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*Glenn J. Pansing*  
REGISTER OF DEEDS

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS OF HIGHWAY CROSSING,  
SARPY COUNTY, NEBRASKA**

THIS DECLARATION is made and executed as of the 15<sup>th</sup> day of January, 2002, by B.H.I. INVESTMENT COMPANY, a Nebraska corporation (hereinafter referred to as the "Declarant").

PRELIMINARY STATEMENT

The Declarant is the Owner of the following described real property:

Lots One (1) through Thirty-two (32), Highway Crossing, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot", as defined below.

The Declarant desires to provide for the preservation of the values and amenities of Highway Crossing and for the maintenance of the character and industrial/commercial integrity of Highway Crossing.

NOW, THEREFORE, the Declarant hereby declares that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of the Lots. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as is more fully described herein. The Lots, and each Lot is and shall be subject to all and each of the following conditions and other terms:

I. DEFINITIONS

(a) "Declarant" shall mean and refer to B.H.I. Investment Company, a Nebraska corporation.

Return to:

*B+R*  
John Q. Bachman  
GAINES, PANSING & HOGAN  
10050 Regency Circle, Suite 200  
Omaha, NE 68114

02319

- (b) "Lot" shall mean and refer to any plot of land platted as a Lot as shown upon the recorded initial Subdivision plat of Highway Crossing, or as any such Lot may hereafter be subdivided, replatted or reconfigured, in whole or in part.
- (c) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot within the Subdivision, including contract seller, but excluding those persons having such interest merely as security for the performance of an obligation (including the trustee under a deed of trust). "Owner" shall include Declarant when the Owner of a Lot.
- (d) "Subdivision" shall mean Highway Crossing, as surveyed, platted and recorded, Sarpy County, Nebraska.

## II. LIMITATIONS AS TO TYPE OF CONSTRUCTION

- (a) All buildings constructed within the Subdivision, shall be of approved construction, such as metal, brick, stone, painted concrete, decorative block or architectural concrete over a steel frame. No painted concrete block or metal (except decorative block) is allowed on any facade facing Shepard Street, 147<sup>th</sup> Street, 146<sup>th</sup> Street and 145<sup>th</sup> Street, without the expressed written consent of Declarant, in Declarant's sole judgment. Any facade facing Highway 50 or Highway 370 may be painted concrete block or metal upon the expressed written consent of Declarant and upon conditions to be approved by Declarant, in Declarant's sole judgment.
- (b) No building shall be moved from outside the Subdivision onto any Lot.

## III. BUILDING SET-BACKS/LANDSCAPE AREAS

- (a) There shall be minimum front yard, rear yard and side yard set-backs applicable to all Lots as determined by the Declarant; but in any event, all improvements on the Lots shall minimally comply with all applicable set-back requirements of the zoning code of Sarpy County, Nebraska, as the same may be amended from time to time.
- (b) The front yard and all other landscaped areas, including that area between the street paving and the property line of all built upon Lots shall be planted with grass and properly maintained as a lawn area, except that part used for driveways or parking. Deciduous trees shall be a minimum two inch (2") caliper and evergreens shall be at least six feet (6') tall. The front yard shall contain an underground water sprinkler system. Parking and paving shall not be permitted closer than 15 feet from the street curb line of Shepard Street and 150th Street. All parking areas and access points within 100 feet of Shepard Street or 150th Street must have concrete curbing.
- (c) The minimum distance between any two buildings on the same Lot shall be twenty-five (25) feet without the expressed written consent of Declarant, in Declarant's sole judgment.

- (d) Declarant shall grant and convey a fifteen (15) foot permanent right-of-way easement for the construction, installation, operation, maintenance, repair, replacement, preservation and removal of landscape areas for that portion of any Lot which adjoins Highway 50 or Highway 370.

#### IV. LIMITATIONS AS TO PERCENTAGE OF LAND COVERED BY BUILDINGS

The total coverage of buildings and structures, including docks and loading platforms, shall not exceed sixty-five percent (65%) of the area of each individual tract, for Lots 1-32.

