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BOOK 1013 PAGE 402

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LOTS 1 THROUGH 48, INCLUSIVE BRYN MAWR FOURTH ADDITION

THIS DECLARATION made on the date hereinafter set forth by Bryn Mawr, Inc., hereinafter referred to as "Declarant".

WITNESSETH:

WHEREAS, Declarant is the Owner of the following described real property:

Lots 1 through 48, inclusive, Bryn Mawr Fourth Addition, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, and

WHEREAS, the Declarant will convey said lots, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth.

NOW, THEREFORE, the Declarant hereby declares that all of the lots described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of said lots. These easements, covenants, restrictions and conditions shall run with said real property and shall be binding upon all parties having or acquiring any right, title or interest in the above described lots or any part hereof and they shall inure to the benefit of each owner thereof.

ARTICLE I DEFINITIONS

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

B. "Properties" shall mean and refer to that certain real property hereinbefore described.

C. "Lot" shall mean and refer to any plot of land shown upon the recorded subdivision map of the Properties.

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GEORGE J. ENGLEWICZ REGISTER OF DEEDS DOUGLAS COUNTY, NE

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D. "Declarant" shall mean and refer to Bryn Mawr, Inc., its successors and assigns.

E. "Architectural Control Committee" shall consist of a committee of five (5) members; four of the members shall be appointed by Declarant, its successors and assigns, and one of the members shall be appointed by the Board of Directors of the Bryn Mawr Homeowners Association, Inc., its successors and assigns.

**ARTICLE II**  
**ARCHITECTURAL CONTROL**

A. No dwelling, fence, other than fences constructed by Declarant, wall, pathway, driveway, patio, patio cover or enclosure, deck, rock garden, gazebo, tree house, swimming pool, television or radio antenna, satellite dishes, flag pole, solar collecting panels or equipment, air conditioning equipment, wind-generating power equipment, tool sheds, or other external improvements, above or below the surface of the ground shall be built, erected, placed, planted, altered or otherwise maintained or permitted to remain on any Lot, nor shall any grading, excavation or tree removal be commenced without express written prior approval of the Declarant through its Architectural Control Committee, or its permission by implied approval procured in the manner set forth below.

B. The Declarant, through its Architectural Control Committee, shall consider general appearance, exterior color or colors, architectural character, harmony of external design and location in relation to surroundings, topography, location within the lot boundary lines, quality of construction, size and suitability for residential purposes as part of its review procedure. Only exterior colors of certain earthtone hues will be acceptable. Designs of repetitive nature and/or within close proximity to one another will not be approved. Similar designs, forms, plans, styles or motifs will be considered repetitive if they are not separated by at least three adjacent lots regardless of orientation. Superficial, cosmetic or minor architectural detail differences in like designs will not constitute a basis for approval. The Architectural Control committee specifically reserves the right to deny permission to construct or place any of the above-mentioned improvements which it determines will not conform to the general character, plan and outline for the development of the Properties. The Architectural Control Committee, before approving plans, will make a determination that the plans conform to the conditions set forth in this Declaration of Covenants.

C. Documents submitted for approval shall be clear, concise, complete, consistent and legible. All drawings shall be to scale. Samples of materials to be included in the improvement may be required of the applicant at the discretion of the Architectural Control Committee. Submittal for the approval shall be made in duplicate and the comments and actions of the Architectural Control Committee will be identically marked on both copies of said submittal. One copy will be returned to

the applicant and one copy will be retained as part of the permanent records of the Committee. Each applicant shall submit to the Architectural Control Committee the following documents, materials and/or drawings.

1. Site plan indicating specific improvement and indicating lot number, street address, grading, surface drainage and sidewalks.
2. Complete construction plans, including, but not limited to, basement and upper floor plans, floor areas of each level, wall sections, stair and fireplace sections and exterior elevations clearly indicating flues or chimneys, type and extent of siding, roofing, other faces and/or veneer materials.
3. An architectural review fee of Fifty (\$50.00) Dollars per improvement plan per lot will be charged. Said fee is subject to adjustment or waiver if so determined by the Architectural Control Committee. Additional review fees will be required for resubmissions for the same lot or alterations or additions to previously reviewed submittal. If construction has commenced on any lot without Architectural Control Committee approval, the review fee will be One Hundred (\$100.00) Dollars. The applicant's name, address and telephone number shall appear on each set of plans submitted to the Architectural Control Committee. If applicant wishes that his plans be returned via the mail, he shall include with his submittal an additional Two (\$2.00) Dollars for postage and handling.

