

Counter SM
Verify AK
D.E. AD
Proof SW
Fee \$ 83.50
ok ☒ Cash ☐ Chg ☐
1133

**THIS PAGE ADDED
FOR RECORDING
INFORMATION.**

**DOCUMENT STARTS ON
NEXT PAGE.**

LLOYD J. DOWDING

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

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATIONS, made on the date hereinafter set forth, by Fairway Homes, Inc., a Nebraska Corporation, hereinafter referred to as the "Declarant", and Kent and Linda Boettger, husband and wife, hereinafter collectively referred to as the "Other Property Owners".

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, 8, 9, 10, 11, 12, 13, 14, 15, and 16, inclusive, Tiburon View II, a Sub-division in Sarpy County, Nebraska, as surveyed, platted and recorded.

WHEREAS, The Other Property Owners are the owners of the following described real property:

Lot 17 in Tiburon View II, a Sub-division in Sarpy County, Nebraska, as surveyed, platted and recorded.

All of the above-described property has been zoned "RS-72PD" and, therefore, is available for single family detached homes.

NOW THEREFORE, Declarant and the Other Property Owners 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, 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.

Declarant has heretofore caused the organization of Tiburon View II 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.

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to Tiburon View II 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.

Section 5. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Dedicated in Tiburon View II, a subdivision in Sarpy County,
Nebraska, as surveyed platted and recorded.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 7. "Lots Adjoining Golf Course" shall mean and refer to all Lots, as defined above, for which one or more of the Lot boundary lines is shared with any boundary line of the golf course.

Section 8. "Declarant" shall mean and refer to Fairway Homes, Inc., its successors, assigns and legal representatives.

Section 9. "Other Property Owners" shall mean and refer to the current owners of Lot 17 of Tiburon View II, namely Kent and Linda Boettger, husband and wife.

Section 9. "Architectural Control Committee" shall mean the individual or committee appointed by the Declarant, its successors or assigns.

Section 10. "Improved Lot" shall mean and refer to any lot on the properties exclusive of the Common Area 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, exclusive of the Common Area, 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".

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association to suspend the voting rights and right to use any recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid: and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the by-laws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

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. The Class B member(s) shall be the Declarant and shall be entitled to four (4) 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 therefor, whether or not it shall be so expressed 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 recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and recreational facilities.

(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.
- (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 by person 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) Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto: PROVIDED THAT, any such assessment shall have the assent of two-thirds (2/3) of the voters of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

(5) Notice and Quorum for Any Action Authorized; Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 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.

(6) 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.

(7) Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of each month following the conveyance of the Common Area. 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 on 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.

(8) 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 herein by non-use of the Common Area or abandonment of his Lot.

(9) 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.

(10) 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.

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, weeds, mowing, erosion control, snow removal, grass, walks, streets, 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 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" or by an architectural committee, 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. Submittals for approval shall be made in duplicate and the comments and actions of the Board and/or 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 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
- 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 1,200 square feet of living area above the basement level and exclusive of garage area;
- b) Each one and one-half or two story residence shall contain no less than 1,500 square feet of total living area above the basement level with a minimum of 1,200 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 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 front Lot line, and a minimum of Fifteen feet (15') from the rear property line. All buildings shall have at least five foot (5') sideyards. 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 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 Sarpy County for the Lots. In the extent that the zoning requirements for a 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 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 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.

(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 of clay-fired brick or stone. If the fireplace and/or enclosure for the fireplace flue is 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 side of the roof ridge within four feet (4) 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 or within thirty-five feet (35') of a lot line which adjoins the golf course. 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 barded wire, electrified, wood and/or snow fences are strictly prohibited.

(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.

(10) No flat or mansard roof shall be permitted on any dwelling. All dwellings shall be roofed with wood shakes, wood shingles, or other 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 City of Omaha 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

STAGED DEVELOPMENTS

Additional land adjacent to Tiburon View II, a Subdivision in Sarpy County, Nebraska, may be developed by the Declarant. A new and separate homeowners association will be created for the purpose of providing for maintenance, preservation and architectural control of the dwelling amenities and common area of the future development. Upon a vote of a majority of the members of the Association and a majority of the members of the homeowners association of the future development, the homeowners association may be merged into one association by any legal means necessary. If the members of the Association and the homeowners association of the future development do not vote to merge, they shall remain separate.

