liability company, trustee, or other entity capable of holding title to real property or any combination thereof.
6. **“Parcel” or “Parcels”** shall mean and refer to the individual parcels or lots as described in the legal description or noted on the plat and make up the real estate.

ARTICLE II

SCOPE OF DECLARATION

1. **Property Subject to Declaration.** Declarant, as Owner of all of the Real Estate expressly intends to and by execution and recording of this Declaration does hereby, subject the Real Estate to the provisions of this Declaration.
2. **Conveyances Subject to Declaration.** All restrictions, conditions, covenants, reservations, liens, charges, benefits, and privileges which are granted, created, reserved or declared by the Declaration shall be deemed to the covenants appurtenant running with the land, and shall at all times inure to the benefit of and be binding on all persons having at any time any interest or estate in any parcel or part thereof, and their respective heirs, legal representatives, successors and assigns.
3. **Maintenance.** The Lot Owner shall maintain each lot, including easements and road rights-of-way adjacent to said lot and all improvements located on said lot in a reasonable manner.
4. **Development: Land Use and Building Standards.** In order to insure the best and most appropriate development, use and improvement of the subdivision, the following specific standards are hereby established:
 - a. **Noxious Activity.** No noxious or offensive activity shall be carried on within any Lot nor shall any trash or other refuse be thrown, placed or dumped upon any lot nor shall anything be done which may be or become an annoyance or nuisance within the Subdivision. All trash shall be placed into closed containers secured against animal invasion and delivered at such times and to such locations as may be determined for trash pickup by the Disposal Company.
 - b. **Residential Use.** The lots and any development thereon shall be exclusively for residential purposes. No building or structure intended for or adopted to business purposes shall be erected, placed, permitted or maintained on such premises or on any part thereof.
 - c. **Setback Lines.** No building, structure, outbuilding or appurtenance of any nature shall be located within the building setback line, as shown on the final plat at the Jefferson County Register of Deeds.

- d. **Utility Lines, Radio and Television Antennas, Windmill Generators.** All Electric, telephone, water, and other utility lines shall be placed underground and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antennas shall be erected, placed or maintained on any part of the premises. Satellite dishes 36 inches and smaller are permitted so long as they are positioned behind the front corners of the home. No exterior power windmill generators shall be erected or installed upon any parcel or be attached to any dwelling upon any parcel.
- e. **Signs.** No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any lot or improvement thereon except signs advertising such property for sale, which shall not exceed 6 square feet in area, further excepting the initial signage that may be placed by Ethel, LLC for the initial sale of the lots.
- f. **Occupancy.** No structure erected upon any lot shall be occupied in any manner while in the course of construction, not at any time prior to its fully completed. All construction shall be completed within twelve (12) months from the start thereof. No temporary house, temporary dwelling, temporary garage, temporary outbuilding, trailer home or temporary structure shall be placed or erected on lot.
- g. **Outbuildings.** Each lot owner may construct one (1) outbuilding and storage shed as described. One storage shed shall not exceed 350 sf determined by outside dimensions and shall not exceed one story in height. One outbuilding shall not exceed 1,200 square feet determined by outside dimensions and shall not exceed one story in height.
- h. **Recreational Vehicles.** All recreational vehicles, campers, trailers, or boats must be parked on the side or back corners of home or outbuildings on gravel or solid surfaces.
- i. **Commercial Vehicles and Outside Storage.** No heavy, commercial vehicles, construction vehicles, or like equipment of any kind shall be permitted, parked, or stored on a lot except during construction or within outbuildings. A maximum of one non-licensed or non-operating motor vehicles may be outside.
- j. **Garage Requirement.** All residences are required to have a minimum of two (2) car attached garage.
- k. **Mobile / Manufactured Homes:** No single or doublewide mobile home, mobile trailer, prefabricated home or modular home or used structure shall be constructed on, or moved upon any lot.
- l. **Minimum Space Requirements.** The living space in any dwelling shall not be less than:
 - i. Single Story = 1400 square feet minimum on the ground floor level
 - ii. Two Story = 1600 square feet minimum combined for two levels

The square footage requirements herein do not include garages, basements, covered walks, porches, and decks.

- m. **Fences.** Chain link fences are not permissible. No fence shall exceed six (6) feet in height.
- n. **Pets and Animals.** Chickens, swine, cattle, horses or other livestock or not allowed. All pets must be kept under control so as not create damage or become a nuisance.
- o. **Utilities and Drainage.** Rights for the installation and maintenance of utilities, and drainage shall be provided over, across and under the lots, as reasonably requested by Declarant, or required from any provider of such utilities or governmental authority, from time to time. Each owner shall refrain from interference with the established drainage pattern over such owner's parcel or from adjoining or other parcels.
- p. **Oil Mining and Quarry Operations.** No quarrying, top-soil removal for commercial purposes, borrow pit or mining excavations or shafts be permitted upon or in any lot, nor shall tunnel, mineral excavations or shafts be permitted upon or in lot for such purposes. No oil drilling, oil wells, tanks, oil development operations or oil refining of any kind shall be permitted upon or in any lot, nor shall oil derricks or development operations or oil refining be permitted upon or in any lot nor shall oil derricks, or other structures for use in boring for oil or natural gas be erected, maintained, or permitted upon any lot.
- q. **Road Maintenance.**
 - i. **Purpose.** The purpose of the Road Maintenance covenant is to establish a mean for the repair and maintenance of the access road (Ethel Court) to Ousdahl Subdivision No. 2 and any emergency access that will be equitably shared among the parties utilizing the road.
 - ii. **Consideration.** The consideration for the road maintenance covenant is the mutual benefits to be derived by the parties, their heirs, and assigns for the usage of the road.
 - iii. **Agreement.** The owners of the lots in "Ousdahl Subdivision No. 2, shall, at their own expense, repair and maintain the subdivision road to Jefferson County Standards in effect at the time of filing of the subdivision. The road repair and maintenance responsibility will be equally proportioned, i.e. one-ninth and shared among the land owners. A meeting may be held between the owners at specific time intervals or called when required to discuss the specifics and responsibilities in insuring the road is kept to the above referenced standard. A majority vote (51% or more), with each lot owner receiving one vote each, will be required to carry out repairs and maintenance when deemed necessary.

