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*Glenn J. Dowling*  
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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF CIMARRON WOODS WEST IN SARPY COUNTY, NEBRASKA**

THIS DECLARATION, made on the date hereinafter set forth, is made by **TORCO DEVELOPMENT, INC.**, a Nebraska corporation, hereinafter referred to as the "Declarant."

**PRELIMINARY STATEMENT**

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

Lots 1 through 379, inclusive, and Outlots A and B, inclusive, all in Cimarron Woods; a Subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.

Such lots are herein referred to collectively as the "Lots" and individually as each "Lot" and such lots are also referred to collectively as a neighborhood as "Cimarron Woods West."

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

NOW, THEREFORE, the Declarant hereby 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 more fully described herein. The Lots, and each Lot are and shall be subject to all and each of the following conditions and other terms.

**ARTICLE I.  
RESTRICTIONS AND COVENANTS**

1. Residential Uses Allowed. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots designated by Declarant for

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townhome or villa use, which may include but is not limited to Lots 286 - 379, inclusive, in Cimarron Woods, and except for 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 as a church, school, park, or for other nonprofit use.

2. Improvement Approvals. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, dog house, pool house, playground equipment, satellite receiving station or "discs" exceeding 18" in diameter, solar heating or cooling device, or other external improvement of any kind, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvements 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, landscaping plans and plot plans to Declarant (herein collectively referred to as the "plans"). Such plans shall include a description type, quality, color, location 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.

B. Declarant shall review such plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by Declarant. In this regard, Declarant intends that the 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 Lots and to protect the values, character and residential quality of all Lots. If Declarant determines that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, in its sole and absolute discretion, 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 the 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.

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E. No structures, whether portable or temporary, and no private fencing shall be allowed within any landscape buffer easement without the prior approval of the City of La Vista.

F. A surveyor's certificate for a Lot prepared by Declarant's Engineer shall be released to an Owner of a Lot only after Declarant approval of plans for construction of the main residential structure on such Lot.

3. Building Limitations. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling which does not exceed two and one-half stories in height. For streets shown in the Park and Boulevard Plan attached to the Subdivision Agreement for Cimarron Woods to be Boulevard Style Streets where there is an abutting side street that affords an opportunity for a driveway, the front of the home shall face the Boulevard Style Street where feasible and the driveway shall enter from and the garage shall face the abutting side street. On corner lots abutting two Boulevard Style Streets, the homes shall face Cimarron Woods Drive where feasible and the driveway/garage orientation shall be to and from the other Boulevard Style Street.

4. Foundation/Exterior Walls, Etc. All foundation walls facing any street shall be covered with brick, stone or cultured stone approved by the Declarant. Each foundation wall of corner lots facing two abutting streets must comply with this provision. Fifty (50%) percent of the front elevation of any house shall be covered with brick, stone or cultured stone approved by the Declarant. The Declarant shall be the sole determinant as to whether the requirements of the prior sentence have been met. 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. Fireplace chimneys shall be covered with brick, stone or cultured stone approved in writing by Declarant. Unless other materials are specifically approved by Declarant, the roof of all improvements shall be covered with Heritage style asphalt shingles with color to be weathered wood.

5. Signage/Business Activities. 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 anyway for any purpose which may endanger the health or unreasonably disturb the owner or owners of any Lot or any resident thereof. Provided, however, this Paragraph shall not apply to the business activities and signs or the construction and maintenance of buildings, if any, by Declarant, its designated builders, agents or assigns, during the construction and sale of the Lots.

6. Towers/Antennas, Etc. No outside radio, television, ham broadcasting, earth station, satellite dish or other electronic antenna or aerial shall be erected or placed on any structure or on any Lot, except, with the prior written approval of Declarant, one (1) satellite dish of 18" or less in diameter or diagonal measurement which is screened from view of any street or sidewalk will be permitted per Lot. The foregoing notwithstanding, any earth station, satellite dish or other electronic antenna or aerial specifically exempted from restriction by statute, regulation, binding order of a court or governmental agency shall be maintained in accordance with the strictest interpretation or condition for such use as may be permitted by such order. No satellite dish less than eighteen inches (18") in diameter and

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approved by Declarant, or other communications device allowed by a binding order of a court or governmental agency shall be located in front of the center line of the dwelling, or shall be visible to public view. No patio, patio enclosure, freestanding flag pole, or similar structure shall be located in front of the center line of the dwelling. No tree houses, tool sheds, doll houses, windmills, or similar structures shall be permitted on any Lot.

