

93-06928

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

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

W I T N E S S E T H:

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

Lots 1 though 25, inclusive, Tiburon Patio Homes and Lots 27 through 55, inclusive, Tiburon Patio Homes and Lot 26, Tiburon Patio Homes, a Sub-division in Sarpy County, Nebraska, as surveyed platted and recorded.

All of the above-described property has been zoned "RD-50" and, therefore, is available for single family detached and attached homes.

NOW THEREFORE, Declarant hereby declares 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 Fairway Patio Homes 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 Fairway Patio Homes Property Owners Association, Inc., its successors and assigns.

Section 2. "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 for the performance of an obligation.

Section 3. "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.

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Section 5. "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 6. "Declarant" shall mean and refer to Landmark/Fairway Limited Partnership, its successors, assigns and legal representatives.

Section 7. "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 specifications for 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 of the 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

### MEMBERSHIP AND VOTING RIGHTS

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Section 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.

#### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 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:

- (1) Annual assessments or charge; and
- (2) 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's 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's 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.

Section 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.

Section 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.

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(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 group 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.

**Section 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.

**Section 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.

**Section 6. Uniform Rate of Assessment.** Both annual and special assessments, with respect to all improved Lots, shall be uniform in amount. In recognition of the fact that a substantial portion of the budget for the Working Fund for maintenance will be attributable to upkeep, maintenance and security upon improved Lots as opposed to unimproved Lots, the regular assessment for each unimproved Lot will be equal to the equivalent of twenty-five percent (25%) of the regular assessment due for each improved Lot. Said assessments may be collected on a monthly basis.

**Section 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

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Section 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.

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provide 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.

Section 10. Insurance. The Association shall procure and maintain property insurance including hazard, fire and extended coverage, as well as liability insurance without prejudice to the right of each Owner to insure himself. Such insurance policies shall be written, and the proceeds thereof payable to the Association, as trustee for the Owners, mortgagees of record, beneficiaries of record, Board, employees, and Managing Agent, if any. Such policies of insurance should contain, if possible, a standard anti-subrogation clause against individual Owners. The premiums for such insurance shall be a Common Area expense.

Each Owner shall be responsible for obtaining his own insurance on the improvements and betterments to his building and on the contents thereof, as well as his decorations, furnishings and personal property therein and any personal property stored elsewhere on the Property. In addition, in the event an Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent that this liability, loss or damage is covered by the liability insurance and insurance against loss or damage by fire and such other hazards obtained by the Association as above provided, said Owner may, at his option and expense, obtain additional insurance.

## ARTICLE V

### 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, trees, shrubs, weeds, mowing, erosion control, snow removal, grass, walks, streets, tree, shrubs and other exterior improvements. Such exterior maintenance shall not include glass surfaces.

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## ARTICLE VI

### ARCHITECTURAL CONTROL

(a) 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, or by an architectural committee, hereinafter referred to as "Committee" composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated 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.

(b) 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 of Directors of the Association, or by an architectural committee.

(c) 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 improvement may be required of the applicant at the discretion of the Committee. Submittals for approval shall be made in duplicate and the comments and actions of the Committee will be identically marked on both copies of said submittals. One copy will be returned to the applicant, and one copy will be retained as part of the permanent records of the Committee. Each applicant shall submit to the Committee the following documents, materials and/or drawings:

(1) Site plan indicating specific improvement and indicating Lot number, street address, grading, surface drainage and sidewalks; and

(2) 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.

## ARTICLE VII

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(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.

Section 2. Other residence styles not described in Section 1 above, will be permitted only if approved by the Committee and shall not be approved unless they are compatible with other residences to be built on the Property in the opinion of the Association and/or Committee in its sole and absolute discretion.

Section 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 Association and/or Committee.

Section 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 eve 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.

Section 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 eight foot (8') 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 event 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 Association 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 Association and/or Committee.

Section 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

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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.

Section 8. No fences may be built forward of the rear-most wall at each side (corner) of the rear of the dwelling. No fence may be built within thirty-five feet (35') of a lot line which adjoins the golf course. Fences shall be constructed only of wood, decorative iron, brick or stone and are subject to the approval of the Association and/or Committee. Temporary or permanent barbed wire, electrified, and/or snow fences are strictly prohibited.

