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FILED SARPY CO. NE.

INSTRUMENT NUMBER

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Lloyd J. Dowling  
REGISTER OF DEEDS

County Sarpy  
City Lincoln  
State NE  
Book 1300  
Page 07

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**THIS PAGE ADDED  
FOR RECORDING  
INFORMATION.**

**LLOYD J. DOWLING**

SARPY COUNTY REGISTER OF DEEDS  
1210 GOLDEN GATE DRIVE #1109  
PAPILLION, NE 68046-2895  
402-593-5773

98-07740A

DECLARATION  
OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR MILLARD PARK

THIS DECLARATION, made on the date hereinafter set forth by MILLARD PARK LIMITED PARTNERSHIP, a Nebraska limited partnership, hereinafter referred to as the "Declarant".

WITNESSETH:

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

Lots 321A through 327B, inclusive, and 332A through 340B, inclusive in Millard Park, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, and

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

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

ARTICLE I  
DEFINITIONS

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

B. "Properties" shall mean and refer to all Lots in Millard Park, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

C. "Lot" shall mean and refer to each of Lots 321A through 327B and 332A through 340B, inclusive, in Millard Park, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

D. "Declarant" shall mean and refer to Millard Park Limited Partnership, a Nebraska limited partnership, and its successors and assigns.

E. "Architectural Control Committee" shall mean the individual or committee appointed by the Declarant, and its successors and assigns.

ARTICLE II  
ARCHITECTURAL CONTROL

A. No dwelling, fence, (other than fences constructed by Declarant), wall, pathway, driveway, patio, patio cover or enclosure, deck, rock garden, garden, treehouse, swimming pool, television or radio antenna, satellite dishes, flag pole,

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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 on any Lot, nor shall any grading, excavation, or tree removal be commenced without express written prior approval of the Declarant through its Architectural Control Committee, or its permission by implied approval procured in the manner set forth below.

B. The Declarant, through its Architectural Control Committee, shall consider general appearance, exterior color or colors, architectural character, harmony of external design and location in relation to surroundings, topography, location within the Lot boundary lines, quality of construction, size and suitability for residential purposes as part of its review procedure. Only exterior colors of certain earthtone hues will be acceptable. The Architectural Control Committee specifically reserves the right to deny permission to construct or place any of the above-mentioned improvements which it determines will not conform to the general character, plan and outline for the development of the Properties.

C. Documents submitted for approval shall be clear, concise, complete, consistent and legible. All drawings shall be to scale. Samples of materials to be included in the improvement may be required of the applicant at the discretion of the Architectural Control Committee. Submittals for the approval shall be made in duplicate and the comments and actions of the Architectural Control Committee will be identically marked on both copies of said submittals. One copy will be returned to the applicant, and one copy will be retained as part of the permanent records of the Committee. Each applicant shall submit to the Architectural Control Committee the following documents, materials and/or designs.

1. Site plan indicating specific improvement and indicating Lot number, street address, grading, surface drainage and sidewalks.

2. Complete construction plans, including but not limited to, basement and upper floor plans, floor areas of each level, wall sections, stair and fireplace sections and exterior elevations clearly indicating flues or chimneys, type and extent of siding, roofing, other faces and/or veneer materials.

D. The approval or disapproval of the Architectural Control Committee as required in these Covenants shall be in writing. Failure of the Architectural Control Committee to give either written approval or disapproval of submitted plans within thirty (30) days after receipt of all of the documents required above, by mailing such written approval or disapproval to the last known address of the applicant as shown on the submitted plans, shall operate as a waiver of the requirements for approval by the Architectural Control Committee for the submitted plans.

### ARTICLE III RESTRICTIONS FOR RESIDENTIAL DWELLINGS

A. Residential Lots. Lots 321A through 327B, inclusive and 332A through 340B inclusive, all in Millard Park shall be subject to the following restrictions.

1. The Lot shall be used only for residential purposes and no Lot shall contain more than two (2) dwelling units: That is one on the A portion of the Lot and another on the B portion of the Lot.

2. No building shall be created, altered, placed or permitted to remain on any Lot other than the dwelling units referred to above, and said dwelling units shall conform to the following requirements.

