

STATE OF NEBRASKA COUNTY OF WASHINGTON) SS 994992
ENTERED IN NUMERICAL INDEX AND FILED FOR RECORD
THIS 20th DAY OF October A.D. 19 99
AT 3:10 O'CLOCK P.M. AND RECORDED IN BOOK
309 AT PAGE 248-258
COUNTY CLERK Charlotta L. Petersen
DEPUTY Jason Madson

FILED

99 OCT 20 PM 3:10

CHARLOTTE L. PETERSEN
COUNTY CLERK
WASHINGTON COUNTY, NEBRASKA

**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS, AND EASEMENTS**

THIS DECLARATION made on the date hereinafter set forth by and between the City of Blair, Nebraska, hereinafter referred to as "Blair", and Rodney D. Martin and Angelic M. Martin, Leslie J. Bowers and Connie Sue Bowers, Randall L. Smith and Holly B. Smith, David I. Petersen and Patricia S. Petersen, and Lynn R. Meyer and Nancy R. Meyer, hereinafter collectively referred to as "Landowners".

WHEREAS, Blair has been requested by Landowners to participate in a program sponsored by the Natural Resources Conservation Service ("NRCS") in which emergency watershed protection funds are available for repairs to water courses as a result of the excessive rainfall on or about August 6, 1999, and NRCS has agreed to engineer, design and contract for such repairs.

WHEREAS, Landowners, in order to induce Blair to participate in said NRCS Emergency Watershed Program, agree to participate and share in the cost of construction of the Emergency Watershed Funded Improvements and, further, agree to pay and be responsible for the expense associated with the operation and maintenance of the Emergency Watershed Funded Improvements, as required by the NRCS contract between Blair and NRCS, including, but not limited to, the operation and maintenance plan incorporated therein.

WHEREAS, the parties agree and understand that participation by a political subdivision is a prerequisite to receive the federal assistance from the NRCS Program, and Blair and the Papio Natural Resources District have agreed to contribute funds to the project.

WHEREAS, the parties agree and understand that Blair is merely serving as the local sponsor for this NRCS Emergency Watershed Program and is not creating a policy to promote watercourse erosion control or flood control.

WHEREAS, Lots described hereinbelow shall be subject to the protective covenants, restrictions, reservations, easements, liens and charges provided for hereinafter; provided, that the landowners and the lots subject to this Declaration are set forth on Exhibit "A" attached hereto and incorporated by this reference herein.

FOR VALUABLE CONSIDERATION including, but not limited to, the promises and covenants herein, the Landowners do hereby declare that all of the Lots described on Exhibit "A" shall be held, sold, and conveyed, subject to the following easements, restrictions, covenants, reservations, liens and charges, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of said Lots. These easements, restrictions, covenants,

Recorded _____
General _____
Numerical _____
Photostat _____
Printed _____

reservations, liens and charges shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in said Lots, or any part thereof, and shall inure to the benefit of each owner thereof and also shall inure to the benefit of Blair.

ARTICLE I DEFINITIONS

SECTION 1. "Lot" shall mean and refer to any parcel of land, whether all or a portion of any platted lot, which is described on Exhibit "A" and owned by any Landowner or their successors, assigns, or representatives.

SECTION 2. "Landowner" shall mean and refer to any person(s) or entities who are the record owner(s), whether a signor of this Declaration or a successor in interest to a signor of this Declaration, of a fee simple title to all or any part, parcel or portion of the Lots, but excluding those individuals or entities having such interest merely as a security for the performance of an obligation (i.e., mortgage holder).

SECTION 3. "Blair" shall mean and refer to the City of Blair, a Municipal Corporation.

SECTION 4. "Emergency Watershed Funded Improvements" shall mean all Emergency Watershed Protection Act improvements constructed pursuant to a certain cooperative agreement entered into between Blair and NRCS dated October ____, 1999.

SECTION 5. "Easement Area" shall mean the area shown on Exhibit "B" on which the perpetual easement shall be granted.

SECTION 6. "Emergency Watershed Operation and Maintenance Expenses" shall mean those reasonable expenses, including engineering expenses, incurred by Blair for the operation and maintenance of the Emergency Watershed Funded Improvements required under the cooperative agreement between Blair and NRCS.

SECTION 7. "Excepted Improvements" shall mean labor, material and debris removal as pertains solely to the drainage structure constructed by Blair between Lots 8 and 9.

