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Glenn J. Dowling

REGISTER OF DEEDS

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Prepared by & Return to: Michael C. Carter, 11506 Nicholas St., Suite 200, Omaha, NE 68154 (402) 493-2800

**EASEMENTS, COVENANTS
AND RESTRICTIONS
TIBURON VILLAGE
SARPY COUNTY, NEBRASKA**

This Declaration of Easements, Covenants and Restriction ("**ECR**") is made and executed on this 12 day of May, 2005, by Dial-Tiburon Land Development North, L.L.C. and Dial - Tiburon Small Shops, L.L.C., both Nebraska limited liability companies, and their successors or assigns ("**Dial**") as developer of subdivision or shopping center "Tiburon Village", a development and sub-division of Sarpy County, Nebraska to be platted and recorded in accordance with the laws, regulations and ordinances of County of Sarpy, State of Nebraska which property is more particularly described in Exhibit A, attached hereto and made a part hereof ("**Property**") and current lot owners.

**Article I
Recitals**

1.1 Dial is the fee simple owner of Lots 1 through 13 inclusive, of the property as surveyed, platted and recorded in Sarpy County, Nebraska.

1.2 Dial desires that the Property be developed pursuant to a general plan of improvement for commercial use and general office use in accord with the requirements and provisions of the plat of subdivision, use permits and zoning restrictions and requirements as approved by the appropriate governing body, and further desire that the Property be subject to easements, covenants and restrictions herein after set forth to insure proper use and appropriate development and improvement of the Property including the establishment of a Property Owners Association to properly own and maintain the Common Drive Tracts and Detention Cell.

**Article II
Definitions**

For purposes of this ECR, the following terms shall have the following meanings:

- A. "**Lot**" or "**Tract**" shall mean any subdivided portion of the Property as shown on Exhibit A.
- B. "**Owner**" shall mean the party or parties owning fee simple title to a Lots 1 - 13 according to the records of Sarpy County, Nebraska.
- D. "**Common Drives**" are shown on Exhibit A which shall include public streets.
- E. "**Building Areas**" shall mean those portions of each Lot that an Owner may elect to construct building improvements so long as the size and location does not violate Section 4.2c.

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- F. **"Parking Area"** shall mean the portion of each Lot, which is paved and striped for ingress, egress and parking use by Owners, customers, agents, invitees, tenants and employees in accord with the parking requirements of this ECR and the appropriate governing body parking requirements.
- G. **"Sidewalks"** shall mean those portions of the Lots and Tracts of the Property designated on Exhibit A required to be paved for pedestrian's traffic exclusively.
- H. **"Tenant"** shall mean any occupant of any building located on any Lot or any portion of any building whether such occupancy is pursuant to a written lease or an oral tenancy, including an occupant holding over possession upon expiration of its lease term.
- I. **"Mortgagee"** shall mean any mortgagee under a mortgage or any trustee or beneficiary under a deed of trust constituting a lien on any Lot.

Article III Uses

3.1 Lots 1 - 13 shall be used for commercial purposes of the type normally found in a retail shopping center, including without limitations, financial institutions, convenience stores including gas pumps, service shops, fast food and sit down restaurants, general offices and retail stores.

3.2 No business of manufacturing, wholesale, distribution or industrial operation; pornographic or "triple-X video, triple-X bookstore" or similar business appealing to customers prurient interest shall be conducted on any Lot without the written consent of each and every Owner of all Lots in the Property. No business may be conducted which may be or become an annoyance or nuisance to any Owner or Tenant or occupant of any other Lot by reason of unsightliness, excessive emission of noxious fumes or odors, vibration, gases, radiation, dust, liquid waste, smoke or noise (other than that which may reasonably occur during construction of improvements on a Lot).

Article IV Improvements

4.1 Buildings:

(a) Dial shall approve all buildings for compliance with this provision, provided such architectural plans and specifications shall be submitted to Dial prior to commencement of construction. Dial shall approve or reject such architectural plans within thirty (30) days. Dial or its successors may enforce this section by injunctive relief.

(b) When the construction of any building has commenced, work must proceed diligently and must be completed within a reasonable time thereafter. Adequate screening shall be required to reduce dirt, dust and debris from entering other lots.

(c) No improvements or alterations shall materially change or alter the drainage of the Property.

(d) All ground mounted HVAC equipment and all garbage collection facilities and dumpsters of any kind located on each Lot shall be screened or fenced, using block or brick materials, from view from adjacent Lots. Garbage and trash receptacles shall be completely screen from the public view by the use of a screened and landscaped yard open to the sky. Such refuse area shall have a concrete slab. Enclosing walls shall be of the same or compatible materials as the building. Foundation walls shall

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be provided for the screen walls to protect against frost action. Gates are not required on compactor screens under this agreement, however, the refuse truck opening shall be arranged in such a manner as not to expose the receptacles to general view.

(e) The parking lot lighting level shall be at one foot candle at a minimum.

(f) Landscaping shall be similar and consistent with developments of shopping centers of similar size and nature in the area. Dial shall approve all landscaping designs for compliance with this provision. Dial shall approve or reject the design within thirty (30) days. Dial or its successors may enforce this section by injunctive relief.