ARTICLE VI

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 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 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 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.

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 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 and may operate such office or 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.

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 maintained in the designated rear yard of any Lot, behind the dwelling on said Lot. Further, rock gardens must be 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 two (2) trees, each not less than two (2) caliper inches 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. No rental or leasing of the dwelling and/or property will be permitted.

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 Public 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 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 replace 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 service lines from property line to dwelling shall be underground.

Section 3. A four foot (4') wide strip of common ground shall abut each side of all roads within the subdivision, as surveyed, platted and recorded.

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

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date 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 the Lot Owners. Any amendment must be recorded with the Register of Deeds in and for Sarpy County, Nebraska.

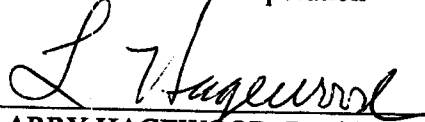
Section 4. FHA/VA APPROVAL. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration.

2002-038401N

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed on this _____ day of _____.

DECLARANT:

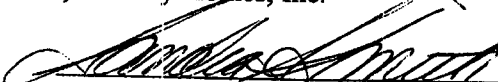
FAIRWAY HOMES, INC.
A Nebraska Sub-S Corporation

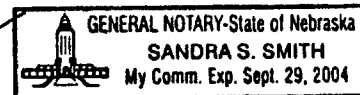

LARRY HAGEWOOD, President,
Fairway Homes, Inc.
Corporation

STATE OF NEBRASKA)

COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 28 day of Jan
by Larry Hagewood, President, Fairway Homes, Inc.

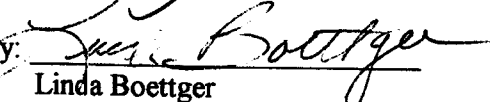

Notary Public



OTHER PROPERTY OWNERS:

Owner of Lot 17

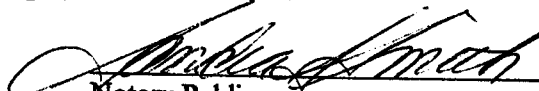
By: 
Kent Boettger

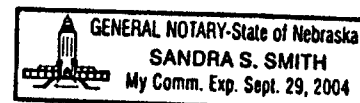
By: 
Linda Boettger

STATE OF NEBRASKA)

COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 28 day of January
by Kent and Linda Boettger, husband and wife.


Notary Public



George J. Downing
REGISTER OF DEEDS

COUNTER LM C.E. a
 VERIFY LM D.E. oo
 PROOF D
 FEES \$ 98.50
 CHECK # 126
 CHC _____ CASH _____
 REFUND _____ CREDIT _____
 SHORT _____ NCR _____

**THIS PAGE ADDED
FOR RECORDING
INFORMATION.**

**DOCUMENT STARTS ON
NEXT PAGE.**

LLOYD J. DOWDING

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

Kent Boeths
Turon View II Property
Owners Association
9745 S. 175th Circle
Ovaka, NE 68136

22091

A

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATIONS, made on the date hereinafter set forth, by Fairway Homes, Inc., a Nebraska Corporation, hereinafter referred to as the "Declarant" and Tiburon View II Home Owners Association, hereafter collectively referred to as the "TVIIHOA."

WITNESSETH

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

Lots 1, 2, 10, and 11 inclusive, Tiburon View II, a sub-division in Sarpy County, Nebraska, as surveyed, platted and recorded.

WHEREAS, The Other Property Owners are the owners of the following described real property:

Lots 3, 4, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17 in Tiburon View II, a sub-division in Sarpy County, Nebraska, as surveyed, platted and recorded.

All of the above-described property has been zoned "RS-72PD" and, therefore, is available for single family detached homes.

NOW THEREFORE, Declarant of the Other property Owners hereby declare ~~that~~ all of the properties described above shall be held, sold and conveyed subject to the following easement, 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 insure to the benefit of each owner thereof.

Declarant has heretofore caused the organization of Tiburon View II 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.

ARTICLE I

DEFINITIONS

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

Section 2. "Board" shall mean and refer to the Board of Directors elected by the majority vote of the members of the Association, its successors and assigns.

B

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 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.

Section 5. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Dedicated in Tiburon View II, a subdivision in Sarpy County, Nebraska, as surveyed platted and recorded.

