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Lloyd J. Dowding
REGISTER OF DEEDS

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LLOYD J. DOWDING

SARPY COUNTY REGISTER OF DEEDS
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64942

A

DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR TIBURON

THIS DECLARATION, made on the date hereinafter set forth by Tiburon Limited Partnership, a Nebraska Limited Partnership, hereinafter referred to as the "Declarant".

WITNESSETH:

WHEREAS, on August 11, 2003, a set of Covenants were filed in the office of the Register of Deeds of Sarpy County, Nebraska as Instrument Number 2003 44764 which purportedly covered the following described property in Sarpy County, Nebraska:

Lots 107 through 159, inclusive. Tiburon, a Sub-division in Sarpy County, Nebraska, as surveyed, platted, and recorded

WHEREAS, said Covenants were invalid because they were signed by Cobblestone Homes, Inc., a Nebraska Sub-S Corporation, which represented that it was the owner of the lots supposedly covered by the Covenants,

WHEREAS, said Cobblestone Homes, Inc. only had an option to purchase the lots covered by the Covenants and the true owner of the lots covered by the Covenants was the Tiburon Limited Partnership, a Nebraska Limited Partnership,

WHEREAS, the Tiburon Limited Partnership, as the true owner of the lots to be covered by these Covenants, wishes to correct said error by signing the following Corrected Declaration of Covenants, Conditions and Restrictions for Tiburon, and

WHEREAS, The Declarant, Tiburon Limited Partnership, is the Owner of the following described real property:

Lots 107 through 159, inclusive. Tiburon, a Sub-division in Sarpy County, Nebraska, as surveyed, platted, and recorded.

All of the above-described property has been zoned "RS-100" and, therefore, is available for single family detached homes.

NOW THEREFORE, Declarant hereby declares that all of the properties described shall be held and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run 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, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. "Board" shall mean and refer to the Board of Directors elected by a majority vote of the members of the Association, its successors and assigns.

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Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title or to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security of the performance of an obligation.

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as many hereafter be brought within the jurisdiction of the Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 5. "Declarant" shall mean and refer to Tiburon Limited Partnership, a Nebraska Limited Partnership, its successors, assigns and legal representatives.

Section 6. "Architectural Control Committee" shall mean the individual or committee appointed by the Declarant.

ARTICLE II

Section 1. Architectural Control.

- (1) Before the construction of the original structure on each Lot, no building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by an architectural committee, hereinafter referred to as "Committee" composed of one (1) or more representatives appointed by the Declarant. In the event the Committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.
- (2) After the construction of the original structure on each Lot, no building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Committee.
- (3) 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 improvements may be required of the applicant at the discretion of Committee. Submittals for approval shall be made in duplicate and the comments and actions of the 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 Committee the following documents and/or drawings:
 - (a) Site plan indicating specific improvement and indicating Lot number, street address, grading, surface drainage and sidewalks; and

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- (b) 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.

Section 2. Restrictions for Residential Units.