Section 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.

Section 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 Association and/or Committee in its sole and absolute discretion.

Section 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.

Section 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.

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## ARTICLE X

### 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 Association.

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 the Association 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 building site, parking area, street or Common Area in the 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

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Section 8. Temporary Structure. No trailer, basement, tent, shack, trailer, garage, barn or other outbuilding, whether temporary or permanent in nature, shall be constructed or used at 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 Fairway Patio Homes Property Owners Association, Inc. Private barbecue grills used in the Common Areas, and outside use or storage of 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 Association 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 Association 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) caliner inches in diameter, shall be planted in the front yard of

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## ARTICLE XI

### EASEMENTS AND LICENSES

(a) A perpetual license and easement is hereby reserved in favor of and granted to the Northwestern Bell 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 replaced within sixty (60) days after their removal, then this easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings shall be placed on perpetual easementways, but the same may be used for garden shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

(b) All telephone and electric power service lines from property line to dwelling shall be underground.

(c) 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 XII

### 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.

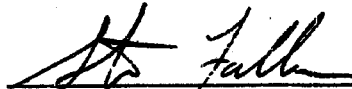
Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise effect any other provisions which shall remain in full force and effect.

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

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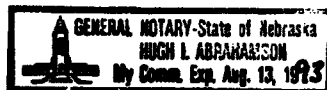
Section 5. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed on this 6<sup>th</sup> day of April, 1993.

  
STEVE FALLER, President,  
Landmark/Fairway Limited  
Partnership

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS )


6<sup>th</sup> The foregoing instrument was acknowledged before me this day of April, 1993, by Steve Faller, President, Landmark/Fairway Limited Partnership.



  
Notary Public

INSTRUMENT NUMBER  
93 006928

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REGISTER OF DEEDS

Proof	<u>✓</u>
D.E.	<u>✓</u>
Verify	<u>✓</u>
Filmed	<u>✓</u>
Checked	<u>✓</u>
Fee	\$ 87.50

AMENDMENT TO DECLARATION  
OF  
TIBURON PATIO HOMES

This Amendment to Declaration is made on August 12, 1993, by the owners as of the date hereof in excess of Ninety Percent (90%) of all the lots contained in the following described real estate, to-wit:

Lots 1 though 25, inclusive, Tiburon Patio Homes and Lots 27 through 55, inclusive, Tiburon Patio Homes and Lot 26, Tiburon Patio Homes, a Sub-division in Sarpy County, Nebraska, as surveyed platted and recorded.

W I T N E S S E T H:

WHEREAS, a Declaration of Covenants, Conditions and Restrictions covering the above-described real estate was executed on April 6, 1993, and filed at Page 06928 through Page 06928K, inclusive, of Book 93 of the Miscellaneous Records in the office of the Register of Deeds of Sarpy County, Nebraska; and

WHEREAS, said Declaration provides for Amendments of the Declaration by instrument signed by the owners of Ninety Percent (90%) or more of the lots; and

WHEREAS, the undersigned are the owners of more than Ninety Percent (90%) of the lots subject to said Declaration, and it is the desire of the undersigned to make certain amendments, additions and clarifications to said Declaration.

NOW THEREFORE, in consideration of the foregoing preambles, the undersigned declare that the following easements, restrictions, covenants and conditions as herein expressed shall apply in amendment of and in addition to the easements, restrictions, covenants and conditions contained in said Declaration to the extent and only to the extent that the same are inconsistent therewith:

1. Article I, Section 7 is hereby amended to read as follows:

"Section 7. "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 specifications for 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".