- iv. **Persons Bound by Agreement.** This agreement for road maintenance shall be binding upon all heirs, successors, and assigns of the parties and shall be deemed an obligation running with the land. This agreement shall remain in full force and effect until such time as City, County, State or Federal authorities install some other arrangement to facilitate maintenance of the road.

All joint owners shall maintain the surface in a smooth and evenly covered condition with the type of surfacing material originally installed and such substitute as shall in all respects be equal or superior in quality, use, and durability.

All joint owners shall remove papers, debris, filth and refuse to the extent reasonable necessary to keep the driveways and roadway in a clean and orderly condition and shall remove snow and ice from the road as may reasonably be completed following the accumulation of snow and ice on the driveways and roadway and maintain any drainage structures, and drainage ways for storm water runoff.

- v. **Enforcement.** This agreement covenant may be enforced by all remedies available under Kansas Law including the placement of a lien against the property or properties of an owner who does not pay their share of the repair or maintenance when the roadway is deemed for need of attention and repair as provided by majority vote of the lawful owners of Ousdahl Subdivision No. 2/ If legal action is taken to enforce this covenant agreement, the successful party or parties shall be entitled to be reimbursed for reasonable and necessary costs incurred, including attorney fees.

ARTICLE III

MODIFICATION AND ENFORCEMENT

1. **Modification.** Except as provided in this Declaration, this Declaration or any provision hereof, or any covenant, condition, restriction or reservation contained herein, may be terminated, changed, modified or amended, including without limitation, adding new or additional provisions, covenants, terms or restrictions (hereinafter, "Amend" or "Amendments"), at any time, with written affirmative vote, in person or proxy, of the then Owners of at least three-fourths or all the Parcels/lots. The Owner or Owners of each Parcel/lot shall be entitled to a single vote for each Parcel/lot owned. Each Parcel/lot shall be entitled to a single vote so that if an Owner owns more than one Parcel/lot, such Owner shall be entitled to a single vote for each Parcel/lot owned. Any amendment made as provided herein shall immediately be effective upon recording a proper instrument in writing executed and acknowledged by the required Owners in the Office of the Register of Deeds of Jefferson County, Kansas.
2. **Enforcement.** The Parcel/lot owners shall have the right to enforce, by any proceeding at law or in equity (including injunctive relief), all restrictions, conditions, covenants, reservations, liens, and easements, now or hereinafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed waiver of the right to do so thereafter. Any party enforcing these restrictions, if successful, shall be entitled to recover the expenses of enforcement, including, but not limited to reasonable attorney's fees, filing fees and costs, and the costs of obtaining expert witnesses, from the party defaulting on

these restrictions. Said expenses shall become a lien upon the property of the offending Parcel/lot Owner and may be enforced as provided in the next paragraph.

3. **Creation of the lien and Personal Obligation of Assessments.** Each lot owner, by acceptance of a Deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay any expenses assessed against said parcel/lot in any enforcement proceedings, said amount to bear interest at a rate established by the court in any such proceedings. Said amount shall become a charge on the land and shall be continuing lien upon the property against which such enforcement is made. Such assessment shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successors in title.

ARTICLE IV

GENERAL PROVISIONS

1. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provision(s), which shall remain in full force and effect.
2. **Subordination of Lien to Mortgage.** The lien of the assessment provided for herein shall be subordinate to the lien of any mortgage or mortgages. However, such subordination shall apply only to assessments of liens, which have become due prior to the sale of such property pursuant to a foreclosure of such mortgage. No such sale shall relieve such lot from liability for any assessment thereafter becoming due or from the lien thereof.
3. **Interpretation.** Should any court be called upon to construe the provisions of this Declaration, it is intended that these provisions be liberally interpreted and consider the goals and purposes as set forth in Declaration of Covenants.
4. **Amendment.** The Covenants and Restrictions of this Declaration shall run with and bind the land within the subdivision and shall insure to the benefit of and been enforceable by the Owner of any Parcel/lot, their legal representatives, heirs, successors, and assigns, for a term of 50 years from the date of this declaration is recorded, after which time said covenants shall be automatically extended to successive periods of 10 years. The Covenants and Restrictions of this Declaration may be amended during the first 50-year period by an instrument signed by not less than 75% of the parcel/lot owners, and thereafter by an instrument signed by not less than 51% of the parcel/lot owners. Said percentage is determined by counting the number of lots whose owners sign said instrument, such that multiplying ownership of said of shall result in a higher percentage. Any amendment shall be properly recoded.

“Remainer of Page Left Blank Intentionally”

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the Effective date.

Declarant:



Dustin Baker
Manager of Ethel, LLC

State of Kansas, County of Douglas:

The foregoing instrument was acknowledged before me this 18th day of March, 2021
by Dustin Baker, as Managing Member of Ethel, LLC, a Kansas Limited Liability Company.


Notary Public

My commission expires: 8-17-2024

EXHIBIT A

Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9, in Ousdahl Subdivision No. 2, a Subdivision in Jefferson County, Kansas, including that portion dedicated as Ethel Court lying adjacent to said Lots; formerly described in Mortgage Book 715, Page 21 as “Ousdahl Subdivision No. 2, a Subdivision in Jefferson County, Kansas”; and now excepting therefrom Out Lot A.