



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.

2003-64942G

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. Invalidity 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:

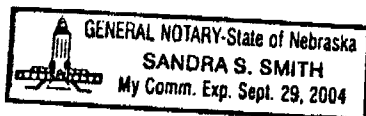
TIBURON LIMITED PARTNERSHIP  
a Nebraska Limited Partnership

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.



[Signature]  
Notary Public



George J. Bowring  
REGISTER OF DEEDS

ah ah  
COUNTED \_\_\_\_\_ D.E. \_\_\_\_\_  
VERIFY \_\_\_\_\_ D.E. \_\_\_\_\_  
PROOF \_\_\_\_\_ P  
FEES \$ 88.50  
CHECK # 2475  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_

**THIS PAGE ADDED  
FOR RECORDING  
INFORMATION.**

**DOCUMENT STARTS ON  
NEXT PAGE.**

# LLOYD J. DOWDING

**SARPY COUNTY REGISTER OF DEEDS**  
**Steven J. Stastny, Deputy**  
**1210 GOLDEN GATE DRIVE, STE 1109**  
**PAPILLION, NE 68046-2895**  
**402-593-5773**

pdk  
 Jeff Mccaul  
 11805 Quail Dr.  
 Bellevue, WA 98123

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**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATIONS, made on the date hereinafter set forth by Tiburon Limited Partnership, LLC. A Nebraska Corporation, hereinafter referred to as the "Declarant", and Jeffrey T. McCaul DBA McCaul Contracting, hereinafter collectively referred to as the "Other Property Owner".

**WITNESSETH:**

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

Lots 1, 2, 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, & 17 inclusive, Tiburon Replat VIII, a Sub-division in Sarpy County, Nebraska, as surveyed, platted and recorded.

WHEREAS, The Other Property Owner is the owner of the following described real property:

Lots 8, 9, 10 and 11 in Tiburon Replat VIII, a Sub-division in Sarpy County, Nebraska, as surveyed, platted and recorded.

All of the above-described property has been zoned "R-2" and, therefore, is available for single family attached homes and single family detached homes.

NOW THEREFORE, Declarant and the Other Property Owner hereby declare that all of the properties described above shall be held, sold 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 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.

Declarant has heretofore caused the organization of Tiburon West Property Owners Association, Inc, which is a non-profit corporation organized under the laws of the State of Nebraska, formed for the purpose of providing for maintenance, preservation and architectural control of the dwelling amenities and common area within the above described property.

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## ARTICLE I

### DEFINITIONS

Section 1. "Association" shall mean and refer to Tiburon West Property Owners Association, Inc, its successors and assigns.

Section 2. "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.

Section 3. "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 of the performance of an obligation.

Section 4. "Properties" shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Dedicated in Tiburon West, a subdivision in Sarpy County, Nebraska, surveyed platted and recorded.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 6. "Declarant" shall mean and refer to Tiburon Limited Partnership, its successors, assigns and legal representatives.

Section 7. "Other Property Owner" shall mean and refer to the current owner of Lots 8, 9, 10 & 11 Tiburon Replat VIII, namely, Jeffrey T. McCaul, DBA McCaul Contracting.

Section 8. "Architectural Control Committee" shall mean the individual or committee appointed by the Declarant, its successors or assigns.

Section 9. "Improved Lot" shall mean and refer to any lot on the properties upon which shall be erected a dwelling, the construction of which shall be at least 80% complete, according to the plans and specification for the construction of said dwelling. All other lots, which shall be vacant or upon which shall be erected a dwelling, the construction of which shall be less than 80% complete, according to the plans and specifications for construction of said dwelling, shall be defined as "Unimproved Lots".

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## HOMEOWNERS ASSOCIATION

### Section 1. Membership and Voting Rights

- (1) Every Owner of a 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 Lot which is subject to assessment.
- (2) The Association shall have two (2) classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. Class B member(s) shall be the Declarant or its written assigns and shall be entitled to two (2) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership exceed the total votes outstanding in the Class B membership.

### Section 2. Covenants for Maintenance and Assessments.

(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 Lot by acceptance of a deed therefore, whether or not it shall be so expresses in such deed, is deemed to covenant and agree to pay to the Association:

- (a) Annual assessments or charge; and
- (b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest costs, and reasonable attorney fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

- (2) Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the maintenance, recreation, health, safety, and welfare of the residents in the Properties.

