

20004050
STATE OF NEBRASKA COUNTY OF WASHINGTON)SS
ENTERED IN NUMERICAL INDEX AND FILED FOR RECORD
THIS 12th DAY OF October A.D. 2000
AT 10:35 O'CLOCK A M AND RECORDED IN BOOK
324 AT PAGE 347-363
COUNTY CLERK Charlotte L. Petersen
DEPUTY Naren Madsen

347

FILED

00 OCT 12 AM 10:35

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 and among McGOWAN - FLEMING PROPERTIES, INC., a Nebraska corporation ("McGOWAN-FLEMING"), CURT S. SCOTT and MEADOW M. SCOTT, Husband and Wife ("SCOTT"), and SEAN DRAPER and STEPHANIE HALL ("DRAPER-HALL"), hereinafter collectively referred to as "Declarant".

W I T N E S S E T H:

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

Tracts 1 through 9 as surveyed, platted and recorded, of Tax Lot 27 lying Northwest Quarter of the Northeast Quarter of Section 29, Township 18 North, Range 12 East of the 6th P.M., Washington County, Nebraska (hereinafter "Tract" individually, and "Tracts" collectively) as follows:

McGOWAN-FLEMING owning Tract 1, Tract 2, Tract 3, Tract 4, Tract 6, Tract 7, and Tract 9; SCOTT owning Tract 5; and DRAPER-HALL owning Tract 8; and

WHEREAS McGOWAN-FLEMING 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

Recorded _____
General _____
Numerical _____
Photostat _____
E-mail _____

mutual equitable servitudes upon the Property; to create reciprocal rights between the respective owners of individual Tracts 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 SHANNON TRACTS PROPERTY OWNERS ASSOCIATION, its successors and assigns. McGOWAN-FLEMING 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 Tract. The purpose of the Property Owners Association is to provide (i) for the maintenance, repair, and improvement of the Roadways within the Property and (ii) for the maintenance, preservation and control of the dwelling amenities within the Property.

SECTION 2. "Water System Association" shall mean and refer to SHANNON PROPERTIES WATER SYSTEM ASSOCIATION, its successors and assigns. McGOWAN-FLEMING has heretofore caused or will cause to be organized the Water System Association as a non-profit corporation under the laws of the State of Nebraska, having as its members each owner of a Tract and each owner of any of Lots 1 through 14, Shannon Estates, a Subdivision of Tax Lot 29 lying in the South Half of the Northeast Quarter of Section 29, Township 18 North, Range 12 East of the 6th P.M., Washington County, Nebraska (hereinafter "Shannon Estates"). The purpose of the Water System Association is to provide (i) for owning and operating the water supply system, (ii) for maintaining, repairing, replacing, and improving the water supply system, (iii) for collecting and/or holding any charges for connecting to the water supply system, (iv) for billing and collecting for water supplied through the water supply system, as well as for charges for electrical use in supplying same, for and to the Tracts and for and to Shannon Estates.

SECTION 3. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Tract 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 4. "Property" shall mean and refer to Tracts 1 through 9 as surveyed, platted and recorded, of Tax Lot 27 lying

Northwest Quarter of the Northeast Quarter of Section 29, Township 18 North, Range 12 East of the 6th P.M., Washington County, Nebraska, and such additions thereto as may hereafter be brought within the jurisdiction of the Property Owners Association.

SECTION 5. "Roadways" shall mean and refer to Casey Lane and Murphy Lane as shown upon the Legal Description for Proposed Murphy Lane and Case Lane, a copy of which is attached hereto as Exhibit "A" and by this reference incorporated herein.

SECTION 6. "Tract" shall mean and refer to any one of Tracts 1 through 9 as surveyed, platted and recorded, of Tax Lot 27 lying Northwest Quarter of the Northeast Quarter of Section 29, Township 18 North, Range 12 East of the 6th P.M., Washington County, Nebraska.