D. The approval or disapproval of the Architectural Control Committee as required in these covenants shall be in writing. Typically, approval or disapproval of the submittal shall be made within seventy-two (72) hours. Failure of the Architectural Control Committee to give either written approval or disapproval of the submitted plans within thirty (30) days after receipt of all of the documents and their fee required above by mailing such written approval or disapproval to the last known address of the applicant, as shown on the submitted plans shall operate as approval of the proposed improvement.

**ARTICLE III**  
**RESTRICTIONS FOR SINGLE FAMILY RESIDENTIAL DWELLINGS**

A. The Lot shall be used only for single-family residential dwelling purposes and no Lot shall contain more than one (1) detached single-family dwelling.

B. No building shall be created, altered, placed or permitted to remain on any Lot other than the one (1) detached, single-family dwelling referred to above.

C. For the purposes of these restrictions, two-story height shall, when the basement is exposed above finish grade, be measured from the basement ceiling on the exposed side(s) to the eave of the structure on the same side(s). Area means finished habitable space, measured to the exterior of the enclosing walls, and does not include porches, stoops, breezeways, courtyards, patios, decks, basements, garages or carports. The maximum height of the dwelling shall be two (2) stories. The basement is not considered a story even if it is one hundred (100%) percent above grade on one side, and essentially below grade on the other three (3) sides. All dwellings shall have attached, enclosed, side-by-side, two (2) car garages minimum, which must contain an area of four hundred (400) square feet.

D. All buildings shall be located at least thirty-five (35) feet from the front lot line, at least seven (7) feet from the side lot lines and at least twenty-five (25) feet from the rear lot line. On corner Lots, either street side may be designated by the Owner as the front, and either non-street side as the rear, for purposes of determining compliance herewith, but buildings must be at least seventeen and one-half (17.5) feet from the other street side lot line. For purposes of this restriction, eaves, open slab-on-grade patios and steps shall not be considered part of the building.

E. Exposed portions of the foundation on the front of each dwelling are to be covered with clay-fired brick or stone even if a portion of those exposed foundations may be perpendicular, or nearly so, to the affronting street. Exposed portions of the foundation on the side of each dwelling facing the street, when said dwelling is located on a corner lot, are to be similarly covered with clay-fired brick or stone. Exposed portions of the foundation on the sides or rear not facing a street of a dwelling located on a corner lot and the exposed portion of the foundation on the sides and rear of every other dwelling shall be covered with clay-fired brick, stone, siding or shall be painted.

F. In the event that a fireplace is constructed as a part of a dwelling on any Lot, except a corner Lot, and said fireplace and/or the enclosure for the fireplace flue is construction in such a manner so as to protrude beyond the outer perimeter of the front or side of the dwelling, or is exposed above the plane of the roof, the enclosure of the fireplace and flue shall be constructed of, or finished with, clay-fired brick or stone. If the fireplace and/or the enclosure for the fireplace flue is constructed in such a manner so as to protrude beyond the outer perimeter of the rear of the dwelling, the enclosure of the fireplace and flue may be constructed of, or finished with, the same material as is the dwelling at the point from which the fireplace and/or the flue protrudes. If more than one fireplace is planned, all shall comply with the above requirements.

Notwithstanding the foregoing, when any fireplace is constructed as a part of a dwelling on any corner Lot, said fireplace and/or the enclosure for the

fireplace flue is constructed in such a manner so as to protrude beyond the outer perimeter of the dwelling, or is exposed above the plane of the roof, the enclosure of the fireplace and flue shall be constructed or finished with clay-fired brick or stone.

The parts of all pre-fabricated metal furnace flues that protrude from the roof of a dwelling must be painted and no furnace flue may protrude more than five (5) feet from the roof of the dwelling, as measured from the top cap of the flue to the point from which the flue emerges from the roof. In the event that a dwelling is constructed without a fireplace, the furnace flue must then be faced with clay-fired brick or stone above roof level. All furnace flues must be located on the rear side of the roof ridge.

G. No fences may be built forward of the rear-most wall of the house and under no circumstances closer to any adjoining street than the property line. Fences shall be constructed only of wood, decorative iron, brick or stone and are subject to the approval of the Architectural Control Committee referred to above. Wire or chainlink fences, temporary or permanent barbed wire, electrified and/or snow fences shall not be permitted.

