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 Register of Deeds, Douglas County, NE
 9/15/2005 14:49:45.87



2005115474

AFTER RECORDING, RETURN TO: Daniel B. Kinnamon, Erickson & Sederstrom, P.C., 10330 Regency Parkway Drive, Omaha, NE 68114
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**DECLARATION OF COVENANTS,
 CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, ("Declaration") made on the date hereinafter set forth by Dave Paik Builders, Inc., a Nebraska corporation, hereinafter referred to as "Declarant".

PRELIMINARY STATEMENT

The Declarant and the persons who have executed the consent and approval attached to this Declaration are the present owners of certain real property in Douglas County, Nebraska, which is more particularly described as:

Lots 541 through 556, inclusive, in Stone Creek, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

NOW, THEREFORE, Declarant and the other consenting owners of the Lots hereby declare that all the properties described above and any other properties hereinafter made subject to this Declaration 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 and desirability of the properties and the enjoyment of the residents and owners thereof, and which shall run, perpetually with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I
 DEFINITIONS**

Section 1. "Association" shall mean and refer to Stone Creek Townhomes Association II, a Nebraska nonprofit corporation, its successors and assigns.

Dave Paik Builders
16535 Douglas Circle
Omaha, Ne 68118

✓ 6093

Section 2. "Owner shall mean and refer to the record owner whether one or more persons or entities, of fee simple title to any townhome Unit or Lot which is a part of the Properties, but excluding in all cases those having any such interest merely as security for the performance of any obligation. If a townhome Unit or Lot is sold under a recorded contract of sale, the purchaser (rather than the fee owner) will be considered the Owner.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described and such additional real properties as may hereafter be brought within the jurisdiction of the Association in accordance with the provisions of this Declaration.

Section 4. "Lot" shall mean and refer to those plots of land included in the Properties as shown as lots upon the recorded subdivision map of Stone Creek and are sometimes referred to collectively herein as the "Lots" and individually as each "Lot".

Section 5. "Declarant" shall mean and refer to Dave Paik Builders, Inc. and its successors, assigns or appointees.

Section 6. "Unit" shall mean an individual dwelling or townhome unit situated on a Lot. Such Units are referred to collectively herein as "Units" and individually as each "Unit".

Section 7. "Architectural Control Committee" shall mean the individual, committee or entity appointed from time to time by the Declarant. Declarant shall have the discretion to appoint itself as the Architectural Control Committee.

Section 8. "Stone Creek Declaration of Covenants" shall mean that certain Declaration of Covenants, Conditions, Restrictions and Easements for a part of Stone Creek, dated August 6, 2001, and recorded with the Register of Deeds Office of Douglas County, Nebraska on August 9, 2001 at Book 1394, Pages 056-066 of Miscellaneous Records. The Stone Creek Declaration of Covenants is by this reference incorporated herein.

(Note: The Association does not and will not own any real property for the common use and enjoyment of any Owner, sometimes referred to generally as "Common Area".)

**ARTICLE II
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Every Owner of a Unit or Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit or Lot which is subject to assessment.

Section 2. In order to ensure that a quorum is present for all meetings of the members, and to allow for orderly management of the Association's affairs, it shall be the duty of each member to attend such meetings or execute and deliver to the Association a continuing proxy prepared by the officers of the Association. This continuing proxy shall operate in lieu of the actual attendance at the meeting by the specific member and shall be void if the member

personally attends that meeting to exercise the member's right to vote. An Owner may provide a superseding proxy to be voted by his duly authorized attorney in fact for one specific meeting only. The proxy shall be subject to the terms of the Nebraska Nonprofit Corporation Act concerning revocability and life span of the proxy. Failure to attend personally or by proxy is a violation of this covenant

The continuing proxy shall be voted by the President of the Association in his or her discretion at any meeting. It is noted that Nebraska law requires that members holding 1/10th of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The continuing proxy shall provide on its face that it is valid on a continuous basis for an indefinite period of time (subject to limitations in effect from time to time under the Nebraska Nonprofit Corporation Act) until revoked in writing by the specific Owner. All proxies shall be in writing and filed with the Secretary of the Association. Each proxy shall be freely revocable and shall automatically cease when the member giving such proxy shall cease to be an Owner of a Lot or at such earlier time as shall be specified in the proxy or by operation of law.

Section 3. The Association shall have two classes of voting membership:

Class A. The Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Unit or Lot owned. When more than one person holds an interest in any Unit or Lot, all such persons shall be members. The vote for such Unit or Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Unit or Lot.