SECTION 7. "Declarant" shall mean and refer to McGOWAN - FLEMING PROPERTIES, INC., a Nebraska corporation, CURT S. SCOTT and MEADOW M. SCOTT, Husband and Wife, and SEAN DRAPER and STEPHANIE HALL, its/their successors, assigns and legal representatives.

SECTION 7. "Improved Tract" shall mean and refer to any Tract 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 Tracts 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 Tracts".

SECTION 8. "Water Supply System" shall mean and refer to any improvements for the supply of potable water to the Tracts and to SHANNON ESTATES in accordance with plans and specifications approved by the State of Nebraska.

ARTICLE II. PROPERTY RIGHTS

SECTION 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to (i) the Roadways and (ii) Water Supply System which shall be appurtenant to and shall pass with the title to every Tract, 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 Tract 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 Water System Association to suspend the voting rights of any Owner for any period during which any assessment against his Tract 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 Water System Association;

C. The right of the Property Owners Association to dedicate or transfer all or any part of the Roadways 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 (2/3) of each class of members has been recorded.

D. The right of the Water System Association to dedicate or transfer all or any part of the Water Supply System 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 (2/3) of each class of members has been recorded.

E. The Roadways are not public county roads and they are not presently dedicated to the public nor have they been accepted by any governmental subdivision. They shall remain the property of McGOWAN-FLEMING or the Association, as the case may be, until such time, if ever, that there will be an annexation of the Property by the City of Blair, and an accompanying dedication and acceptance by the City of Blair. 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.

F. The Water Supply System is not presently dedicated to the public nor has it been accepted by any governmental subdivision. It shall remain the property of McGOWAN-FLEMING or the Association, as the case may be, until such time, if ever, that there will be an annexation of the Water Supply System by the City of Blair, and an accompanying dedication and acceptance by the City of Blair. Inclusion of dedication language upon any development plat filed with the County Clerk of Washington County, Nebraska, shall not effect a change, estoppel or waiver of the foregoing.

G. The Property Owners Association, as successor to McGOWAN-FLEMING, shall forever and until annexation have the sole responsibility, and at its cost, to repair and maintain the Roadways within the Property, and to hold the public, the State of Nebraska, or any of its political subdivisions, harmless from the same.

H. The Water System Association, as successor to McGOWAN-FLEMING, shall forever and until annexation have the sole responsibility, and at its cost, to repair and maintain the Water Supply System within and without the Property, 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 Roadways to the members of his family, his tenants, or contract purchasers who reside on the Tracts, and (ii) in accordance with the By-Laws of the Water System Association, his right of enjoyment to the Water Supply System to the members of his family, his tenants, or contract purchasers who reside on the Tracts.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

SECTION 1. Membership. Every Owner of a Tract which is subject to assessment shall be (i) a member of the Property Owners Association and (ii) a member of the Water System Association. Membership in both the Property Owners Association and the Water System Association shall be appurtenant to and may not be separated from ownership of any Tract which is subject to assessment.

SECTION 2. Voting Rights. Members of the Property Owners Association and the Water System Association shall be entitled to one vote for each Tract owned. When more than one person holds an interest in any Tract, all such persons shall be members, however, there shall be only one vote per Tract, and in no event shall more than one vote for either Property Owners Association or Water Supply 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 pro rata basis.

ARTICLE IV. COVENANT FOR ROADWAYS MAINTENANCE ASSESSMENTS.

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Tract owned within the Property, hereby covenants and each Owner of any Tract 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 Tract 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 Assessments. The assessments levied by the Association shall be used exclusively for the maintenance, repair, replacement, and improvement of the Roadways, 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, 2001, the maximum annual assessment shall be Two Hundred Dollars (\$200.00) per Tract.

