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RESIDENTIAL LOTS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF LINDEN ESTATES, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA

GEORGE J. DOOLEWICE REGISTER OF DEEDS DOUGLAS COUNTY, NE

THIS DECLARATION, made on the date hereinafter set forth, is made by LINDEN PARK PARTNERSHIP, a Nebraska general partnership, hereinafter referred to as the "Declarant".

PRELIMINARY STATEMENT

The Declarant is the owner of certain real property located within Douglas County, Nebraska and described as follows:

Lots 74 through 121, inclusive, in Linden Estates, a Sub-division, as surveyed, platted and recorded in Douglas County, Nebraska.

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

The Residential Lots are situated in Linden Estates, a residential subdivision situated southeast of 144th and Blondo Street in Douglas County, Nebraska and herein referred to as "Linden Estates". Linden Estates consists of the Residential Lots and seventy-three (73) other residential lots, collectively referred to with the Residential Lots as the "Subdivision Lots".

The Declarant desires to provide for the preservation of the values and amenities of Linden Estates, for the maintenance of the character and residential integrity of Linden Estates, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of Linden Estates.

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

ARTICLE I. RESTRICTIONS AND COVENANTS

1. Each Residential Lot shall be used exclusively for single-family residential purposes, except for such Residential Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or for a church, school or park, or for other non-profit use.

2. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, basketball backboards, dog house, pool house, or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Residential Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

(a) An Owner desiring to erect an Improvement on any Residential Lot shall deliver two sets of construction plans, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify the Declarant of the Owner's mailing address.

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(b) Declarant shall review such plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Residential Lots and in the surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the Residential Lots shall be developed residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarant to promote development of the Residential Lots and to protect the values, character and residential quality of all Residential Lots. If Declarant determines that the proposed Improvement will not protect and enhance the integrity and character of all the Residential Lots and neighboring lots as a quality residential community, Declarant may refuse approval of the proposed Improvement.

(c) Written Notice of any approval of a proposed Improvement shall be mailed to the owner at the address specified by the owner upon submission of the plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by Declarant.

(d) No Residential Lot owner, or combination of Residential Lot owners, or other person or persons shall have any right to any action by Declarant, or to control, direct or influence the acts of the Declarant with respect to the approval or disapproval of any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any proposed Improvement.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Residential Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height.

4. The exposed foundation walls must be constructed of or faced with brick or other material approved in writing by Declarant. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys shall be covered with brick, or other material approved in writing by Declarant. The roof of all Improvements shall be covered with wood cedar shakes or shingles, or other material approved in writing by Declarant. Hardboard, pressed wood, bonded wood, and the like will not be approved by Declarant for coverage of any roof.

5. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Residential Lot except one sign per Residential Lot consisting of not more than six (6) square feet advertising a lot as "For Sale"; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Residential Lot or any resident thereof.

6. No exterior television or radio antenna, satellite receiving disc, or exterior solar heating or cooling device of any sort shall be permitted on any Residential Lot.

7. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Residential Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Residential Lot. No unused building material, junk or rubbish shall be left exposed on the Residential Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Residential Lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside on any Residential Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such Residential Lot. No grading or excavating equipment, tractors or

semitractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this section 8 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other Improvements during the period of construction. All residential Residential Lots shall provide at least the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Omaha, Nebraska.

9. No incinerator or trash burner shall be permitted on any Residential Lot. No garbage or trash can or container or fuel tank shall be permitted unless completely screened from view, except for pickup purposes. No garden lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubble or cutting shall be deposited on any street, road or Residential Lot. No clothes line shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be planted and maintained in rear yards.

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

11. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line unless otherwise approved by Declarant. No fences or walls shall exceed a height of six (6) feet unless otherwise approved by Declarant.

12. No swimming pool may extend more than one foot above ground level.

13. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. No excavation dirt shall be spread across any Residential Lot in such a fashion as to materially change the grade or contour of any Residential Lot.

14. Commencing with completion of construction of any Improvement on a Lot, a public sidewalk constructed of concrete four (4) feet wide by four (4) inches thick shall be installed and maintained in front of each Residential Lot and upon each street side of each corner Residential Lot. The sidewalk shall be placed five (5) feet back of the street curb line and shall be constructed by the owner of the Residential Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of the City of Omaha.

15. Driveway approaches between the sidewalk and curb on each Residential Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

16. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Residential Lot, except for one dog house constructed for one (1) dog; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns. Dog houses shall only be allowed adjacent to the rear of the building, concealed from public view. No dog runs or kennels may be constructed or installed on any Residential Lot.

17. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards so as not to be visible from public view. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Residential Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Residential Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Residential Lots shall be allowed to reach a height in excess of twelve (12) inches.

18. No Residence shall be constructed on a Residential Lot unless the entire Residential Lot, as originally platted, is owned by one owner of such Residential Lot, except if parts of two or more platted Residential Lots have been combined into one Residential Lot which is at least as wide as the narrowest Residential Lot on the original plat, and is as large in area as the largest Residential Lot in the original plat.

19. No structure of a temporary character, carport, trailer, basement, tent, storage shed, outbuilding or shack shall be erected upon or used on any Residential Lot at any time, either temporarily or permanently. Pool and bath houses may be approved by the Declarant as an Improvement, pursuant to Paragraph 2 of this Article. No structure or dwelling shall be moved from outside Linden Estates to any Residential Lot without the written approval of Declarant.

