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*Carol Larson*  
DOGEE COUNTY  
REGISTER OF DEEDS  
COMPARE INSTRUMENTS

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
AND EASEMENTS FOR WHISPERING PINES HOMEOWNERS  
ASSOCIATION, FORMERLY KNOWN AS GREEN ACRES  
HOMEOWNERS ASSOCIATION, LOTS 90 THROUGH 105**

THIS DECLARATION made on the date hereinafter set forth by the owners of lots 90 through 105 of Whispering Pines Homeowners Association, formerly known as Green Acres Homeowners Association.

Lots 90 through 105 inclusive, in Green Acres, being a platting of Part of the East One-Half of the NE1/4 of the NW1/4 of Section 13, Township 18 North, Range 8 East of the 6<sup>th</sup> P.M., Dodge County, Nebraska.

WHEREAS, Owners of said lots desire hereby to impose upon said real estate mutual and beneficial restrictions, covenants, conditions and charges under general plan for the benefit of the owners of said real estate and future owners of the same.

WHEREAS, Owners of said lots desire to avoid any confusions with the Green Acres Mobile Home Community and change the name of the Association to Whispering Pines Homeowners' Association.

WHEREAS, Owners of said lots desire to amend and replace the covenants, conditions, restrictions, and easements and do not intend to change the declarations that were in place prior to the execution of the amended declarations.

NOW, THEREFORE, in consideration of the promises, for themselves, their successors, assignees and all future grantees and successors in title, do hereby impose, create and place upon the real estate described hereinabove the reservations, conditions, covenants and restrictions ( all of which are hereby termed "restrictions") contained herein below. Owners further declare that said real estate is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used and occupied, subject to the provisions of this Declaration, all of which is declared to be in the furtherance of a plan for the development, improvement and sale of lots within said real estate 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, servitude upon the real estate; to create reciprocal

rights between the respective owners of individual lots herein; to create a privity of contract in estate between the grantees hereof, their heirs and assigns and shall, as to the owners of any interest in said real estate, their heirs, successors and assigns, operate as covenants running with the land for the benefit of each and all other owners of said real estate and this shall be so even if said restriction are amended from any deed or instrument of conveyance of said lands, or any part thereof.

By accepting a deed to any of said lots, a Grantee shall bind himself, his heirs, personal representatives, administrators, successors, assigns, and grantees to observe and perform all restrictions as fully as if they had joined in this declaration and said grantee, by accepting a deed, further agrees to become a member of Whispering Pines Homeowners Association, and to pay the dues, regular and special assessments, if any therefore.

In addition, there is herewith formed the Whispering Pines Homeowners Association (hereinafter referred to as the "Association") The purpose of the Association shall include the enforcement of the restrictions contained in this Declaration, setting, collecting and enforcing annual and special assessments and such other purposes and functions as the members shall, from time to time, deem mutually advantageous and beneficial. All persons having any ownership interest in any of the real estate described hereinabove shall automatically be members of the Association, provided, however, that for the purposes of voting on all matters to come before the Association, each platted lot contained herein shall be entitled to one vote regardless of the number of individual owners thereof. The Association shall hold a general membership meeting no less than annually on the third Sunday of February at 3:00 o'clock p.m. at such place as may be designated. At the annual meeting of the Association, officers of the Association will be elected consisting of no less than a President and Secretary and such other officers as the members may deem advisable and the members of the Committee shall be appointed and elected for the ensuing two year term. The committee shall consist of not less than three nor more than five members; the exact number to be determined at the annual meeting of the Association and one member of the committee shall be designated as the ~~Chairman~~.

In addition, the Association may adopt such by-laws, rules and regulations as the membership may deem advisable in the furtherance of its purposes, providing, however, that no such by-law, rule or regulation shall be inconsistent with or in contravention of the restrictions contained in this Declaration unless the same have first been amended in accordance with the procedure described by applicable laws.

## **ARTICLE I** **DEFINITIONS**

A. Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot referenced herein, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

B. Properties. "Properties" shall mean and refer to all such properties that are subject to the Declaration or any supplemental Declaration under the provisions hereof, which shall initially consist of the real estate described hereinabove.

## **ARTICLE II** **RESTRICTIONS FOR RESIDENTIAL UNITS**

A. Purpose. Restrictive Covenants adopted herein are to preserve the appearance, architectural character, harmony of external design and location in relation to surroundings, topography, and location within the lot boundary lines, quality of construction and size and suitability for residential purpose. Any violation(s) existing prior to the approval of this amended Declaration is protected under a grandfather rule and will not be required to comply with the amended Declarations at this time.

A violation may not continue if an opportunity exists to correct the deficiency to the current Declarations. The determination of when an opportunity arises or exists to correct the deficiency is at the sole discretion of the Officers of the Association.

B. Residential Use. The Lots shall be used only for residential purposes.

C. Minimum Square Feet No main residence shall be created, altered, placed, or permitted to remain on any Lot other than a detached single family dwelling which shall contain a minimum of 1,000 square feet.