7. Vehicular/Watercraft, Etc. Repairs. 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 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.

8. Vehicular Storage. 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 forty-eight (48) hours 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 semi-tractors/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 during the period of construction. All residential Lots shall provide at least an attached three-car garage and the minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of La Vista, Nebraska.

9. Trash/Storage and Other Outdoor Uses. 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, and in no event shall any trash can or other receptacle be placed along any portion of any Lot facing any Boulevard Style Street, including Cimarron Woods Drive, Josephine Street and 99<sup>th</sup> Street. 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, 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, not more than ten feet by ten feet in area and located in as inconspicuous a manner as possible, may only be maintained in rear yards, subject to review and approval of Declarant pursuant to Paragraph 2, above.

10. Exterior Lighting. 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.

11. Fences/Shrubs. No fence shall be permitted to extend beyond the front line of a main residential structure. No hedges or mass planted shrubs shall be permitted more than the (10') feet in front of the front building line. Unless other materials are specifically approved in writing by Declarant and approved by the City of La Vista by issuance of a permit, fences on Lots adjacent to or directly visible from any boulevard-designated street, which shall include Cimarron Woods Drive, Josephine Avenue, and 99<sup>th</sup> Street, shall only be composed of black wrought iron or

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black PVC wrought iron (a/k/a blackline) appearing fence materials of such style and character that are not opaque and are uniform in appearance. Subject to the approval of Declarant pursuant to Paragraph 2 and the City by issuance of a fence permit, all of which shall occur prior to installation of fencing, fences on any Lot not adjacent to a boulevard-designated street may be composed of black wrought iron, black PVC wrought iron (a/k/a blackline), or six (6') foot almond vinyl overscalloped in style. Any fencing installed on Lots that are not adjacent to or directly visible from any boulevard-designated street shall be adequately screened from any boulevard-designated street as indicated in Exhibit E-3 of the Cimarron Woods Subdivision Agreement. No fences shall exceed a height of six (6) feet. No chain link fencing of any kind shall be permitted on any Lot. No waiver of the provisions of this paragraph shall be effective unless approved by the City of La Vista. No perimeter fencing shall be installed along 96th Street and/or Harrison Street. A six foot solid wood perimeter fence, approved by the City of La Vista, shall be installed by the Declarant in the rear ten feet of Lots 39-46, inclusive, Lots 54-55, Lots 59-61, inclusive, Lots 64 -66, inclusive, and Outlot A, all in Cimarron Woods, and a permanent easement is hereby retained for the benefit of Declarant and the Association for such installation and maintenance, repair and replacement of such fencing, and also for the benefit of the City in the exercise of its rights pursuant to Article IV hereof.

12. Swimming Pools. No swimming pool may extend more than one foot above ground level and must conform to all applicable state, county and city regulations.

13. Completion of Improvements. 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.

14. Zoning Ordinance Compliance, Setbacks, Sidewalks, Etc. All applicable zoning ordinances of the City of La Vista, including but not limited to Section 5.15 of the La Vista Zoning Ordinance No. 848, as the same may be amended from time to time, shall apply to all Lots, except that all Lots shall have a front yard setback of thirty (30') feet, a rear yard setback of twenty-five (25') feet, a side yard setback of five (5') feet for side yards not abutting a street, and in the case of a side yard abutting a street a setback of twenty-five (25') feet. A public sidewalk shall be constructed of concrete four (4') feet wide by four (4") inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed five (5') feet back of the street curb line and shall be constructed by the owner of the Lot at the earlier of the following events: completed construction on of 75% of Lots abutting such block on which the Lot is located, five years from the date of recording the original plat of Cimarron Woods or prior to the time of completion of the main structure and before occupancy thereof, provided, however, this sidewalk provision shall vary as needed to comply with any requirements of the City of La Vista by its ordinances or by the Residential Subdivision Agreement for Cimarron Woods.