- (1) Residences built on Lots shall comply with the following minimum size requirements:
 - (a) Each one story residence shall contain no less than 1,400 square feet of living area above the basement level and exclusive of garage area except Lots 107, 125, 126 and 157. These lots shall contain no less than 1600 square feet of living area above the basement level; and
 - (b) Each one and one-half of two story residence shall contain no less than 1,800 square feet of total living area above the basement level with a minimum of 1,000 square feet on the main level, exclusive of garage area.
- (2) Other residence styles not described above in this Section will be permitted only if approved by the Committee and shall not be approved unless they are compatible with other residences to be built on the Property in the opinion of the Committee in its sole and absolute discretion.
- (3) All residences shall, as a minimum, have attached, enclosed, side-by-side, two car garages which must contain minimum area of 400 square feet built at appropriately the main level of the residence. Other or additional garages may be permitted at the discretion of the Committee.
- (4) For the purposes of these restrictions, two story heights shall, when the basement wall 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). Living 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.
- (5) All buildings shall be located at least twenty-five feet (25') from the front Lot line, and a minimum of twenty-five feet from the rear property line. All buildings shall have at least eight foot (8') side yards. On corner Lots, either street side may be designated by the owner/builder as the front, and either non-street side as the rear. The minimum setback requirement for the non-front street exposure is fifteen feet (15') from the property line. For the purposes of this restriction, eaves, open patios, steps shall not be considered part of the building. The above provisions parallel the present zoning requirements of Sarpy County for the Lots. To the extent that the zoning requirements for Lot or Lots are subsequently changed by Sarpy County to be less restrictive than the present requirements, or in the event a waiver or variance of some of the requirements for Lot or Lots is granted by the appropriate authority, the Committee shall have the right and authority, but not the obligation, to grant in whole or in part the relaxation of requirements allowed by the zoning changes, waiver or variance, all in the sole and absolute discretion of the Committee.

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- (6) 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 covered with clay-fired brick or stone. Exposed portions of the foundation on the sides, or rear, not facing a street of a dwelling on the sides and rear of every other dwelling shall be covered with clay-fired brick, stone, siding or shall be painted.. Fifty percent (50%) brick or stone does not include any door, window or garage door areas.
- (7) No structure of a temporary character, trailer, basement, tent, shack, barn or other out building shall be erected on any of said Lots, 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 dwelling oblong houses shall be constructed or erected on any of said Lots. No dwelling shall be moved from outside of the Properties onto any of said Lots.
- (8) No flat or mansard roof shall be permitted on any dwelling. All dwellings shall be roofed with Heritage 30 weather wood color roofing, except Lots 107, 125, 126, and 159 shall be wood shake roof.
- (9) 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 Sarpy County and any revisions thereof. The maintenance of said sidewalks, after construction, shall be the responsibility of the Owners of each of the Lots.
- (10) 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.

ARTICLE III

GENERAL RESTRICTIONS

Section 1. Awnings. No awnings or sun screens of any type shall be affixed to any building or structure within the properties without the written consent of the Board.

Section 2. Buildings or Uses Other Than for Residential Purposes. No building or structure of any sort may ever be placed, erected or used for business, professions, trade or commercial purposes on any of the property within the Properties. Provided, however, the prohibition shall not apply:

- (a) To any building or structure that is to be used exclusively by a public utility company in connection with the furnishing of public utility services to the Properties; or
- (b) To any portion of a building used by Declarant, its licensees or assigns, for a manager's office, or by the Association for its offices.

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Section 3. Fences, etc. No fences or enclosures of any type or nature whatsoever shall ever be constructed, erected, placed or maintained on or about any building site within the Properties, except metal, PVC or wood fences approved by the Committee in writing. No truck, trailer, boat, motor home, camper equipment or machinery or cars not in daily use shall ever be parked, located or otherwise maintained on any Properties. Automobiles shall be parked only in designated parking areas as published by the Association in its Rules and Regulations. No external television or radio antenna or satellite dish shall hereafter be erected on or about any of the building sites or property within the Properties. No clothesline or clothes hangers shall be permitted outside of any dwelling at any time. Any exterior air conditioning condenser units or heat pump units shall be placed in the designated side or rear yard of the dwelling. Detached accessory buildings are not permitted.

Section 4. Livestock and Poultry Prohibited. No animals, livestock or poultry of any kind shall be raised or kept on any building site in the Properties other than household pets, which shall be limited to two (2) per household. All pets shall be leashed when outside of the home and patio areas and provision made that they are kept confined to the Lot of their Owner and are not permitted to run loose outside the Lot of the Owner. No such pet will be kept, bred, or maintained for commercial purposes.

Section 5. Noxious Activity. No noxious or offensive activity shall be carried on the Properties, nor shall any trash, ashes or other refuse be thrown, placed, dumped upon any vacant building site, nor shall anything ever be done which may be, or may become, an annoyance or nuisance to the neighborhood.

