

465870
Document No.

**DECLARATION OF
EASEMENT FOR
PRIVATE ROAD AND
PUBLIC UTILITIES
AND RESTRICTIVE
COVENANTS**

VOL. ~~801~~ OF REC. PAGE 402 -
Otto Korpela 409
REGISTER OF DEEDS

'01 JUL 30 AM 9 14

REGISTER'S OFFICE/S.S.
BAYFIELD COUNTY, WIS.

Return to:

Attorney Gerald L. Wright
PO Box 1317
Hayward WI 54843

Paid 24.00

034-1079-05 001
Parcel Number

THIS DECLARATION (the Declaration) is executed as of July ., 2001 by Patti A. Olson, f/k/a Patti A. Leffingwell, (the Declarant) and her husband, Jerry D. Olson.

RECITALS:

A. The Declarant is the owner of certain real property located in Bayfield County, Wisconsin, (the Property) described as follows:

That part of Government Lots One (1) and Two (2), Section Seventeen (17), Township Forty-three (43) North, Range Six (6) West, more particularly described as Lot 1, Volume 5 Certified Survey Maps Pages 292-293, Survey No. 822.

B. The Declarant has subdivided the Property into six lots and intends to further subdivide the Property. The currently existing subdivisions of the Property are recorded as follows:

Volume 7 Certified Survey Maps Pages 63-65, Survey No. 1101 (Lots 1 through 4); and
Volume 7 Certified Survey Maps Pages 66-68, Survey No. 1102 (Lots 5 and 6).

C. All references in this Declaration to the Lots include the following:

(1) Lots 1 through 4, Volume 7 Certified Survey Maps Pages 63-65, Survey No. 1101; Lots 5 through 6, Volume 7 Certified Survey Maps Pages 66-68, Survey No. 1102; and any lots to be created by the future subdivision of said Lot 6.

(2) Lot 2, Volume 5 Certified Survey Maps Pages 292-293, Survey No. 822.

D. The current owner of said Lot 2, Volume 5 Certified Survey Maps Pages 292-293, Survey No. 822, is the C. Richard Helm Trust dated January 23, 1993. The current trustee of said trust is Attorney Jack A. Carlson.

E. Certain real property is referred to in this Declaration as the Roadway Property, to wit:

A 33 foot wide strip of land, the Center Line of which commences at the intersection of the South line of the Property and the boundary Line between Lots 5 and 6, Volume 7 Certified Survey Maps Pages 66-68, Survey No. 1102; thence Northerly and Westerly along the East and North boundary Lines of Lot 5, Volume 7 Certified Survey Maps Pages 66-68, Survey No. 1102; thence Westerly across Lot 6, Volume 7 Certified Survey Maps Pages 66-68, Survey No. 1102 to a point on the East boundary Line of Lot 4; thence Northeasterly along the East boundary lines of Lots 4, 3, 2 and 1, Volume 7 Certified Survey Maps Pages 63-65, Survey No. 1101; thence continuing Northeasterly to the point where the road now crosses the South boundary of Lot 2, Volume 5 Certified Survey Maps Pages 292-293, Survey No. 822, as more specifically depicted and described on said certified survey map Nos. 1101 and 1102.

F. A portion of the Roadway Property is improved as a private road with a private entrance gate (the Private Road).

G. The Declarant wishes to create a perpetual nonexclusive easement over the Roadway Property under the terms of this Declaration, for the mutual benefit of all of the Lots described above. The declarant also wishes to impose certain additional restrictive covenants on the lots described in paragraph C.(1), above, but not on Lot 2, Volume 5 Certified Survey Maps Pages 292-293, Survey No. 822.

H. Although said Lot 2, Volume 5 Certified Survey Maps Pages 292-293, Survey No. 822, is not currently included in the definition of the Property, as set forth above, the owner of said Lot 2 currently has nonexclusive easement rights over the Property and wishes to join with the Declarant in those portions of this Declaration concerning the creation of a perpetual nonexclusive easement over the Roadway Property under the terms of this Declaration, for the mutual benefit of all of the Lots described above.