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a. Each one story dwelling unit shall contain no less than 1,100 square feet of Living Area above the basement level and exclusive of garage area.

b. Each one and one-half or two story dwelling unit shall contain no less than 1,500 square feet of total Living Area above the basement level with a minimum of 800 square feet on the main floor, exclusive of garage area.

c. Other dwelling unit styles not described in a. and b. above will be permitted only if approved by the Architectural Control Committee and shall not be approved unless they are compatible with other homes to be built in Millard Park in the opinion of the Architectural Control Committee in its sole and absolute discretion.

d. All buildings on all Lots shall comply with the set back requirements of the Zoning Code of Sarpy County as the same may be amended from time to time.

B. General Restrictions. All dwelling units described in Article II A and B above shall comply with the following restrictions.

1. All dwelling units shall have attached, enclosed, side-by-side, two (2) car garages minimum which must contain area of not less than four hundred (400) square feet and shall be at approximately the same level as the main floor of the dwelling.

2. For the purposes of these restrictions, two-story height shall, when the basement is exposed above finish grade, be measured from the basement ceiling on the exposed side(s) to the eave of the structure on the same side(s). Area means finished habitable space, measured to the exterior of the enclosing walls, and does not include porches, stoops, breezeways, courtyards, patios, decks, basements, garages or carports. The maximum height of the dwelling shall be two (2) stories. The basement is not considered a story even if it is one hundred percent (100%) above grade on one or more sides, and essentially below grade on the other sides.

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

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

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dwelling must be painted and no furnace flue may protrude more than five (5) feet from the roof of the dwelling, as measured from the top cap of the flue to the point from which the flue emerges from the roof. All furnace flues must be located on the rear side of the roof ridge.

5. No fences may be built forward of the rear wall of the dwelling and, under no circumstances, closer to any adjoining street than the property line. In those instances where the house has more than one rear wall, the Architectural Control Committee shall determine in its discretion which rear wall shall be applicable. Fences shall be six (6) feet high, shall be constructed only of wood, decorative iron, brick or stone and are subject to the approval of the Architectural Control Committee referred to above. Wire or chain-link fences shall not be permitted. Temporary or permanent barbed wire, electrified, and/or snow fences are strictly prohibited.

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

7. No primary flat or mansard roof shall be permitted on any dwelling. All dwellings shall be roofed with roofing materials which have the approval of the Architectural Control Committee in its sole and absolute discretion.

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

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

10. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot. No animals, livestock, fowl, or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats, or other household pets maintained within the dwelling may be kept, provided that they are not kept, bred or maintained for any commercial purpose and, provided, that they are kept confined to the Lot of their owner and are not permitted to run loose outside the Lot of the Owner.

11. No incinerator, or trashburner shall be permitted on any Lot. No garbage, trash can or container shall be permitted to remain outside of any dwelling unless completely screened from view from every street and from all other lots in the subdivision. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling except while in actual use. No garage door shall be permitted to remain open except when entry to and exit from the garage is required. No clothesline shall be permitted outside of any dwelling at any time. Any exterior air conditioning condensing units or heat pump units shall be placed in the rear yard of the

dwelling and in no case closer than ten (10) feet to the neighboring property line. Detached accessory buildings are not permitted.

12. No automobile, boat, camping trailer, van-type campers, auto-drawn trailer of any kind, mobile home, motorcycle, snowmobile, or other self-propelled vehicles shall be stored or maintained outside of the garage. For purposes of the preceding provision, "stored or maintained outside of the garage" shall mean, parking the vehicle or trailer on the driveway, or any part of the Lot, outside of the garage for four (4) or more consecutive days. All repair or maintenance work on automobiles, boats, camping trailers, van-type campers, auto-drawn trailers of any kind, mobile homes, motorcycles, snowmobiles or other self-propelled vehicles done on the premises must be done in the garage. The dedicated street right-of-way located between the pavement and the lot line of any residential Lot shall not be used for the parking of any vehicle, boat, camper, or trailer. Automobiles and other self-propelled vehicles parked out-of-doors within the premises above-described, or upon the streets thereof, must be in operating condition.

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

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

15. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or nuisance to the neighborhood, including, but not limited to, odors, dust, glare, sound, lighting, smoke, vibration and radiation.