15. Driveway Approaches. Driveway approaches between the sidewalk and curb on each 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. Animals, Shelters, Etc. No stable or other shelter for any animal, livestock, fowl or poultry or reptile shall be erected, altered, placed or permitted to remain on any Lot, except for one dog house constructed for one (1) dog; provided

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always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarant, or its assigns, as required by this Declaration. Dog houses shall only be allowed at the rear of the residence, concealed from public view. No dog runs or kennels of any kind shall be allowed. No pot-bellied pigs or other exotic animals shall be allowed in Cimarron Woods West.

17. Exterior A/C Condensers, Utility Boxes, Etc. Any exterior air-conditioning condenser unit and other utility boxes or appurtenances on any Lot shall be placed in the rear yard or side yard so as not to be visible from public view. No exterior air-conditioning condenser unit or other utility boxes or appurtenances shall be allowed to be visible from any Boulevard Style Street, including Cimarron Woods Drive, Josephine Street and 99th Street and such utility units shall in no instance be placed in any side, rear or front yard abutting such Boulevard Style Street.

18. Trees and Vegetation. 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. Trees and shrubs along any Boulevard Style Street, including Cimarron Woods Drive, Josephine Street and 99th Street, shall be placed only in a landscape easement area, except for plantings within the boulevard medians, all as provided by the Cimarron Woods Subdivision Agreement. Vacant Lots shall not be used for dumping of earth or any building or waste materials, including grass clippings, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

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

20. Detached/Temporary Structures, Etc. No structure of a temporary character, carport, detached garage, trailer, basement, 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 the Cimarron Woods West to any Lot without the written approval of Declarant.

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

22. Siltation Control. Declarant does hereby reserve unto itself the right to require the installation of siltation fences or erosion control devices and measures in such location, configurations, and designs as it may determine appropriate in its sole and absolute discretion, all at the cost of the Owner. Silt fences shall be used by each Owner of an uphill Lot, as defined by Declarant, during construction. Each owner of each Lot shall control erosion on their Lot and remain responsible for any erosion resulting from construction on such owner's Lot, whether such erosion occurs on such owner's Lot or on neighboring Lots. If any Owner fails to install erosion control measures as required by the Declarant, Declarant shall have the right to enter onto such Lot and install such erosion control measures at the cost of Owner, which cost may become a lien against such Lot.

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23. Tree Planting Requirement. Except for Lots owned by the Declarant and any designated builder, all Lots shall be fully sodded within two years after closing of said Lot or within 30 days after occupancy of said Lot, whichever occurs earlier. There shall be planted on each lot a minimum of two (2) trees prior to occupancy of said Lot. At least one tree shall be planted in the front yard and at least one tree shall be planted in the rear yard. Deciduous trees shall be a minimum of two inch (2") caliper and coniferous trees shall at least six feet (6') in height.

**ARTICLE II.**  
**HOMEOWNERS' ASSOCIATION**

1. The Association. Declarant has or will cause the incorporation of the Cimarron Woods West 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 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, together with the performance of the Common Area Obligations identified in the Residential Subdivision Agreement for Cimarron Woods between the Declarant, the City of La Vista and Sanitary and Improvement No. 237 as being a Common Area Obligation or an obligation of the Homeowners' Association, either directly or as a successor in obligation to the Declarant (the Developer). Common Facilities may include but are not limited to: outlots, recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks dedicated and nondedicated roads, paths, ways, green areas, landscaping, perimeter fencing, buffer areas and signs and entrances for Cimarron Woods West. 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 or owned or leased by 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. 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 Cimarron Woods West; and the protection and maintenance of the residential character of Cimarron Woods West.

D. The Mandatory Duties of the Association as set forth in Article IV of this Declaration.

2. Membership and Voting. The "Owner" of each Lot shall be a Member of this Association. For purposes of this Declaration, the term "Owner" of a Lot means

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and refers to the record Owner, whether one or more persons or entities, of fee simple title of 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. With the exception of the Class B membership set forth below, the Owner of each Lot, whether one or more, shall have one vote on all matters properly before the Association. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B member(s) shall be the Declarant and shall be entitled to twelve (12) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- a. when the total votes outstanding in the Class A membership equal three-fourths of the total votes outstanding in the Class B membership, or
- b. on June 1, 2012 or sooner at Declarant's discretion.

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 maintenance, landscaping, mowing, watering, repair and replacement of parks, perimeter fencing and landscaping, open space, buffer areas and recreational facilities and land, and other public property and improvements on parks, street right-of-way, medians or public property within or near Cimarron Woods West.

