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WASHINGTON COUNTY, STATE OF NEBRASKA

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Karen A. Madsen

REGISTER OF DEEDS

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KAREN A. MADSEN
WASHINGTON COUNTY
REGISTER OF DEEDS
ELAIR, NE

DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

THIS DECLARATION, effective the date set forth below, is made by MCGOWAN PROPERTIES, INC., a Nebraska corporation, hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property (hereinafter the "Property") located in Washington County, Nebraska, more particularly described as:

Clearwater Creek II, A subdivision of all of Tax Lots 23 and 39 lying in the S1/2 of the SW 1/4 of Section 3, along with all of tax lots 121 and 122 lying in the N 1/2 of the NW 1/4 of Section 10, and all lying in Township 17 North, Range 12 East of the 6th PM, Washington County, Nebraska.

And further divided into Lots 21, 22 and 23.

WHEREAS, Declarant developed the Property for residential purposes with the intention of selling the Tracts therein to third party purchasers for the construction of single family dwellings, and the Declarant desires to impose upon the Property mutual and beneficial restrictions, covenants, conditions, easements, and charges under a general plan for the benefit of the owners of the property and future owners of same.

NOW, THEREFORE, in consideration of the premises, Declarant, for itself, its/their successors and assigns and all future grantees, does hereby impose, create and place upon the Property the reservations, conditions, covenants, restrictions, and easements (all of which are hereby termed "Covenants" and/or "Restrictions") contained hereinbelow.

Declarant further declares that the Property is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used and occupied subject to provisions of this Declaration, all for which are declared to be in furtherance of a plan for the development, improvement and sale of single - family dwellings within the Property and are established for the purpose of enhancing the value, desirability and attractiveness thereof.

The provisions of this Declaration are intended to create mutual equitable servitudes upon the Property; to create reciprocal rights between the respective owners of individual Lots therein; to create a privity of contract and estate between the grantees thereof, their heirs, successors, and assigns and shall, as to the owners of any interest in the Property, their heirs, successors and assigns, operate as covenants running with the

land for the benefit of each and all other owners of the Property and this shall be so even if said covenants are omitted from any deed or instrument of conveyance of the Property, or any part thereof.

ARTICLE I. DEFINITIONS

SECTION 1. "Property Owners Association: shall mean and refer to CLEARWATER CREEK II PROPERTY OWNERS ASSOCIATION, its successors and assigns. Declarant has heretofore caused or will cause to be organized the Property Owners Association as a non-profit corporation under the laws of the State of Nebraska, having as its members each owner of a Lot. The purpose of the Property Owners Association is to provide I) for the maintenance, repair, and improvement of the Roadway within the Property, known as High Pasture Drive. II) for the maintenance, preservation and control of the dwelling amenities within the Property.

SECTION 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation, but including mortgagees in possession and receivers or trustees in bankruptcy.

SECTION 3. "Property" shall mean and refer to Lots 21, 22 and 23 as surveyed, platted and recorded, as the legal description described above, and such additions thereto as may hereafter be brought within the jurisdiction of the Property Owners Association.

SECTION 4. "Roadway" shall mean and refer to High Pasture Drive as shown on the legal description and survey filed with the Washington County Clerk.

SECTION 5. "Lot" shall mean and refer to any one of the Lots 21, 22 or 23, as surveyed, platted and recorded, with the above legal description in Washington County, Nebraska.

SECTION 6. "Declarant" shall mean and refer to McGowan Properties, Inc., a Nebraska corporation, its successors, assigns and legal representatives.

SECTION 7. "Improved Lot" shall mean and refer to any Lot of the Property upon which shall be erected a dwelling, the construction of which shall be at least 80% complete, according to the plans and specifications for construction of said dwelling. All other Lots which shall be vacant or upon which shall be erected a dwelling, the construction of which shall be less than 80% complete, according to the plans and specifications for construction of said dwelling, shall be defined as "Unimproved Lots".

ARTICLE II. PROPERTY RIGHTS

SECTION 1. Owners' Easements of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the roadway which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Property Owners Association to suspend the voting rights of any Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of the By-Laws and / or the published rules and regulations of the Property Owners Association;

B. The right of the Property Owners Association to dedicate or transfer all or any part of the Roadway to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds of each class of members has been recorded.

C. The Roadway is presently not dedicated to the public or has either been accepted by any governmental subdivision. It shall remain the property of the Declarant or the Association, as the case may be, until such time, if ever, that there will be an annexation of the Property by a governmental subdivision, and an accompanying dedication and acceptance by such governmental subdivision. Inclusion of dedication language upon any plat filed with the County Clerk of Washington County, Nebraska, shall not effect a change, estoppel or waiver of the foregoing.