Assessment Reserves. The Association may require an Owner other than Declarant to deposit with the Association up to three times the amount of the estimated monthly common assessment, without interest, which sum shall be held by the Association as a reserve to be used for paying such Owner's monthly common

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2. Article IV, Section 6 is hereby amended to read as follows:

"Section 6. Uniform Rate of Assessment. Both annual and special assessments, with respect to all improved Lots, shall be uniform in amount. In recognition of the fact that a substantial portion of the budget for the Working Fund for maintenance will be attributable to upkeep, maintenance and security upon improved Lots as opposed to unimproved Lots, the regular assessment for each unimproved Lot will be equal to the equivalent of five percent (5%) of the regular assessment due for each improved Lot. Said assessments may be collected on a monthly basis."

3. Article IV, Section 10 is hereby amended to read as follows:

"Section 10. Insurance. The Association shall procure and maintain property insurance including hazard, fire and extended coverage, as well as liability insurance without prejudice to the right of each Owner to insure himself. Such insurance policies shall be written, and the proceeds thereof payable to the Association, as trustee for the Owners, mortgagees of record, beneficiaries of record, Board, employees, and Managing Agent, if any. Such policies of insurance should contain, if possible, a standard anti-subrogation clause against individual Owners. The premiums for such insurance shall be a Common Area expense.

Each Owner shall be responsible for obtaining his own insurance on the improvements and betterments to his building and on the contents thereof, as well as his decorations, furnishings and personal property therein and any personal property stored elsewhere on the Property. Such policies of insurance should contain, if possible, a standard anti-subrogation clause against the Association. In addition, in the event an Owner desires to insure against his personal liability and loss or damage by fire or other hazards above and beyond the extent that this liability, loss or damage is covered by the liability insurance and insurance against loss or damage by fire and such other hazards obtained by the Association as above provided, said Owner may, at his option and expense, obtain additional insurance.

It is the intent of the Declarant that in the event of a loss that the separate insurance policies purchased by the Association and the individual Owners shall have the effect of indemnifying each party from the other in case of loss."

4. Article VI (a) is hereby amended to read as follows:

"(a) Before the construction of the original structure on each Lot, no building, fence, landscaping, 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 and a landscaping plan 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

5. Article VII, Section 8 is hereby amended to read as follows:

"Section 8. No fences may be built forward of the rear-most wall at each side (corner) of the rear of the dwelling. No fence may be built within thirty feet (30') of a lot line which adjoins the golf course. No fence may be built except for privacy fences which may be built around the patio and/or deck of each dwelling unit. Fences shall be constructed only of wood, decorative iron, brick or stone and are subject to the approval of the Association and/or Committee. Temporary or permanent barbed wire, electrified, and/or snow fences are strictly prohibited."

6. Article VII, Section 11 is hereby amended to read as follows:

"Section 11. Public sidewalks are not required and the Association shall have no responsibility to construct or maintain public sidewalks. If in the future, public sidewalks are required, the public sidewalks shall be the responsibility of, and shall be constructed by, the then Owner of each dwelling. 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."

7. Article X, Section 6 is hereby amended to read as follows:

"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."

Construction and Sales Period Facilities. Notwithstanding any provisions herein contained to the contrary, it shall be expressly permissible for the Declarant, its agents, employees and contractors to maintain during the period of construction and sale of the dwellings, upon such portion of the Property as Declarant may choose, such facilities and in such numbers, sizes, and locations and relocations as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the construction and sale or rental of dwellings including, without limitation, a business office, management office, storage area, construction yards, signs, model units, sales office, construction office, parking areas and lighting. The construction and sale period shall terminate upon the sale of the last dwelling unit by the Declarant."

8. Article X, Section 13 is hereby deleted.

9. Article X, Section 16 is hereby amended to read as follows:

93-19942C

10. Article XI (a) is hereby amended to read as follows:

"(a) A perpetual and permanent license and easement is hereby reserved in favor of and granted to the Association to maintain without limitation the common ground and dwellings per Article V.

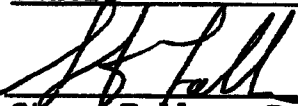
A perpetual license and easement is hereby reserved in favor of and granted to the Northwestern Bell Telephone Company and to Omaha Public Power District, their successors and assigns, to erect and operate, maintain, repair, and renew cables, conduits, and other instrumentalities, and to extend wires 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 replaced within sixty (60) days after their removal, then this easement shall automatically terminate and become void as to such unused or abandoned easementways. No permanent buildings shall be placed on perpetual easementways, but the same may be used for garden shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted."