DECLARATION

The Declarant declares that:

1. **Definitions.** The terms set forth in this Section 1 shall have the following definitions:

- (a) **Association:** The association described in Section 5, below, and the association's successors and assigns.
- (b) **Municipality:** The Town of Namekagon.
- (c) **Owner:** The person or persons, including any business organization or trust, having the power to convey the fee simple title to any of the Lots subject to this Declaration.

2. **Creation of Easements.** The Roadway Property shall be subject to the following easements, all of which shall be perpetual and nonexclusive:

(a) **Vehicular and Pedestrian Access Easement:** An easement for ingress and egress for the purpose of granting to all of the Owners and their occupants, agents, employees, guests, licensees, and invitees vehicular and pedestrian access across the Roadway Property.

(1) A common driveway is also to be constructed for Lots 2 and 3, Survey No. 1101, from the Roadway Property, with a Center Line following the boundary line between said Lots. The Owners of said Lots 2 and 3 shall be equally and solely responsible for the maintenance and repair of said common driveway. The Association shall have no responsibility whatsoever for said common driveway.

(b) **Utility Easement:** A public utility easement for the purpose of permitting public utilities to install, lay, operate, repair, and maintain underground pipes and conduits for water, storm sewer, sanitary sewer, cable television, gas, and electric service under the surface of the Private Road.

(1) The utility easement referenced above also includes the now existing electric pedestal, as depicted on CSM No. 1101, and accompanying underground lines now in existence.

(c) **Fire Department and Vehicular Access.** An easement for emergency access by the local fire department or any other emergency services, and for ingress and egress for garbage trucks and other service vehicles for the purpose of granting the providers of these services vehicular and emergency access across the Private Road.

3. **No Parking in Private Road.** Parking shall not be allowed on the Private Road, except that parking shall be allowed in visitor parking areas located off of and adjacent to the drive aisles.

4. **Owners' Easements.** The easements granted to the Owners under this Declaration shall be appurtenant to and shall pass with the title to the Lots and any portion of the Property. The Owners' easements created by this Declaration shall be subject to the following:

(a) The right of the Declarant and the Association to establish reasonable rules regulating use of the Private Road; and

(b) The right of the Declarant (or the Association, following conveyance by the Declarant of all of its right, title, and interest in and to the Lots) to dedicate or transfer all or any part of the Private Road to any public agency, authority, or utility for such purposes, and subject to such conditions, as may be agreed to by the Declarant (or, if applicable, the Association). No such dedication or transfer shall be effective unless the public agency, authority, or utility agrees to accept it.

5. **Association.**

(a) **Membership.** Every Owner in fee simple of a Lot shall automatically be deemed to be a member of an association of Owners of all of the Lots (the Association), which shall have the rights, and carry out the duties, assigned to it under this Declaration. The Association shall initially be an unincorporated nonstock association, under the laws of the State of Wisconsin and Chapter 184 of the Wisconsin Statutes. The structural form of the Association may be transformed into a non-stock corporation or other entity chosen by the Owners of at least two-thirds of the Lots. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot. Members shall be entitled to one vote for every Lot with respect to which the Owner is deemed to be an Owner. When more than one person holds any interest in any Lot, the vote for the Lot shall be exercised as those persons among themselves determine, but in no event shall more votes be cast with respect to any Lot than the number of votes assigned to the Lot under this Section.

(b) **Manager.** The Association may appoint one or more managers to handle the affairs of the Association.

(c) **Governance.**

(1) All decisions of the Association shall be by simple majority vote unless a greater majority is required elsewhere in this Declaration or by law.

(2) General annual charges and special charges, as described in paragraphs 8 and 9 below, shall be evenly apportioned among the Lots, with each Lot being assessed the same amount regardless of

its size or level of development.

6. **Obligations of the Association.** The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for enforcing this Declaration, exercising exclusive management and control of the Private Road, and keeping the Private Road in good, clean, attractive, and sanitary condition, order, and repair (including timely removal of snow and ice, patching, repairing and resurfacing, and maintenance of a private gate at the entrance of the Private Road).