D. The Property Owners Association as successor to Declarant, shall forever and until annexation have the sole responsibility, and at its cost, to repair and maintain the roadway, and to hold the public, the State of Nebraska, or any of its political subdivisions, harmless from the same.

SECTION 2. Delegation of Use. Any owner may delegate: (i) in accordance with the By-Laws of the Property Owners Association, his right of enjoyment to the Roadway to the members of his family, his tenants, or contract purchasers who reside on the Lots.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Membership. Every owner of a lot which is subject to assessment shall be a member of the Property Owners Association. Membership in the Property Owners Association shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

SECTION 2. Voting Rights. Members of the Property Owners Association 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, however, there shall be only one vote per Lot, and in no event shall more than one vote for either Property Owners Association matters be cast with respect to any Tract. Accordingly, if two or more persons are members from a Tract, their acts with respect to voting shall have the following effect: (i)

if only one votes, such act binds all; and (ii) if more than one votes, the vote shall be divided on a prorata basis.

ARTICLE IV. COVENANT FOR ROADWAY MAINTENANCE ASSESSMENTS.

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each lot owned within the Property, hereby covenants and each owner of any lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Property Owners Association:

- A. Annual assessments or charges; and
- B. Special assessments for improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

SECTION 2. Purpose of Roadway Maintenance Assessments. The Roadway maintenance assessments levied by the Association shall be used exclusively for the maintenance, repair, replacement, and improvement of the Roadway, including, but not limited to, expenses for grading, rock, drainage structures, culverts, snow removal, hard surfacing, etc., as well as insurance coverages associated therewith.

SECTION 3. Maximum Annual Assessment. Until January 1, 2009, the maximum annual assessment for Roadway Maintenance shall be Three Hundred Fifty Dollars (\$350.00) per Lot. \$200.00 of this assessment is to be used for maintenance on High Pasture Drive and the additional \$150.00 of this assessment is to be used for maintenance on Clearwater Drive.

A. From and after January 1, 2009, each annual assessment may be increased by not more than Ten Dollars (\$10.00) per year over the annual assessment of the preceding year unless otherwise agreed by a vote of two-thirds (2/3) of each group of members who are voting by person or proxy at a meeting duly called for this purpose.

SECTION 4. Special Assessments for Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, replacement, or improvement to the roadway, PROVIDED THAT, any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting by person or proxy at a meeting duly called for such purpose..

SECTION 5. Notice and Quorum for any Action Authorized Under Sections 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all members not less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

SECTION 6. Uniform Rate of Assessment. Both annual and special assessments, with respect to all improved lots, shall be uniform in amount. In recognition of the fact that (i) substantially all of the Roadway maintenance budget for the Association will be as a result of the use of the roadway by owners of improved lots as well as owners of unimproved lots.

SECTION 7. Date of Commencement of Annual Assessments: Due Dates. The annual Assessments provided for herein shall commence as to all lots on the first day of the month following conveyance of the roadway to the property owners association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the Annual Assessment not less than thirty (30) days in advance of the first month in which such Annual Assessment is to take effect. Written notice of the Annual Assessment shall be sent to every owner. The due date of the Annual assessment shall be established by the Board of Directors. The Property Owners Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Property Owners Association setting forth whether the assessments on the specified Lots have been paid. A properly executed certificate of the Property Owner's Association as to the status of assessments on a lot is binding upon the Property Owners Association as of the date of its issuance.

SECTION 8. Effect of Non-Payment of Assessments: Remedies of the Property Owners Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Property Owners Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Roadway or abandonment of his lot.

SECTION 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure of any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to

such sale or transfer. No sale or transfer shall relieve such lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V. INSURANCE

SECTION 1. Property Owners Association Insurance. The property owners association shall purchase and provide liability insurance for the Property Owners Association and for its members with respect to the Roadway only. Any such liability insurance for the protection of the Owners of any lot being the responsibility of each owner.

SECTION 2. Annual Review of Policies. The insurance policy shall be reviewed at least annually by the Board of Directors of the Property Owners Association in order to ascertain whether the coverage contained in the policy is sufficient with respect to potential liability.

ARTICLE VI. MAINTENANCE AND REPAIR.