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

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

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

19. No streamers, poster, banner, balloons, exterior illumination or other rallying devices will be allowed on any Lot in the promotion or sale of any Lot, dwelling or property unless approved by the Architectural Control Committee in writing. No advertising sign or posters of any kind shall be erected or placed on any of said Lots, except the residential "For Sale" signs, not exceeding six (6) square feet in size, shall be permitted and, provided further, that such restriction as to sign size shall not apply to any sign erected by the Declarant, or his agents, in his development of Millard Park or signs approved by the Architectural Control Committee in writing.

20. All driveways shall be constructed of concrete.

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21. None of said Lots shall be subdivided, split or in any manner combined with any other Lot, or portion of any other Lot, without approval of the Architectural Control Committee in writing.

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

23. No solar collecting panels or equipment, no wind generating power equipment shall be allowed on the Lots. No television antenna, no antenna of any kind or nature, no satellite dish, shall be allowed on the Lots unless completely screened from view from every street and from all other Lots in the Subdivision in a manner approved by the Architectural Control Committee.

#### ARTICLE IV Easements and Licenses

A. A perpetual license and easement is hereby reserved in favor of and granted to U.S. West Communications, City or County franchised cable television firms, and to Omaha Public Power District, and their successors and assigns, to erect and operate, maintain, repair, and renew cables, conduits, and other instrumentalities and to extend wires for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message services and cable television under an 8-foot strip of land adjoining the rear boundary lines of said Lots, and said license is being granted for the use and benefit of all present and future owners of said Lots; provided, however, that said lot line easement is granted upon the specific condition that if said utility companies fail to construct any wires or conduits along any of the said lot lines within 36 months of the date hereof, or if any wires or conduits are constructed but hereafter removed without replacement within 60 days after their removal, then this lot line easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings shall be placed in perpetual easementways, but the same may be used for gardens, shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

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

C. By a separate document easements have been reserved to all Owners of Lots in the Properties on certain Lots with part or all of their rear or side yards adjoining Harrison Street or 156th Street (Lots 9 through 12 and 16 through 19) for a fence along said streets. Said easement is recorded in the Miscellaneous Records of Sarpy County, Nebraska.

D. By a separate document perpetual easements have been reserved to all Owners of Lots in the Properties on parts of Lots 11, 12, and 19 for entrance markers for the subdivision. Said easement is recorded in the Miscellaneous Records of Sarpy County, Nebraska.

ARTICLE V  
COVENANTS RELATING TO TELEPHONE COMPANY

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

B. Each development phase shall be considered separately in determining whether ninety percent (90%) of the lots within that Phase have been improved within the Five (5) Year Term. In determining the date U. S. West Communications or its successors shall have completed the installation of its distribution system, each development phase shall also be considered separately.

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

ARTICLE VI  
GENERAL PROVISIONS

A. The Declarant, or its assigns, or any Owner of a Lot within the Properties, shall have the right to enforce by proceeding at law or in equity, all restrictions, conditions, covenants, and reservations, now or hereafter imposed by the provisions of this Declaration, either to prevent or restrain any violation of same, or to recover damages or other dues for such violation. Failure by the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

B. The Covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded. This Declaration may be amended by the Declarant, or any person, firm, corporation, partnership, or entity designated in writing by the Declarant, in any manner it shall determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than ninety percent (90%) of the lots in the Properties.

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

IN WITNESS WHEREOF, the Declarant has caused these presents to be executed this 25th day of March, 1998.



98-C7740H  
DECLARANT:

MILLARD PARK LIMITED PARTNERSHIP,  
A Nebraska limited partnership

BY: DODGE DEVELOPMENT, INC.  
a Nebraska corporation,  
the sole General Partner

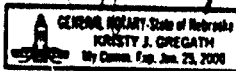
BY: W. L. Morrison, Jr.

W. L. Morrison, Jr., President

STATE OF NEBRASKA )  
                          ) ss.  
COUNTY OF DOUGLAS )

On this 25th day of March, 1998, before me the undersigned, a Notary Public in and for said County and State, personally came W. L. Morrison, Jr., known to me to be the President of Dodge Development Inc., a Nebraska corporation, which corporation is the sole general partner of Millard Park Limited Partnership, a Nebraska limited partnership, and acknowledged that he executed as the voluntary act and deed of such corporation, and the voluntary act and deed of said limited partnership.