7. **Damage or Destruction of Private Road.** If any portion of the Private Road is damaged or destroyed by an Owner, by any of the Owner's guests, tenants, licensees, or agents, or by a member of the Owner's family, the Owner authorizes the Association to repair the damaged area. The Declarant or the Association shall have the right to repair the damaged area in a workmanlike manner in conformity with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association or the Declarant in the discretion of the Association or Declarant. The amount necessary for the repairs shall become a special assessment on the Lot of the Owner. Furthermore, any public utility installing any improvements within the Private Road shall restore the surface of the Private Road to its condition existing before the installation.

8. **General Annual Charges.** All Lots shall be subject to general annual charges, which may be determined and assessed annually by the Association, solely for defraying the prelitigation- and litigation-related costs and expenses (including actual attorney fees) of the Association in carrying out its stated purposes and functions and for maintaining and improving the Private Road. The general charges shall be sufficient to raise an amount that, in the reasonable judgment of the Association and combined with amounts collectible from other users of the Private Road, may be required to cover the expenses of the ensuing calendar year (including interest costs) and to establish a reasonable reserve for future roadway repairs and replacements.

9. **Special Charges.** All Lots shall be subject to special charges, which may be determined and assessed by the Association for the expenses described in Section 8, above, for which the general annual charges are inadequate.

10. **Collection.** The right to collect or enforce the collection of charges assessable to the Owners is exclusively delegated to the Association. The Owner of a Lot, or any portion of a Lot, shall be personally obligated to pay charges that were assessed or accrued upon the land owned during the period of ownership. All charges that are unpaid when due shall from that date become and remain a lien upon the Lot until paid, with interest on the charges from the due date of 12.0% per annum until paid in full. The Association shall have the sole right to bring all actions and proceedings for the collection of the charges and for the enforcement of liens securing the charges. Any liens securing unpaid charges arising by virtue of this Declaration shall be subject and subordinate to the lien of any first-lien mortgage whether the mortgage is executed or recorded before or after the creation of the liens. Nothing in this Declaration shall prevent or impede the collection of lawful charges, taxes, or similar charges by the Municipality. The Association may commence a collection action against any Owner personally obligated to pay the charges or an action to foreclose the lien for the charges against any Lot. Any such foreclosure action may be brought, at the Association's election, either in the same manner as an action to foreclose a real estate mortgage or as a proceeding to enforce a lien under chapter 779 of the Wisconsin Statutes. The Association shall, upon the written request of an Owner or purchaser of any Lot, issue a Certificate of Status of Lien. If an attorney is retained to enforce any delinquent charges, reasonable attorney fees, title charges, court costs, and other costs incurred shall be added to and become a part of the charges.

11. **Miscellaneous Restrictive Covenants.** All Lots now existing or to be created on The Property shall be subject to the following covenants:

(a) The structures and grounds on each Lot shall be kept and maintained in a neat and attractive manner. No boat trailers, RVs or junk vehicles may be stored on the Lots, EXCEPT that a portion of what is now known as Lot 6 may be dedicated to boat and boat trailer storage by Declarant, subject to such rules

as the Declarant may from time to time impose. In the event that Declarant at any time fails to provide a dedicated boat and boat trailer storage site, Owners may store boats and boat trailers on their Lot.

(b) New residential structures must be a minimum of 2,000 square feet in size, sided with natural wood siding, and utilizing only earth tone colors on the exterior. General contractors for new residential structures must be approved by the Declarant until such time that Declarant no longer has any ownership interest in any portion of the Property.

[Note: per the definitions set forth in the Recitals portion of this Declaration, the miscellaneous restrictive covenants set forth in Section 11 do NOT apply to Lot 2, Volume 5 Certified Survey Maps Pages 292-293, Survey No. 822.]

12. **Amendment.** Until all of the Lots subject to this Declaration have been sold by the Declarant, this Declaration may be amended by the recording of a written instrument executed by or on behalf of all the following: (a) the Declarant; (b) the Owners of at least 60% of the Lots subject to this Declaration and not owned by the Declarant; (c) in the case of any amendment to Section 2(b) only, all public utilities that have installed improvements within the Private Road; and (d) in the case of any amendment to Sections 2(c) or 4(b), the Municipality. After all of the lots subject to this Declaration have been sold by the Declarant and until the termination of this Declaration, this Declaration may be amended by the recording of a written instrument executed by or on behalf of all of the following: (a) the Owners of at least 60% of the Lots subject to this Declaration; (b) in the case of any amendment to Section 2(b) only, all public utilities that have installed improvements within the Private Road; and (c) in the case of any amendment to Section 2(c) only, the Municipality. In ascertaining the number of Owners assenting to any such instrument, persons, including any business organizations, having the power to convey the fee simple title in a given Lot shall constitute a unit having a single vote. Notwithstanding the foregoing: (1) this Declaration shall not be amended in a manner that would cause the Property to cease to have access over the Private Road or from County Highway M without the consent of all Owners; and (2) the owner(s) of Lot 2, Volume 5 Certified Survey Maps Pages 292-293, Survey No. 822, shall not have any vote concerning amendments to Section 11.