SECTION 1. Roadway. In the event that the need for maintenance or repair of the Roadway is caused through the willful or negligent acts of an owner, or through the willful or negligent acts of the family, guests, or invitees of an owner, which acts shall include damages caused by vehicles loaded to a weight in excess of the posted weight limits passing over the roadway, the cost of such maintenance or repair shall be added to and become part of the assessment to which such owner and his lot is subject.

ARTICLE VII. ACCESS

SECTION 1. Property Owners Association Access. The Property Owners Association, its officers, employees and agents, and contractors and repairmen designated by the Property Owners Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair to the Roadway, making inspections and performing the duties of the Property Owners Association hereunder, and the Property Owners Association is hereby granted a specific easement for such purposes.

ARTICLE VIII. GENERAL RESTRICTIONS

SECTION 1. Building or Uses other than for Residential Purposes Not Permitted. The properties shall be used only for residential purposes, in accordance with appropriate zoning regulations. No structures shall be erected, altered, placed or permitted to remain on any residential building lot other than one detached single family dwelling not to exceed two and one half stories in height and other out-buildings incidental to residential use of the lot; no dwelling or other out building shall be constructed within 50' of roadway easement lines. One story dwellings will contain not less than 1800 square feet of living area excluding garage and basement. Multi-story and split-level dwellings shall contain not less than 2400 square feet of living area excluding garage and basement. No flat or mansard roof shall be permitted on any dwelling. No mobile homes or modular

homes shall be permitted at any time. Each dwelling shall have a minimum of 25% brick or stone on the front of the dwelling. All accessory buildings such as storage sheds, barns, carports, detached garages and other buildings shall be of neat construction and of such character as to enhance the value of the properties. Declarant must review & approve all home construction plans prior to building.

No building or structure of any sort may ever be placed, erected or used for business, professional, trade or commercial purposes on any of the lots within the properties. Provided, however, this prohibition shall not apply to any building or structure that is to be used exclusively by a public utility company in connection with the furnishing or public utility services to the properties.

SECTION 2. Telephone/Electric Service. All telephone and electric power service lines from property line to dwelling shall be under ground, however, a single pole and appurtenances may be used temporarily to provide electrical service during the permitted construction period.

SECTION 3. Lot Development Restrictions. No residential building Lot shall be resubdivided.

SECTION 4. Noxious Activity. No noxious or offensive trade or activity shall be carried on upon any lot, or shall any trash, junk cars, or other refuse be thrown, placed or dumped upon any lot. Nor shall anything ever be done which may be, or may become, an annoyance or nuisance to the Property. The owner of a vacant Lot is required to keep said Lot in presentable condition and non-burnable refuse must be hauled away for disposal. No trash or garbage containers shall be visible from the Roadway.

SECTION 5. Temporary Structure. No trailer, basement, tent, shack garage, barn or other outbuilding whether temporary or permanent in nature, shall be constructed or used at any time as a residence, and no structure previously used shall be moved onto any lot. Declarant or its assigns may erect and maintain model homes for sales purposes and rental and lease purposes and may operate such office or offices therein for so long as they deem necessary for the purposes of selling, renting or leasing the property.

SECTION 6. Livestock and Poultry Restrictions. No animals, livestock or poultry of any kind shall be raised or kept on any lot other than horses, beef cattle, dogs, cats or other household pets. No such pet will be kept, bred or maintained for commercial purposes.

SECTION 7. Billboards Prohibited. No sign, billboard or other structure for advertising or the display of advertising material of any kind shall be erected, placed or permitted to remain on any lot except that real estate for-sale or for -rent signs shall be permitted temporarily in the yards of dwellings which are being offered for sale or rent.

SECTION 8. Septic Tanks. Septic tanks must conform to minimum State Health Department regulations and shall be constructed in accordance with the recommendation

called for as a result of a percolation test. It shall be necessary for the owner of the lot to contact the appropriate governing agency to request and receive approval of the septic system prior to construction and use. In no case may a septic system on any lot be closer to a lot property line than applicable Washington County Zoning Regulation or State of Nebraska Department of Health Regulations allow.

SECTION 9. Access to Lots/Residence Markers. Access to each and every Lot shall be from the Roadway only. E-911 residence markers of and for Washington County shall be placed by the driveway entrance from each lot to the roadway.

SECTION 10. Additional Restrictions. In addition to the Covenants set forth herein, all above-described lots shall be subject to all applicable zoning ordinances, rules, and regulations of Washington County, Nebraska, and any other political subdivision, governmental or quasi-governmental entities having jurisdiction over these lots.