Section 6. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 7. "Lots Adjoining Golf Course" shall mean and refer to all Lots, as defined above, for which one or more of the Lot boundary lines is shared with any boundary line of the golf course.

Section 8. "Declarant" shall mean and refer to Fairway Homes, Inc., its successors, assigns and legal representatives.

Section 9. "Other Property Owners" shall mean and refer to the current owners of Lots in Tiburon View II, Lot 3, Sharon Wendland, Lot 4, Chris Hasting, Lot 5, Louie and Trudy Warren, Lot 6, John and Glenda Lammel, Lot 7, Bob and Sue Knight, Lot 8, Bill and Patty Sturgeon, Lot 9, Tony and Patty Martinez, Lot 12, Phil and Barb Hough, Lot, 13, Wayne and Lori Kobza, Lot, 14, Bob and Kathy Keasling, Lot 15, Dennis and Gloria Julch, Lot 16, Jim and Mary Mollner, Lot 17, Kent and Linda Boettger.

Section 10. "Architectural Control Committee" shall mean the individual or committee appointed by the Declarant, its successors or assigns.

Section 11. "Improved Lot" shall mean and refer to any lot on the properties exclusive of the Common Area 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, exclusive of the Common Area, 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."

C

ARTICLE II

PROPERTY RIGHTS

Section 1. Owners' Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
- (b) The right of the Association to suspend the voting rights and right to use any recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid: and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and
- (c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the by-laws, his right of enjoyment to the Common Area and facilities to the member of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

HOMEOWNERS ASSOCIATION

Section 1. Membership and voting:

(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.

D

Class B. The Class B member(s) shall be the Declarant and shall be entitled to four (4) 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 thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (a) Annual assessment 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 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 Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and recreational facilities.
- (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 annul 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, with a vote of the membership.
 - (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 person or proxy at a meeting duly called for this purpose.

- E
- (c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.
 - (4) Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an capital improvement upon the Common Area, including fixtures and personal property related thereto: PROVIDE THAT, any such assessment shall have the assent of two-thirds (2/3) if the voters of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.
 - (5) Notice of Quorum for Any Action Authorized: Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 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 member 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.
 - (6) Uniform Rate of Assessment. Both annual and special assessments, with respect to all improved Lots, shall be uniform amount. Said assessments may be collected on a monthly basis.
 - (7) Date of Commencement of Annual Assessment; Dues Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of each month following the conveyance of the Common Area. 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 notices of the annual assessment shall be sent to every Owner subject thereto. The 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 on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot in binding upon the Association as of the date of its issuance.
 - (8) 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 (12%) per annum. The

F

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 herein by non-use of the Common Area or abandonment of is Lot.

- (9) 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 affect the assessment lien. However, the sale of transfer of any lot pursuant to mortgage foreclosure or any proceeding n lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessment thereafter becoming due or from the lien thereof.
- (10) Insurance. The Association shall not provide any property or liability insurance. Other than related to the pond general liability if deemed necessary. 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.

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder, as follows: paint, repair, replacement and care of roofs gutters, downspouts, exterior building surfaces, weeds, mowing, erosion control, snow removal, grass, walks, streets, 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, guest, or invitees of the Owner of the Lot needing such maintenance 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. Architectual Control.

- (1) Before the construction of the original structure on each Lot, no building, fence, wall or other structure shall 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

G

Association, hereinafter referred to as the "Board" or by an architectural committee, 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 of 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 exterior 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. Submittals for approval shall be made in duplicate and the comments and actions of the Board and/or 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 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 improvements and indicating Lot number, street address, grading, surface drainage and sidewalk; and
 - (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 chimney, type and extent of siding, roofing, other faces and/or veneer materials.