Section 6. Billboards Prohibited. No sign, billboard or other structure for advertising or the display of advertising material of any kind shall be erected, altered, placed or permitted to remain on any lot except that real estate "For Sale" or "For Rent" signs shall be permitted temporarily in the yards of dwellings which are being offered for sale or rent or other builder promotional signs.

Section 7. Outbuildings Prohibited. No outbuildings or other attached or unattached structures appurtenant to a residence may be erected on any of the building sites hereby restricted.

Section 8. Temporary Structure. No trailer, basement, tent, shack, trailer, garage, barn or other outbuilding, whether any time as a residence. PROVIDED, however, nothing contained herein shall restrict Declarant or its assigns for locating, constructing or moving a temporary real estate and/or construction office on any building site in the Properties to be used during the period of the construction and sale of the Properties. Declarant or its assigns may also erect and maintain model homes for sales purposes and rental and lease purposes and may operate such office and offices therein for so long as they deem necessary for the purposes of selling, renting or leasing the Properties.

Section 9. All garage doors must remain closed at all times except when cars are entering or exiting from the garage space. No garbage cans or trash receptacles are to be permitted outside unless fully screened from view in a manner approved in writing by the Association. Private barbecue grills will be subject to regulation, restriction or exclusion by the Association. 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. Automobile parking will be subject to regulation and restriction by the Association.

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Section 10. No automobile, motor home, camper or vehicle repair will be permitted outside of garages on any Lot at any time. No automobiles in a state of disrepair shall be kept on the premises of any Lot or be permitted to park on the streets for a period in excess of three (3) days.

Section 11. Except for the purpose of controlling erosion on vacant Lots, no field crops shall be grown upon any Lot at any time.

Section 12. A dwelling on which construction has begun must be completed within one (1) year from the date the foundation was dug for said dwelling.

Section 13. 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, rock gardens must be approved by the Committee.

Section 14. 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 Committee.

Section 15. All driveways shall be constructed of concrete or brick.

Section 16. The front, side and rear yards of all Lots shall be sodded, and one (1) tree, each not less than one (1) caliper inch 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 that construction for the residence on the Lot was initiated.

ARTICLE IV

EASEMENTS AND LICENSES

Section 1. A perpetual license and easement is hereby reserved in favor of and granted to Qwest Telephone Company 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 service on, over, through, under and across a five foot (5') wide strip of land abutting all front and side boundary Lot lines, and an eight foot (8') wide strip of land adjoining the rear boundary lines of all Lots. Said licenses being granted for the use and benefit of all present and future owners of said Lots; PROVIDED, however, that said easements are granted upon the specific condition that if both said utility companies fail to construct wires or conduits along any of the said Lot lines within thirty-six (36) months of the date hereof, or if any wires or conduits are constructed but hereafter removed without being replaced within sixty (60) days after their removal, then this easement shall automatically terminate and become void as to such unused or abandoned easement ways. No permanent buildings shall be placed on perpetual easement ways, but the same may be used for garden shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

Section 2. All telephone and electric power service lines from property line to dwelling shall be underground.

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ARTICLE V

GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, 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. 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.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenant and restrictions of this Declaration shall run with and bind the land, for a term of four (4) years from the date of this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of Lot Owners. Any amendment must be recorded with the Register of Deeds in and for Sarpy County, Nebraska. Declarant can change anything within the first five (5) years.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed on this 10 day of October 2003

DECLARANT:

TIBURON LIMITED PARTNERSHIP
a Nebraska Limited Partnership

BY: DRELLA, INC., a Nebraska
Corporation, General Partner

By: Eric B. Waddington
Eric B. Waddington, President

STATE OF NEBRASKA)
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 10 day of October 2003 by Eric B. Waddington, President, Drella, Inc.

Sandra S. Smith
Notary Public