C. The Mandatory Duties of the Association described in Article IV of this Declaration.

D. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

E. The expenditure, commitment and payment of

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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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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. The Association shall install, permanently and continuously maintain, replace and repair any entranceways, entrance signs and landscaping, perimeter fencing, trails (except trails in Outlots C, D and E), any trees and landscaping in street right-of-way, medians, boulevards, buffer areas (including the industrial buffer area along the west side and the south side of Cimarron Woods) and easement areas, requirements of any 404 permit, drainage detention facilities, recreational space and equipment, and related fixtures in Cimarron Woods West and keep the same in generally good and neat condition and shall own and maintain Outlots A-B, inclusive, all in Cimarron Woods in generally good and neat condition. In complying with these mandatory duties, the Association shall comply with the requirements of the Residential Subdivision Agreement for Cimarron Woods entered into by Declarant and the City of La Vista and shall enter into any required maintenance agreement with SID 237 and the City of La Vista. In the event that Declarant and the Association fail to comply with any mandatory duty stated herein, the City of La Vista, at its option, may itself take such remedial or curative action, or cause such action to be taken, and assess the cost thereof to each Lot within Cimarron Woods West.

5. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with a dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this

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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 provisions of this declaration, the Board of Directors may, in individual circumstances where good cause exists, abate all or part of the dues due in respect of any Lot, and may abate all dues owing in respect to any unsold Lot during the period such Lot is owned by the Declarant. During any such time of abatement of dues on Declarant-owned lots and until the Homeowners' Association is activated and has annual income from membership dues and assessments sufficient to fully fund performance of the Common Area Obligations as defined in this Declaration or in the Subdivision Agreement, Declarant shall perform such obligations, or in the alternative fund the cost of performance of such Common Area Obligations to the extent of any shortfall in membership dues and assessments received by the Association for such purposes. Assessments for Extraordinary Costs as provided for in Section 10 hereof, may be waived only with the consent of the City.

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. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 11, below, the aggregate dues which may become due and payable in any year shall not exceed the greater of:

- A. Two Hundred and NO/100ths (\$200.00) Dollars per Lot.
- B. In each calendar year beginning on January 1, 2005, 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 for such extraordinary cost in each calendar year shall be limited in an amount to Two Hundred and NO/100ths (\$200.00) Dollars per Lot.

11. Excess Dues and Assessments. With the approval of seventy-five (75%) percent of votes 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 Lots, but dues may be abated as to individual Lots, as provided in Section 6 of this Article.

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 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 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 nonuse of the Common Area 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. In such event, 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 Lot shall not affect or terminate the dues and assessment lien.

### **ARTICLE III. EASEMENTS**

1. Easements - General Scope. A perpetual license and easement are hereby reserved in favor of and granted to Omaha Public Power District, Quest Communications, and any company which have been granted a franchise to provide a cable television system within the Lots; to Metropolitan Utilities District of Omaha, and Sanitary and Improvement District No. 237 of Sarpy 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

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lines of the Lots; and eight (8') foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior lots that are adjacent to presently platted and recorded Lots; and a sixteen (16') foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the 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. Metropolitan Utilities District Water. 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 cull-de-sac streets; this license being granted for the use and benefit of all present and future owners of these 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 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 easement ways. No permanent buildings, trees, retaining walls or loose rock walls shall be placed in the easement ways 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. Telecommunications. U.S. West Communications, Inc. and/or any other telecommunications company may, upon completion of its distribution system, require a connection charge on some or all of the Lots at the time service is requested.

4. Industrial Buffer. A permanent thirty (30') foot wide industrial buffer zone a/k/a landscape buffer easement has been and is hereby reserved in favor of the Declarant and the Cimarron Woods Homeowners Association over, under, through and across the rear 30 feet of Lots 9-14, inclusive, Lots 29-39, inclusive, Lots 39-46, inclusive, Lots 54-55, Lots 59 -61, inclusive, Lots 64 -66, inclusive, and Outlot A, all in Cimarron Woods for the purpose of constructing a six (6') foot solid wood perimeter fence and installing a treed buffer area along the west and south boundary of Cimarron Woods within said buffer zone. Such installation of perimeter fencing and trees shall be performed by the Declarant or the Association, and the Association shall maintain and replace, if necessary, all perimeter fencing and trees within said buffer zone. All trees and fencing within said buffer zone shall be planted and installed in such a manner as to create a passage for service vehicles along the easement and shall be approved in writing by the City of La Vista. No structures, whether portable or temporary, and no private fencing shall be allowed within said buffer zone without the prior approval of the City Administrator. No building permit will be granted for any of the lots encumbered by said buffer zone until Declarant has fulfilled the requirements of the Residential Subdivision Agreement for Cimarron Woods relating to said buffer zone.