Section 2. Restrictions for Residential Units

H

- (1) Residences built on Lots shall comply with the following minimum size requirements:
 - (a) Each one story residence shall contain no less than 1,200 square feet of living area above the basement level and exclusive of garage area;
 - (b) Each one and one-half or two story residence shall contain no less than 1,500 square feet of total living area above the basement level with a minimum of 1,200 square feet on the main level, exclusive of the garage area.
- (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 garage which must contain a minimum 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 purpose of these restrictions, two-story height shall, when the basement wall is exposed above finished 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 front Lot line, and a minimum of Fifteen feet (15') from the rear property line. All buildings shall have at least five feet (5') sideyards. 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 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 Sarpy County for the Lots. In the event that the zoning requirements for a Lot of 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 a Lot or Lots is granted by the appropriate authority, the Board and/or Committee shall have the right and authority, but no the obligation, to grant in whole or in part the relaxation of requirements allowed by the zoning changes, waivers 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 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.
- (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 a finished with, clay-fire 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 of clay-brick or stone. If the fireplace and /or enclosure for the fireplace flue is 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 materials as is the dwelling at the point from which the fireplace an/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 form 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 side of he roof ridge within four feet (4) of the roof ridge.
- (8) No fence(s) may be built forward of the rear-most wall on each side (corner) of the rear of the dwelling or within thirty-five feet (35') of a lot line which adjoins the golf course. 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 bared wire, electrified, wood and /or snow fences are strictly prohibited.
- (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

J

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 house 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.

- (10) No flat or mansard roof shall be permitted on any dwelling. All dwellings shall be roofed with wood shakes, wood shingles, or other 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 City of Omaha 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 from 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

STAGED DEVELOPMENTS

Additional land adjacent to Tiburon View II, a subdivision in Sarpy County, Nebraska, may be developed by the Declarant. A new and separate homeowners association will be created for the purpose of providing for maintenance, preservation and architectural control of the dwelling amenities and common area of the future development. Upon a vote of a majority of the members of the Association and a majority of the members of the homeowners association of the future development, the homeowners association may be merged into one association by any legal means necessary. If the members of the Association and the homeowners association of the future development do not vote to merge, they shall remain separate.

K

ARTICLE VI

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 Properties. Provided, however, the prohibition shall not apply:

- (a) To any building or structure that is used to be 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 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 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 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 homes 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.

L

Section 6. Billboards Prohibited. No sign, billboard or other structure for advertising or the display or 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.

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 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 and may operate such office or offices therein for so long as they deem necessary for the purpose of selling, renting or leasing the Properties.

Section 9. All garage doors must remain closed at all times except when car(s) are entering or exiting from garage space or when an individual is present or property maintenance is being performed. No garbage or trash receptacles are to be permitted outside unless fully screened from view in a manner approved by the Association. Private barbecue grills will be subject to regulations, restrictions 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.

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 on 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 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.

M

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 two (2) trees, each not less than two (2) caliper 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. No rental or leasing of the dwelling and/or property will be permitted.

ARTICLE VII

EASEMENT 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 Public Power District, their successors and assigns, to erect and operate, maintain, repair, and renew cables, conduits, and other instrumentalities, and to extend wire for 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 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 interface 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.

Section 3. A four foot (4') wide strip of common ground shall abut each side of all roads within the subdivision, as surveyed, platted and recorded.

ARTICLE VIII

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the rights 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

N

by the Association or 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 shall in no wise effect any other provisions which shall remain in full force and effect.

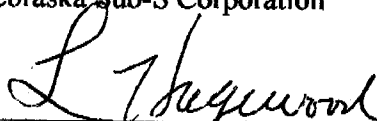
Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be 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 (75%) of the Lot Owners. Any amendment must be recorded with the Register of Deeds and for Sarpy County, Nebraska.

Section 4. FHA/VA APPROVAL. As long as there is a Class B membership, the following actions will require the prior 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 undersigned, being the Declarant herein, has caused this instrument to be executed on this 28th day of JUNE 2006.

DECLARANT:

FAIRWAY HOMES, INC.
A Nebraska Sub-S Corporation



LARRY HAGEWOOD, President
Fairway Homes, Inc.
Corporation

STATE OF NEBRASKA)

COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 28th day of June, by Larry Hagewood, President, Fairway Homes, Inc.
2006

0

Sandra K. Leedom
Notary Public



OTHER PROPERTY OWNERS:

Owner of Lot 17

By: Kent Boettger
Kent Boettger

By: Linda Boettger
Linda Boettger

Owner of Lot 16

By: Jim Mollner
Jim Mollner

By: Mary Mollner
Mary Mollner

Owner of Lot 15

By: Dennis Julch
Dennis Julch

By: Gloria Julch
Gloria Julch

Owner of Lot 14

By: Robert O. Keasling
Bob Keasling

By: Kathy Keasling
Kathy Keasling

P

Owner of Lot 13

By: Wayne Kobza
Wayne Kobza

By: Lori Kobza
Lori Kobza

Owner of Lot 12

By: Phil Hough
Phil Hough

By: Barb Hough
Barb Hough

Owner of Lot 9

By: Tony Martinez
Tony Martinez

By: Patty Martinez
Patty Martinez

Owner of Lot 8

By: Bill Sturgeon
Bill Sturgeon

By: Patty Sturgeon
Patty Sturgeon

Owner of Lot 7

By: Bob Knight
Bob Knight

By: Susie Knight
Susie Knight

2006-22091 Q

Owner of Lot 6

By: John A Lammel
John Lammel

By: Glenda Lammel
Glenda Lammel

Owner of Lot 5

By: Louie Warren
Louie Warren

By: Trudy Warren
Trudy Warren

Owner of Lot 4

By: Chris Hastings
Chris Hastings

Owner of Lot 3

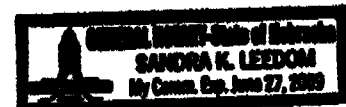
By: Sharon Wendland
Sharon Wendland

STATE OF NEBRASKA)

COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 28th day of June, 2006, by the above property owners.

Sandra K. Leedom
Notary Public



FILED SARPY COUNTY NEBRASKA
INSTRUMENT NUMBER

2012-06337

03/02/2012 12:23:03 PM

Lloyd J. Dowding

REGISTER OF DEEDS



COUNTER PR C.E. DM
VERIFY PR C.E. DM
PROOF PR
FEES \$ 86.50
CHECK# 1110
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

R+R
DAVID SORRICK
9505 S. 175TH C.W.
OMAHA, NE
68136

DECLARATION

OF COVENANTS, CONDITIONS AND RESTRICTIONS

DECLARATIONS, made on the date hereinafter set forth, by Tiburon View Phase II and III to also be known as TVII&IIIOA.

WITNESSETH

WEAS, the declarants are the Property Owners of certain property in Sarpy County, Nebraska, which is more particularly described as:

Lots 1 through 17 inclusive, Tiburon View II, and lots 1 through 6 inclusive, Tiburon View III, a sub-division in Sarpy County, Nebraska, as surveyed, platted and recorded.

All of the above-described property has been zoned "RS-72PD" and, therefore, is available for single family detached homes.

THEREFORE, Declarant hereby declare that all of the properties described above shall be held, sold and conveyed subject to the following covenants, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the 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 insure to the benefit of each owner thereof.

Declarant has heretofore caused the organization of Tiburon View II & III 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 property and common area within the above described property.

ARTICLE I

DEFINITIONS

1. "Association" shall mean and refer to Tiburon View II & III Property Owners Association, Inc., its successors and assigns.
2. "Board" shall mean and refer to the Board of Directors elected by the majority vote of the members of the Association, its successors and assigns.
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 part of the Properties, including contract sellers, but excluding those having such interest merely as security of the performance of an obligation.
4. "Properties" shall mean and refer to that certain real property herein before described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

"Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Dedicated in Tiburon View II & III, a subdivision in Sarpy County, Nebraska, as surveyed platted and recorded.

"Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

"Lots Adjoining Golf Course" shall mean and refer to all Lots, as defined above, for which one or more of the Lot boundary lines is shared with any boundary line of the golf course.

"Declarant" shall mean and refer to TVII&IIIOA, its successors, assigns and legal representatives.

"THO architectural committee" shall mean the individual or committee appointed by the Declarant, its successors or assigns.

"Improved Lot" shall mean and refer to any lot on the properties exclusive of the Common Area 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, exclusive of the Common Area, 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."

ARTICLE II

PROPERTY RIGHTS

1. Owners' Easement of Enjoyment. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every lot, subject to the following provisions:

- (1) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common area;
- (2) The right of the Association to suspend the voting rights and right to use any recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and
- (3) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

on 2. Delegation of Use. Any Owner may delegate, in accordance with the by-laws, his right of enjoyment to the Common Area and facilities to the member of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

HOMEOWNERS ASSOCIATION

on 1. Membership and voting:

(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 one class of voting membership:

Members shall be all Owners 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.

on 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 thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- (a) Annual assessment 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 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 Assessment. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area and recreational facilities.