4.2 Ingress/Egress and Parking Areas:

(a) Owners of each Lot and their tenants, customers, employees, invitees and agents shall have an easement for ingress and egress from one Lot to another on the Property through and across the public roads and no owner may materially modify or change the flow of vehicular or pedestrian traffic designated on the plat of the subdivision, as approved by Sarpy County. This grant of easement for ingress and egress on one Lot to the other shall run with the land and is only for the benefit of any and all assignees, successors in interest, tenants, buyers or other persons or entities who may be legally entitled to use and occupancy of any Lot. In addition, a permanent and perpetual reciprocal parking easement to run with the land is hereby granted for the customers and invitees of the Owners or Tenants of Lots. However, each and every Owner or Tenant occupying or using any Lot shall prohibit its on-duty employees from parking on any other Owner's or Tenant's lot.

(b) All parking areas, access drives and loading areas shall be paved with concrete or asphalt and graded in accord with the Property grading plan designated.

(c) Each and every Owner or Tenant occupying any Lot shall independently maintain its Parking Area to accommodate a minimum of, (i) in the case of retail or service use, five (5) parking spaces for each one thousand (1000) square feet of Floor Area, (ii) in the case of fast food or sit down restaurants, or theatre there shall be 1.0 car spaces for each three (3) seats; (iii) and insofar as any lodging facility is concerned there shall be 1.5 car spaces for each unit, and, (iv) in the case of office or financial institution use, four (4) parking spaces for every one thousand (1000) square feet of rentable square feet.

(d) No Owner or Tenant may commence doing business on any Lot in the Property unless and until the Parking Area of said Lot is paved and striped for parking in accord with this ECR.

(e) Dial shall cause to be constructed the Drives, as identified on the Exhibit A, and shall pay for the construction permits therefor. Each Owner shall construct its own access to such Owner's Lot from such drives at its sole cost and expense, including costs of any permits therefor.

4.3 Landscape Areas:

(a) All Landscaping Areas shall be consistent with paragraph 4.1(g) above.

(b) All landscaping plans shall include an underground lawn sprinkling system connected to an adequate source of water and which is automatically activated as frequently as necessary to maintain green, healthy condition of all lawns, trees, shrubs and other plants on each and every Lot. Provided further, it shall be the responsibility of the Owner of each and every Lot to landscape and maintain the area between the lot lines of the Owner's Lot and the curbs of any roadways or the Common Drive adjacent to any Lot.

(c) All landscaping and underground sprinkler systems shall be completed within sixty (60) days after the substantial completion of construction of any building to be constructed on any Lot, provided

however, if weather conditions do not at such time permit, then such landscaping shall be completed as soon thereafter as weather conditions permit.

Article V Signs

5.1 All signs shall comply with the codes, rules and regulations pertaining to signs as promulgated by the appropriate governing body. No sign of any type shall be placed upon the roof of any building on the Property. Each building constructed on any lot shall be permitted a maximum of one (1) monument sign (the design and building material shall be approved by Dial or its assigns) not to exceed ten (10) feet in height, plus additional signage located on the face of such building. No flashing signs, no temporary signs, other than "For Sale or Lease", or banners (except for those professionally prepared and commonly used by other banks in the course of normal banking transactions) will be allowed.

5.2 Dial shall, at its expense, construct a base and frame and install sign panels, back lit sign or other signage approved by the appropriate governing body in as many locations as deemed necessary in this Development. Dial shall at its expense construct monument signs for name recognition of the shopping center. Dial may sell and assign such rights to such signage in its sole discretion to any Lot Owner. The Owners of Lots 1, 3, 4, 7, 8 and 13 hereby grant an easement to Dial or its Successor or Assigns over and across its Lots for construction, maintenance, repair and replacements of such signs, in the area set forth on Exhibit "B."

Article VI Utilities

6.1 Construction of Utilities: Dial shall cause to be installed electricity, gas, water, sanitary sewer and storm sewer in accord with the utility plan, as designated in engineering plans as approved by the appropriate governing body. These utilities shall be available to all Lot Owners as newly installed whether in any Lot, or the Common Drives. It is agreed, however, that any hook-up fee, tap-in fee, impact fee, land use fee, meter fee, trip fees for proposed traffic use of streets, meter installation fees or other fees which may be levied or assessed, or charged by an governmental or quasi governmental agency for the development of each Lot shall be the cost of the Owners or Occupants developing such Lot and not the cost of Dial.

6.2 Easements: Each Owner of each Lot shall cooperate in granting appropriate easements to the appropriate governmental or quasi governmental agencies or utility companies and the other Lot Owners for the installation, maintenance, repair and replacements of utilities services as set forth in the plat of the subdivision.

