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FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
**98-000321**

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*Lloyd J Dowding*  
REGISTER OF DEEDS

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Proof *ll*  
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**THIS PAGE ADDED  
FOR RECORDING  
INFORMATION.**

**LLOYD J. DOWDING**

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

92 00321 A

AGREEMENT

THIS AGREEMENT made this 22nd day of April, 1992 by and between Tiburon Limited Partnership, a Nebraska limited partnership (herein referred to as the "Partnership") and Dodge Land Co., a Nebraska Corporation (herein referred to as the "Developer"),

WHEREAS, the Partnership owns certain lots in Tiburon, a subdivision in Sarpy County, as surveyed, platted and recorded, which are legally described in Exhibit "A" attached hereto and incorporated herein by reference,

WHEREAS, the Partnership desires to hire the Developer to develop and market those lots and parcels in Tiburon described in Exhibit "A" (the "Property"), and

WHEREAS, the parties desire to set forth their understanding in this Agreement,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the following is agreed between the parties hereto:

1. Employment of Developer. The Developer is hereby employed to develop and market all of the Property.

2. Duties and Responsibilities of Developer. The Developer shall have the following duties and responsibilities:

a. Secure Financial Commitment. Immediately following the full execution of this Agreement, the Developer will attempt to secure a financial commitment from a fiscal agent for sanitary and improvement district ("SID") financing to develop Phase I of the Property. Thereafter, the Developer will attempt to secure SID financing from the fiscal agent for subsequent Phases.

b. Reorganization of SID. The Developer will reorganize the present SID No. 32 of Sarpy County which covers the subdivision, probably by liquidation of it and the organization of a new SID which covers the subdivision. This SID shall be referred to herein as the "New SID". The parties agree that upon the reorganization or creation of the New SID no less than three of the trustees shall be persons designated by the Developer. The Partnership will cooperate with the Developer in reorganizing the SID, including, but not limited to, paying in full all of the outstanding warrants of SID No. 32 or securing the consent of the warrant holders to a reorganization of the SID, conveying qualifying land to the trustees designated by the Developer, and, depending on the alternative which the Developer

RETURN TO:  
Robert V. Ginn  
BRASHEAR & GINN  
800 Farnam Plaza, 1623 Farnam St.  
Omaha, NE 68102-2106

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shall select, causing SID No. 32 to dissolve, consenting to a parcel of adjoining land not presently in SID No. 32 becoming a part of a new SID, and by merging SID No. 32 into a new SID.

c. Approval of SID Improvements And Installation Of The Same. The Developer will work with the engineer for the SID to secure the necessary governmental approvals for the SID improvements and to cause the New SID to install said improvements in Phase I of the subdivision, and in subsequent Phases, said improvements to include but not necessarily limited to the following: paved streets with curb and gutter, paved (or at least hard surfaced) perimeter streets, storm sewers (to the extent required or desired consistent with the overall general obligation of the SID), sanitary sewers, sewage treatment plants, water lines, water pumping stations, wells, and water storage tanks, underground electrical service, and, to the extent possible consistent with the SID's capacity for general obligation indebtedness, acquisition and development of public parks. The New SID agrees to employ Design Engineering, Larry Hagewood, President, as engineer for the New SID provided the engineering work for the Property is performed in an acceptable and timely manner.

d. Determination of Phases. The Developer shall determine the lots to be included in the various Phases of the subdivision, including Phase I.

e. Amenities. To the extent of economic feasibility, the Developer will cause amenities determined by it to be installed in the Subdivision. In no event shall the Developer incur costs in excess of \$25,000 in any given three month period without the consent of the Partnership.

f. Minor Grading. Since the Subdivision has already been graded, the Developer may in its discretion cause additional minor grading of the Subdivision, not to exceed \$25,000 in total cost without the Partnership's consent.

g. Marketing of Lots. Working with its parent corporation, N. P. Dodge Company, the Developer will market the lots in the Subdivision.

(1) Price List. The Developer will establish a price list for the developed lots in each Phase in the discretion of the Developer which may be changed by the Developer from time to time after consultation with the Partnership.

(2) Terms of Sale. The Developer shall determine the terms of sale of the lots in the various Phases i.e. cash, installment sale, options, and so forth.