ARTICLE II PROPERTY SUBJECT TO DECLARATION

All Lots described on Exhibit "A" shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration. All such Lots hereby subjected to this Declaration shall, after the filing of this Declaration in the office of the Register of Deeds of Washington County, Nebraska, be subject to all of the same duties, liabilities and rights hereunder which shall also be binding upon and inure to the benefit of any successors, assigns or representatives of the Landowners executing this Agreement. The terms and provisions of this Declaration shall inure to the benefit of Blair.

**ARTICLE III
EASEMENT TO CITY OF BLAIR**

Each Landowner agrees and does hereby grant, bargain and convey unto Blair, its agents, employees, representatives or assigns, a perpetual easement over and across a strip of land described on the Easement Area; provided, further, that said easement shall grant the right, privilege and use to erect, construct, reconstruct, replace, remove, maintain and operate the Emergency Watershed Funded Improvements. Grantee shall have the free and uninterrupted use, liberty, privilege, easement and right of way on the Easement Area to erect, construct, reconstruct, replace, remove, maintain, and/or operate the Emergency Watershed Funded Improvements required under the cooperative agreement between Blair and NRCS.

Landowners shall not construct any improvements, excavate, or in any manner alter the Easement Area in violation of the requirements of the cooperative agreement between Blair and the NRCS without the express written authority of Blair or the NRCS.

**ARTICLE IV
COVENANT FOR MAINTENANCE ASSESSMENTS**

SECTION 1. Creation of Lien and Personal Obligation of Assessments. The Landowners of each Lot subject to this Declaration, by execution of this Declaration, or by acceptance of a Deed therefor, whether or not it shall be so expressed in such Deed, hereby covenant and agree to pay to Blair:

- (a) A one time assessment in an amount equal to 8.333% of the total cost of the Emergency Watershed Funded Improvements, with the exception of the Excepted Improvements, which amount is in the aggregate and shall be a lien for the aggregate total cost upon each Lot described on Exhibit "A" attached hereto until the entire aggregate total cost is paid in full and each Landowner shall have a joint and several personal obligation for the aggregate total cost of such initial assessment until the same is paid in full; and
- (b) Special assessments for any Emergency Watershed Operation and Maintenance Expenses, with the exception of the Excepted Improvements.

The special assessment, once levied by Blair pursuant to the provisions of Section 3, hereinbelow, shall be a continuing lien upon each Lot against which the special assessment is made. **Each such assessment, shall also be the personal obligation of the person who was the owner of such Lot at the time when the assessment fell due.**

SECTION 2. Initial Assessment. The initial assessment, described in Section 1(a) above, together with interest, costs and reasonable attorney's fees, shall be charged in the aggregate on each

Lot and shall be a continuing lien upon such Lots. All subsequent purchasers shall take title to any Lot subject to said lien and shall be bound to inquire of Blair as to the amount of any unpaid assessment. Such initial assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Landowner of such Lot at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to the successors in title, unless expressly assumed by them, but shall remain a lien upon such Lot until paid in full.

SECTION 3. Special Assessments. Blair may levy a special assessment, as described in Section 1(b) above, to pay the cost, in full, of the Emergency Watershed Operation and Maintenance Expenses. The Emergency Watershed Operation and Maintenance Expenses shall be levied and assessed in the following manner, to-wit:

- (1) In order to pay the costs and expenses of the Emergency Watershed Operation and Maintenance Expenses, the Mayor and City Council of Blair may levy and collect special assessments upon the Lot(s) which may be specially benefitted by such improvements. The Blair City Council may declare all or any portion of the Emergency Watershed Funded Improvements to be in need of repair or maintenance by adoption of a resolution at a regular or special meeting of the Blair City Council. A certified copy of such resolution shall be served upon the Landowners of the Lot. Service may be had by any member of the Police Department of Blair. If any Landowner is a nonresident of the City of Blair, or if any such Landowner cannot be found within the City of Blair, service may be had upon such Landowner by publishing a copy of such resolution one time in a legal newspaper published in or of general circulation in Blair. Unless the required Emergency Watershed Operation and Maintenance repairs are completed by Landowner within thirty (30) days following service of such resolution, or a written agreement and undertaking is entered into to perform such repair or maintenance within a time and manner which shall be approved by the Mayor and Council and be filed with the City Clerk within such 30-day period of time, the Director of Public Works shall cause such Emergency Watershed Operation and Maintenance repairs to be performed, and the NRCS Operation and Maintenance Expenses shall be assessed upon the Lots which are specially benefitted thereby in proportion to such benefits. Such special assessments shall be made by the Mayor and City Council at any meeting by a resolution fixing the costs of Emergency Watershed Operation and Maintenance Expenses by majority vote, with the vote thereon, by "Ayes" and "Nays", to be spread at length upon the minutes; notice of the time of holding such meeting and the purpose for which it is to be held shall be published in a newspaper published in and of general circulation in the City of Blair at least 10 days before the same shall be held, and all such special assessments shall be known as "Special Assessments for Emergency Watershed Operation and Maintenance Expenses", with the cost of notice to be levied and collected as a special assessment in addition to the taxes for