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- (3) Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall initially be determined by the Declarant.
- (a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased by not more than the greater of either: (I) five percent (5%); or (II) the percentage rise in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding October over the prior year's October without a vote of the membership. By such percentage as may be agreed upon by a vote of at least 66%.
- (b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased above said percentage (Paragraph (a) above) by a vote of two-thirds (2/3) of each class of members who are voting or 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.
- (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.
- (5) Uniform Rate of Assessment. Both annual and special assessments, with respect to all improved Lots, shall be uniform in amount. Said assessments may be collected on a monthly basis.
- (6) Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots the first day of each month following the conveyance of Lot to the original homeowner. Lots owned by declarant and/or McCaul Contracting shall not

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be subject to any assessments. 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. 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 a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

- (7) Effect of Non-Payment 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 rate of twelve percent (12%) per annum. 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 any reason or abandonment of his Lot.
- (8) Subordination of the Lien to Mortgages. 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 Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due or from the lien thereof.
- (9) Insurance. The Association shall not provide any property or liability insurance. Each Owner, including the Declarant, shall individually procure and maintain insurance on such Owner's Lot(s), improvements thereto and on the contents, decorations, furnishings and personal property therein.

### Section 3. Exterior maintenance.

The Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: snow removal, lawn service and west lot line fence maintenance and other exterior improvements that the Board from time to time determine to be appropriate.

In the event that the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of the family, guests, or invitees of the Owner of the Lot needing such maintenance

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or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject.

#### ARTICLE IV

##### 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 addition 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 the Board of Directors of the Association, hereinafter referred to as the "Board of Directors of the Association, hereinafter referred to as "Committee" composed of three (3) or more representatives appointed by the Board. In the event the Board, or 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 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 the Board and/or 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 the Board and/or Committee. Each applicant shall submit to the Board and/or Committee the following documents, materials 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 on 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 Villa Residence shall contain no less than 1,400 square feet of living area above the basement level and exclusive of garage area;
  - b) Each attached Town Home shall contain no less than 1,200 sq ft of total living area above basement and exclusive of garage.
- (2) Other residence styles not described above in this Section, will be permitted only if approved by the Board and/or Committee and shall not be approved unless they are compatible with other residences to be built on the Property in the opinion of the Board and/or 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 a minimum area of 400 square feet built at approximately the main level of the residence. Other or additional garages may be permitted at the discretion of the Board and/or Committee.
- (4) For the purposes of these restrictions, two-story height 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 feet (20') from the Lot line, and a minimum of Fifteen feet from the rear property line. All buildings shall have at least five foot (5') 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



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setback requirement for the non-front street exposure is fifteen feet (15') from the property line. For purposes of this restriction, eaves, open patios, and steps shall not be considered part of the building. The above provisions parallel the present zoning requirements of the City of Gretna for the Lots. In the extent that the zoning requirements for a Lot or Lots are subsequently changed by The City of Gretna to be less restrictive than the present requirements, or in the event a waiver or variance of some of the requirements for a Lot or Lots is granted by the appropriate authority, the Board and/or 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 Board and/or Committee.

- (6) Exposed portions of the foundation on the front of each dwelling are to be covered with clay-fired brick or stone. Exposed portions of the foundation on the sides or rear shall be painted.
- (7) In the event that a fireplace is constructed as a part of the dwelling, said fireplace and/or enclosure for the fireplace flue shall be constructed of or finished with, clay-fired brick or stone. In the event that a fireplace is constructed as a part of the dwelling in a manner so as to protrude beyond the outer perimeter of the front or side of the dwelling, or is exposed above the roof, the enclosure of the fireplace and flue shall be constructed in such a manner so as to protrude beyond the outer perimeter of the rear of the dwelling, the enclosure of the fireplace and flue shall be constructed of, or finished with, the same material as is the dwelling at the point from which the fireplace and/or flue protrudes or shall be constructed of, or finished with, clay-fired brick or stone. No furnace flue may protrude more than four feet (4) 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 or side of the roof ridge.
- (8) No fence(s) may be built forward of the rear-most wall at each side (corner) of the rear of the dwelling. Fences shall be constructed only of vinyl, decorative iron, brick or stone and are subject to the approval of the Board and/or Committee. Temporary or permanent barbed wire, electrified, wood and/or snow fences are strictly prohibited. Privacy fences for patio(s) and or deck may be approved by the committee. Such plans to be submitted to a control committee.
- (9) 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 or log 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.