13. **Covenants Run with Land.** All of the terms and conditions in this Declaration, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by each owner and their respective successors and assigns as owners of the Lots. The easements granted under Section 2(a) of this Declaration are easements appurtenant to the Lots and may not be transferred separately from, or severed from, title to the Lots. Furthermore, the benefits of the easements granted under Section 2(a) shall not be extended to any properties other than the Lots without the consent of the owners of the fee simple interest of all of the Lots. Each Owner shall cease to have further liability under this Declaration with respect to facts or circumstances first arising after the Owner has transferred its fee simple interest in a Lot, except, however, for such obligations as accrued during the Owner's period of ownership of fee title to the Lot.

14. **Non-Use.** Non-use or limited use of the easement rights granted in this Declaration shall not prevent the benefiting party from later use of the easement rights to the fullest extent authorized in this Declaration.

15. **Governing Law.** This Declaration shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

16. **Notices.** All notices to any Owner under this Declaration shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. If the other party's address is not known to the party desiring to send a notice, the party sending the notice may use the address to which the other party's property tax bills are sent. Any Owner may change its address for notice by providing written notice to the Association.

CONSENT OF CURRENT EASEMENT HOLDER

Jack A. Carlson, as Successor Trustee under the C. Richard Helm Trust Agreement dated January 23, 1993, hereby consents to the inclusion in this Declaration of the above described real property belonging to said trust, and agrees that the trust and its beneficiaries, successors and assigns shall be bound by the terms of this Declaration.

Dated: July 24, 2001

Jack A. Carlson

Jack A. Carlson, Successor Trustee under the C. Richard Helm Trust Agreement dated January 23, 1993

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) §§
COUNTY OF BAYFIELD)

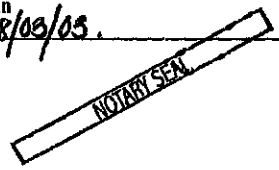
This instrument was acknowledged before me on July 24, 2001, by Jack A. Carlson, Successor Trustee under the C. Richard Helm Trust Agreement dated January 23, 1993.

Cindy A. Hanson

CINDY A. HANSON

Notary Public, State of Wisconsin

My commission expires: 08/09/05.



CONSENT OF MORTGAGEE

The undersigned, being the holder of a mortgage against the Property, consents to the grant of the easement set forth above and agrees that its interest in the Property shall be subject to this Declaration.

Dated: 7-24-01

C. Richard Helm Trust dated January 23, 1993

By:

Jack A. Carlson

Name: Jack A. Carlson
Title: Successor Trustee

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) §§
COUNTY OF BAYFIELD)

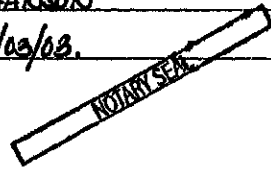
This instrument was acknowledged before me on July 24, 2001, by Jack A. Carlson, Successor Trustee under the C. Richard Helm Trust Agreement dated January 23, 1993.

Cindy A. Hanson

CINDY A. HANSON

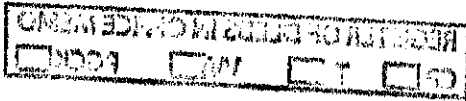
Notary Public, State of Wisconsin

My commission expires: 08/09/03.