ARTICLE IX. EASEMENTS AND LICENSES

SECTION 1. Ingress and Egress. A perpetual non-exclusive license and easement for ingress and egress is hereby reserved in favor of and granted by the Declarant for itself/themselves, its/their successors and assigns and all future grantees, to enter on the real estate described in Section 6 of this Article at any time for travel to and from each Lot. The license and easement is to be and shall run with the land, and shall be for the benefit and use of all future owners of all or any portion of the property or any of the lots, and the family, guests, and invitees of an owner.

SECTION 2. Roadway Maintenance. A perpetual non-exclusive license and easement, with specific rights of ingress and egress, is hereby reserved in favor of Declarant and granted by the Declarant to and for Declarant and to and for the Property Owners Association, to enter on the real estate described in Section 6 of this Article at any time that it may see fit to perform maintenance, repair, and improvements to the roadway, making inspections, performing the duties of the Property Owners Association hereunder. The license and easement is to be and shall run with the land, and shall be for the benefit and use of Declarant, the Property Owners Association, its/their successors and assigns.

SECTION 3. Utility Company. A perpetual license and easement, with specific rights of ingress and egress, is hereby reserved in favor of and granted by the Declarant to and for Declarant and to and for the Omaha Public Power District, the Blair Telephone Company, or any other utility company, their successors and assigns, to enter on the real estate described in Section 6 of this Article at any time that it may see fit, for the purpose of installing, constructing, maintaining, altering, repairing, upgrading, extending, replacing removing, operating, etc. cables, wires, conduits, other instrumentalities, etc. for carrying and transmitting electric current for light, heat and power and for all telephone and /or message service, together with the right to refill ditches and trenches for the location of such cables, wires, conduits, other instrumentalities, etc., and the further right to remove trees, bushes, undergrowth, crops and other obstructions from the

surface and subsurface interfering with the location, construction, maintenance, etc. of such cables, wires, conduits and other instrumentalities. The license and easement granted herein is to be and shall run with the land, said license and easement being granted for the use and benefit of all present and future owners of any and all lots.

SECTION 4. No Construction. No structure, shed or building of temporary or permanent nature shall be erected or constructed, nor shall any well be drilled or operated, nor shall any obstacle be constructed above ground, in the area of the license and easement described herein, nor shall any obstacle be placed in the area of the license and easement described herein except if same shall be buried below plow depth, nor shall any ground cover over the instrumentalities or the appurtenances thereto be added.

SECTION 5. Description. The license and easement granted under this Article shall cover a strip of land sixty-six feet (66') in width over, under, across and through The roadway set forth within the property.

ARTICLE X. INDEMNIFICATION OF OFFICERS AND DIRECTORS.

SECTION 1. Indemnification. The Association shall indemnify every Director and officer, his heirs and personal representatives against all loss, costs and expense, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director or officer of the Association, except as to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Board of Directors may determine that the person to be indemnified has not been guilty of gross negligence or willful misconduct in the performance of his duty as such Director or officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Director or officer may be entitled. All liability, loss, damage, costs and expense incurred or suffered by the Association by reason of, arising out of, or in connection with the foregoing indemnification provisions shall be treated and handled by the Association as common expenses; provided, however, that nothing in this Article shall be deemed to obligate the Association to indemnify any member or owner of a lot who is or has been a director or officer of the Association, with respect to any duties or obligations assumed or liabilities incurred by him and by virtue of this declaration as a member of the Association may obtain such liability insurance for the Directors as the Association may deem appropriate, which liability insurance shall be treated and handled by the Association as common expenses.

ARTICLE XI. GENERAL PROVISIONS

SECTION 1. Enforcement. The association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or

restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

SECTION 2. Severability. Invalidation of any one of these Covenants or Restrictions by judgment or court order shall in no way effect any other provisions which shall remain in full force and effect.

SECTION 3. Amendment. The Covenants and Restrictions of this Declaration shall run with and bind the land, and shall be binding on all parties and all persons claiming under them until January 1, 2010, at which time said covenants shall be automatically extended for successive periods of ten years. This declaration may be amended during the period ending January 1, 2010, by an instrument signed by not less than ninety percent of the lot owners, and thereafter by an instrument signed by not less than seventy-five percent of the lot owners. Any amendment must be recorded with the Register of Deeds in and for Washington County, Nebraska. Non-renewal of these covenants shall not divest or deprive the public or any political subdivision of the State of Nebraska from any right or remedy acquired hereunder, which covenants shall survive non-renewal.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed.

DATED: 4-1-07

McGowan Properties, Inc.,
A Nebraska Corporation,

By Jolene McGowan
Jolene McGowan, Vice President

Sharon K Nelson