5. Drainage. A permanent twenty (20') foot wide storm sewer and drainageway easement has been reserved in favor of Sanitary & Improvement District No. 237 of Sarpy County, Nebraska ("SID 237") affecting portions of Lots 61

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-65, inclusive, all in Cimarron Woods, as more particularly depicted on the plat of Cimarron Woods.

6. Landscape/Sidewalk/Trail Easements. A permanent landscape and sidewalk/trail easement has been and is hereby reserved in favor of SID 237 of Sarpy County, Nebraska, the Declarant and the Cimarron Woods Homeowners Association, and utility companies noted in the dedication on the plat of Cimarron Woods, over, under, through and across a fifteen (15') foot wide strip abutting Cimarron Woods Drive, Josephine Avenue and 99<sup>th</sup> Street on Lots 1, 6-7, 20-21, 92-93, 99-100, 113, 126, 159160, 179, 180, 189-190, 201-202, 209-225, inclusive, 236-237, 249-259, inclusive, 270-271, 285-286, 309-310, 333-334, 348-349, 363-364, 371-372, 379, all in Cimarron Woods, for the installation, maintenance, repair and, if necessary, replacement of trees, berms, plantings and other landscape measures and of a concrete trail/sidewalk.

7. Other Easements. Other easements are provided for in the final plat of Cimarron Woods which is filed in the Register of Deeds of Sarpy County, Nebraska, as the same may be replatted from time to time.

8. Encroachment on Easements Prohibited. No permanent or temporary structures, buildings, trees, retaining walls, loose rock walls, or other improvement shall be placed in or made to any of said easement areas by any person or entity, but same may be used for other purposes by the Owner of such Lot so long as such use does not then or later interfere with the aforementioned uses or rights granted herein.

**ARTICLE IV**  
**CITY RIGHT TO ENFORCE COMMON AREA OBLIGATIONS**

As used herein "Common Facilities" or "Common Area Obligations" shall mean all of the obligations identified in this Declaration or in the Residential Subdivision Agreement between the Declarant as Developer of Cimarron Woods West, Cimarron Woods East, Inc. ("Sudbeck") as Developer of Cimarron Woods East, Developer, the City of La Vista and Sanitary and Improvement District No. 237 (herein the "Subdivision Agreement") as being Common Area Obligations of the Declarant or an obligation of the Homeowner's Association, either directly or as successor in obligation to the Declarant, in respect to the Cimarron Woods West Subdivision.

Declarant and the Homeowner's Association, as successor in obligation to the Declarant, and Owners of Lots as successors in obligation in the absence of a Homeowner's Association, and all of them on behalf of themselves, their grantees, successors and assigns, do hereby covenant and agree:

1. To timely perform the terms of these Declarations and of the Subdivision Agreement regarding construction, installation, repair, maintenance or upkeep of Outlots A and B and other Common Area Obligations of the Declarant and the Homeowners' Association (collectively "Common Area Obligations");

2. Should there be a failure, for whatever reason, to faithfully and fully perform such obligations, then in such event, the City, at its option, and after thirty (30) days written notice to Owners of record of the Lots, may, in whole or in part, undertake to construct, install, repair, maintain or provide upkeep and/or take such other curative action, or cause such curative action to be taken in respect to such Common Area Obligations, and may assess against the Lots the full cost thereof,

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including but not limited to administrative, engineering and legal expenses incurred in respect thereto and foreclose said lien if need be. City may assess the cost of such work to the Owners of record of the Lots in the proportionate shares as established in this Declaration and/or by the Association with City's approval, for the particular improvement involved, and if there be no established allocation, then in such proportion as City may determine. Such assessment shall bear interest at the rate of twelve percent (12%) until paid;