A. From and after January 1, 2001, the 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.

B. The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

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 Roadways; 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 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 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 Tracts, shall be uniform in amount. In recognition of the fact that substantially all of the budget for the Association will be as a result of the use of the Roadways by Owners of Improved Tracts as opposed to Unimproved Tracts, the regular assessment for each Unimproved Tract will be equal to ten percent (10%) of the regular assessment due for each Improved Tract. Said assessment 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 Tracts on the first day of the month following the conveyance of the Roadways 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 subject thereto. 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 a specified Tract have been paid. A properly executed certificate of the Property Owners Association as to the status of assessments on a Tract 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 Roadways or abandonment of his Tract.

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 Tract shall not affect the assessment lien. However, the sale or transfer of any Tract pursuant to mortgage foreclosure of any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or

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

ARTICLE V. COVENANT FOR WATER SUPPLY SYSTEM CHARGES AND MAINTENANCE ASSESSMENTS.

SECTION 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Tract owned within the Property, hereby covenants and each Owner of any Tract 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 Water System Association:

A. Charges levied and/or assessed for connecting to the water supply system and charges billed for water supplied to each Tract through the water supply system, as well as for charges for electrical use in supplying same;

B. Annual assessments or charges;

C. Special assessments for improvements, such assessments to be established and collected as hereinafter provided.

The charges, and 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 charge and/or assessment is made. Each such charge and/or 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 Tract at the time when the assessment fell due. The personal obligation for delinquent charges and/or assessments shall not pass to his successors in title unless expressly assumed by them.

SECTION 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the maintenance, repair, replacement, and improvement of the Water Supply System, including insurance coverages associated therewith.

SECTION 3. Maximum Annual Assessment. Commencing January 1, 2001, the annual assessment shall be Two Hundred Dollars (\$200.00) per Tract.

A. From and after January 1, 2002, the 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.

B. The Board of Directors may fix the annual assessment at

an amount not in excess of the maximum.

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 Water Supply System; 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 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 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 (as opposed to water use charges which shall depend on the amount of water used by the Owner), with respect to all improved Tracts, shall be uniform in amount. In recognition of the fact that substantially all of the budget for the Association will be as a result of the use of the Water Supply System by Owners of Improved Tracts as opposed to Unimproved Tracts, the regular assessment for each Unimproved Tract will be equal to ten percent (10%) of the regular assessment due for each Improved Tract. Said assessment 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 Tracts on the first day of the month following the conveyance of the Roadways to the Water System 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 subject thereto. The due date of the Annual Assessment shall be established by the Board of Directors. The Water System Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Water System Association setting forth whether the

assessments on a specified Tract have been paid. A properly executed certificate of the Water System Association as to the status of assessments on a Tract is binding upon the Water System Association as of the date of its issuance.

SECTION 8. Effect of Non-Payment of Charges and/or Assessments: Remedies of the Water System Association. Any charge and/or 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 Water System 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 charges and/or assessments provided for herein by non-use of the Water Supply System or abandonment of his Tract.

SECTION 9. Subordination of the Lien to Mortgages. The lien of the charges and/or assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Tract shall not affect the charges and/or assessment lien. However, the sale or transfer of any Tract pursuant to mortgage foreclosure of any proceeding in lieu thereof, shall extinguish the lien of such charges and/or assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Tract from liability for any charges and/or assessments thereafter becoming due or from the lien thereof.

ARTICLE VI. 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 Roadways only, any such liability insurance for the protection of the Owners of any Tracts being the responsibility of each Owner.

SECTION 2. Water System Association Insurance. The Water System Association shall purchase and provide liability insurance for the Water System Association and for its members with respect to the Water Supply System only, any such liability insurance for the protection of the Owners of any Tracts being the responsibility of each Owner.

SECTION 3. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors of each respective Association in order to ascertain whether the coverage contained in the policies is sufficient with respect to potential liability.

ARTICLE VII. MAINTENANCE AND REPAIR

SECTION 1. Roadways. In the event that the need for maintenance or repair of the Roadways 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 Roadways, the cost of such maintenance or repair shall be added to and become part of the assessment to which such Owner and his Tract(s) are subject.