Article VII Maintenance

7.1 Maintenance Obligations: Each Owner of each Lot shall keep and maintain its Lot and improvements in good condition and repair. Maintenance shall include, without limitations, the following:

- (a) Maintain parking surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
- (b) Remove all debris, filth and refuse and periodically sweep Lot to maintain in a clean and orderly condition;
- (c) Remove snow and ice from parking areas and Sidewalks in a reasonable manner and not placed in other parcels, so that they may be used by customers and patrons of the Owners and Tenants in accordance with the provisions of this Agreement;

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- (d) Operate, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required in accordance with the original design;
 - (e) Maintain all perimeter walls, exterior building walls and all retaining walls in a good condition and state of repair.
 - (f) Maintain (with a minimum of four application process of fertilizer, weed and insect control), mow, weed, trim and replace shrubs and other landscaping as is necessary.
 - (g) Maintain an underground sprinkler system for all landscaping.
 - (h) Maintain and replace any appropriate and necessary signs and markers.

7.2 Expenses Respective owner(s) shall pay the expenses of maintaining the Building Areas, Parking Areas, Sidewalks, and Landscapes Areas on their respective Lot(s).

Article VIII Miscellaneous

8.1 Severability. All of the conditions, covenants, restrictions and reservations contained in this Declaration shall be construed together, but if it shall at any time be held that any one of such conditions, covenants, restrictions and reservations, or any part thereof, is invalid, or for any reason becomes unenforceable, no other conditions, covenants, restrictions and reservations or any part thereof shall be thereby affected or impaired.

8.2 Owner's Liability Subsequent to Sale. Upon the sale of a Lot, the Owner so selling shall not have any further liability for the obligations hereon which accrue against the Lot after the date of the conveyance; provided, however, that nothing herein shall be construed so as to relieve an Owner of any Lot from any liabilities or obligations incurred prior to such sale pursuant to this Declaration.

8.3 Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Declarants that this Declaration shall be strictly limited to the purposes expressed herein. Provided, however, Dial, or its assigns may, but is not required to, dedicate any land it deems advisable.

8.4 Benefits and Burdens. The terms and provisions contained in this Declaration shall be binding upon and inure to the benefit of the Declarants and the Owners of all Lots located within the Property and their respective heirs, successors, personal representatives, and assigns. Each Tenant shall be subject to this Declaration, but no Tenant shall take any rights hereunder or be deemed to be a third party beneficiary hereof.

8.5 Notice. Any notices required or permitted herein shall be in writing and sent by Federal Express or other receipted overnight courier service or mailed, postage prepaid, by registered or certified mail, return receipt requested, and shall be directed as follows: If intended for a Lot Owner, to the Owner of such Lot by name and address as shown on the then current real property tax rolls in Sarpy County, Nebraska.

8.6 Singular and Plural. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires.

8.7 Mutual Indemnification.

THE OWNER OF EACH OF THE LOTS SHALL INDEMNIFY AND HOLD THE OWNERS OF THE OTHER LOTS

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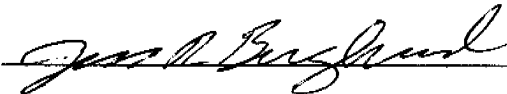
HARMLESS WITH RESPECT TO INJURIES, DAMAGES AND LIABILITIES WHICH ARISE ON SUCH RESPECTIVE OWNER'S LOT UNLESS SUCH INJURY OR DAMAGE IS CAUSED BY THE NEGLIGENCE, GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF THE OWNER OF ANOTHER LOT OR SUCH OWNER'S AGENTS, INVITEES, AND/OR EMPLOYEES.

8.8 Insurance. The Owner or Tenant of each Lot shall secure and maintain as to the portion of the parking lots, driveways and/or walkways traversing any portion of such owner's Lot public liability insurance coverage covering such party's Lot, insuring against the risk of bodily injury, property damage and personal injury liability with respect to such Lot, in an amount of not less than Five Million Dollars (\$5,000,000.00).

8.9 Hazardous Material. All operations or activities upon, or any use or occupancy of any Lot, or any portion thereof, by such party, its assignees, subtenants, and their respective agents, servants, employees, representatives and contractors (collectively, "**Affiliates**"), throughout the term of this Agreement, shall be in all respects in compliance with all federal, state and local laws, regulations, statutes, ordinances or orders then governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, release, spillage, leakage, dumping, discharge or disposal of any Hazardous Materials ("**Environmental Laws**"). As used herein, "**Hazardous Materials**" shall mean any hazardous or toxic waste, substance or petroleum product as defined for purposes of any Environmental Laws and all amendments thereto.

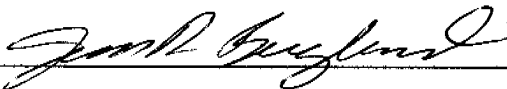
IN WITNESS WHEREOF, declarant has executed this ECR as of the date first above written.

DIAL - TIBURON LAND DEVELOPMENT NORTH,
L.L.C., A Nebraska limited liability company

By: 

Its: Manager

DIAL - TIBURON SMALL SHOPS, L.L.C.,
A Nebraska limited liability company

By: 

Its: Manager

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EXHIBIT "A"

LEGAL DESCRIPTION

Tiburon Village being a Replat of Lot 400A2A, Lot 401A, Tiburon, and Lot 1 Tiburon Replat II located in Section 28, Township 14 North, Range 11 East of the 6th P.M. Sarpy County, Nebraska, Lots 1 through 13 inclusive.