H. No structure of a temporary character, trailer, basement, tent, shack, barn or other out building shall be erected on said Lot or used as a residence, temporarily or permanently. No prefabricated or factory built house or residential dwelling built elsewhere shall be moved onto or assembled on any of said Lots. No pre-cut dwelling shall be assembled on any of said Lots. No full or partial subterranean dwellings or log houses shall be constructed or erected on any Lot. No dwelling shall be moved from outside of the Properties onto any of said Lots.

I. No part of any residence or garage shall be covered by a flat or mansard roof and all dwellings or garages shall be roofed with wood shakes or with wood shingles.

J. Public sidewalks are the responsibility of, and shall be constructed by, the then Owner of a Lot prior to the time of completion of a dwelling and before occupancy thereof. The extent of sidewalks, location, construction details, materials and grades shall be in accordance with the regulations of the City of Omaha and any revisions thereof. The maintenance of said sidewalks, after construction, shall be the responsibility of the Owners of each of the Lots.

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

L. 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 animals, livestock, fowl or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets maintained within the dwelling may be kept, provided that they are not kept, bred, or maintained for any commercial purpose and provided that they are kept confined to the Lot of their Owner and are not permitted to run loose outside the Lot of the Owner.

M. No incinerator or trashburner shall be permitted on any Lot. No garage or trash can or container shall be permitted to remain outside of any dwelling unless completely screened from view from every street and from all other Lots in the subdivision. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling except while in actual use. No garage door shall be permitted to remain open except when entry to and exit from the garage is required. No clothesline shall be permitted outside of any dwelling at any time. Any exterior air conditioning condensing units or heat pump units shall be placed in the rear yard of the dwelling and in no case closer than twelve (12) feet to the neighboring property line. Detached accessory buildings are not permitted.

N. No automobile, boat, camping trailer, van-type campers, auto-drawn trailer of any kind, mobile home, motorcycle, snowmobile or other self-propelled vehicles shall be stored or maintained outside of the garage. For purposes of the preceding provision, "stored or maintained outside of the garage" shall mean, parking the vehicle or trailer on the driveway, or any other part of the Lot, outside of the garage, for seven (7) or more consecutive days. All repair or maintenance work on automobiles, boats, camping trailers, van-type campers, auto-drawn trailers of any kind, mobile homes, motorcycles, snowmobiles, or other self-propelled vehicles must be done in the garage. The dedicated street right-of-way located between the pavement and the Lot line of any residential Lot shall not be used for the parking of any vehicle, boat, camper or trailer. Automobiles and other self-propelled vehicles parked out-of-doors within the premises above-described, or upon the streets thereof, must be in operating condition.

O. All Lots shall be kept free of rubbish, debris, merchandise and building material; however, building materials may be placed on Lots when construction is started on the main residential structure intended for such Lot. In addition, vacant Lots where capital improvements have not yet been installed shall not be used for dumping of earth or any other waste materials, and shall be maintained level and smooth enough for machine mowing. No vegetation on vacant lots where capital improvements have not yet been installed shall be allowed to reach more than a maximum height of twelve (12) inches.

P. Except for the purpose of controlling erosion on vacant Lots, no field crops shall be grown upon any Lot at any time.

Q. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation. Further, home occupations, as defined in the Zoning Code of the Municipal Code of the City of Omaha, Nebraska shall not be permitted to take place within any of the residential dwellings.

R. A dwelling on which construction has begun must be completed within one (1) year from the date the foundation was dug for said dwelling.

S. Vegetable gardens and rock gardens shall be permitted only if maintained in the designated rear yard of any Lot, behind the dwelling on said Lot. Further, vegetable gardens and rock gardens must be approved by the Architectural Control Committee.

T. No residential dwelling shall be occupied by any person as a dwelling for such person until the construction of such dwelling has been completed, except for minor finish details as determined and approved by the Architectural Control Committee.

U. No streamers, posters, banners, balloons, exterior illumination or other rallying devices will be allowed on any Lot in the promotion or sale of any Lot, dwelling or property. No advertising signs or posters of any kind shall be erected or placed on any of said Lots, except the residential "For Sale" signs, not exceeding six (6) square feet in size, shall be permitted and, provided further, that such restriction as to sign size shall not apply to any sign erected by the Declarant, or its agents, in the development of Bryn Mawr.

V. All driveways shall be constructed of concrete, brick, or asphaltic concrete.

W. None of said Lots shall be subdivided, split or in any manner combined with any other Lot or portion of any other Lot, unless the resulting parcel shall contain at least as much area as the smallest of the Lots used in assembling the resulting parcel.