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



Notary Public

r:\wpdocs\mp\covenants

Handwritten initials "DK" inside a circle.

This instrument after recording  
to be returned to:

Daniel B. Kinnamon  
Erickson & Sederstrom, P.C.  
Regency Westpointe  
10330 Regency Parkway Drive  
Omaha, NE 68114

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
**98-029337**

98 OCT 19 AM 10:46

*Blair J. Sederstrom*  
REGISTER OF DEEDS

98-29337

Counter AK  
Verify 4  
D.E. S  
Proof N  
Fee \$ 56.00  
Ck ☒ Cash ☐ Chg ☐

98-029337

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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:

Declarant is the owner of certain real property in Sarpy County, Nebraska, which is more particularly described as:

Lots 321A, 321B, 322A, 322B, 323A, 323B, 324A, 324B, 325A, 325B, 326A, 326B, 327A, 327B, 332A, 332B, 333A, 333B, 334A, 334B, 335A, 335B, 336A, 336B, 337A, 337B, 338A, 338B, 339A, 339B, 340A and 340B, in Millard Park, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

**NOW, THEREFORE**, Declarant hereby declares 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 Millard Park Townhomes II, Inc., a Nebraska nonprofit corporation, its successors and assigns.

**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.

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**Section 4.** "Lot" shall mean and refer to those plots of land shown as lots upon the recorded subdivision maps of Millard Park.

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

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

**Section 7.** "Architectural Control Committee" shall mean the individual or committee appointed from time to time by the Board of Directors of the Association.

**Section 8.** "Millard Park Declaration of Covenants" shall mean that certain Declaration of Covenants, Conditions, Restrictions and Easements of Millard Park, dated March 25, 1998, and recorded with the Register of Deeds of Sarpy County, Nebraska, on March 31, 1998, as Instrument Number 98-007740. The Millard Park 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.

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**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 Declarants, 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, 2004; or
- (c) The written direction of Declarant.

**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 therefore, 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 Owner's 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.

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

**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 without a vote of the members by a percentage of the prior years' assessment, which percentage shall not exceed the greater of five percent (5%) of the maximum assessment for the previous year or the percentage increase

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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 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 meeting duly called for this purpose.

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

**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.

**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 then maximum legal rate for individuals allowable in the State of Nebraska. 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.

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**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.

**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.

**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 Millard Park Declaration of Covenants. Exterior maintenance shall not include any repairs or maintenance of sanitary sewer, water, gas or electrical lines on Owner's Lot, roof repair or replacement, repair or maintenance 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 Owner's 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 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 Owner's 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 Owner's Lot and to repair, maintain, and restore the Unit and any other improvements erected on the Owner's Lot. 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

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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 PARTY WALLS**

**Section 1. General Rules of Law to Apply.** Any wall which is built as a part of the original construction of any townhome Unit upon the Properties and placed on the dividing line between two Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**Section 2. Sharing of Repair and Maintenance.** The cost of reasonable repair, maintenance and restoration of a party wall shall be shared by the Owners who make use of the such party wall in proportion to such use.

**Section 3. Destruction by Fire or Other Casualty.** If such party wall is destroyed or damaged by fire or other casualty, any Owner who has used such wall may restore it, and if the Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, subject however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

**Section 4. Weatherproofing.** Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes such party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

**Section 5. Right to Contribution Runs With the Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor in title.

**Section 6. Binding Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party to the dispute shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all the arbitrators shall be binding and enforceable against the parties to the dispute.

#### **ARTICLE V RESTRICTIONS, EASEMENTS 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 the provisions of the Millard Park Declaration of Covenants and to the extent not inconsistent with the Millard Park Declaration of Covenants, the following additional restrictions:

(a) 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.

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Trailers and recreational vehicles shall not be continuously parked on driveways or side yards.

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

(c) 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.

(d) 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.

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

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

(g) All Lots and Units shall be used only for residential purposes.

#### **ARTICLE VI ARCHITECTURAL CONTROL**

No dwelling, fence (other than fences constructed by Declarant), wall, pathway, driveway, patio, patio cover or enclosure, deck, rock garden, garden, treehouse, 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 Articles II and III of the Millard Park Declaration of Covenants.

