

*Dug*

602

FILED

DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS

02 JUN -6 PM 3:16

CHARLOTTE L. PETERSEN  
WASHINGTON COUNTY CLERK  
BLAIR, NEBR.

THIS DECLARATION, made on the date hereinafter set forth by R. F. BROADBAND SPECIALISTS, INC., hereinafter referred to as "Declarant":

WITNESSETH:

WHEREAS, Declarant is the owner of the following described real property:

Lots 1-18, inclusive, in Halford's Cherry Hills Plaza,  
a Subdivision in the City of Fort Calhoun, Washington  
County, Nebraska.

WHEREAS, Declarant will convey the said Lots, subject to certain protective covenants, restrictions, reservations, easements, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the Lots above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said Lots. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding upon all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to the Cherry Hills Plaza Property Owners Association, a Nebraska Non-profit Association, its successors and assigns. The primary objective of the Association is to assure full compliance with the plat, Subdivision Agreement and this Declaration entered into by and between the Declarant, the City of Fort Calhoun, Nebraska and the lot owners.

Section 2. "Declarant" shall mean and refer to R. F. Broadband Specialists, Inc., its successors and assigns.

Section 3. "Lot" shall mean and refer to any parcel of land, whether all or a portion of any platted lot shown upon the final plat of Halford's Cherry Hills Plaza upon which a living unit may be built or is proposed to be built. The Lots subject to this Declaration are Lots 1-18, inclusive in Halford's Cherry Hills Plaza.

Repaired   
General   
Numerical   
Photostat   
Faded

-1-

602

20023421  
STATE OF NEBRASKA COUNTY OF WASHINGTON)SS  
ENTERED IN NUMERICAL INDEX AND FILED FOR RECORD  
THIS 6<sup>th</sup> DAY OF June, A.D. 2002  
AT 3:16 O'CLOCK P.M. AND RECORDED IN BOOK  
366 AT PAGE 602-608  
COUNTY CLERK Charlotte L. Petersen  
DEPUTY Janet Madson

Section 4. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 5. "Owner" shall mean and refer to the record Owner, whether one or more person or entities, of a fee simple title to all or any part, parcel or portion of a platted Lot.

## ARTICLE II

### PROPERTY SUBJECT TO DECLARATION,

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Lots 1-16 of Halford's Cherry Hills Plaza, a Subdivision of the City of Fort Calhoun, Washington County, Nebraska, shall be held, transferred, sold, conveyed and occupied subject to these Declarations.

Section 2. Every Owner of a Lot which is subject to these Declarations shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of the Lots. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

Section 3. Members (Owners) shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they may, among themselves determine, but in no event shall more than one vote be cast with respect to any one Lot.

## ARTICLE III

### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Assessments. The Association may levy, in any calendar year, an assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any expenses associated with promoting the health, safety, welfare and recreation of the Lot Owners which may include the maintenance and repair of common areas; provided however, any such assessment shall have the assent of a simple majority of the votes of Members who are voting in person or by proxy at a meeting duly called for this purpose. Any assessments will be fixed at a uniform rate (1/18th share) for all Lots. If any assessment, or any installment thereof, is not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon, become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, successors and assigns. Any assessment not paid within thirty (30) days after the due date (due date to be established by a vote of the majority of the Board of Directors) shall bear interest from the due date at the rate of ten percent (10%) per

annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot.

#### ARTICLE IV

#### COMMON SCHEME RESTRICTIONS

The following restrictions are imposed as a "common scheme" upon Lots for the benefit of each other Lot, and may be enforced by the Association or by any Owner of a Lot.

- (a) No Lot, other than Lots 17 and 18, shall be used except for residential purposes; provided further, that Lots 17 and 18 of Halford's Cherry Hills Plaza may be used for any purpose allowed under the Multiple Family Residential Zoning District (R-3) of the Land Development Ordinance of the City of Fort Calhoun, Nebraska, as amended from time to time.
- (b) With the exception of accessory buildings, no building shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) single-family dwelling, and said dwelling shall conform to the following requirements:
  - (1) A one-story house (Ranch) with attached garage shall contain a minimum of 1,400 square feet of living area on the main floor, exclusive of garage area. The garage must be approximately on the same level as the main floor.
  - (2) One and one-half and two-story dwellings shall contain a minimum of 1,600 square feet of living area above the basement level, exclusive of garage area. For the purpose of these Restrictions, two-story height shall, when the basement wall is exposed above finished grade, be measured from the basement ceiling on the exposed side(s) to the eave of the structure of the same side(s). Area means finished habitable space, measured to the exterior of the enclosing walls, and does not include porches, stoops, breeze-ways, courtyards, patios, decks, basements, garages, or carports. The basement will not be considered a story even if it is 100% above grade on one or more sides and essentially below grade on the other sides.
  - (3) Underground dwelling structures shall be allowed and shall contain not less than 1,500 square feet of living area, exclusive of garage area.
  - (4) All dwelling units shall have either attached or detached, enclosed, side-by-side garages which must be capable of accommodating at least two (2) standard-size automobiles per living unit.