X. The front, side and rear yards of all Lots shall be sodded, and two (2) trees, each not less than two (2) caliper inches in diameter, shall be planted in the front yard of each residence. No trees shall be planted in the dedicated street right-of-way located between the pavement and the Lot line. All yards shall be sodded and the trees planted within one (1) year from the date the foundation for the residence on the Lot was completed.



**ARTICLE IV**  
**EASEMENTS AND LICENSES**

A. A perpetual license and easement is hereby reserved in favor of and granted to the U.S. West Communications, Inc., the City or County franchised cable television firm and to the Omaha Public Power District, their successors and assigns, to erect and operate, maintain, repair, and renew cables, conduits and other instrumentalities and to extend wires for the carrying and 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 all front and side boundary Lot lines, and an eight (8') foot wide strip of land abutting the rear boundary lines of all Lots, and we do further grant a perpetual easement to 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 for the transmission of gas and water on, through, under and across a five (5') foot wide strip of land abutting all streets, said easement and license being granted for the use and benefit of all present and future owners of said Lots; provided, however, that said Lot line easement is granted upon the specific condition that if any said utility company fails to construct wires or conduits along any of the said Lot lines within thirty-six (36) months of the date hereof, or if any wires or conduits are constructed but hereafter removed without replacement within sixty (60) days after their removal, then this Lot line easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings shall be placed in perpetual easementways, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

B. All telephone, cable television, electric power, gas, and water service lines from property line to dwelling shall be underground.

**ARTICLE V**  
**HOMEOWNER'S ASSOCIATION**

A. The following definitions shall apply for the purposes of this Article:

1. "Association" shall mean and refer to Bryn Mawr Homeowner's Association, Inc., its successors and assigns, a Nebraska non-profit corporation.
2. "Improved Lot" shall mean and refer to any Lot of the Properties on which a dwelling has been erected and the construction thereof is substantially complete.

All other definitions contained in Article I will likewise be applicable to this Article.

B. Every owner shall be a member of the Bryn Mawr Homeowner's Association, which was established on September 9, 1986, for the purpose of maintaining the entry islands, cul-de-sac islands and perimeter fence for the various phases of the Bryn Mawr Subdivision as they are platted from time to time. With the inclusion of the Lots subject to these Covenants, the Homeowner's Association shall cover the lots in Bryn Mawr, Bryn Mawr Second Addition, Bryn Mawr Third Addition and the Lots subject to these Covenants. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

C. The Declarant, for each Lot owned within the Properties as defined herein, hereby covenants and each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed covenant and agreed to pay to the Association regular annual maintenance assessments for the charges for the purposes hereinafter set forth, which assessments, together with interest, costs, and reasonable attorneys' fees shall be and constitute, until paid, a continuing charge against and a lien upon such Lot or property against which each such assessment is made.

D. The assessments levied by the Association shall be used exclusively without any part of the net earnings inuring to the private benefit of its members, to maintain the Bryn Mawr Subdivision cul-de-sac and entryway islands and more particularly for the watering, maintenance and replacement of trees, grass and shrubbery planted thereon. The assessments levied by the Association shall also be used to maintain the perimeter fence constructed by the Declarant which is located on the rear property lines that abut either 132nd Street and/or Blondo Street for the following legally described property; Lots 1 through 8, Lots 13 through 15, and Lots 72 through 76, inclusive, all in Bryn Mawr, Lots 1, 2, 27, 28 and 30, Bryn Mawr Second Addition, Lots 2, 3, and 4, Bryn Mawr Third Addition, and Lots 3 through 10, inclusive, Bryn Mawr Fourth Addition, all subdivisions located in Douglas County, Nebraska, as surveyed, platted and recorded.

E. Before each fiscal year, the Board of Directors of the Association shall adopt and fix in reasonably itemized detail an annual budget for the then anticipated fiscal affairs and general operations for the Association for that year, and shall levy and collect annual assessments from each Lot on the Properties, which shall be sufficient to fund the budget for the fiscal year. In recognition of the fact that the sole purpose of this Homeowner's Association is for the maintenance of the areas described in Subparagraph D above, the regular assessment for each Lot for the initial year shall be Twenty-Five (\$25.00) Dollars and for each improved Lot shall be Fifty (\$50.00) Dollars. The regular assessment for each unimproved Lot shall be no more than fifty (50%) percent of the regular assessment for improvement lots.

