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RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

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DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR LONERGAN LAKE ESTATES, A SUBDIVISION  
IN DOUGLAS COUNTY, NEBRASKA

This Declaration, made on the date hereinafter set forth, is made by MICHAEL J. LESCH, hereinafter referred to as "Declarant".

Preliminary Statement

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

Lots 1 through 8, inclusive, in Lonergan Lake Estates, a Subdivision, as surveyed, platted, and recorded in Douglas County, Nebraska.

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

Declarant desires to provide for the preservation of the values and amenities of Lonergan, for the maintenance of the character and residential integrity of Lonergan, and for the acquisition, construction, and maintenance of common facilities for the use and enjoyment of the residents of Lonergan.

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

ARTICLE I.

RESTRICTIONS AND COVENANTS

1. Each Lot shall be used exclusively for single-family

residential purposes.

2. No residence, wall, driveway, patio, patio enclosure, swimming pool, basketball backboards, playground or recreational equipment, pool house, or other external improvement, including landscaping, above or below the ground (herein all referred to as an "Improvement") shall be constructed, erected, placed or permitted to remain on any 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 shall deliver two sets of construction plans, detailed landscaping plans, and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description of the type, quality, color, and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify Declarant of Owner's mailing address.

B. Declarant shall review such plans in light of the conditions and restrictions in Article I of this Declaration and in relation to the type and exterior of Improvements which have been constructed, or approved for construction, on the Lots. In this regard, Declarant intends that the Lots shall be developed as a 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 in a reasonable manner to promote conformity and harmony of the external design of the Improvements constructed within the Lonergan and to protect the values, character, and residential quality of all Lots in a manner consistent with this Declaration. By way of illustration, and not of limitation, it is intended that the architecture of the residential structures construed shall be consistent with the architecture found in the Barrington Park and Lakemont subdivisions in Douglas County, Nebraska. If Declarant determines that the external design and location of the proposed Improvement does not conform with the standards or requirements of this Declaration, does not conform with the surrounding improvements and topography, or will not protect and enhance the integrity and character of all the Lots and neighboring lots, if any, 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 Lot owner, or combination of 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 Declarant with respect to 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.

E. No Lot owner may construct an Improvement which substantially obstructs the view of the lake of another Lot owner.

3. No building shall be created, altered, placed or permitted to remain on any Lot other than one (1) detached, single family residential structure which shall have more than 2,500 square feet of finished habitable space, and which shall also conform to the following minimum area requirements:

| <u>Design</u>          | <u>Minimum Area</u>   |
|------------------------|---|
| One-story ranch        | 2,200 sq. ft. of finished habitable space on the main floor |
| One and one-half story | 2,200 sq. ft. of finished habitable space on the main floor |
| Two-story house        | 2,200 sq. ft. of finished habitable space on the main floor |

For purposes of this Article I, Section 3, "finished habitable space" shall mean the finished living area measured to the exterior of the enclosing walls, and does not include porches, stoops, courtyards, patios, decks, garages or basements which are seventy-five percent (75%) or more below finished grade on at least three (3) sides. The maximum height of the dwelling

shall be thirty-three (33) feet above the finished grade. The basement shall not be considered a story if it is seventy-five percent (75%) or more below finished grade on at least three (3) sides. All dwellings shall have attached and enclosed front, side, or rear load garages which will accommodate a minimum of two (2) cars.

4. No building or porch shall be constructed, erected, installed or situated within thirty-five (35) feet of the side yard lot line and within thirty-five (35) feet of the front yard line, except that because of the shape of Lot 4, any building constructed on said lot may be within fifteen (15) feet of the side yard lot line. Except as set forth herein, all improvements on the Lots shall comply with all other set back requirements of the Zoning Code of the City of Omaha as the same may be amended from time to time. Notwithstanding the foregoing, Declarant contemplates that it will be necessary to grant limited waivers of the front and side yard line set backs for purposes of construction of improvements on Lot 2 and that it may be necessary or appropriate to grant limited waivers of the front and side yard line set back for other Lots.

5. Declarant has created a water drainage plan by grading the Lots and installing improvements and easements for storm water drainage in accordance with accepted engineering principles. No residential structure shall be placed, nor any Lot graded, to interfere with such water drainage plan nor cause damage to the neighboring residential structures or Lots.

6. The exposed front foundation walls and any foundation walls facing any street of all main residential structures must be constructed of or faced with brick or other material approved in writing by Declarant. All exposed side and rear concrete or concrete block foundation walls not facing a street must be painted. 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. The roof of all Improvements constructed after the date of this Declaration shall be covered with wood shingles.

7. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed, or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a lot as "For Sale". No business

activities of any kind whatsoever shall be conducted on any Lot, 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 Lot or any resident thereof. Provided, however, the foregoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, his agents or assigns, during the construction and sale of the Lots.

8. Exterior television or radio antenna of any sort shall not be permitted on any Lot, except a satellite receiving dish not exceeding 24 inches in diameter and attached directly to the residence may be permitted, provided that said dish is out of sight of any neighboring residences, not visible from public view, and that the location and size of the proposed satellite receiving dish be first approved by Declarant. No tree houses, tool sheds, doll houses, windmills, or similar structures shall be permitted on any Lot.

9. 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 Lot at any time, nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building material, junk, including fire wood, or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

10. 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 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 Lot, except vehicles driven on a regular basis by the occupants of the dwelling located on such 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 10 shall not apply to trucks, tractors, or commercial vehicles which are necessary for the construction of residential dwellings during the period of construction. All 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.

11. No incinerator or trash burner shall be permitted on any 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 except when in actual use. No garbage, refuse, rubbish or cutting shall be deposited on any street, road, or Lot. No clothes line shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards out of view of neighboring residences and must be maintained in as neat and inconspicuous manner as possible.

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

13. No fences shall be permitted, except as required for swimming pools, which shall only be constructed of wrought iron and no other material. No hedges or mass planted shrubs shall be permitted. All Lots will be fully sodded at the time of substantial completion of the dwelling located on the Lot.

14. After date of this Declaration, no swimming pool may extend more than one foot above ground level.

15. 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 Lot in such a fashion as to materially change the grade or contour of any Lot. No material other than earth, sand, rock, or gravel shall be used as fill on any Lot.

16. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete, brick, paving stone or laid stone. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete, brick, paving stone or laid stone. No asphalt overlay of driveway approaches will be permitted unless approved by Defendant.

17. No stable or other shelter for any animal, livestock, fowl, or poultry shall be erected, altered, placed or permitted to remain on any Lot. No dog runs or kennels of any kind shall be allowed in Lonergan. No livestock or agricultural-type animals shall be allowed in Lonergan, including, but not limited

to pot-bellied pigs.

18. 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 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, or obstruct the view of a neighboring residence. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches. Any owner of a vacant Lot shall maintain said Lot at his or her own expense, including mowing the Lot and keeping it free of debris.

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

20. No structure of a temporary character, carport, trailer, basement, storage building, tent, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently. No structure or dwelling shall be moved from outside Lonergan to any Lot without the written approval of Declarant.

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

22. No firearms or guns of any type or nature whatsoever shall be fired or discharged upon, over, or across any land in the subdivision, nor shall hunting or trapping be permitted in any manner whatsoever.

23. Power mowers and other power equipment shall not be operated before eight o'clock A.M. or after 8:00 o'clock P.M.



ARTICLE II  
HOMEOWNERS ASSOCIATION

1. The Association. Declarant has caused or promptly will cause the incorporation of LONERGAN HOMEOWNERS ASSOCIATION, a Nebraska not for profit corporation (hereinafter referred to as the "Association"). The Association shall have as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots, including:

- A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit, and enjoyment of the Members. Common Facilities may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association, or on property dedicated to a Sanitary Improvement District.
- A. 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 Facilities.
- B. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Lonergan; and the protection and maintenance of the residential character of Lonergan.

2. Membership in Association.

- A. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those

parties having any interest in any of such Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

- B. Declarant shall be the sole Voting member of the Association for the five (5) year period commencing on the date of this Declaration and shall thereafter cease being a Voting Member except to the extent that Declarant is an Owner, in which event he shall be a Voting Member in the Association and shall be entitled to all of the benefits, including the voting privileges to the same extent as all other Owners. The Owner of each Lot shall be a Non-voting member of the Association for the five (5) year period commencing on the date of this Declaration, and after such five (5) year period shall be a Voting member of the Association. Except as otherwise required by law, Non-voting Members of the Association shall have no voting rights. Subsequent to the five (5) year period commencing on the date of this Declaration, the Owner of each Lot, whether one or more persons and entities, shall be a Voting Member and shall be entitled to one (1) vote on each matter properly coming before the Members of the Association.

3. Powers 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 the

Common Facilities, and the enforcement of 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 Lonergan.
- 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, and the holding or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.
- G. The deposit, investment, and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.
- H. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.
- I. General administration and management of the

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

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

4. Mandatory Duties of Association.

- A. The Association shall maintain and repair any fences and signs which may be installed at the entrances or the exterior of the Lonergan subdivision in generally good and neat condition.
- B. The Association shall operate, maintain, repair, and replace as necessary the sanitary sewers, storm sewers and drainage ways constructed by the developer of the Lots in accordance with Easements reserved by Declarant for such storm sewers, sanitary sewers, and drainage ways.

5. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments. Except as otherwise specifically provided herein, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board.

6. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may abate all or part of the dues or assessments due in respect of any Lot.

7. Liens and Personal Obligations for Dues and Assessments. The assessments and dues, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to

the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid assessments or dues.

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

9. Assessments for Sanitary, Storm Sewer, Drainage, Repairs, and Replacements Costs. The Board of Directors of the Association shall levy an assessment or assessments for the purpose of defraying and paying in whole or in part, the costs and expenses incurred by the Association for the operation, repair, maintenance, improvement, replacement, or removal of any sanitary sewers, storm sewers, paving, and other improvements benefiting the Lots (the "Assessments").

10. Assessments for Extraordinary Costs. In addition to the dues and Assessments, 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.

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

12. Effect of nonpayment of Assessments; Remedies of the Association. Any installment of dues or assessments which is not paid when due shall be delinquent. Delinquent dues or assessment shall bear interest from the due date at the rate of sixteen percent (16%) per annum, compounded annually. The Association

may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs, and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by becoming a nonuser of the Common Facilities or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs, and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

In addition to any right or remedy set forth in this Section 12., and any right or remedy set forth in any other Article of the Declaration, the Association may assess a daily penalty in an amount determined by the Association against any person or persons violating or attempting to violate any covenant or restriction. The person or persons violating said covenant or restriction shall also be liable for any attorney fees, interest, or other costs or expenses incurred by the Association in enforcing the covenants and restrictions or taking any action to correct or remedy any violation. Any penalty assessed by the Association or attorney fee, interest, cost, or expense incurred by the Association, shall be a lien against the Lot owned by the person or persons violating the covenants or restrictions until said person pays all sums due the Association. Before assessing any penalty, attorney fee, interest, cost, or expense, the Association shall notify in writing the person or persons violating the covenants or restrictions of the violation and allow said person or persons thirty (30) days to correct or remedy the violation to the satisfaction of the Association. If the violation is not corrected within thirty (30) days after written notice to the person or persons violating the covenant or restriction, the Association may then assess the penalty, attorney fee, interest, cost, or expense.

13. Subordination of the Lien to Mortgagee. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract, or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

ARTICLE III  
EASEMENTS

Easements are provided for in the Plat of Lonergan which is filed with the Register of Deeds of Douglas County, Nebraska, at Book 2093, Page 170.

ARTICLE IV  
GENERAL PROVISIONS

1. Except for the authority and powers specifically granted to Declarant in this Declaration, Declarant or any owner of a 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 arising from such violation. Failure by 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 Declarant, or any person, firm, corporation, partnership, or entity designated in writing by Declarant, in any manner which he may determine in his full and absolute discretion for a period of five (5) years from the date hereof. Thereafter, this Declaration may be amended by an instrument signed by the owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.

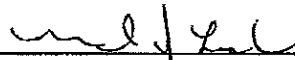
3. By the written consent of Declarant for a period of five (5) years from the date hereof, any or all of the covenants, conditions, restrictions, and easements as they apply to the Lots may be waived, modified, or amended for any Lot or Lots, in any manner, for such a time period, and on such conditions, if any, which Declarant may determine in his sole and absolute discretion after considering the benefits and detriments which the waiver, modification, or amendment will have on the Lonergan Subdivision and the Owner requesting the Waiver. Declarant's decision on any requested waiver, modification, or amendment shall be final and there shall be no right of appeal of Declarant's decision. 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 requested waiver, modification, or amendment.

4. Declarant, or his successors or assigns, may terminate their 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.

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

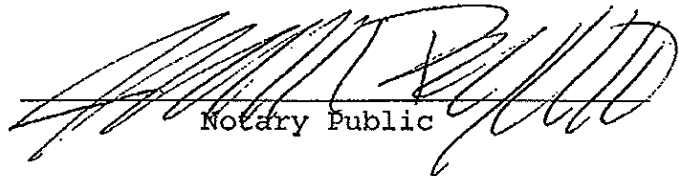
IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this 23<sup>rd</sup> day of September, 1998.

  
\_\_\_\_\_  
Michael J. Lesch, "Declarant"

STATE OF NEBRASKA)  
                                  ) SS  
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of September, 1998, by MICHAEL J. LESCH, Declarant.



  
\_\_\_\_\_  
Notary Public