(3) Homebuilders. The Developer will work to cause homebuilders to buy lots and build homes in the subdivision.

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(4) Partner Lots. Several of the partners in the Partnership own lots in the subdivision. The Partnership will attempt to cause said partners to build homes on their lots or to offer said lots for sale through the Developer. The Partnership will encourage said partners to use the homebuilders suggested by the Developer to build their houses.

(5) Undeveloped Lots. The Developer will not sell undeveloped lots or parcels in the subdivision unless it has the written consent of the Partnership.

h. Maintenance of Subdivision. The Developer will maintain the subdivision, including the mowing of developed and undeveloped lots, cleaning mud from streets, and removal of trash.

3. Power and Authority of Developer. The following shall be applicable to the power and authority of the Developer:

a. Power of Attorney. It is the intent of this Agreement that the Developer shall have very broad and extensive powers in the development and marketing of the Property, said powers to be as extensive as if the Developer were a general partner in a Nebraska limited partnership and the Partnership were the limited partners in the limited partnership. Accordingly, the Partnership hereby grants the Developer an irrevocable power of attorney, coupled with interest, with respect to the Property which includes all ownership rights as a general partner would have in a limited partnership. Said power of attorney shall include but not be limited to the following:

(1) Sell and Convey Property. The Developer shall have the power and authority to sell, convey, assign, lease, transfer, exchange, or otherwise dispose of or encumber the Property, except Developer shall have no power to convey nor assign those lots presently owned or allocated to Tiburon limited partners, or individuals owning stock in the General Partner, as shown on Exhibit "B".

(2) Borrow Money. The Developer shall have the power and authority to borrow money for purposes of developing the Property and to issue evidence of indebtedness and to secure the same by mortgages, deeds of trust, pledges, or other liens or security interest on portions of the Property.

(3) Enter Into Contracts. The Developer shall have the power and authority to enter into and perform contracts and agreements of any kind necessary and desirable with respect to the development of the Property and in connection with any matters incidental or related thereto.

(4) Take Other Action. The Developer shall have the power and authority to take such action and execute such

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documents as may be required or desirable in connection with any mortgage, note, bond, indemnity, security agreement, escrow or bank letter of credit which may be required in the development of the Property or in connection with the financing or refinancing of the Property.

(5) Reserves. The Developer shall have the power to establish reasonable reserve funds in amounts not to exceed \$20,000 from revenues derived from sales of portions of the Property to provide payments of future obligations relating to the development and marketing of the Property.

(6) All Other Necessary and Appropriate Acts. The Developer shall have the power and authority to take all acts which it deems necessary and appropriate for the protection and preservation of the Property.

(7) Insurance. The Partnership shall maintain at its expense appropriate public liability insurance providing coverage for the development of the Property and naming Developer as an additional insured, in amounts agreeable to the Developer. Partnership agrees to furnish Developer a copy of such policy within thirty days of execution of this Agreement.

(8) Lawsuits and Claims. The Developer shall have the power and authority to compromise, settle, or submit to arbitration, and to institute, prosecute and defend any and all actions or claims in favor of or against the Partnership or relating to the development of the Property and the sale of lots or parcels.

b. Term of Power of Attorney. The full power and authority in the above Power of Attorney shall continue until terminated as provided in Paragraph 10 of this Agreement.

4. Compensation of the Developer. The Developer, or its parent, N.P. Dodge Company, shall be paid the following fees for their services:

a. Marketing Fee. A marketing fee of 8% of the gross selling price of each lot or parcel in the Property sold shall be paid to N. P. Dodge Company, payable on closing in the event of a cash sale, but, in the event the sale is on terms, one-half of said fees shall be paid at the closing and the balance shall be paid when the final payment for said lot or parcel is paid.

b. Development Fee. A development fee of 8% of the gross selling price of each lot or parcel in the subdivision shall be paid to the Developer on closing.

c. Lots Owned By Partners. The Partnership shall not be obligated for the payment of marketing fees or development

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fees on lots or parcels of the Property as shown in Exhibit "B" attached hereto owned by the partners in the Partnership on the date this Agreement is executed. However, if any of the lots or parcels owned by the partners are to be sold, the Partnership agrees to encourage the partners to sell said lots or parcels through the Developer and pay the marketing fee as shown above.