(3) Maximum Annual Assessments.

- (a) 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, with a vote of the membership.
- (b) The annual assessment may be increased above said percentage (Paragraph (a) above by a vote of two-thirds (2/3) of lot owners who are voting person 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) Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an capital improvement upon the Common Area, including fixtures and personal property related thereto: PROVIDE THAT, any such assessment shall have the assent of two-thirds (2/3) of the lot owners who are voting in person or by proxy at a meeting duly called for this purpose.

(5) Notice of Quorum for Any Action Authorized: Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 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 member or of proxies entitled to cast sixty percent (60%) of all the votes 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.

(6) Uniform Rate of Assessment. Both annual and special assessments, with respect to all improved Lots, shall be uniform amount. Said assessments may be collected on a monthly basis.

(7) Date of Commencement of Annual Assessment; Dues Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of each month following the conveyance of the Common Area. 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 notices of the annual assessment shall be sent to every Owner subject thereto. The 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 on a specified improved 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.

(8) 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 (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 herein by non-use of the Common Area or abandonment of their Lot.

(9) 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 affect the assessment lien. However, the sale of transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessment thereafter becoming due or from the lien thereof.

- (10) Insurance. The Association shall not provide any property or liability insurance, other than related to the pond general liability if deemed necessary. Each Owner shall individually procure and maintain insurance on such Owner's Lot(s), improvements thereto and on the contents, decorations, furnishings and personal property therein.

on 3. Exterior Maintenance.

The Association shall provide exterior maintenance upon the common area and each Lot which is subject to assessment hereunder, as follows: lawn care to include mowing, fertilization, weed control, and aeration, erosion control of the common area, well and pond maintenance to ensure proper functionality, snow removal, 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, guest, or invitees of the Owner of the Lot needing such maintenance or repair, the cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject. A letter from the Association Board to the home/property owner requesting that the maintenance issue be dealt with would precede any assessment activity. The goal of this section is unity of look and value for the neighborhood.

ARTICLE IV

on 1. Architectural Control.

- (1) Before the construction of the original structure on each Lot, no building, fence, wall or other structure shall 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" or by the THO architectural committee, 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 of 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 exterior 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.

Submittals for approval shall be made in duplicate and the comments and actions of the Board and/or 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 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 improvements and indicating Lot number, street address, grading, surface drainage and sidewalk; and
- (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 chimney, type and extent of siding, roofing, other faces and/or veneer materials.

on 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 1,200 square feet of living area above the basement level and exclusive of garage area;
- (b) Each one and one-half or two story residence shall contain no less than 1,500 square feet of total living area above the basement level with a minimum if 1,200 square feet on the main level, exclusive of the garage area.

(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 garage which must contain a minimum 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 purpose of these restrictions, two-story height shall, when the basement wall is exposed above finished 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 front Lot line, and a minimum of Fifteen feet (15') 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 setback for the non-front street exposure is fifteen feet (15') from the property line. For purposes of this restriction, eaves, open patios, and step shall not be considered part of the building.

The above provisions parallel the present zoning requirements of Sarpy County for the Lots. In the extent that the zoning requirements for a Lot of 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 a Lot or Lots is granted by the appropriate authority, the Board and/or Committee shall have the right and authority, but no the obligation, to grant in whole or in part the relaxation of requirements allowed by the zoning changes, waivers 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 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.

(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 a finished with, clay-fire 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 of clay-brick or stone. If the fireplace and /or enclosure for the fireplace flue is 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 materials as is the dwelling at the point from which the fireplace an/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 side of the roof ridge within four feet (4) of the roof ridge.

(8) No fence(s) may be built forward of the rear-most wall on each side (corner) of the rear of the dwelling or within thirty-five feet (35') of a lot line which adjoins the golf course. 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 bared wire, electrified, wood and /or snow fences are strictly prohibited.

(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 house 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.

(10) No flat or mansard roof shall be permitted on any dwelling. Fifty year asphalt shingles are allowed though the pattern and color must match the general look of the neighborhood; hence the THO architectural committee shall review the choice to ensure conformity.

(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 City of Omaha and any revisions thereof. The maintenance of said sidewalks, after construction, shall be the responsibility of the Owners of each of the Lots.