#### V. PARKING FACILITIES

All vehicular parking (customer, visitor and employee) shall be off-street. The minimum number of vehicular parking spaces required shall equal at least forty percent (40%) of the number of employees normally engaged at any one time in the business or industry conducted on each individual Lot. Parking areas shall not be used for any purpose other than the parking of automotive vehicles belonging to customers, visitors and employees. In no case shall any storage, servicing or dismantling of automobiles or other vehicles, or loading or unloading operation, be permitted in this required parking areas. All parking areas shall be hard surfaced with a suitable dustless material. Automobiles, trucks and other self-propelled vehicles parked out of doors within the subdivision must be in operating condition.

#### VI. LOADING AREA

All loading and unloading operations shall be off-street. In no case shall loading or unloading be permitted in the parking or lawn areas or in a location which will interfere with ingress or egress thereto. All loading areas shall be hard surfaced with a suitable dustless material. No loading areas shall be constructed facing any public street or highway without prior written approval of Declarant, in Declarant's sole judgment.

#### VII. OUTSIDE STORAGE

No article of merchandise or other material shall be kept, stored or displayed outside the confines of a walled building unless it be so screened by fences, walls or plantings that it cannot be seen from any public street. In no event shall any part of the required parking or lawn areas be used for the storage or abandonment of any property. No area outside the confines of a walled building shall be used to display any article of merchandise held for the purpose of sale. No outside storage shall be permitted closer to any street than the building set-back requirement without prior written approval of Declarant, in Declarant's sole judgment.

### VIII. ERECTION OF SIGNS

No Owner, lessee or occupant of any Lot shall use, or permit to be used, any portion of the property under its control for the erection of signs, billboards or displays, other than those directly connected with the business operated on said Lot. No flashing signs or lights, revolving beacons, strobe lights or similar electrical or mechanical mechanisms, whether permanent or temporary in nature, shall be permitted. No signs shall be erected or maintained on the roof of any building. Written approval by the Declarant is required prior to the erection or modification of any sign, other than a sign attached to a building and identifying the address and/or the occupant thereof. All approved signs must be less than twenty-five (25) feet in height and must be "monument" type signs.

### IX. MAINTENANCE OF UNDEVELOPED AREAS

That portion of each Lot which is not improved through the construction of buildings, parking facilities, loading facilities and lawn area, as hereinbefore provided, shall be seeded to a cover planting which grows to a height not to exceed approximately twelve (12) inches and shall be continuously and attractively maintained. In no event and at no time shall any Lot be planted to cultivated row crops. Each Lot Owner shall be responsible for the maintenance of the property beyond the lot line up to the edge of the pavement of the abutting street or streets.

### X. OFFENSIVE USES

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which is, becomes or produces, an annoyance, nuisance or hazard to the Owner or occupant of other property within the Subdivision, including, but not limited to, unsightliness or the emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke, noise or "Hazardous Substance," as defined in §101(14) of CERCLA (42 U.S.C. §9601 (14)) or any applicable present or future state or local law, rule, regulation or ordinance, as amended from time to time.

### XI. ZONING AND BUILDING REGULATIONS

In addition to the foregoing, the use and building regulations, as now or hereafter imposed by the provisions of the zoning and building regulations of all governmental entities having jurisdiction shall apply throughout the Subdivision, except as such may be modified by duly constituted authority.

### XII. APPROVAL OF PLANS

- (a) No building, fence, wall, driveway, landscaping, satellite receiving station or disc or other external improvements, above or below the surface of the ground, shall be built, erected, placed, altered or otherwise maintained or permitted to remain on any Lot, nor shall any grading or excavation be commenced without the express written approval of the Declarant. "Approval of Declarant" shall also mean approval by another person

designated by Declarant in a writing duly recorded in the Office of the Register of Deeds and indexed against the Subdivision as approving authority in lieu of Declarant.

- (b) Documents submitted to Declarant shall be clear, concise, complete, consistent and legible. Samples of materials to be included in the improvement may be required of the applicant at the discretion of Declarant. Submittals shall be made in duplicate and comments and actions of Declarant will be identically marked on both copies of said submittals. one copy will be returned to the applicant and one copy will be retained as part of the permanent records of Declarant. Each applicant shall submit to Declarant (i) a site plan, indicating specific improvement and indicating Lot number, street address, grading, surface drainage and sidewalks; (ii) complete set of construction plans, including, but not limited to, floor areas of each level, wall sections, exterior elevations clearly indicating type and extent of exterior materials and color, roofing and landscaping (herein collectively the "Plans"). Concurrently with submission of the plans, the Owner shall notify the Declarant of the Owner's mailing address.
- (c) Any notice of approval shall be in writing and mailed to the Owner at the address specified by Owner upon submission of the plans. Failure of Declarant to give written approval of submitted plans within thirty (30) days after receipt of all the plans shall operate as disapproval of the plans submitted.