This document was drafted by
Attorney Gerald L. Wright
SBN 1011818
PO Box 1317, Hayward WI 54843

V 8 0 1 P 4 0 9



Document Number

AMENDMENT TO DECLARATION OF
EASEMENT FOR PRIVATE ROAD AND
PUBLIC UTILITIES AND RESTRICTIVE
COVENANTS

PATRICIA A OLSON
BAYFIELD COUNTY, WI
REGISTER OF DEEDS
2005R-500402
07/12/2005 10:35:01AM

TF EXEMPT #:
RECORDING FEE: 15.00
PAGES: 3

This Amendment is executed as of the 10 day of JUNE, 2005 by Patti A. Helm and William C. Hoepfner and Vicki I. Hoepfner, the owners of the real estate described below, which real estate is subject to the terms and provisions of a Declaration of Easement for Private Road and Public Utilities and Restrictive Covenants dated July 26, 2001 and recorded in the Bayfield County Register of Deeds Office on July 30, 2001 in Volume 801 of Records, Page 402 - 409 as Document No. 465870.

WHEREAS, the undersigned are the owners of all of the real estate subject to the Declaration of Easement for Private Road and Public Utilities and Restrictive Covenants referred to above and described as follows:

Lots One through Four (1 - 4), Certified Survey Map No. 1101, recorded in Volume 7 of Certified Survey Maps, Page 63 - 65; Lots Five (5) and Six (6), Certified Survey Map No. 1102, recorded in Volume 7 of Certified Survey Maps, Page 66 - 68 and Lot Two (2), Volume 5, Certified Survey Maps, Pages 292 - 293, Survey No. 822; and

WHEREAS, the parties desire to amend Paragraphs 11 and 12 of the original July 26, 2001 Declaration and to make provisions for a joint well located upon some of the Lots.

Based upon the foregoing, the undersigned declare and agree as follows:

Recording Area

Name and Return Address

Spears & Carlson
PO Box 547
Washburn, WI 54891

Parcel Identification Number (PIN)

1. Paragraph 11, Miscellaneous Restrictive Covenants, as set forth in the original Declaration for Easement for Private Road and Public Utilities and Restrictive Covenants dated July 26, 2001 and recorded in Volume 801 of Records, Page 402 - 409 shall be deleted, and Paragraph 11 shall read as follows:

11. Miscellaneous Restrictive Covenants. All Lots (including Lot 2, Volume 5 Certified Survey Maps Pages 292 - 293, Survey No. 822) now existing or to be created on the Property shall be subject to the following covenants:

(a) Each Lot shall be used exclusively for residential purposes, and no commercial or public use of the Lots or structures thereon is allowed, except for home offices.

(b) It shall be the responsibility of each Lot Owner to prevent the development of any unclean, unsightly or unkempt condition of the building or grounds on such Lots which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area. All Lots and buildings shall be maintained in a neat, clean and well kept condition.

(c) Exterior appearance. All Lot Owners shall maintain the premises and the outside appearance of any improvements thereon so that the same remains aesthetically pleasing and suitable in architectural design, in order to conform to the surrounding environment of all Lots subject to this Declaration. In order that all construction be as inconspicuous as possible, exterior finishes of all buildings, structures, signs and site improvements shall consist of materials and use color schemes which harmonize with the natural surroundings. Natural screening will be included.

(d) Rubbish, etc. No portion of any Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers and no exterior burning of household refuse shall be done. All incinerators or other equipment for the storage or disposal of such material shall be kept within a garage structure on the Lot, or otherwise be adequately screened.