F. The regular annual assessments provided for herein shall commence as to all Lots on the first day of the month following the filing of this Declaration. The regular annual assessments provided herein as to all improvement Lots shall commence the first day of the month following the month during which the dwelling was substantially completed. As provided in the By-laws, the first regular 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 against each Lot at least thirty (30) days in advance of each annual assessment. Written notice of the annual assessment shall be sent to every owner subject thereto. The due date shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certification signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

G. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of nine (9%) percent per annum. The Association may foreclose the lien against the property in the same manner as provided by law for foreclosure of mortgages.

H. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

I. All Properties dedicated to, and accepted by, a local public authority and all Properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Nebraska shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

J. The Homeowner's Association is a non-profit corporation originally formed by the Declarant and its Articles of Incorporation and Bylaws, to the extent not inconsistent with this Declaration, are hereby incorporated herein by this reference. In the event of any conflict between the Articles and/or Bylaws of the corporation and this Declaration, then this Declaration shall control.

**ARTICLE VI**  
**GENERAL PROVISIONS**

A. The Declarant, or its assigns, or any owner of a Lot named herein shall have the right to enforce by proceeding at law in equity, all restrictions,

conditions, covenants, and reservations, no or hereinafter imposed by the provisions of this Declaration, either to prevent or restrain any violation of same, or to recover damages or other dues for 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.

B. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded. This Declaration may be amended only by Bryn Mawr, Inc. for a period of five (5) years from the date of this Declaration, or until eighty (80%) percent of the Lots covered by these covenants have been built upon. Thereafter, this Declaration may be amended by an instrument signed by the owners of not less than seventy-five (75%) percent of the Lots covered by this Declaration.

C. Invalidity of any one of these covenants by judgment or court order shall in no way affect any of the other provisions hereof which shall remain in full force and effect.

D. At such time as eighty (80%) percent of the Lots covered by these covenants have been built upon, the Declarant then agrees to assign to the Bryn Mawr Homeowner's Association, Inc. all of Declarant's rights, titles, interest, powers and privileges granted or reserve unto Declarant, including but not limited to, the right to enforce by a proceeding at law or equity, all of the restrictions, covenants, conditions and provisions contained therein.

**ARTICLE VII**  
**NOTICE OF POTENTIAL TELEPHONE FACILITIES CHARGE**

A. In the event that ninety (90%) percent of all lots in Bryn Mawr Fourth Addition are unimproved within five (5) years from the date that U.S. West Communications, Inc. shall have completed the installation of its distribution system within such phase of said subdivision and filed notice of such completion, then every lot that is unimproved at the end of the five (5) year term shall be subject to a charge of Four Hundred Fifty (\$450.00) Dollars by U.S. West Communications, Inc. or its successors. A Lot shall be considered as unimproved if construction of a permanent structure has not commenced on that Lot. Construction shall be considered as having commenced if a footing inspection has been made on the Lot in question by officials of the City or other appropriate governmental authority.

B. Bryn Mawr Fourth Addition shall be considered separately in determining whether ninety (90%) percent of the Lots within that phase have been improved within the five (5) year term. In determining the date U.S. West Communications, Inc. shall have completed the installation of its distribution system, each development phase shall also be considered separately.

C. Such charge shall be due and owing immediately upon the expiration of the five (5) year term, and if such charge is not paid within sixty (60) days after the sending of written notice by U.S. West Communications, Inc. or its successors to the owner of an unimproved Lot that such charge is due, then such charge will begin drawing interest commencing upon the expiration of the sixty (60) day period at the rate of twelve (12%) percent per annum, or the maximum rate allowed by law if said maximum rate is less than twelve (12%) percent per annum at that time.

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 22<sup>nd</sup> day of May, 1992.

DECLARANT:

BRYN MAWR, INC. a Nebraska corporation

By *Charles G. Smith - Pres.*

STATE OF NEBRASKA )

) ss.

COUNTY OF DOUGLAS)

On this 22<sup>nd</sup> day of May, 1992, before me the undersigned, a Notary Public, in and for said County and State personally came Charles G. Smith, to me known to be the President of Bryn Mawr, Inc., a Nebraska corporation, and acknowledged his execution thereof to be his voluntary act and deed and the voluntary act and deed of such corporation.

WITNESS my hand and official seal the day and year last above written.



*Gloria J. Stroh*  
Notary Public