XIII. COMPLIANCE WITH GOVERNMENT REGULATIONS, ETC.

The Owner of each Lot shall, at all times, keep the premises, buildings, improvements and appurtenances in a safe, clean, wholesome condition and in all respects in compliance with applicable rules, regulations, ordinances and statutes of all governmental authorities having jurisdiction. All Lots shall be kept free of rubbish, debris, merchandise and building material except during reasonable construction periods for the main structures. Vacant Lots shall not be used for dumping of earth or other waste materials and shall be maintained level and smooth enough for machine mowing. A building upon which construction has begun must be completed within one year from the date the foundation was dug for said building.

XIV. PROPERTY OWNERS ASSOCIATION

1. The Association. Declarant has caused the incorporation of HIGHWAY CROSSING PROPERTY OWNERS ASSOCIATION, a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association has as its purpose the promotion of the health, safety, welfare and enjoyment of the owners of the Lots, including:

A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include dedicated and nondedicated roads, paths, ways and green areas; landscape areas and signs and entrances for Highway Crossing. Common Facilities may be situated on property owned or leased by the Association, on public property, on private property

subject to an easement in favor of the Association, or on property dedicated to a Sanitary and Improvement District.

B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities by Members, their invitees, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

C. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Highway Crossing; and the protection and maintenance of the residential character of Highway Crossing.

2. Membership and Voting. Highway Crossing is initially divided into thirty-two (32) separate lots (referred to as the "Lots"). The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The Owner of each Lot, whether one or more persons and entities, shall be entitled to one (1) vote on each matter properly coming before the Members of the Association.

3. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the Purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors, and upon authorization of the Board of Directors by the Officers, shall include but shall not be limited to the following:

A. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

B. The landscaping, mowing, watering, repair and replacement of landscape areas and other public property and improvements on public property within or near Highway 50 and Highway 370.

C. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

D. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and

casualty, and purchase of liability insurance coverages for the Association, the Board of Directors of the Association and the Members.

E. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

F. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

G. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

H. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

I. General administration and management of the Association, and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

J. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

4. Mandatory Duties of Association. The Association shall maintain and repair any fence, signs and landscaping which have been installed in easement areas of the Highway Crossing subdivision and center islands dividing dedicated roads, in generally good and neat condition.

5. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

6. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot, and shall abate all dues and assessments due in respect of any Lot during the period such Lot is owned by the Declarant.

7. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' 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. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of 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 assessments or dues.

8. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association described in Section 1 of this Article, and to perform the Powers and Responsibilities of the Association described in Sections 3 and 4 of this Article.

9. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 11, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

A. One Hundred Twenty-Five and no/100 Dollars (\$125.00) per Lot.

B. In each calendar year beginning on January 1, 2003, one hundred twenty-five percent (125%) of the aggregate dues charged in the previous calendar year.

10. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. The aggregate assessments in each calendar year shall be limited in amount to Two Hundred and no/100 Dollars (\$200.00) per Lot.

11. Excess Dues and Assessments. With the approval of seventy-five percent of the Members of the Association, the Board of Directors may establish dues and/or assessments in excess of the maximums established in this Declaration.

12. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots, but dues may be abated as to individual Lots, as provided in Section 5, above.

13. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessment shall be and become a lien as of the date such amounts first become due and payable.

14. Effect of Nonpayment of Assessments-Remedies of the Association. Any installment of dues or assessment which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the



Common Area or abandonment of his 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 all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

15. 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 improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

16. Additional Lots. Declarant reserves the right, without consent or approval of any Owner or Member, to expand the Association to include additional lots in any subdivision which is contiguous to any of the Lots. Such expansion(s) may be affected from time to time by the Declarant or Declarant's assignee by recordation with the Register of Deeds of Sarpy County, Nebraska, of a Declaration of Covenants, Conditions, Restrictions and Easements, executed and acknowledged by Declarant or Declarant's assignee, setting forth the identity of the additional residential lots (hereinafter the "Subsequent Phase Declaration").