V922 P185

- (e) Once construction has been commenced on any dwelling or building, the exterior must be completed within twelve (12) months of the commencement of the construction. Any delay in construction not attributable to the Owner shall extend the allowed time to complete the exterior of the building or structure.
- (f) No temporary structures of any kind may be placed on any Lots, nor shall there be any trailers or mobile homes erected or moved onto the Lots covered by these Restrictions.
- (g) Owners will be allowed to put in satellite dishes that do not exceed thirty-six (36) inches in diameter, provided such facility blends into the wooded area of the Lot.
- (h) No livestock of any kind shall be kept, bred or raised on any Lot except that dogs, cats, or other domestic pets may be kept provided they are not bred, kept or maintained for any commercial purpose. All dogs must be kept either on the Owner's property or on a leash. Continually barking or howling dogs will not be allowed and their removal shall be mandatory upon action taken by the Association.
- (i) No dusk to dawn mercury vapor lights or spotlights shall be allowed. Private yard lights on either the residence, garage, outbuilding or post outside shall not exceed ten feet in height.
- (j) No motorized recreational vehicles shall be utilized or allowed on any of the Lots, to include, but not limited to four wheelers, snowmobiles, dirt bikes or other similar motorized vehicles.
- (k) No abandoned or junk cars are to be left on the property.
- (l) There shall be no parking or storage of boats, snowmobiles, trailers, recreational or camping vehicles or all-terrain vehicles on any Lot outside of garage or other storage building located upon a Lot.
- (m) Nuisances. No noxious or offensive activities or excessive noise shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any Owner or to any other person lawfully residing on the Lots.
2. Paragraph 12, Amendments, as set forth in the original Declaration for Easement for Private Road and Public Utilities and Restrictive Covenants dated July 26, 2001 and recorded in Volume 801 of Records, Page 402 - 409 shall be deleted, and Paragraph 12 shall read as follows:
12. This Amended Declaration of Easement for Private Road and Public Utilities and Restrictive Covenants, except as set forth below, may be amended by the recording of a written instrument executed by the Owners of at least two-thirds (2/3) of the Lots subject to the Declaration (including Lot 2, Volume 5 Certified Survey Maps Pages 292 - 293, Survey No. 822). In the case of any amendment to Sections 2(b), all public utilities that have installed improvements within the Private Road shall also join in the amendment, and in the case of any amendment to Section 2(c) or 4(b), the Municipality shall also join in the amendment. In ascertaining the number of Owners assenting to any amendment, persons, including any business organizations, having the power to convey the fee simple title in a given Lot shall constitute a unit having a single vote. Notwithstanding the foregoing, this Declaration shall not be amended in any manner that would cause the Property to cease to have access over the Private Road or from County Highway M without the consent of all Owners.
3. Lots One (1) through Four (4), Certified Survey No. 1101 as recorded in Volume 7, Certified Survey Maps, Pages 63 - 65 all share a common well. The common well is located upon Lot 2. The Lot Owners of Lots 1, 2, 3 and 4 shall be equally responsible for the costs incurred in maintaining, operating and repairing said well. So long as the joint well is utilized, the Owners of Lots 1, 2, 3 and 4 shall be granted an easement to access, repair and maintain the well located upon Lot 2 and easements to access, repair and maintain any water pipes or lines located upon Lots 1, 2, 3 and 4. At the time that the joint well requires replacing, unless all four Lot Owners agree to install a new joint well, each Lot Owner shall be required to install a well upon their own Lots and the easement rights referred to herein shall terminate.

V 922 P 186 -

4. Notwithstanding any language contained in the original Declaration of Easement for Private Road and Public Utilities and Restrictive Covenants dated July 26, 2001, Lot 2, Volume 5 Certified Survey Maps Pages 292 – 293, Survey No. 822 shall be subject to all of the terms and provisions of this Amended Declaration of Easement for Private Road and Public Utilities and Restrictive Covenants.
5. Except as set forth above, all other terms and provisions of the Declaration of Easement for Private Road and Public Utilities and Restrictive Covenants dated July 26, 2001 and recorded in the Bayfield County Register of Deeds Office in Volume 804 of Records, Page 402 – 409 as Document No. 465870 shall remain in full force and effect.

Patti A. Helm

Patti A. Helm

ACKNOWLEDGMENT

STATE OF WISCONSIN)
 COUNTY OF Bayfield)ss.

Personally came before me this 10th day of June, 2005 the above named Patti A. Helm, to me known to be the person who executed the foregoing instrument and acknowledge the same.

William C. Hoepfner
 Notary Public, _____ County, WI
 My commission expires: 9-21-2008

William C. Hoepfner
 William C. Hoepfner

Vicki I. Hoepfner
 Vicki I. Hoepfner

ACKNOWLEDGMENT

STATE OF Minnesota)
 COUNTY OF Hennepin)ss.

Personally came before me this 10th day of June, 2005 the above named William C. Hoepfner and Vicki I. Hoepfner, to me known to be the person who executed the foregoing instrument and acknowledge the same.

Kelly Heath Griffin
 Notary Public, Washington County, _____
 My commission expires: January 31, 2010