general revenue purposes, subject to the same penalties and collected in like manner as other city taxes; and such special assessments shall be certified to the County Clerk and County Treasurer at the same time and at the next certification for general revenue purposes. No action shall be taken by the Mayor and City Council of Blair except by a simple majority of all of the members elected to the City Council comprising the same, and in open session. In cases where the Mayor and City Council shall find such benefits to be equal and uniform, such special assessments may be according to feet frontage as the Mayor and City Council may consider fair and equitable; and all such special assessments and findings of benefits shall not be subject to review in any equitable or legal action except for fraud, injustice or mistake.

SECTION 4. Due Date of Assessment. The initial assessment shall be due and payable, in full, the same date or dates that Blair is obligated to make payments for the Emergency Watershed Funded Improvements and shall be payable to the City of Blair, but in no event later than thirty (30) days after substantial completion of the Emergency Watershed Funded Improvements.

Any special assessment levied shall be due and payable, in full, within fifteen (15) days after written notice of such assessment shall be delivered to Landowner.

SECTION 5. Effect of Nonpayment of Assessments; Personal Obligation of the Landowner; Lien; Remedies of City of Blair. If any assessment (initial or special), or any portion thereof, is not paid on the date when due, then such assessment shall become delinquent and shall, together with interest thereon and costs of collection thereof, as hereinafter provided, thereupon become a continuing lien on the Lots, which shall bind such Lots and the then owner, his heirs, successors, personal representatives and assigns. The personal obligation of the then owner to pay such assessment, however, shall remain his/her personal obligation for the period of five (5) years and shall not pass as a personal obligation to his/her successors in title, unless expressly assumed by their successor in title. Notice of such assumption shall be delivered to Blair.

Any delinquent assessment, or any portion thereof, not paid within fifteen (15) days after the due date shall bear interest from the due date at the rate of fourteen percent (14.0%) per annum. Blair may bring an action at law against the Landowner personally obligated to pay the same or foreclose the lien against said Lot, and there shall be added to the amount of such assessment the cost of preparing and filing the petition in such action and, in the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorney's fee to be fixed by the court, together with the cost of the action. No Landowner may waive or otherwise escape the liability for the assessments provided for herein by non-use or abandonment of his/her Lot. The mortgagee of the subject Lot shall have the right to cure any delinquency of a Landowner by payment of all sums due, together with interest, costs and fees. Blair may assign to such mortgagee, all of its rights with respect to such lien and rights of foreclosure to the mortgagee.

**ARTICLE V
LANDOWNERS RIGHT TO REVIEW AND VETO
NRCS FUNDED IMPROVEMENTS**

Blair agrees that the Landowners will be permitted to consult with Blair and the NRCS in the review and approval of plans for the NRCS Funded Improvements; and shall collectively have the right to veto the proposed NRCS Funded Improvements in the event that the Landowners' collective initial assessment (pursuant to Article IV, Section 1 (1) and Section (2)) will exceed Thirty Thousand Dollars (\$30,000.00). Any veto power authorized under this Article shall expire unless the Landowner(s) exercise their collective right to veto by serving a written notice of such veto on Blair on or before three (3) business days after notice of the amount of the assessment.

**ARTICLE VI
MISCELLANEOUS PROVISIONS**

SECTION 1. Notice. Any notice or resolution required to be served upon any Landowner or party to this Declaration shall be deemed to have been properly served when either personally delivered or sent by certified U.S. Mail, return receipt requested, to the Landowners at their addresses as set forth on Exhibit "A". Any notice required to be sent to Blair shall be deemed to have been properly send when either personally delivered or sent by certified U.S. Mail, return receipt requested to Blair at 218 S. 16th Street, Blair, NE 68008. Any mailed notice shall be deemed to have been delivered two (2) business days following the date of mailing.