Class B. Class B member(s) shall be the Declarant and it shall be entitled to four (4) votes for each Lot or Unit owned. The Class B membership shall cease and be converted to Class A membership on the happening of any of the following events, whichever occurs earlier:

- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership: or
- (b) On January 1, 2010: or
- (c) The written direction of Declarant

Section 4. 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, may include but shall not be limited to the following:

A. Grounds and lawn care and maintenance, snow removal, trash collection and the other exterior maintenance as more particularly described in Section 10 of Article III herein.

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

C. The expenditure, commitment and payment of Association funds for the management and operation of the Association and to accomplish the purposes of the Association.

D. 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.

E. 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.

F. 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.

G. The employment of and payment of fees to 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.

H. The 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.

I. 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.

**ARTICLE III
COVENANTS FOR MAINTENANCE ASSESSMENTS**

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Unit or Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments or charges, such assessments to be established and collected as hereinafter provided. The annual assessments, together with interest, costs, and attorney's fees shall be a charge on the land and

shall be a continuing lien upon the real property against which each such assessment is made. Each such assessment, together with interest, costs, and attorney's fees, shall also be the personal obligation of the person(s) who was the Owner of such real property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to such Owners successors in title unless expressly assumed by them, and in that event all successors shall take title subject to the lien for such assessments and shall be bound to inquire of the Association as to the amount of any unpaid assessments. All assessments made under this Declaration shall not be in lieu thereof but shall be in addition to any other assessments from time to time made by the Stone Creek Homeowners Association under the Stone Creek Declaration of Covenants.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the expenses, charges, and costs of the operation and management of the Association and the exterior maintenance of the Lots and Units situated thereon as more particularly described herein in this Article III.

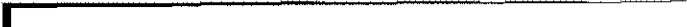
Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall not exceed Nine Hundred Sixty Dollars (\$960.00) per Unit or Lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year by the Board of Directors without a vote of the members by a percentage of the prior years' assessment, which percentage shall not exceed the greater of ten percent (10%) of the maximum assessment for the previous year or the percentage increase in the U.S. Department of Labor Consumer Price index (all items) for all Urban Consumers 1993 -94 = 100 ("CPI-U") for the month of October immediately preceding such new calendar year as compared to the CPI-U for the month of October in the prior year. If the CPI-U is discontinued or replaced, then the Board of Directors shall substitute a reasonably equivalent other index which will in their opinion accomplish the same result of reflecting general consumer price changes in the United States economy.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the percentage increase permitted in subparagraph (a) above, by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a members' meeting duly called for this purpose.

(c) The Board of Directors may in its discretion fix the annual assessment at an amount not in excess of the maximum prescribed herein.

Section 4. Notice and Quorum for Any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to



cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

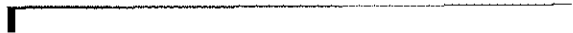
Section 5. Rate of Assessment. Annual assessments must be fixed, based on the status of each Lot. All Lots which have a townhome Unit completed and residents living therein will be assessed. Lots or Units under construction, which are vacant, used as models and/or unsold to third party purchasers (not the Declarant or its assigns) will not be assessed. All assessments may be collected on a monthly basis and shall be fixed at a uniform rate as to all Lots unless otherwise specifically provided herein to the contrary.

Section 6. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots or Units on the first day of the month following the conveyance of the first townhome Unit to a third party purchaser. The first 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 or Unit at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot or Unit have been paid. A properly executed certificate of the Association as to the status of assessments on a Unit or Lot is binding upon the Association as of the date of its issuance.

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date 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 property. No Owner may waive or otherwise escape liability for the assessments provided for herein by maintaining his or her own Unit or Lot.

Section 8. Abatement of Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors may in its discretion, abate all or any part of the assessments due in respect of any Lot or Unit. Lots or Units owned by the Declarant shall not be subject to the imposition of dues, assessments or the lien of any assessments.

Section 9. Subordination of the Lien to Mortgages/Trust Deeds. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first Deed of Trust. Sale or transfer of any Unit or Lot shall not affect the assessment lien. However, the sale or transfer of any Unit or Lot pursuant to a mortgage or trust deed foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot or Unit from liability for any assessments thereafter becoming due or from the lien thereof.



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Section 10. Exterior Maintenance and Services. Exterior maintenance (as defined herein) of each townhome Unit and Lot shall be provided by the Association and each Owner does hereby consent and grant to the Association and its officers, employees, agents, contractors and repairmen, a perpetual and permanent easement over and across such Unit and Lot at any reasonable time to make inspections and to perform such exterior maintenance. "Exterior maintenance" shall mean the painting of exterior wood and metal building surfaces, together with maintenance of the lawns (mowing, fertilization and chemicals), garbage pickup and snow removal. Exterior maintenance shall at all times be consistent with and comply with the provisions of the Stone Creek Declaration of Covenants. Exterior maintenance shall not include any repairs or maintenance of sanitary sewer, water, gas or electrical lines on Owners Lot, roof repair or replacement, repair, maintenance or replacement of gutters, downspouts, sprinkler systems, or any damage to property of any kind normally covered by homeowners insurance policies with extended coverage including but not limited to such items as glass, garage doors, entrance doors and Owners personal property. There shall be no exterior painting permitted of any townhome Unit by any Owner. All exterior maintenance that is not the responsibility of the Association shall be the responsibility of each Owner of a townhome Unit and Lot.