D. Maximum Height. The maximum height of the dwelling shall be two (2) stories above the surface grade. The basement will be considered a story even if it is one hundred percent (100%) above grade on one or more sides and essentially below grade on the other sides.

E. Setbacks. All buildings shall be located in accordance with applicable zoning regulations.

F. Fences. No fences may be built forward of the front most wall at each side (corner) of the front of the foremost structure (dwelling or garage) except decorative fences no more than 42" in height and constructed of brick, chain link, decorative iron, stone, wood or commercial produced plastic or vinyl fence, and being 25% open. This must not extend past the lot boundary of the property on the street side. Fences on the front of property (parallel to the street) and on either side of the lot, from the front most wall of the foremost structure (dwelling or garage) to 10' inside the property line, must not exceed 48" in height and be constructed of chain link, brick, decorative iron, stone, wood or commercial produced plastic or vinyl fence and be 25% open. Fences on either side of property, beginning 10' in from the front property line to the back corner of the lot and across the rear of said lot shall be constructed of wood, decorative iron, brick, stone, chain link, or commercially produced plastic or vinyl fence and must not exceed 6' in height. Only these may be 100% closed. The side of the dwelling facing the road shall be the front for purpose of location on said lots. Temporary or permanent barbed wire, electrified, and / or snow fences are strictly prohibited. (See attached chart)

G. Prohibited Structures. No structure of a temporary character, basement, tent, shack, barn, or other out-building shall be erected on said Lot, or used as a residence, temporarily or permanently, No full or partial subterranean dwelling or log houses shall be constructed or erected on any Lot.

H. Accessory / Utility Structures. Detached accessory / utility buildings are permitted so long as they are placed in rear of yard as defined in Section F above and are no larger than 12' X 14' of a commercially produced quality. The Association officers must first approve all structures built on site.

I. Garages. Garages may be built on the side or front of Lot no larger than (720 square feet) in size. The finish construction must match the roof design, color, and building material of the main residence. The garage may not be located on Lot so that any roof overhang will exceed Lot property lines.

J. General Appearance Restrictions. No incinerator or trash burner shall be permitted on any Lot. Garbage, trash can or container shall be permitted at the edge of road only during construction of a residential dwelling or the day trash is being collected for the subdivision.

K. Vehicle Restrictions. No semi-truck with or without trailer allowed. Camping trailers, recreation vehicle, boat or similar vehicle shall be allowed provided they are kept within the Lot property lines. No repair of boats, campers, automobiles, trucks, motorcycles, or similar vehicles will be permitted outside of the property on any Lot for any longer than forty-eight (48) hours.

L. Lots Free of Rubbish and Mowing. All Lots shall be kept free of rubbish, debris, merchandise, and building material; however, building materials may be placed on Lots when construction has been started on the main residential structure, garages, or accessory / utility structures. In addition, vacant Lots not may not be used for dumping of earth or any other waste materials, and shall be maintained level and smooth enough for machine mowing. No vegetation shall be allowed to reach more than a maximum height of eight inches (8).

M. Field Crops on Lots. No field crops shall be grown upon any Lot at any time.

N. Restrictions on use of Lots. No noxious or offensive activity shall be carried on any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, including but not limited to odors, dust, glare, sound, lighting, smoke, vibration, and radiation.

O. Gardens. Vegetable gardens shall be permitted if maintained in the designated rear yard of any Lot behind the dwelling on said Lot.

P. Restrictions on Pets. Customary house pets may be kept limited to two (2) dogs and two (2) cats per household. Care shall be taken to keep these pets within the confines of one's own property. Animals other than customary house pets are prohibited. Hoofed or farm animals are specifically prohibited.

Q. When Dwelling Completed. A dwelling, garage, or accessory/utility structure on which construction has begun must be completed within (1) year from the date the building Permit was issued or construction was started.

R. Lawn and Yard Maintenance. All Lots shall be neatly maintained at all times, all grass and weeds shall be kept at a reasonable height, (maximum 8"). There shall be no accumulation of debris, machinery, disabled automobiles, or offensive material of any kind. No posters or advertising signs (except residential "For Sale" signs, and for 3 -days "garage sale" signs) shall be erected on any Lot.

S. Exterior Lighting. Exterior lighting installed on any Lot shall either be indirect or of such controlled focus and intensity as not to disturb the residents of adjacent Lots.

T. Sewer system. All sewer systems must be installed so as to comply with the existing State / County Health Codes. An appropriately designated Health Inspector must inspect such systems during installation. No septic tanks are allowed.

U. Excavation. All excavations, including utility trenches, shall be kept filled, compacted, and maintained by the owner of each Lot. No material other than earth, sand, rock, or gravel shall be used as fill or backfill on any Lot.

### **ARTICLE III** **EASEMENTS**

- A. The properties are, and shall perpetually be, unless thereof is terminated, subject to all and each of the following easements for common use, construction, maintenance, support, repair, recreational and other access, private and public sewer line construction and services and roadway easements.