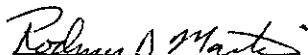
SECTION 2. Enforcement. Enforcement of this Declaration shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by this Declaration. Failure by the City of Blair to enforce any covenant or restriction then contained shall in no event be deemed a waiver of the right to do so thereafter.

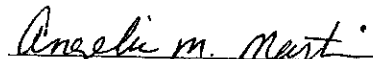
SECTION 3. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

SECTION 4. Non-Waiver of Rights. Nothing in this Agreement shall be construed as a waiver of any rights, claims or defenses which Blair may have against the Landowners or which the Landowners may have against the City of Blair.

CITY OF BLAIR, NEBRASKA

By 
Michael A. Mines, Mayor


Rodney B. Martin


Angelie M. Martin

Leslie J. Bowers
Leslie J. Bowers

Connie Sue Bowers
Connie Sue Bowers

Randall L. Smith
Randall L. Smith

Holly B. Smith
Holly B. Smith

David I. Petersen
David I. Petersen

Patricia S. Petersen
Patricia S. Petersen

Lynn R. Meyer
Lynn R. Meyer

Nancy R. Meyer
Nancy R. Meyer

STATE OF NEBRASKA)
)
COUNTY OF WASHINGTON)

Now on this 19th day of October, 1999, before me the undersigned, a notary public in and for said county, personally came Michael A. Mines, Mayor of the City of Blair, Nebraska, personally known by me to be the identical person who executed the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed and the voluntary act and deed of said City.

Witness my hand and notarial seal the day and year last above written.



Brenda R. Taylor
Notary Public

STATE OF NEBRASKA)
):ss:
COUNTY OF WASHINGTON)

Now on this 19th day of October, 1999, before me the undersigned, a notary public in and for said county, personally came Rodney D. Martin and Angelic M. Martin, Husband and Wife, known by me to be the identical persons who executed the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

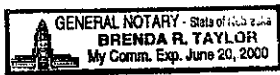


Brenda R. Taylor
Notary Public

STATE OF NEBRASKA)
) :ss:
COUNTY OF WASHINGTON)

Now on this 19th day of October, 1999, before me the undersigned, a notary public in and for said county, personally came Leslie J. Bowers and Connie Sue Bowers, Husband and Wife, known by me to be the identical persons who executed the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

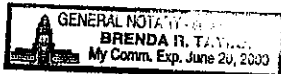


Brenda R. Taylor
Notary Public

STATE OF NEBRASKA)
) :ss:
COUNTY OF WASHINGTON)

Now on this 19th day of October, 1999, before me the undersigned, a notary public in and for said county, personally came Randall L. Smith and Holly B. Smith, Husband and Wife, known by me to be the identical persons who executed the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.



Brenda R. Taylor
Notary Public

STATE OF NEBRASKA)
) :ss:
COUNTY OF WASHINGTON)

Now on this 10th day of October, 1999, before me the undersigned, a notary public in and for said county, personally came David I. Petersen and Patricia S. Petersen, Husband and Wife, known by me to be the identical persons who executed the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

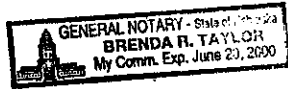


Brenda R. Taylor
Notary Public

STATE OF NEBRASKA)
) :ss:
COUNTY OF WASHINGTON)

Now on this 14th day of October, 1999, before me the undersigned, a notary public in and for said county, personally came Lynn R. Meyer and Nancy R. Meyer, Husband and Wife, known by me to be the identical persons who executed the foregoing instrument and acknowledged the execution thereof to be their voluntary act and deed.