H

(12) The lot plan created a water drainage plan by grading the Properties and installing improvements and easements from 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

STAGED DEVELOPMENTS

Phase II of Tiburon View has had a set of covenants for several years, originally written by and designed for the interest of the developer. All lots have been sold to homeowners or builders and the original developer no longer has any legal standing with Tiburon Phase II or III and, in fact, is in the process of being disbanded.

Because of this it has been determined that it would be best to update Phase II covenants and to also include Phase III under the same set of covenants. Phase III is the final phase of Tiburon View and Phase III has never had a binding set of covenants. Phase I has their own set of covenants and has no interest in joining Phase II or III so this set of covenants only applies to Phase II and to Phase III based on the stipulations

of all home and lot owners in Phase II to this set of covenants automatically makes all previous covenants void and makes these covenants the binding documents for Phase II going forward based on the date signed and the requirements contained within. Phase III participation in these covenants is voluntary and upon the signature of the home or lot owner they too will be bound by these covenants going forward as specified in the body of these covenants and the date signed.

GENERAL RESTRICTIONS

- on 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.
- on 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 Properties. Provided, however, the prohibition shall not apply:
- (a) To any building or structure that is used to be exclusively by a public utility company in connection with the furnishing of public utility services to the Properties; or
- on 3. Fences, etc. Fences or enclosures may be constructed, erected, placed or maintained on or about any building site within the Properties as 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 or machinery or cars not in daily use shall ever be parked, located or otherwise maintained on any Properties. Playground equipment to include but not necessarily limited to such items as trampolines, swing sets, slides, sand box, basketball hoop, playhouse or tent, jungle gym, teeter totter or other "playground equipment" by whatever name known will not be allowed on the properties or common area. 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~~ 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. Small, discrete, satellite dishes are allowed but may not be attached to the roof. Satellite dishes must be attached to the side or back of the house, or installed on the side or back of the lot and not intrude on any other homeowners view or access to their own property and shall be placed in a way to achieve minimal visibility from the street facing the property. 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.
- on 4. Livestock and Poultry Prohibited. No animals, livestock or poultry of any kind shall be raised or kept on any building 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 homes 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.
- on 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.
- on 6. Billboards Prohibited. No sign, billboard or other structure for advertising or the display or advertising material of any kind shall be erected, altered, placed or permitted to remain on any lot except that real estate "For Sale" signs shall be permitted temporarily in the yards of dwellings which are being offered for sale.

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.

All garage doors must remain closed at all times except when car(s) are entering or exiting from garage space or when an individual is present or property maintenance is being performed. No garbage or trash receptacles are to be permitted outside unless fully screened from view in a manner approved by the Association. Private barbecue grills will be subject to regulations, restrictions 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.

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.

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

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

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 Board and/or Committee.

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.

All driveways shall be constructed of concrete or brick.

The front, side and rear yards of all Lots shall be sodded, and two (2) trees, each not less than two (2) caliper 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.

No rental or leasing of the dwelling and/or property will be permitted.

ARTICLE VII

EASEMENT AND LICENSES

on 1. A perpetual license and easement is hereby reserved in favor of and granted to the Century Link Telephone Company and to Omaha Public Power District, their successors and assigns, to erect and operate, maintain, repair, and renew cables, conduits, and other instrumentalities, and to extend wire for 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 interface with the aforesaid uses or rights herein granted.

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

on 3. A four foot (4') wide strip of common ground shall abut each side of all roads within the subdivision, as surveyed, platted and recorded.

ARTICLE VIII

GENERAL PROVISIONS

on 1. Enforcement. The Association, or any Owner, shall the rights 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 Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

on 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court shall in no wise effect any other provisions which shall remain in full force and effect.

on 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date 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 (75%) of the Lot Owners. Any amendment must be recorded with the Register of Deeds and for Sarpy County, Nebraska.

WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed on this 30th day of December 2011.