3. Each Owner, for itself, its successors and assigns does hereby irrevocably promise, agree and consent to City's performing any unperformed or failed work involving the Common Area Obligations and the aforementioned Outlots, and each does hereby agree that upon City's demand, to fully reimburse the City its proportionate share of the cost of performing such work, together with interest at the above stated rate, and if enforced through legal proceedings, to reimburse City its court costs and attorneys fees incurred in such matter;

4. In addition to, and not in lieu of the foregoing, the Owners, on behalf of themselves and their grantees, successors and assigns, do hereby irrevocably consent and agree that City, at its option, may expend such funds in such amounts and from such sources as City may determine to be necessary or expedient to the prosecution of such work and/or the recovery of its costs therein incurred as authorized by this Article IV; and

5. The rights of City and the obligations of Declarant and of land owners herein provided for shall be covenants running with the land and shall survive the dissolution, termination or other cause of non-existence of the Homeowners' Association.

**ARTICLE V.**  
**GENERAL PROVISIONS**

1. Section Headings. Article headings and section headings herein are intended only as a brief reference to the subject matter therein and do not identify all subjects within a particular section.

2. Enforcement. Except for the authority and powers specifically granted to the Declarant, the 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 to either 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.

3. Covenants Running with the Land/Duration. The covenants, conditions, restrictions, easements and terms of this declaration shall run with and bind the land in perpetuity.

4. Amendments. This Declaration may be amended by Declarant, or any person, firm corporation, partnership, or entity designated in writing by Declarant, in any manner which it may determine in its full and absolute discretion for a period of ten (10) 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. Any amendment shall be subject to section 6 of this Article V.





DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
NEBRASKA REGULATORY OFFICE-WEHRSPANN  
8901 SOUTH 154<sup>TH</sup> STREET, SUITE 1  
OMAHA, NEBRASKA 68138-3621

REPLY TO  
ATTENTION OF:

August 29, 2003

Mr. Jerry Torczon  
BHI Properties, Inc.  
11205 South 150<sup>th</sup> Street, Suite 100  
Omaha, Nebraska 68138

SEP 05 2003

Dear Mr. Torczon:

We have reviewed the request for Department of the Army authorization for the Shenandoah Development located in the North 1/2 Section 16, Township 14 North, Range 12 East, Sarpy County, Nebraska.

Based on the information provided this office has determined that your project is authorized by the Department of the Army Nationwide Permit No. 39, found in the January 15, 2002 Federal Register (Vol. 67, No. 10, Part II), Issuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide permit and lists the General Conditions that must be adhered to for this authorization to remain valid.

The authorization for this Nationwide Permit will include the following Special Conditions:

1. All areas disturbed by construction shall be revegetated to appropriate perennial, native grasses and forbs and maintained in this condition. Reed Canary Grass (*Phalaris arundinacea*), Purple Loosestrife (*Lythrum salicaria*) and Smooth Brome (*Bromus inermis*) are not appropriate choices of vegetation. Revegetation will be acceptable when ground cover of desirable species reaches 50%.
2. Concurrently with construction, silt curtains and other sediment control measures shall be employed as needed to protect waters of the U.S. Upon completion of the project, upland seeding of disturbed areas adjacent to the wetland and channel crossings shall be completed by September 15 of that year. If this seeding cannot be accomplished by that date, an erosion blanket must be placed on the disturbed slopes adjacent to wetland and channel crossings. The erosion blanket will remain in place until native upland vegetation is established.
3. The Wehrspann Regulatory Office shall be notified of the construction start and end dates, as well as all appropriate documentation stating the date on which seeding of disturbed areas was completed.

EXHIBIT I - 1

Although an individual Department of the Army permit will not be required for the project, this does not eliminate the requirement that you obtain any other applicable Federal, state, tribal or local permits as required. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit in your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

In compliance with General Condition 14, the attached Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.

This verification will be valid until August 29, 2005.

Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

If you have any questions concerning this determination or jurisdiction, please feel free to contact John Moeschen at (402) 896-0896 and reference Nationwide Permit No. 2003-10760.