- (5) All dwelling units and structures shall be of new construction.
- (c) Storage sheds, barns, carports, detached garages, and other buildings (collectively referred to herein as "accessory buildings") shall be located no closer to the public street on the front of the Lot, than the front foundation line of the dwelling. All structures of this type shall be of a neat construction and of such a character as to enhance the value of the property.
- (d) No mobile home shall be permitted to be installed on any Lot.
- (e) No fences shall be erected in front of the main residential structure, except decorative fences no more than forty-two inches (42") in height, constructed of brick, stone, PVC or wood. Side and rear fences shall be maintained in such a manner as to not be unsightly to the neighboring properties.
- (f) No structure of a temporary character, basement, tent, shack, barn or other out building shall be used as a residence, temporarily or permanently.
- (g) No manufactured homes shall be allowed to be placed on any Lots in Halford's Cherry Hills Plaza. For purposes of this section, "manufactured homes" shall mean:
- (1) A factory-built structure which is to be used as a place of human habitation, which is not constructed or equipped with permanent hitch or other device allowing it to be moved other than to a permanent site, which does not have permanently attached to its body or frame any wheels or axles and which bears a label certifying that it was built in compliance with National Manufactured Home Construction and Safety Standards, 24 C.F.R. 3280, et seq., promulgated by the United States Department of Housing and Urban Development.
  - (2) Any factory-built structure constructed on a non-removable chassis; or
  - (3) Any factory-built structure that does not meet the inspection required by the Uniform Building Code (UBC) or its equivalent, normally shown by the application of a state or inspection agency label or approval.
- (h) Dogs shall not be allowed to run at large. Dog owners have the responsibility to make sure to control noise so as not to disturb their neighbors.
- (i) All Lots shall be kept free of rubbish, debris, merchandise, and building material; however, building materials may be placed on Lots when construction is started on the main residential structure intended for such Lot. In addition, vacant Lots

where capital improvements have not yet been installed shall not be used for dumping of any waste materials, and shall be maintained level and smooth enough for machine mowing. No vegetation on vacant Lots where dwellings have not yet been constructed, shall be allowed to reach more than a height of twelve inches (12"). No material other than earth, sand, rock, or gravel shall be used as fill on any Lot.

- (j) No Lot shall be subdivided into building plots of a size and type less than allowed by the Fort Calhoun, Nebraska Zoning and Subdivision Regulations, as then constituted.
- (k) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood.
- (l) No repair of automobiles, motor vehicles, boats, engines and the like, will be permitted outside of garages on any Lot at any time.
- (m) No boat, camping trailer, auto-drawn trailer of any kind, mobile home, truck, motorcycle, grading or excavation equipment or other heavy machinery or equipment, vehicle undergoing repair, or aircraft shall be stored outside the garage or other accessory building or in any manner left exposed on any Lot at any time. Storage of motor homes shall specifically require written approval by the Board of Directors of the Association.
- (n) No sign, billboard or other structure for advertising or the display of advertising material of any kind shall be erected, altered, placed or permitted to remain on any Lot except that real estate for-sale or for-rent signs of a size no greater than 4.5 square feet shall be permitted temporarily in the yards of Living Units which are being offered for sale or rent.
- (o) Antennas and satellite dishes shall be subject to the approval of the Board of Directors of the Association.

#### ARTICLE V

#### EASEMENTS

Section 1. Utility Easements. Declarant hereby grants to itself, the City of Fort Calhoun, Nebraska, Metropolitan Utilities District, Omaha Public Power District, The Blair Telephone Company, HunTel Cablevision, and any other public utilities, their successors and assigns, a perpetual easement, together with rights of egress, ingress, and other access thereto, for purposes of construction, installing, maintaining, operating, renewing, or repairing their respective

telephone, water, electric, or other utility conduits, lines, or other facilities on all utility easements as shown on the final plat of Halford's Cherry Hills Plaza.

The easement and right-of-way granted hereunder is to be and run with the land, and shall be for the benefit and use of the Declarant, City of Fort Calhoun, Nebraska, and any other public utilities, their successors and assigns. No structure, shed or building of a temporary or permanent nature shall be erected or constructed so as to interfere with the easement area.

All telephone, gas, power, cable T.V. and other public utilities shall be constructed underground.

## ARTICLE VI

### GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty (20) years from the date this Declaration is recorded.

Section 2. Amendments. The covenants and restrictions of this Declaration may be amended by the Declarant, or any person, firm, corporation, partnership, or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion, until such times as the Declarant has conveyed fee simple title to eighteen (18) of the Lots. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than two-thirds (2/3) of the Lots covered by this Declaration. Written notice of any proposed amendment and a meeting to be called for such purpose must be sent at least sixty (60) days but not more than ninety (90) days prior to such proposed meeting, by the Board of Directors of the Association. The notice will contain the full text of the proposed amendment and the date, time and place of the meeting. Any such amendment so adopted and executed must be properly recorded.

Section 3. Notices. Any notice required to be sent to any Member, Owner or mortgagees under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing; provided, that it shall be the sole responsibility of each contract purchaser and mortgagee to notify the Association, in writing, of its interest in a Lot prior to the responsibility arising in the Association to notify and contract purchaser or mortgagee as required under any of the provisions herein established. In the absence of such notice, the Association shall be free from any liability or responsibility to such party or parties arising by reason of performing its duties hereunder.

Section 4. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; provided further, that enforcement of these covenants and restrictions may be prosecuted by the Declarant, so long as the Declarant owns any Lot, by any Owner or by the Association; provided further, failure by the Association, the Declarant or any Owner to enforce any covenant or restriction therein contained shall in no event be deemed a waiver of the right to do so thereafter. Enforcement by the usage of cost bond postage shall also be available to the Declarant and/or the Association.

The City of Fort Calhoun, Nebraska neither accepts any responsibility or liability in the enforcement of these covenants and restrictions.

Section 5. Severability. Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no way affect any other provision, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 6<sup>th</sup> day of June 2002.

R. F. BROADBAND SPECIALISTS, INC.,  
Declarant

By Darrell Halford  
Darrell Halford, President

STATE OF NEBRASKA            )  
  ) :ss:  
COUNTY OF WASHINGTON    )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of June 2002, by Darrell Halford, President of R. F. Broadband Specialists, Inc., a Nebraska Corporation, on behalf of the Corporation.



Kimberly K. Tierney  
Notary Public

km