DECLARANT:

Tiburon View Phase II & III Home Owners Association

STATE OF NEBRASKA)

COUNTY OF SARPY)

oregoing instrument was acknowledged before me this 30th day of December 2011, by

David Sorrick, association president David Sorrick

Bob Keasling, association secretary Robert D. Keasling

Tim McCarty, association treasurer Tim McCarty

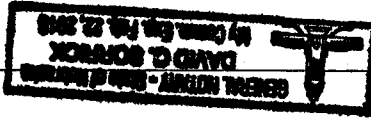
Waren S. Zoerb
Notary Public
GENERAL NOTARY - State of Nebraska
WARREN S. ZOERB
My Comm. Exp. Nov. 1, 2013

USE II PROPERTY OWNERS:

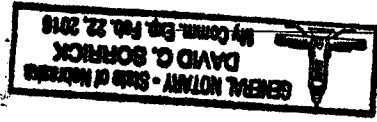
Owner of Lot 17 By: <u>William Olson</u>	By: <u>Vicki Olson</u>	Vicki Olson
Owner of Lot 16 By: <u>Mary Mollner</u>	By: <u>Jim Mollner</u>	Jim Mollner
Owner of Lot 15 By: <u>Ruth Asche</u>	By: <u>Ruth Asche</u>	Ruth Asche
Owner of Lot 14 By: <u>Robert D. Keasling</u>	By: <u>Kathleen Keasling</u>	Kathleen Keasling Kathy Keasling

The foregoing instrument was acknowledged before me this 1st day of MARCH 2012, by the above property owners David & Sue Sorrick ds

STATE OF NEBRASKA)
COUNTY OF SARPY)



David Sorrick



David C. Sornick

The foregoing instrument was acknowledged before me this 15 day of MARCH 2012, by the above property owners.

STATE OF NEBRASKA)
COUNTY OF SARPY)

- Owner of Lot 13 By: Wayne Kobza By: Ami Keph
Wayne Kobza Ami Keph
- Owner of Lot 12 By: Phil Hough By: Barb Hough
Phil Hough Barb Hough
- Owner of Lot 11 By: Tim Schaefer By: Barb Hough
Tim Schaefer Barb Hough
- Owner of Lot 10 By: Tim Schaefer By: Rachel McCarty
Tim Schaefer Rachel McCarty
- Owner of Lot 9 By: Tim Schaefer By: Patty Martinez
Tim Schaefer Patty Martinez
- Owner of Lot 8 By: Bill Sturgeon By: Patty Sturgeon
Bill Sturgeon Patty Sturgeon
- Owner of Lot 7 By: Bob Knight By: Susie Knight
Bob Knight Susie Knight
- Owner of Lot 6 By: Glenda Lamme By: Trudy Warren
Glenda Lamme Trudy Warren
- Owner of Lot 5 By: Louie Warren By: Trudy Warren
Louie Warren Trudy Warren
- Owner of Lot 4 By: Chris Hastings By: Chris Hastings
Chris Hastings Chris Hastings
- Owner of Lot 3 By: Sharon Wendland By: Sharon Wendland
Sharon Wendland Sharon Wendland
- Owner of Lot 2 By: Tomas Thompson By: Tracy Thompson
Tomas Thompson Tracy Thompson
- Owner of Lot 1 By: Doug Zoerb By: Karen Zoerb
Doug Zoerb Karen Zoerb

Owner of Lot 6 By: David Sorrick By: Susan Sorrick
David Sorrick Susan Sorrick

Owner of Lot 5 By: Mark Wright By: Marsha R. Dought
Mark Wright Marsha Wright

Owner of Lot 4 By: Steve Jensen By: Sharon Jensen
Steve Jensen Sharon Jensen

Owner of Lot 3 By: Al Schiemann By: Marian Schiemann
Al Schiemann Marian Schiemann

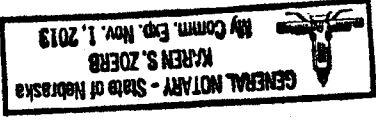
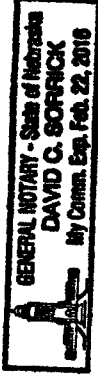
Owner of Lot 2 By: Tim Schaefer
Tim Schaefer
Quality First Construction

Owner of Lot 1 By: Tom McGowan By: Cathie McGowan
Tom McGowan Cathie McGowan

STATE OF NEBRASKA)
COUNTY OF SARPY)

The foregoing instrument was acknowledged before me this 1st day of MARCH, 2012, by the above property owners.

David C. Sorrick



STATE OF NEBRASKA)
COUNTY OF SARPY)
The foregoing instrument was acknowledged before me this 1st day of March, 2012, by the above property owners David & Sue Sorrick.

David & Sue Sorrick