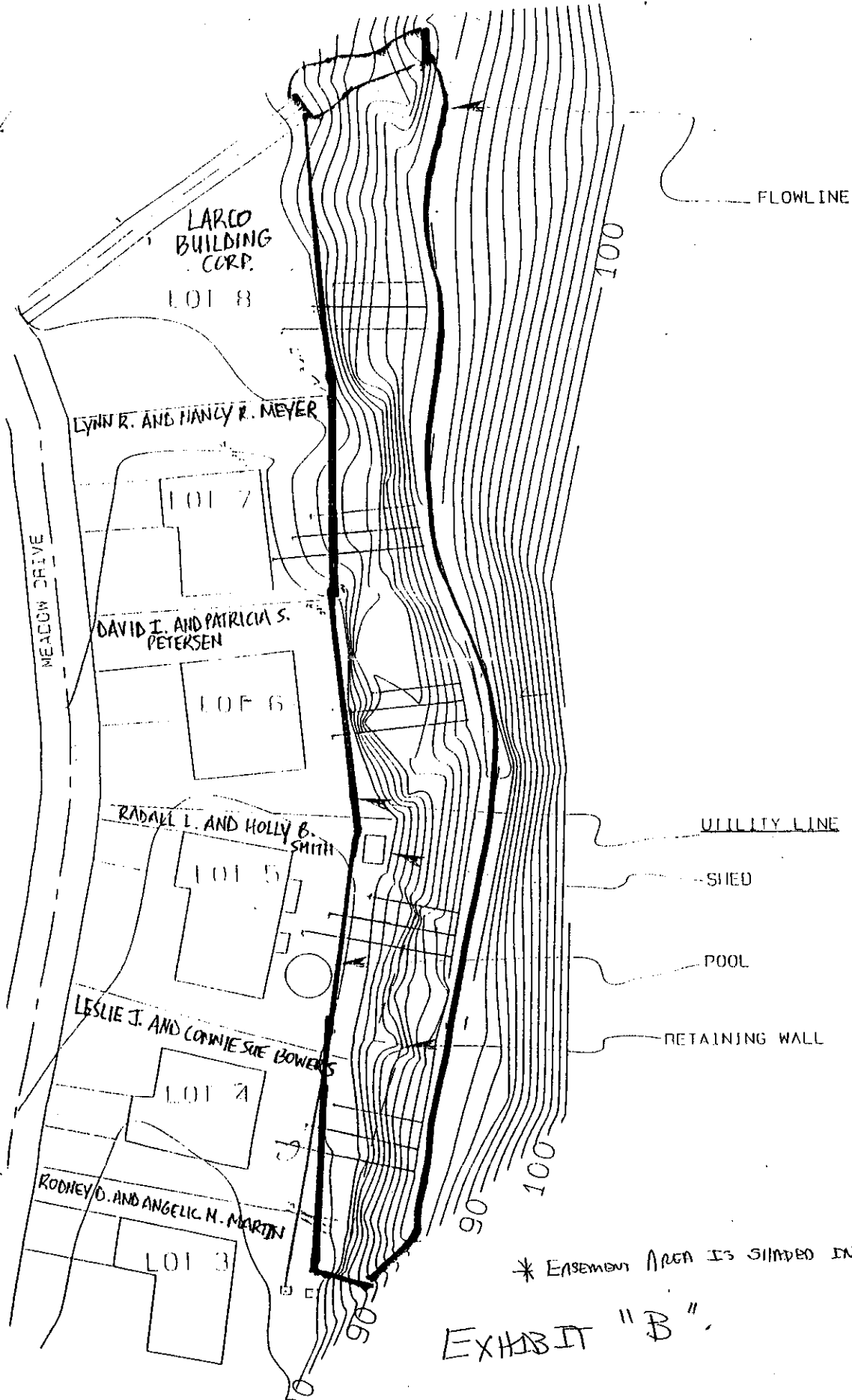
Witness my hand and notarial seal the day and year last above written.



Brenda R. Taylor
Notary Public

Exhibit "A"

<u>Name and Address of Landowner</u>	<u>Legal Description of Property</u>
Rodney D. and Angelic M. Martin 824 Meadow Drive Blair, NE 68008	Lot 3, Larsen's Stillmeadow Third Addition to the City of Blair, Washington County, Nebraska
Leslie J. and Connie Sue Bowers 828 Meadow Drive Blair, NE 68008	Lot 4, Larsen's Stillmeadow Third Addition to the City of Blair, Washington County, Nebraska
Randall L and Holly B. Smith 832 Meadow Drive Blair, NE 68008	Lot 5, Larsen's Stillmeadow Third Addition to the City of Blair, Washington County, Nebraska
David I. and Patricia S. Petersen 836 Meadow Drive Blair, NE 68008	Lot 6, Larsen's Stillmeadow Third Addition to the City of Blair, Washington County, Nebraska
Lynn R. and Nancy R. Meyer 840 Meadow Drive Blair, NE 68008	Lot 7, Larsen's Stillmeadow Third Addition to the City of Blair, Washington County, Nebraska



* EASEMENT AREA IS SHIPPED IN YELLOW

EXHIBIT "B"