SECTION 2. Water Supply System. In the event that the need for maintenance or repair of the Water Supply System 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, the cost of such maintenance or repair shall be added to and become part of the assessment to which such Owner and his Tract(s) are subject.

ARTICLE VIII. 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 Tract for the purpose of performing maintenance and repair to the Roadways, 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.

SECTION 2. Water System Association Access. The Water System Association, its officers, employees and agents, and contractors and repairmen designated by the Water System Association, shall have the right to go on any Tract for the purpose of performing maintenance and repair to the Water Supply System, making inspections and performing the duties of the Water System Association hereunder, and the Water System Association is hereby granted a specific easement for such purposes.

ARTICLE IX. 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 tract 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 tract; no dwelling or other out-building shall be constructed with fifty (50') feet of Roadway easement lines. Underground dwellings will contain not less than 1500 square feet of living area excluding garage. One story dwellings will contain not less than 1500 square feet of living area

excluding garage. Multi-story and split-level dwellings shall contain not less than 1800 square feet of living area excluding garage and basement. No flat or mansard roof shall be permitted on any dwelling. No mobile homes shall be permitted at any time. Modular homes or prefabricated homes shall be permitted only after being approved by the Architectural Committee of the Property Owners Association. 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.

No building or structure of any sort may ever be placed, erected or used for business, professional, trade or commercial purpose on any of the property within the Properties. Provided, however, this prohibition shall not apply:

A. 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; or

B. To any portion of a building used by MCGOWAN-FLEMING, its licensees or assigns, for a manager's office or a sales office, or by either or both the Property Owners Association or Water System Association for its respective offices.

SECTION 2. Water Service. There shall be no private well drilled on any Tract or any part thereof, except when the water therefrom is to be used for closed loop water circulating heat pump systems located on such Tract. No other use shall be permitted or allowed for such wells.

SECTION 3. Telephone/Electric Service. All telephone and electric power service lines from property line to dwelling shall be underground, however, a single pole and appurtenances may be used temporarily to provide electrical service during the permitted construction period.

SECTION 4. Tract Development Restrictions. No residential building Tract shall be resubdivided.

SECTION 5. Noxious Activity. No noxious or offensive trade or activity shall be carried on upon any Tract, nor shall any trash, junk cars, or other refuse be thrown, placed, or dumped upon any Tract, nor shall anything ever be done which may be, or may become, an annoyance or nuisance to the Property. The Owner of a vacant Tract is required to keep said Tract in presentable condition and non-burnable refuse must be hauled away for disposal. No trash or garbage containers shall be visible from the Roadways.

SECTION 6. Temporary Structure. No trailer, basement, tent, shack, garage, barn or other outbuilding building 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 tract. PROVIDED, however, nothing contained herein shall restrict McGOWAN-FLEMING or its assigns from locating, constructing or moving a temporary real estate office on any Tract to be used during the period of the sale of the Tracts owned by McGOWAN-FLEMING. McGOWAN-FLEMING or its assigns may also 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 7. Livestock and Poultry Restrictions. No animals, livestock or poultry of any kind shall be raised or kept on any Tract other than horses, beef cattle, dogs, cats or other household pets. No such pet will be kept, bred or maintained for commercial purposes.

SECTION 8. Bill Boards Prohibited. 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 Tract 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 9. 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 Tract 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 Tract be closer to a Tract property line than applicable Washington County Zoning Regulations or State of Nebraska Department of Health Regulations allow.

SECTION 10. Access to Tracts/Residence Markers. Access to each and every Tract shall be from the Roadways only. E-911 residence markers of and for Washington County shall be placed by the driveway entrance from each Tract to the Roadways.

SECTION 11. Additional Restrictions. In addition to the Covenants set forth herein, all above-described Tracts 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 tracts.