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- (10) No flat or mansard roof shall be permitted on any dwelling. All dwellings shall be roofed with roofing materials which have the approval of the Board and/or Committee in its sole and absolute discretion.
- (11) 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 the governing public domain and any revisions thereof. The maintenance of said sidewalks, after construction, shall be the responsibility of the Owners of each of the Lots.
- (12) 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 V 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. Building 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 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 a sales office, or by the Association, for its offices.

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 such fences or enclosures as may be authorized by Article IV, Section 2 (8) of this Declaration or as may be authorized by the Board and/or Committee. No truck, trailer, boat, motor home, camper equipment or machinery or cars not in daily use 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 Regulation. No external television or radio antenna or

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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. Builder or agent for builder signs shall be permitted.

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, garage, barn or other outbuilding, whether any time as a residence. PROVIDED, however, nothing contained herein shall restrict Declarant or its assigns from 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 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 except when occupant present. 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 except water hose and reel. Automobile parking will be subject to regulation and restriction by the Association.

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Section 10. No automobile 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 approved by the Board and/or 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 Board and/or 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 first year 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.

Section 17. The original home owner of lot 1, 16 or 17 with written approval of the Committee may be excluded from Tiburon West property Owners Association, Inc - once excluded may never become part thereof.

## ARTICLE VII EASEMENTS

### AND LICENSES

Section 1. A perpetual license and easement is hereby reserved in favor of and granted to the US West Telephone Company and to Omaha Power District, 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 for all telephone and telegraph and message

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service on, over, through, under and across a sixteen foot (16') wide strip of land adjoining the rear boundary Lot lines, and a five foot (5') wide strip of land adjoining the side 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 wire 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 easementways. No permanent buildings shall be placed on perpetual easementways, 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 lines from property line to dwelling shall be underground.

## ARTICLE VIII

### 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. Failure by the Association 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. Invalidity of any one of these covenants or restriction by judgement or court order shall in no way effect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restriction of this Declaration shall run with and bind the land, for a term of (20)-years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods by an instrument signed by not less than sixty percent (60%) of the Lot Owners, and thereafter by an instrument signed by no less than (60%) of the Lot Owners. Any amendment must be recorded with the Register of Deeds in and for Sarpy County, Nebraska.

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Section 4. FHA/VA APPROVAL. As long as there is a Class B membership, the following actions will require approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration.

IN WITNESS WHEREOF, the Declarant and Other Property Owners have caused these presents to be executed on the date(s) shown.

DECLARANT:

TIBURON LIMITED PARTNERSHIP  
a Nebraska Limited Partnership

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

Date: Aug 9, 2007

By: 

Eric B. Waddington, President

OTHER PROPERTY OWNERS:

Owners of Lots 8, 9, 10 and 11  
Tiburon Replat VIII, a Subdivision  
Sarpy County, Nebraska

Owner: Jeffrey T. McCaul  
D.B.A. McCaul Contracting

Date: 8-14-07

By: 

Jeffrey T. McCaul

Date: Aug 9, 2007

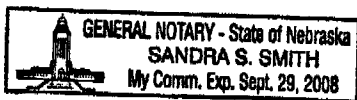
By: 

Brenda J. McCaul

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STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this 9 day of  
August, 2007, by ERIC B. WALKINGTON



Sandra S. Smith  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Sarpy )

The foregoing instrument was acknowledged before me this 14 day of  
August, 2007, by JT McCaul

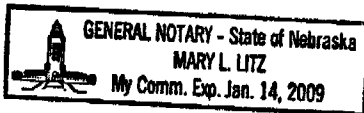
Janette Hughes  
Notary Public



2007-258470

STATE OF NEBRASKA )  
COUNTY OF Saspy ) SS.

The forgoing instrument was acknowledged before me this 9 day of  
August, 2007, by Brenda J. McCaul



Mary L. Litz  
Notary Public