Section 1. Utility Easements. A perpetual license and easement is hereby reserved in favor of and granted for utility service included, but not limited to telephone, cable, gas and electricity. Said license and easements shall run to the provider of said service for the Lots listed herein, their successors and assigns, to erect and operate, maintain, repair and renew underground utilities, and their accessories and other instrumentalities for the supply of electric power, gas, water, telephone and cable television on the Lots referenced herein. While the utility easement granted herein is a blanket easement, the easement shall not, nor is it intended to interfere with the orderly development of each lot and the Grantees of the above described easement agree to use only so much of the easement as is necessary for their purpose in order to maximize the buildable area of each lot. The guarantees of the above described easement further agree that subsequent to the construction of their respective improvements on the properties, they shall reduce said blanket utility easement to a specific metes and bounds easement setting forth the actual amount to be used for said improvements, and all owners hereby covenant and agree to cooperate with the reduction of the blanket utility easement to a specific metes and bounds utility easement. Each Grantee, by acceptance or use of this easement right, shall be deemed to agree to restore the surface of the soil, if excavated, for any purpose hereunder to the original contour thereof as near as may be possible and to repair or replace the surface of any lawns, streets, parking areas, or

driveways which may have been disturbed for any purpose hereunder as near as may be possible to their original condition. Such restoration, repair or replacement shall be performed as soon as may be reasonably possible to do so.

#### **ARTICLE IV** **MEMBERSHIP**

Every Owner as defined in Article I A. under this Declaration shall be a member of the Association. No owner shall have more memberships than the number of Lots owned by such Owner, Membership shall be appurtenant to and may not be separated from ownership of the Lots. Ownership of a Lot or Lots shall be sole qualification for membership. The foregoing is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation.

#### **ARTICLE V** **VOTING RIGHTS**

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 Lots shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

#### **ARTICLE VI** **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, hereby covenant, and agree to pay to the Association: (1) annual assessment or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as herein provided. The annual and special assessments, together with interest, cost and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien on the property against



which each such assessment is made. All subsequent purchasers shall take title to the Lot subject to said lien and shall be bound to inquire to the Association as to the amount of any unpaid assessments. 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 property at the time when the assessment fell due. The personal obligation for delinquent assessment shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The annual assessment shall be used exclusively for the maintenance and repair of roads, main distribution lines of water and sewer service, area street lighting and electricity for street lights, snow removal to the subdivision, office supplies, insurance bond, bank fees, and legal fees.

Section 3. Annual Assessments.

- (a) From and after January 1, 1999, the annual assessment may be increased / decreased by not more than twenty percent (20%) of the annual assessment for the previous year by a vote of two-thirds (2/3) of the members who are voting in person or by proxy at the annual meeting or a meeting duly called for this purpose.
- (b) All the assessments shall become the property of the Association.

Section 4. Special Assessments for Capital 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 or replacement of a capital improvement upon any common area, or within the subdivision roadway, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of majority of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose

of taking any action authorized under Section 3 or 4 of this Article shall be delivered either personally or by mail to all members not less than 10 days nor more than 60 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 shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be fifty percent (50%) of all of the votes. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

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 the conveyance of the properties. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

The officers of the Association shall fix the amount of annual assessment to be assessed against each lot at least thirty (30) days prior to the commencement of the fiscal year of the Association, which shall coincide with the annual assessment period commencing on January 1 of each year and terminating on December 31<sup>st</sup> thereof. Written notice of the annual assessment to each Owner subject thereto at least twenty (20) days prior to the due date of the assessment, or the first installment thereof, including the due dates and amounts thereof. The failure of the officers of the association to so notify each Owner in advance shall not, however, relieve any owner of the duty and obligation to pay such assessment of any installment thereof. The annual assessment shall be and become a lien as of the date of the annual assessment.

Section 8. Effect of Non-Payment of Assessments; The Personal Obligation of the Owner; The Lien, Remedies of the Association. If any assessments, 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 and cost of collection thereof as hereinafter provided, thereupon, become a continuing lien on the property which shall bind such

property in the hands of the then Owner, his heirs, successors, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass as a personal obligation to this successors in title unless expressly assumed by them.

Any delinquent assessment or installment thereof not paid within thirty (30) days after the due day 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, and there shall be added to the amount of such assessment the cost of repairing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided, and a reasonable attorney's fee to be fixed by the court, together with cost of the action.

No Owner may waive or otherwise escape the liability for the assessments provided for herein by non-use of the property or abandonment of his lot. The Mortgagee of the subject property shall have the right to cure any delinquency of an owner by payment of all sums due, together with interest, cost and fees. The Association shall assign to such Mortgagee all of its rights with respect to such lien and rights of foreclosure to the mortgage.

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 or 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 or any assessments thereafter becoming due, or from the lien thereof.

## ARTICLE VII 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. 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 officers 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 Mortgagee 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 a Member or Owner on the records of the Association at the time of such mailings; 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 said 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; and failure by the Association 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.

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

IN WITNESS HEREOF, the Owners have caused these presents to be executed this 14th day of September, 2004 year.

Richard R. Culver  
President

Gregory S. Dunlop  
Vice President

Mary S. Culver  
Secretary

Annie Dunlop  
Treasurer

**Attached Chart**  
**Fence size and Location**