Executed the day and year first above written.

Legal Description of Lots  
Owned: (All in FAIRWAY  
PATIO HOMES

Lots 1 through 25, inclusive,  
Tiburon Patio Homes and Lots  
27 through 55, inclusive,  
Tiburon Patio Homes and Lot  
26, Tiburon Patio Homes, a  
Subdivision in Sarpy County,  
Nebraska, as surveyed  
platted and recorded.

Signature of  
Owners

  
Steve Faller, President of  
Landmark Development Company,  
the general partner of  
Landmark/Fairway Limited  
Partnership, Owner

STATE OF NEBRASKA )  
 )  
COUNTY OF DOUGLAS )

12 The foregoing instrument was acknowledged before me this  
day of August, 1993, by Steve Faller, President of Landmark  
Development Company, the general partner of Landmark/Fairway  
Limited Partnership, owner of the following described real estate:

FILED IN THE  
INSTRUMENT NUMBER

94-17931

94 AUG 10 AM 11:19

AMENDMENT TO DECLARATION  
OF  
TIBURON PATIO HOMES

17421

Proof	
D.E.	<i>W</i>
Ver	
Fi	
Checked	
Fee \$	52.50

This Amendment to Declaration is made on July 22<sup>nd</sup>, 1994, by the owners as of the date hereof in excess of Ninety Percent (90%) of all the lots contained in the following described real estate, to-wit:

Lots 1 through 25, inclusive, Tiburon Patio Homes and Lots 27 through 55, inclusive, Tiburon Patio Homes and Lot 26, Tiburon Patio Homes, a Sub-division in Sarpy County, Nebraska, as surveyed platted and recorded.

W I T N E S S E T H:

WHEREAS, a Declaration of Covenants, Conditions and Restrictions covering the above-described real estate was executed on April 6, 1993, and filed at Page 06928 through Page 06928K, inclusive, of Book 93 of the Miscellaneous Records in the office of the Register of Deeds of Sarpy County, Nebraska; and

WHEREAS, said Declaration provides for Amendments of the Declaration by instrument signed by the owners of Ninety Percent (90%) or more of the lots; and

WHEREAS, the undersigned are the owners of more than Ninety Percent (90%) of the lots subject to said Declaration, and it is the desire of the undersigned to make certain amendments, additions and clarifications to said Declaration.

NOW THEREFORE, in consideration of the foregoing preambles, the undersigned declare that the following easements, restrictions, covenants and conditions as herein expressed shall apply in amendment of and in addition to the easements, restrictions, covenants and conditions contained in said Declaration to the extent and only to the extent that the same are inconsistent therewith:

1. The introductory paragraphs are hereby amended to read as follows:

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

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

W I T N E S S E T H:

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

Lots 1 through 25, inclusive, Tiburon Patio Homes and Lots 27 through 55, inclusive,

Declarant hereby declares that the hereinabove mentioned properties shall be developed in two (2) phases as follows:

Phase I shall consist of Lots 1 through 21, inclusive, Tiburon Patio Homes and Lots 41 through 48, inclusive Tiburon Patio Homes, a Sub-division in Sarpy County, Nebraska, as surveyed platted and recorded.

Phase II shall consist of Lots 22 through 55, inclusive, Tiburon Patio Homes and Lot 26, Tiburon Patio Homes, a Sub-division in Sarpy County, Nebraska, as surveyed platted and recorded.

All of the above-described property has been zoned "RD-50" and, therefore, is available for single family detached and attached homes.

NOW THEREFORE, Declarant hereby declares 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 Fairway Patio Homes 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.

2. Article I, Section 7 is hereby amended to read as follows:

"Section 7. "Improved Lot" in Phase I, as is hereinbefore described, 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 specifications for 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".

"Improved Lot" in Phase II as is hereinbefore described 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 specifications for construction of said dwelling. All other lots, exclusive of the Common Area, which shall be vacant or upon which shall be erected a dwelling, shall be defined as "Unimproved Lots".