In the event that the need for any exterior maintenance of a Unit or the improvements thereon by the Association is caused through the willful or negligent acts or omissions of its Owner, or through the willful or negligent acts or omissions of the family, guests, or invitees of the Owner of the Unit needing such maintenance the cost of such exterior maintenance by the Association shall be added to and become part of the assessment to which such Unit is subject under this Declaration.

With respect to those exterior maintenance obligations that are not the responsibility of the Association, in the event an Owner of any Unit shall fail to maintain the exterior of the Owner's Unit and any other improvements situated on the Owners Lot in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon the Owners Lot and to repair, maintain and restore the Unit and any other improvements erected on the Owners Lot as the Association deems appropriate or necessary. The cost of such exterior maintenance shall be added to and become an additional part of the assessment to which such Unit is subject under this Declaration.

Section 11. Insurance. Each townhome Owner shall provide homeowners insurance with respect to the improvements (townhome Units) in an amount equal to at least eighty percent (80%) of the full replacement value of said improvements or in an amount as may be required by any mortgage holder, whichever is higher, against loss by fire, lightning, windstorm, and other perils covered by standard extended coverage endorsement, and insurance against such other hazards in amounts as are normally carried by owners of like units. Upon request of the Association from time to time, each Owner shall provide written evidence of this insurance coverage.

**ARTICLE IV
RESTRICTIONS AND MISCELLANEOUS PROVISIONS**

Section 1. Restrictions. Every Owner shall have full rights of ownership and enjoyment to his individual Unit or Lot, subject to the restrictions set forth in Articles I, II and III of the Stone Creek Declaration of Covenants and to the extent not inconsistent with such provisions of the Stone Creek Declaration of Covenants, the following additional restrictions:

(a) Each Lot and Unit shall be used solely and exclusively for single-family residential purposes and for no other purpose or use.

(b) No noxious or offensive trade or activity shall be carried on, in or from any Unit or Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No outside above-ground trash or garbage piles, burners, receptacles or incinerators shall be erected, placed or permitted on any Lot. Except while under construction, any wood storage piles and equipment shall be walled in or kept screened by adequate planting or by other means in such a manner as to conceal them from view. Trailers and recreational vehicles shall not be continuously parked on driveways or side yards.

(c) No fences (other than fences constructed by Declarant) shall be erected without the prior written consent of the Architectural Control Committee of the Association. All Lots shall be kept free of all types of trash and debris.

(d) No trailer, basement, tent, shack, garage, barn or other building erected on any Lot shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence until all exterior construction is fully completed according to approved plans.

(e) No birds, snakes, cattle, horses, sheep, poultry, pigs or any other animals shall be kept or maintained on any Lot. Each Owner may however, keep a maximum of two (2) domestic pets.

(f) All exterior lighting shall be so installed and maintained so as not to unreasonably disturb adjoining Units or adjacent Lot Owners.

(g) Except for approved chemical temporary toilets to be used only during construction no outdoor toilets may be constructed or maintained on any Lots.

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**ARTICLE V
ARCHITECTURAL CONTROL**

No dwelling, fence (other than fences constructed by Declarant) wall, pathway, driveway, patio, patio cover or enclosure, deck, rock garden, garden, tree house, swimming pool, television or radio antenna, satellite dishes, flag pole, solar collecting panels or 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 upon any of the Properties, nor shall any grading, excavation, or tree removal be commenced without express written approval of the Architectural Control Committee and where applicable the express written approval of the Declarant in accordance with the requirements of Article I of the Stone Creek Declaration of Covenants.

**ARTICLE VI
GENERAL PROVISIONS**

Section 1. Enforcement. Except for the authority and powers specifically granted to the Declarant, the Declarant, the Association, or any Owner of a Lot, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other amounts due for such violation. Failure by the Declarant, Association or an Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. 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 3. Term; Amendment. The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of thirty (30) years from the date this Declaration is recorded, after which time they may be automatically extended for successive periods of ten (10) years by action of not less than seventy-five percent (75%) of the Owners. Except for the Declarant rights reserved in Section 4 and subject to complying with the provisions of Section 5 of this Article, this Declaration may be amended or canceled by an instrument signed by the Declarant and not less than seventy-five percent (75%) of the Owners. Any amendment or extension must be recorded in the real estate records to be effective.