Sincerely,



for Michael Rabbe  
Nebraska State Program Manager

Enclosures

Copy Furnished:  
DEQ (Hickman)  
Sarpy County (Tex)  
E&A Consulting Group, Inc. (Meyer)



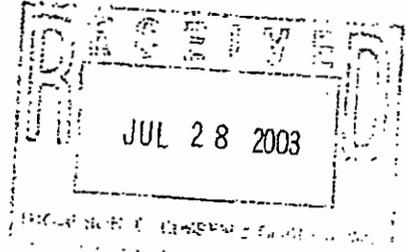
REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, OMAHA DISTRICT  
NEBRASKA REGULATORY OFFICE-WEHRSPANN  
8901 SOUTH 154<sup>TH</sup> STREET, SUITE 1  
OMAHA, NEBRASKA 68138-3621

July 24, 2003

**COPY**

1056-121



Mr. Melvin Sudbeck  
Shenandoah South, Inc.  
16255 Woodland Drive  
Omaha, Nebraska 68136

RE: Shenandoah

Dear Mr. Sudbeck:

We have reviewed your request for Department of the Army authorization for the construction of two road crossings on an unnamed tributary to West Papillion Creek. The work will be carried out in accordance with plans received on July 24, 2003. The sites are located in the NE ¼ of Section 16, Township 14 North, Range 12 East, Sarpy County, Nebraska.

Based on the information you provided, this office has determined that your work is authorized by the Department of the Army Nationwide Permit No. 39, found in the January 15, 2002 Federal Register (Vol. 67, No. 10, Part II), Issuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General Conditions that must be adhered to for this authorization to remain valid.

Although an individual Department of the Army permit will not be required for the project, this does not eliminate the requirement that you obtain any other applicable Federal, state, tribal or local permits as required. Please note that deviations from the original plans and specifications of your project could require additional authorization from this office.

You are responsible for all work accomplished in accordance with the terms and conditions of the Nationwide Permit. If a contractor or other authorized representative will be accomplishing the work authorized by the Nationwide Permit in your behalf, it is strongly recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the applicable Nationwide Permit. Any activity that fails to comply with all of the terms and conditions of the Nationwide Permit will be considered unauthorized and subject to appropriate enforcement action.

In compliance with General Condition 14, the attached Compliance Certification form must be signed and returned to the address listed upon completion of the authorized work and any required mitigation.

EXHIBIT I-2

**COPY**

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This verification will be valid until July 24, 2005.

Should you at any time become aware that either an endangered and/or threatened species or its critical habitat exists within the project area, you must immediately notify this office.

If you have any questions concerning this determination or jurisdiction, please feel free to contact Matt Wray at (402) 896-0896 and reference Nationwide Permit No. 2003-10795.

Sincerely,

*Matthew T. Wray*  
FOR Michael Rabbe  
Nebraska State Program Manager

Enclosures

Copy Furnished:

NDEQ (Terry Hickman)  
TD<sup>2</sup> (Doug Kellner)

	lots Torczon SF	lots Sudbeck SF	units Townhomes	units MF
	285	125	94	418
<b>total acreage of development</b>	<b>223.5 acres</b>			
Outlot A - entrance park area NW corner	0.567 acres - SID may buy less developer contribution			
Outlot B - entrance park/Harrison buffer NW corner: buildable	2.123 acres - SID may buy less developer contribution			
Outlot B - entrance park/Harrison buffer NW corner: unbuildable	0.82 acres - unbuildable - SID may buy, but may not pay for			
Outlot C - interior park	3.533 acres - SID may buy less developer contribution			
Outlot D - north end of central greenway park: unbuildable	0.89 acres - unbuildable - SID may buy, but may not pay for			
Outlot D - north end of central greenway park: unbuildable	1.4 acres - unbuildable - SID may buy, but may not pay for			
Outlot D - north end of central greenway park: buildable	6.789 acres - SID may buy less developer contribution			
Outlot E - south end of central greenway park: unbuildable	14.23 acres - SID may buy less developer contribution			
Outlot E - south end of central greenway park: buildable	4.2 acres - unbuildable - SID may buy, but may not pay for			
Outlot F - south of railroad - unbuildable buffer	1.785 acres - unbuildable - SID may buy, but may not pay for			
Outlot G - south of railroad - unbuildable drainageway	1.167 acres - unbuildable - SID may buy, but may not pay for			
<b>total greenspace</b>	37.504		<i>total of 504 SF lots</i>	
			<i>total purchase price of development 223.5 x \$40,000 = \$8,940,000 M</i>	
amount of development to be apartments	25.94 acres			
balance of development to be SF residential	197.56 acres			
density of Single Family (SF) at 15 people/acre	* 2963 people			
density of Multi Family (MF) 2000 census 2.32/unit	970 people			
<b>total population of proposed SID</b>	3,933 people			
<b>park land requirement:</b> (2.5 acres park per 1,000 people)	9.83 GO Cost to SID = @ \$40,000/acre 38.9937 acres - 9.83 = 27.2 x \$40,000 = \$1,088,000 M			
<b>Developer Contribution</b>	9.83 acres of parkland and greenspace			
<b>Total Developer Contribution</b>	10.262 acres of unbuildable drainageways/or buffers/adjacency requirements			
	20.092		20.092 x 40,000 = \$803,680 *	
			*cost per SF lot is specially assessed: \$ 1,594.60	
<b>Total Parkland to be purchased by SID</b>	17.412 acres of parkland & greenspace		17.412 x 40,000 = \$696,480	