5. Release From Deeds of Trust. The Partnership owes loans which are secured by deeds of trust or mortgages on the lots and parcels in the Property. The Partnership agrees to provide a release of said deeds of trust or mortgages to the Developer for each Phase of the subdivision within ten calendar days after an SID financing commitment is issued for said phase.

6. Exclusion of Golf Facility from SID. At the time of the execution of this Agreement there is a developed 18-hole Golf Course with club house and maintenance building (herein collectively referred to as the "Golf Facility") in SID No. 32. The Partnership prefers that the Golf Facility not be a part of the New SID. In seeking an SID financial commitment, the Developer agrees to negotiate for the exclusion or the de-annexation of the Golf Facility from the New SID. It is acknowledged that the fiscal agent may require the Partnership to pay an annual fee to the SID in lieu of taxes for a period of years if the Golf Facility is excluded or de-annexed from the SID. Immediately south of the New SID there is property covered by SID No. 153 of Sarpy County, Nebraska, which will be developed at a subsequent time. It is the intention of the parties that the New SID will allow SID No. 153 to connect its sewer and water facilities at a later date for a reasonable fee, or such fee as agreed upon between the New SID and SID No. 153 in connection with the conveyance of certain real estate by SID No. 153 to the New SID.

7. Easements. In the event easements have not already been granted for public improvements of the New SID, the Partnership agrees to provide easements in the future for all such public improvements to be installed in the subdivision.

8. Title Insurance. Within twenty (20) calendar days after this Agreement is fully executed, the Partnership at its cost shall secure an updated title insurance policy from American Land Title Company (also known as ATI). The Partnership shall furnish Developer copies of the updated policy, and the policy obtained by the Partnership upon its acquisition of the Property in June of 1988 which shall show all the title holders to each lot and parcel in the Property, all mortgage holders, all easements, all covenants, and all encumbrances of every kind and description.

9. Termination. This Agreement and the Power of Attorney outlined herein shall terminate on the first to occur of the following:

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a. Termination Because Of A Date Certain. This Agreement shall terminate on the 15th day of April, 2002, unless extended by the Partnership and the Developer.

b. Termination Because of Lack of Performance. The parties acknowledge it may be several months before all of the public improvements in Phase I are installed and the sewer treatment plan or water plant are completed and operational and before substantial momentum in the sale of lots and the building of houses is established. This Agreement may be terminated at the option of the Partnership on a date two years after the date this Agreement was fully executed if less than 40 lots in the Partnership have been sold by such date. If the Partnership elects its option to terminate this Agreement, it shall notify the Developer and record the written notice of termination in the Register of Deed's office of Sarpy County, Nebraska, against the Property within 30 calendar days after the expiration of the two-year period. Said notice of termination shall be effective on a date 60 calendar days after it is recorded in the Register of Deed's office of Sarpy County, Nebraska. In the event of a termination the Partnership shall honor all obligations and contracts incurred during the term of this Agreement.

c. Termination Because Of Failure To Secure Financial Commitment. Either party may terminate this Agreement in the event the Developer is unable to secure the financial commitment set forth in Paragraph 2 a. within 180 days of the execution of this Agreement with respect to Phase I.

10. Binding Effect. This Agreement shall be binding upon the parties, their successors and assigns.

Dated the date above written.

DEVELOPER

Dodge Land Co., a Nebraska Corporation

By: W. L. Morrison, Jr.  
W. L. Morrison, Jr.

PARTNERSHIP:

Tiburon Limited Partnership,  
a Nebraska limited partnership

BY: Drella, Inc., a Nebraska corporation, its sole general partner



98-003014

EXHIBIT "A"

Lots And Parcels Covered By Agreement

The Property covered by this Agreement is Lots 1 thru 402, inclusive, and Lots A, B, and C of Tiburon, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska, except Lots A, B and C (which includes the 18-hole golf course, clubhouse and maintenance building), Fairway Townhomes d/b/a Tiburon Townhomes - Lots 1-55, Lot 399 (multi-family), Lots 397, park, and 398, school, only if used for park and/or school, and Lots 400, 401 and 402 (commercial).

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183 lots

96.50 - lots

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