ARTICLE X. 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 Tract. 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 Tracts, and the family, guests, and invitees of an Owner.

SECTION 2. Property Owners Association. A perpetual non-exclusive license and easement, with specific rights of ingress and egress, is hereby reserved in favor of McGOWAN-FLEMING and granted by the Declarant to and for McGOWAN-FLEMING and to and for the Property Owners Association, its officers, employees and agents, and contractors and repairmen designated by 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 Roadways, making inspections, and 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 McGOWAN-FLEMING, the Property Owners Association, its/their successors and assigns.

SECTION 3. Water System Association. 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 McGOWAN-FLEMING and to and for the Water System Association, Metropolitan Utilities District, County of Washington, the City of Blair, Washington County, Nebraska, and any other affected governmental body or political subdivision, 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. underground pipelines, mains, sewers, and surface manholes for conveying gas, water and/or sewerage through and under the area of the license and easement, together with the right to refill ditches and trenches for the location of such pipelines, mains, sewers, and manholes, 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 pipelines, mains, sewers, and manholes. 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 Tracts.

SECTION 4. 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 McGOWAN-FLEMING 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 telegraph 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 Tracts.

SECTION 5. No Construction. No structure, shed or building of a 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 constructed below ground or underground fixtures of any kind 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 6. 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 Roadways set forth within the Property.

ARTICLE XI. 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

362

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 X shall be deemed to obligate the Association to indemnify any member or Owner of a Tract 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 or Owner of a Tract. In its discretion, 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 XII. 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 affect 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 (10) years. This Declaration may be amended during the period ending January 1, 2010, by an instrument signed by not less than ninety percent (90%) of the Tract Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Tract 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 or under any Agreement with the City of Blair, Nebraska, which covenants shall survive non-renewal.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed and hereby declares that the terms and provisions of this instrument shall amend, modify, and supersede (i) that Declaration of Covenants, Conditions, Restrictions and Easements filed in the real estate

records of Washington County, Nebraska, in Book 315 at page 826 - 841, which are hereby repealed in their entirety, and (ii) that Easement and Joint Use Declaration filed in the real estate records of Washington County, Nebraska, in Book 307 at Page 1 - 6, except that all terms and provisions of said Easement and Joint Use Declaration not amended, modified or superseded by the terms and provisions of this instrument are hereby ratified and confirmed.

DATED: September 29, 2000.

McGOWAN - FLEMING PROPERTIES, INC., a Nebraska corporation,

By John M. McGowan
JOHN M. McGOWAN, President

Curt S. Scott
CURT S. SCOTT

Meadow M. Scott
MEADOW M. SCOTT

Sean Draper
SEAN DRAPER

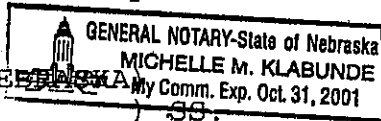
Stephanie Hall
STEPHANIE HALL

STATE OF NEBRASKA)
) -SS.



COUNTY OF Washington

The foregoing instrument was acknowledged before me on September 29, 2000, by JOHN M. McGOWAN, President of McGOWAN - FLEMING PROPERTIES, INC., a Nebraska corporation, with authority and on behalf of the corporation.



Michelle M. Klabunde
Notary Public

STATE OF NEBRASKA)
) -SS.

COUNTY OF Washington

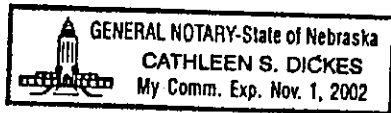
The foregoing instrument was acknowledged before me on September 29, 2000, by CURT S. SCOTT and MEADOW M. SCOTT.

Michelle M. Klabunde
Notary Public

STATE OF NEBRASKA)
) SS.

COUNTY OF Douglas

The foregoing instrument was acknowledged before me on September 29, 2000, by SEAN DRAPER and STEPHANIE HALL.



Cathleen S. Dickes
Notary Public