**E&A CONSULTING GROUP, INC.**  
**ENGINEERS • PLANNERS • SURVEYORS**

12001 "Q" STREET  
OMAHA, NEBRASKA 68137-3542  
PHONE: (402) 895-4700  
FAX: (402) 895-3599

*"Building Our Reputation on Quality and Service"*

7130 SOUTH 29<sup>TH</sup> STREET, SUITE D  
LINCOLN, NEBRASKA 68516-5841  
PHONE: (402) 420-7217  
FAX: (402) 420-7218

September 23, 2004

Mr. Brenda Sedlacek  
City of LaVista  
8116 Park View Boulevard  
LaVista, NE 68128-2198

Re: Cimarron Woods Approval of Street Lights  
E & A File No 2003153.01 (Power)

Dear Brenda,

Per the Subdivision Agreement the Developer is permitted to utilize decorative lighting for the Cimarron Woods entrance streets at Harrison Street. The Developer has identified 19 street lights that are desired to be the decorative style, all other street lights within the subdivision will be the standard OPPD street lights. The locations of the 19 decorative street lights are shown on the attached exhibit.

The cost differential for decorative street lights according to OPPD is \$2,273.32 per fixture or a total of \$43,193.08. Per the subdivision agreement the cost of the decorative street lights is to be paid 50% by the Developer and 50% may be a general obligation expense of SID 237 up to a maximum of \$17,250. As 50% of the cost exceeds the allowable G.O. maximum, City approval is hereby requested to enter into a contract with OPPD to install 19 decorative street lights with SID 260 paying \$17,250 as a general obligation expenditure and the Developer paying the balance privately.

Sincerely,  
E & A CONSULTING GROUP

A handwritten signature in black ink, appearing to read 'Mark Westergard', is written over the typed name.

Mark A. Westergard, P.E.

Cc: Mr. John Fullenkamp w/ attachments  
Mr. Jerry Torczon w/ attachments

**EXHIBIT "G" TO THE SUBDIVISION AGREEMENT**

TO THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA:

FROM: Mark Westergard, P.E., E&A Consulting Group  
Doug Kellner, P.E. Thompson Dreesen & Dörner, Inc.

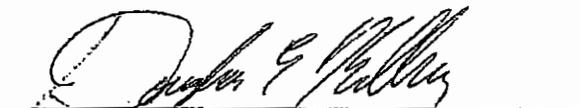
As agents for the developers, we, the Engineers for the Cimarron Woods subdivision and S.I.D. #237 of Sarpy County, Nebraska, have determined that all lots in the Cimarron Woods subdivision are of sufficient size and width, and of sufficient depth from the building line to comply with the City's regulations applicable to the zoning granted by the City, and contain no easements, drainage way, utility lines or other hindrance which would prevent any of the lots from being buildable as platted.

DATED this 11<sup>th</sup> day of February, 2004.

E&A CONSULTING GROUP  
Lots 1 through 380

THOMPSON, DREESSEN & DÖRNER, INC.  
Lots 381 through 505

  
By: Mark A. Westergard, P.E.

  
By: Douglas E. Kellner, P.E.

The City of La Vista will release Permanent Easement Instrument Number 92-017624, as filed and recorded with the Sarpy County Register of Deeds.