94-519 12

Assessment Reserves. The Association may require an Owner other than Declarant to deposit with the Association up to three times the amount of the estimated monthly common assessment, without interest, which sum shall be held by the Association as a reserve to be used for paying such Owner's monthly common assessment and for working capital. Such an advance payment shall not relieve an Owner from making the regular monthly payment for the monthly common assessment as the same comes due. Upon the sale of his dwelling unit an Owner shall be entitled to a credit from his grantee for any unused portion thereof."

3. Article IV, Section 1 is hereby amended to read as follows:

Section 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:

Phase I as is hereinbefore described:

- (1) Annual assessments or charge; and
- (2) 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's 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's 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.

Phase II as is hereinbefore described:

The Declarant, for each Lot owned within Phase II as is hereinbefore described, after said Phase II is developed as evidenced by the construction of public streets and the installation of utilities, hereby covenants and each Owner of any Lot in Phase II 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:

- (1) Annual assessments or charge; and
- (2) 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's fees, shall be a charge on the land and

4. Article IV, Section 3 is hereby amended to read as follows:

Section 3. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot in Phase I, as is hereinbefore described, 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 in Phase I, as is hereinbefore described, to an Owner, the annual assessment may be increased by not more than the greater of either: 1) Five percent (5%); or 2) 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 in Phase I, as is hereinbefore described, 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 group 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 for Phase I Owners, as is hereinbefore described, at an amount not in excess of the maximum.

Until January 1 of the year immediately following the conveyance of the first Lot in Phase II, as is hereinbefore described, 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 in Phase II, as is hereinbefore described, to an Owner, the annual assessment to an Owner in Phase II may be increased by not more than the greater of either: 1) Five percent (5%); or 2) 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 in Phase II, as is hereinbefore described, to an Owner, the annual assessment to an Owner in Phase II may be increased above said percentage (Paragraph (a) above) by a vote of two-thirds (2/3) of each group 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 for Phase II Owners, as is hereinabove described, at an amount not in excess of the maximum.

5. Article IV, Section 6 is hereby amended to read as follows:

90-5251

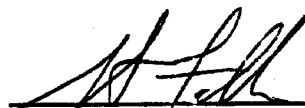
Uniform Rate of Assessment for Phase II Lots only. Both annual and special assessments, with respect to all improved Lots in Phase II when developed, as is hereinabove described, shall be uniform in amount. In recognition of the fact that a substantial portion of the budget for the Working Fund for maintenance will be attributable to upkeep, maintenance and security upon improved Lots as opposed to unimproved Lots, the regular assessment for each unimproved Lot in Phase II will be equal to the equivalent of five percent (5%) of the regular assessment due for each improved Lot in Phase II. Said assessments may be collected on a monthly basis."

Executed the day and year first above written.

Legal Description of Lots  
Owned: (All in FAIRWAY  
PATIO HOMES


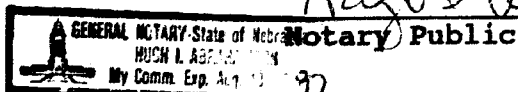
Lots 1 through 4, inclusive,  
Tiburon Patio Homes, Lot 6  
Tiburon Patio Homes, Lots  
8 through 17, inclusive,  
Tiburon Patio Homes, Lots 19  
through 25, inclusive,  
Tiburon Patio Homes, Lots 27  
through 55, inclusive,  
Tiburon Patio Homes and Lot  
26, Tiburon Patio Homes, a  
Subdivision in Sarpy County,  
Nebraska, as surveyed  
platted and recorded.

Signature of Owners:

  
Steve Faller, President  
Landmark Development Company,  
the general partner of  
Landmark/Fairway Limited  
Partnership, Owner

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

<sup>22<sup>nd</sup></sup> The foregoing instrument was acknowledged before me this day of July, 1994, by Steve Faller, President of Landmark Development Company, the general partner of Landmark/Fairway Limited Partnership, owner of the following described real estate: Lots 1 though 4, inclusive, Tiburon Patio Homes, Lot 6, Tiburon Patio Homes, Lots 8 though 17, inclusive, Tiburon Patio Homes, Lots 19 through 25, inclusive, Tiburon Patio Homes, Lots 27 through 55, inclusive, Tiburon Patio Homes and Lot 26, Tiburon Patio Homes, a Subdivision in Sarpy County, Nebraska, as surveyed platted and recorded.

