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STATE OF NEBRASKA COUNTY OF WASHINGTON)SS  
ENTERED IN NUMERICAL INDEX AND FILED FOR RECORD  
THIS 25th DAY OF August A.D. 2005  
AT 2:44 O'CLOCK P M AND RECORDED IN BOOK  
470 AT PAGE 706-710  
COUNTY CLERK Charlotte L. Petersen  
DEPUTY Joann Madson

Recorded /  
General /  
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CHARLOTTE L. PETERSEN  
WASHINGTON COUNTY CLERK  
BLAIR, NEBR.

**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: SOUTHERN HEIGHTS; A subdivision of all of Tax Lot 53 and Tax Lot 131 and all lying in the NW 1/4 of the NE 1/4 of Section 14, T-17-N, R-12-E of the 6th P.M. 58 Lots located in the City of Fort Calhoun, Washington County, NE.

NOW, THEREFORE, Declarant hereby declares that all of the Lots in Southern Heights shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions, and easements, which are the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the tracts or any part thereof, their heirs, grantees, transferees, successors and assigns, to wit:

DEFINITIONS

1. "Association" shall mean and refer to the Southern Heights 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 Subdivision Agreement and this Declaration entered into by and between the Declarant, the City of Fort Calhoun, Nebraska and the Lot owners.
2. "Declarant" shall mean and refer to McGowan Properties, Inc., its successors and assigns.
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 Southern Heights upon which a living unit may be built or is proposed to be built.
4. "Member" shall mean and refer to every person who holds membership in the Association.

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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.

MEMBER AND VOTING RIGHTS

1. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of the Lots. This is not intended to include persons or entities that hold an interest merely as security for the performance of an obligation.

2. Members shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, 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.

COVENANTS FOR MAINTENANCE ASSESSMENTS

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 (1/58<sup>th</sup> share) for the 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 30 days after the due date, which is to be established by a majority vote of the Board of Directors, shall bear interest from the due date to the rate of 10 percent 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.

RESTRICTIONS

1. Any and all lots shall be known and designated as residential building lots. No structures shall be erected, altered, placed or permitted to remain on any residential building lot other than one detached singly-family dwelling not to exceed two stories in height and other out-buildings incidental to residential use of the lot. Dwellings will contain not less than 1200 square feet of living area excluding garage, basement, decks, stoops and patios. All dwellings shall have either attached or detached, enclosed, side-by-side garages which can accommodate at least 2 automobiles. Each structure must be completed within one year from the date that the building permit for that structure is issued. No mobile homes, modular homes or prefabricated homes shall be permitted at any time.

2. All accessory buildings such as storage sheds, carports and detached garages shall be of neat construction and of such character as to enhance the value of the property. All must be finished completely with siding and a shingled roof. All 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.

3. No structure of temporary character, tent, shack, trailer, motor home, barn or other outbuilding shall be used on any tract at any time as a residence, either temporary or permanently, and no structure previously used shall be moved onto any lot. All structures shall be of new construction.

4. No trash, unlicensed cars or other refuse may be thrown, dumped or stored on any lot. Each owner of a lot is required to keep said lot in presentable condition and all refuse must be hauled away for disposal. This includes the construction phase of the residence.

5. No vegetation on vacant lots shall be allowed to reach more than a height of twelve inches (12"). Declarant shall have the right, should it become necessary, to enter upon any Lot in which a completed residence has not yet been constructed for the purpose of mowing and maintaining any such Lot without being classified as a trespasser; provided, however that the owner of the Lot shall pay any reasonable expense actually incurred on this account.

6. No repair of automobiles, motor vehicles, boats, engines and the like, will be permitted outside of garages on any Lot at any time.

7. No fences shall be erected in front of the main residence, except decorative fences no more than 42" in height, constructed of brick, stone, PVC or wood. Side and rear fences shall be maintained.

8. 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 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. Declarant may display signs and billboards for the sale of lots in above said subdivision until all lots are sold.

9. No noxious or offensive activity shall be carried on upon any Lot, or shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood. Dog owners have the responsibility to make sure to control noise.

10. 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.

#### EASEMENTS

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.

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

#### GENERAL PROVISIONS

Duration. The covenants are to run with the land and shall be binding on all parties and all personal claiming under them for a term of 20 years from the date this Declaration is recorded.

Amendments. The covenants and restrictions of this Declaration may be amended 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 58 of the Lots. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than two-thirds 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 60 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.

Notices. Any notice required to be sent to any Member, Owner or mortgagees under the provisions of the 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.

Enforcement. Enforcement of these covenants and restrictions shall be 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 the 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.

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

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed this 25<sup>th</sup> day of August, 2005.

MCGOWAN PROPERTIES, INC.  
Declarant

By [Signature]  
John M. McGowan, President

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

The foregoing instrument was acknowledged before me on Aug 25, 2005, 2005, by John M. McGowan, President of McGowan Properties, Inc. a Nebraska corporation, with authority and on behalf of the corporation.

[Signature]  
Notary Public