#### **ARTICLE VII GENERAL PROVISIONS**

**Section 1. Enforcement.** The Association, or any Owner, 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 and where applicable any of the provisions of the Millard Park Declaration of Covenants. Failure by the Association or by an Owner to enforce any covenant or restriction herein contained or contained in the Millard Park Declaration of Covenants 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.



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**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. Subject to complying with the provisions of Section 4 of this Article, this Declaration may be amended or dissolved by an instrument signed by 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. Special Declarant Rights.** Declarant, its successors, assigns or appointees, 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. Upon such filing, Declarant, or the Association, shall each have the right to appoint another entity or individual to serve as Declarant, and such appointee shall thereafter serve as Declarant with all the same 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 4 unless consented to in writing by Declarant.

**Section 5. FHAVA 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 11<sup>th</sup> day of October 1998.

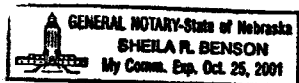
**DECLARANT:**

**Dave Paik Builders, Inc., a Nebraska corporation,**

By: [Signature]  
**David R. Paik, President**

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of October 1998, by David R. Paik, President of Dave Paik Builders, Inc., a Nebraska corporation, and acknowledged that he executed it as the voluntary act and deed of such corporation.



[Signature: Sheila R. Benson]  
Notary Public

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2002 37609

2002 SEP 25 11:21

*Glenn J. [Signature]*  
REGISTER OF DEEDS

Counter 24  
Verify [Signature]  
D.E. [Signature]  
Proof [Signature]  
Fee \$ 31.00  
Ck ☒ Cash ☐ Und ☐  
27531

*[Signature]* AFTER RECORDING, RETURN TO: DANIEL B. KINNAMON, ERICKSON & SEDERSTROM, P.C., 10330 REGENCY PARKWAY DRIVE, OMAHA, NE 68114

(Space Above This Line for Recording Data)

### FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

THIS FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Amendment") is dated as of September \_\_, 2002 and is made by Dave Paik Builders, Inc., a Nebraska Corporation, hereinafter referred to as the "Declarant."

#### RECITALS:

WHEREAS, a Declaration of Covenants, Conditions and Restrictions (the "Declaration") was recorded in the office of the Register of Deeds of Sarpy County, Nebraska on October 19, 1998 as Instrument No. 98-029337, which covered the following described real property:

Lots 321 A & B through Lots 327 A & B, inclusive, and Lots 332 A & B through Lots 340 A & B, inclusive, in Millard Park, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

WHEREAS, all terms used in this Amendment without definition shall have the same meanings in this Amendment as such terms have in the Declaration.

WHEREAS, Declarant, as the Owner of seventy-five percent (75%) or more of the Lots, in accordance with Article VII, Section 3 of the Declaration desires to amend the Declaration as hereinafter set forth:

1. Addition of Property to Declaration. Declarant is the Owner of the following described real property (herein "Replat Lots"):

Lots 1 through 10, inclusive in Millard Park Replat 6 (being a replatting of Lots 8A through 13B, Millard Park Replat 5), a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

The foregoing Replat Lots shall be added to and become a part of the Properties under the Declaration and all of the terms, covenants, restrictions, conditions, reservations, and provisions of the Declaration shall be extended to and be applicable to such Replat Lots for all purposes. This Amendment shall be deemed to be effective on the date of the recording of the Amendment with the Register of Deeds of Sarpy County, Nebraska.

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2. Reference to and Effect on the Declaration. On and after the effective date of this Amendment, each reference in the Declaration to "this Declaration", "hereof", "herein", or words of like import, shall mean and be a reference to the Declaration as amended by this Amendment. The reference to "Lot" in Article I, Section 4 shall be amended to include, in addition to lots upon the recorded subdivision maps of Millard Park, the lots in Millard Park Replat 6. Except as specifically amended by this Amendment, the Declaration shall remain in full force and effect and hereby is ratified and confirmed.

IN WITNESS WHEREOF, this Amendment has been duly executed on behalf of the Declarant as of the date above written.

**Dave Paik Builders, Inc., a Nebraska Corporation,**

BY:                     *DRP*                      
**David R. Paik, President**

STATE OF NEBRASKA     )  
                                          ) SS.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of September, 2002, by David R. Paik, President of Dave Paik Builders, Inc., a Nebraska corporation, on behalf of the Corporation.

\_\_\_\_\_  
Notary Public     *[Signature]*