  
 GENERAL NOTARY State of Nebraska  
MUCH A. AGGARWAL  
My Comm. Exp. Aug. 1997

FILED SARYPY CO. NE.  
INSTRUMENT NUMBER  
94-17931

AMENDMENT TO DECLARATION  
OF  
TIBURON PATIO HOMES

94 AUG 10 AM 11:19

94-17931

Proof	
D.E.	<i>[Signature]</i>
Verif	
Filed	
Checked	
Fee \$	52.50

*Car* This Amendment to Declaration is made on July 22<sup>nd</sup>, 1994, by the owners as of the date hereof in excess of Ninety Percent (90%) of all the lots contained in the following described real estate, to-wit:

Lots 1 through 25, inclusive, Tiburon Patio Homes and Lots 27 through 55, inclusive, Tiburon Patio Homes and Lot 26, Tiburon Patio Homes, a Sub-division in Sarpy County, Nebraska, as surveyed platted and recorded.

W I T N E S S E T H:

WHEREAS, a Declaration of Covenants, Conditions and Restrictions covering the above-described real estate was executed on April 6, 1993, and filed at Page 06928 through Page 06928K, inclusive, of Book 93 of the Miscellaneous Records in the office of the Register of Deeds of Sarpy County, Nebraska; and

WHEREAS, said Declaration provides for Amendments of the Declaration by instrument signed by the owners of Ninety Percent (90%) or more of the lots; and

WHEREAS, the undersigned are the owners of more than Ninety Percent (90%) of the lots subject to said Declaration, and it is the desire of the undersigned to make certain amendments, additions and clarifications to said Declaration.

NOW THEREFORE, in consideration of the foregoing preambles, the undersigned declare that the following easements, restrictions, covenants and conditions as herein expressed shall apply in amendment of and in addition to the easements, restrictions, covenants and conditions contained in said Declaration to the extent and only to the extent that the same are inconsistent therewith:

1. The introductory paragraphs are hereby amended to read as follows:

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

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

W I T N E S S E T H:

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

Lots 1 through 25, inclusive, Tiburon Patio Homes and Lots 27 through 55, inclusive, Tiburon Patio Homes and Lot 26, Tiburon Patio Homes, a Sub-division in Sarpy County, Nebraska, as surveyed platted and recorded.

Landmark Enterprises  
13308 Hillard Ave  
Omaha, NE 68137

94-17931 A

Declarant hereby declares that the hereinabove mentioned properties shall be developed in two (2) phases as follows:

Phase I shall consist of Lots 1 through 21, inclusive, Tiburon Patio Homes and Lots 41 through 48, inclusive Tiburon Patio Homes; a Sub-division in Sarpy County, Nebraska, as surveyed platted and recorded.

Phase II shall consist of Lots 22 through 55, inclusive, Tiburon Patio Homes and Lot 26, Tiburon Patio Homes, a Sub-division in Sarpy County, Nebraska, as surveyed platted and recorded.

All of the above-described property has been zoned "RD-50" and, therefore, is available for single family detached and attached homes.

NOW THEREFORE, Declarant hereby declares 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 Fairway Patio Homes 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.

2. Article I, Section 7 is hereby amended to read as follows:

"Section 7. "Improved Lot" in Phase I, as is hereinbefore described, 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 specifications for 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".

"Improved Lot" in Phase II as is hereinbefore described 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 specifications for 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".

Assessment Reserves. The Association may require an Owner other than Declarant to deposit with the Association up to three times the amount of the estimated monthly common assessment, without interest, which sum shall be held by the Association as a reserve to be used for paying such Owner's monthly common assessment and for working capital. Such an advance payment shall not relieve an Owner from making the regular monthly payment for the monthly common assessment as the same comes due. Upon the sale of his dwelling unit an Owner shall be entitled to a credit from his grantee for any unused portion thereof."