Upon the recording of any Subsequent Phase Declaration which expands the residential lots included in the Association, the additional lots identified in the Subsequent Phase Declaration shall be considered to be and shall be included in the "Lots" for purposes of this Article XIV, and the Owners of the additional residential lots shall be Members of the Association with all rights, privileges and obligations accorded or accruing to Members of the Association.

XV. EASEMENTS

- (a) A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, Qwest Communications Corporation, and any company which has been granted a franchise to provide a cable television system within the Lots, Metropolitan Utilities Company, and Sanitary and Improvement District No. 199 of Sarpy County, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electrical and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5) foot wide strip of land abutting the front and the side boundary lines of the Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior lots that are adjacent to presently platted and recorded Lots; and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the Lots. The sixteen (16) foot wide easement will be reduced to an eight (8) foot wide strip when such adjacent land is surveyed, platted and recorded.

- (b) A perpetual easement is further reserved for the Metropolitan Utilities District of Omaha, their successors and assigns to erect install, operate, maintain, repair and renew pipelines, hydrants and other related facilities, and to extend thereon pipes, hydrants and other related facilities and to extend therein pipes for the transmission of gas and water on, through, under and across a five (5) foot wide strip of land abutting all cul-de-sac streets; this license being granted for the use and benefit of all present and future owners of these Lots; provided, however, that such licenses and easements are granted upon the specific conditions that if any of such utility companies fail to construct such facilities along any of such Lot lines within thirty-six (36) months of date hereof, or if any such facilities are constructed but are thereafter removed without replacement within sixty (60) days after their removal, then such easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings, trees, retaining walls or loose rock wall shall be placed in the easementways but same may be used for gardens, shrubs, landscaping and other proposes that do not then or later interfere with the aforementioned uses or rights granted herein.
- (c) Other easements are provided for the final plat of Highway Crossing which is filed in the Register of Deeds of Sarpy County, Nebraska (Instrument No. 2001-43420).

#### XVI. DURATION

- (a) The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, and shall be automatically renewed and extended for successive periods of five (5) years each, unless and until the then Owners of a majority of land within the Subdivision execute and record an instrument terminating these covenants. This Declaration may be amended by the Declarant, or any person, firm, corporation, partnership or entity designated in writing by Declarant, in any manner which it may determine its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.
- (b) The Declarant, or any Owner or contract purchaser of a Lot, shall have the right to enforce, by proceeding at law or in equity, all restrictions and covenants now or hereafter imposed by the provisions of this Declaration, either to prevent or restrain any violation. Failure by the Declarant, any Owner or contract purchaser to enforce any covenant or restriction herein contained shall, in no event, be deemed a waiver of the right to do so thereafter.

XVII. SEVERABILITY

If any term or provision of this Declaration, or the application of it to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Declaration and the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term and provision thereof shall be valid and shall be enforced to the extent permitted by law.

XVIII. NOTICES

All notices to be given pursuant to this Declaration shall be in writing and must be given by United States mail, certified or registered, postage prepaid, properly addressed to the Owner or each Lot by name and address as shown on the then current property tax rolls in Sarpy County, Nebraska. All notices to Declarant shall be sent to it at the following address; or the address as requested by Declarant:

B.H.I. Investment Company  
11205 South 150<sup>th</sup> Street  
Omaha, Nebraska 68138

XIX. ATTORNEY'S FEES

In the event any entity which is entitled to the benefits of this Declaration brings any action at law or equity to enforce this Declaration, the prevailing party of such action shall be entitled to recover from the other party its reasonable attorney's fees and all court costs in addition to all other appropriate relief.

XX. SUCCESSORS AND ASSIGNS

The Declaration created hereby shall inure to the benefit of, and be binding upon, the Owners of all Lots within the Subdivision and their respective successors and assigns; provided, however, that if any Owner sell any portion or all of its interest in any Lot, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by its arising out of this Declaration after the sale and conveyance of title.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date first set forth above.

2007-07319K

B.H.I. INVESTMENT COMPANY, a Nebraska corporation

By: Gerald L. Torczon  
Gerald L. Torczon, President

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 15 day of January, 2002, by Gerald L. Torczon, President of B.H.I. INVESTMENT COMPANY, a Nebraska corporation, on behalf of the corporation.

Doris J. Nicholson  
Notary Public