Section 4. Declarant Amendment. 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 five (5) years from the date of the recordation of this Declaration. Further, by written consent of the Declarant for a period of five (5) years from the date hereof, any or all of the covenants, conditions and restrictions as they apply to the Lots may be waived modified, or amended for any Lot or Lots, in any manner, for such a time period, and on such conditions, if any, which the Declarant may determine in its full and absolute discretion after considering the benefits and detriments which the waiver, modification or amendment will have on the Properties and the Owner requesting the

waiver. Declarant's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of Declarant's decision. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant by virtue of the authority granted to Declarant in this Section, or as a result of any act or failure to act by Declarant with respect to any requested waiver, modification or amendment.

Section 5. Special Declarant Rights. Declarant or its successors or assigns reserves the right to terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. In that event, the Declarant, or the Association, shall each have the right to appoint the Association or another entity or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with all the same rights, powers and authority as the original Declarant. Notwithstanding the provisions of Section 3 of this Article, no amendment of this Declaration shall modify in any manner the provisions of this Section 5 unless consented to in writing by Declarant.

Section 6. FHA/VA Approval. During the period that there is a Class B membership and the loan on any Owner's Lot or Unit is made or insured by either the Federal Housing Administration or the Veterans Administration, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration as the case may be: (i) annexation of additional properties within the jurisdiction of the Association; (ii) any mortgaging or dedication of any common areas of the Association; and (iii) the amendment of this Declaration.

IN WITNESS WHEREOF, the undersigned being the Declarant herein has executed this Declaration this 30th day of August, 2005.

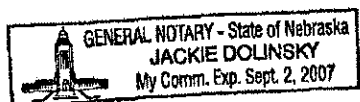
DECLARANT:


**DAVE PAIK BUILDERS, Inc., a
Nebraska Corporation**

By: 
David Paik, President

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

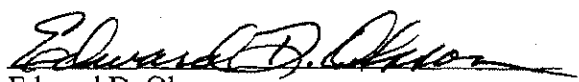
The foregoing instrument was acknowledged before me this 30th day of August, 2005, by David Paik, President of Dave Paik Builders, Inc., on behalf of the corporation.





Notary Public

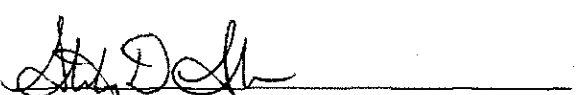
CONSENT TO AND APPROVAL
OF DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS

The undersigned, each being the Owner of the Lots in Stone Creek subdivision set forth opposite their respective names hereby approve and consent to be bound by all of the terms and provisions of the Declaration and consent to its recording with the Register of Deeds of Douglas County, Nebraska.

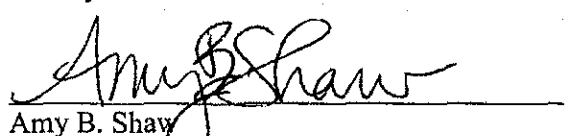

Edward D. Olsson


Lot 550
Stone Creek


Manona L. Olsson

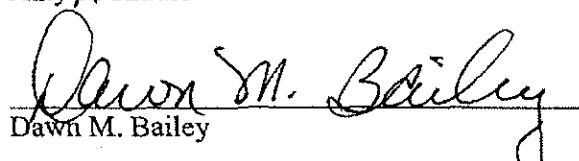

Stanley D. Shaw

Lot 554
Stone Creek


Amy B. Shaw


Amy A. Riddle

Lot 555
Stone Creek

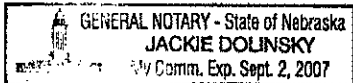

Dawn M. Bailey

Lot 556
Stone Creek



STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

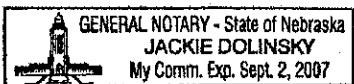
The foregoing instrument was acknowledged before me this 13th day of September, 2005, by Edward D. Olsson and Manona L. Olsson, husband and wife.



Jackie Dolinsky
Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

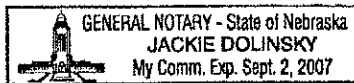
The foregoing instrument was acknowledged before me this 14th day of September, 2005, by Stanley D. Shaw and Amy B. Shaw, husband and wife.



Jackie Dolinsky
Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

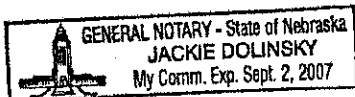
The foregoing instrument was acknowledged before me this 14th day of September, 2005, by Amy R. Riddle, an unmarried person.



Jackie Dolinsky
Notary Public

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 13th day of September, 2005, by Dawn M. Bailey, an unmarried person.



Jackie Dolinsky
Notary Public