20. All utility service lines from each lot line to a dwelling or other Improvement shall be underground.

## ARTICLE II. BOUNDARY FENCE

1. Declarant has constructed a boundary fence between Blondo Street and the Linden Estates Subdivision (the "Blondo Fence"). The Blondo Fence is situated on the north boundary line of Lots 106, 107 and 108, and may extend south on each side of 138th Street in Lots 106 and 107. All such lots are collectively referred to as the "Boundary Lots".

2. Declarant hereby declares that the Boundary Lots are subject to a permanent and exclusive right and easement in favor of Declarant and the Linden Estates Homeowners Association to maintain, repair and replace the Blondo Fence and any signs installed on or near the Blondo Fence. Without limitation of the rights and easements granted by this Declaration, the Declarant or Association may come upon any of the Boundary Lots for the purpose of constructing, installing, repairing, maintaining, removing, and replacing the Blondo Fence.

3. The rights and easements granted in this Article shall fully and finally terminate as to any Boundary Lot if: (i) the owner of the Boundary Lot gives written notice to the Association that the Association has failed to maintain the Blondo Fence on the Owner's Lot in neat and orderly condition and in good repair; and (ii) the Association fails to place the Blondo Fence on the Owner's Lot into good order and repair within ninety (90) days after the written notice.

## ARTICLE III. HOMEOWNERS' ASSOCIATION

1. The Association. Declarant has caused the incorporation of LINDEN ESTATES HOMEOWNERS 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, recreation, welfare and enjoyment of the residents of Linden Estates, 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 recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways and green areas; and signs and entrances for Linden Estates. Common Facilities may be situated on property owned or leased by the Association, on private property subject to an easement in favor of the Association, or on public property, or on property dedicated to a Sanitary 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 families, 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 Linden Estates; and the protection and maintenance of the residential character of Linden Estates.

2. Membership and Voting. Linden Estates is divided into one hundred twenty-one (121) separate lots (referred to as the "Subdivision Lots"). The "Owner" of each Subdivision Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Subdivision Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Subdivision Lot, but excluding however those parties having any interest in any of such Subdivision 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 Subdivision Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Subdivision Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Subdivision Lot, and may not be separated from ownership of each Subdivision Lot.

The Owner of each Subdivision 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 parks and other public property and improvements on parks or public property within or near Linden Estates.

(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 the Association. The Association shall maintain and repair the fences and signs which have or will be installed by Declarant between 144th Street and Linden Estates, and between Blondo Street and Linden Estates, in good repair and neat condition.

5. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Subdivision 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 Subdivision Lot, and shall abate all dues and assessments due in respect of any Subdivision Lot during the period such Subdivision 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 Subdivision 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 Subdivision 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 Section 3 of this Article.

9. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 10, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

(a) Sixty Dollars (\$60.00) per Subdivision Lot.

(b) In each calendar year beginning on January 1, 1991, 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 Dollars (\$200.00) per Subdivision Lot.

11. Excess Dues and Assessments. With the approval of sixty 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 Subdivision Lots, but dues may be abated as to individual Subdivision 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 Subdivision 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 Subdivision Lot or Subdivision 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 Subdivision Lot. The mortgagee of any Subdivision 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 Subdivision Lot shall not affect or terminate the dues and assessment lien.

#### ARTICLE IV. EASEMENTS

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, U. S. West telephone company, and any company which has been granted a franchise to provide a cable television system within the Residential Lots, Metropolitan Utilities Company, and Sanitary and Improvement District No. 353 of Douglas 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 electric 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 Residential Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of all interior Residential Lots and all exterior lots that are adjacent to presently platted and recorded Residential Lots; and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Residential Lots that are not adjacent to presently platted and recorded Residential Lots. The term exterior Residential Lots is herein defined as those Residential Lots forming the outer perimeter of the Residential 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.

2. 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 Residential 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 Residential 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 walls shall be placed in the easementways but same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforementioned uses or rights granted herein.

3. Other easements are provided for in the final plat of Linden Estates which is filed in the Register of Deeds of Douglas County, Nebraska (Book 1862, Page 228).

ARTICLE V.  
GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to the Declarant, the Declarant or any owner of a Residential Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues of such violation. Failure by the Declarant 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.

2. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity. This Declaration may be amended by Linden Park Partnership a Nebraska general partnership, or any person, firm, corporation, partnership, or entity designated in writing by Linden Park Partnership, a Nebraska general partnership, in any manner which it may determine in 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 sixty (60%) of the Residential Lots covered by this Declaration.

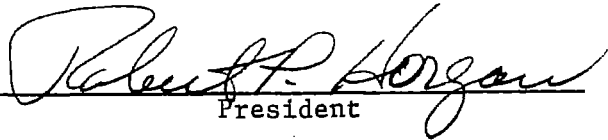
3. Linden Park Partnership, a Nebraska general partnership, or its successor or assign, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, the Association may appoint itself or another entity, association or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

4. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 15 day of November, 1989.

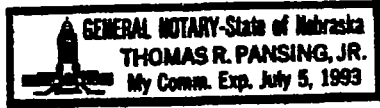
LINDEN PARK PARTNERSHIP, a Nebraska general partnership, the "Declarant"

BY: MAENNER/HORGAN DEVELOPMENT COMPANY, a Nebraska corporation, the Development Partner

By   
President

STATE OF NEBRASKA )  
                          ) ss.:  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 5 day of November, 1989, by Robert P. Horgan, President of Maenner/Horgan Development Company, the Development Partner of Linden Park Partnership, a Nebraska general partnership, on behalf of the Partnership.



Thomas R. Pansing, Jr.  
Notary Public