3. Article IV, Section 1 is hereby amended to read as follows:

Section 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:

Phase I as is hereinbefore described:

- (1) Annual assessments or charge; and
- (2) 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's 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's 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.

Phase II as is hereinbefore described:

The Declarant, for each Lot owned within Phase II as is hereinbefore described, after said Phase II is developed as evidenced by the construction of public streets and the installation of utilities, hereby covenants and each Owner of any Lot in Phase II 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:

- (1) Annual assessments or charge; and
- (2) 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's 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's 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.

94-17931C

4. Article IV, Section 3 is hereby amended to read as follows:

Section 3. Maximum Annual Assessments. Until January 1 of the year immediately following the conveyance of the first Lot in Phase I, as is hereinbefore described, 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 in Phase I, as is hereinbefore described, to an Owner, the annual assessment may be increased by not more than the greater of either: 1) Five percent (5%); or 2) 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 in Phase I, as is hereinbefore described, 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 group 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 for Phase I Owners, as is hereinbefore described, at an amount not in excess of the maximum.

Until January 1 of the year immediately following the conveyance of the first Lot in Phase II, as is hereinbefore described, 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 in Phase II, as is hereinbefore described, to an Owner, the annual assessment to an Owner in Phase II may be increased by not more than the greater of either: 1) Five percent (5%); or 2) 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 in Phase II, as is hereinbefore described, to an Owner, the annual assessment to an Owner in Phase II may be increased above said percentage (Paragraph (a) above) by a vote of two-thirds (2/3) of each group 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 for Phase II Owners, as is hereinabove described, at an amount not in excess of the maximum.

5. Article IV, Section 6 is hereby amended to read as follows:

"Section 6. Uniform Rate of Assessment for Phase I Lots only. Both annual and special assessments, with respect to all improved Lots in Phase I, as is hereinabove described, shall be uniform in amount. In recognition of the fact that a substantial portion of the budget for the Working Fund for maintenance will be attributable to upkeep, maintenance and security upon improved Lots as opposed to unimproved Lots, the regular assessment for each unimproved Lot in Phase I will be equal to the equivalent of five percent (5%) of the regular assessment due for each improved Lot in Phase I. Said assessments may be collected on a monthly basis."

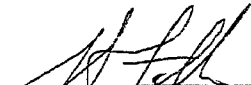
94-17931 D

Uniform Rate of Assessment for Phase II Lots only. Both annual and special assessments, with respect to all improved Lots in Phase II when developed, as is hereinabove described, shall be uniform in amount. In recognition of the fact that a substantial portion of the budget for the Working Fund for maintenance will be attributable to upkeep, maintenance and security upon improved Lots as opposed to unimproved Lots, the regular assessment for each unimproved Lot in Phase II will be equal to the equivalent of five percent (5%) of the regular assessment due for each improved Lot in Phase II. Said assessments may be collected on a monthly basis."

Executed the day and year first above written.

Legal Description of Lots  
Owned: (All in FAIRWAY  
PATIO HOMES

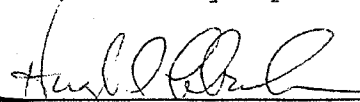
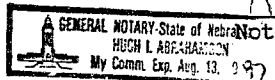
Signature of Owners:

  
Steve Faller, President  
Landmark Development Company,  
the general partner of  
Landmark/Fairway Limited  
Partnership, Owner

Lots 1 through 4, inclusive,  
Tiburon Patio Homes, Lot 6  
Tiburon Patio Homes, Lots  
8 through 17, inclusive,  
Tiburon Patio Homes, Lots 19  
through 25, inclusive,  
Tiburon Patio Homes, Lots 27  
through 55, inclusive,  
Tiburon Patio Homes and Lot  
26, Tiburon Patio Homes, a  
Subdivision in Sarpy County,  
Nebraska, as surveyed  
platted and recorded.

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

22nd The foregoing instrument was acknowledged before me this day of July, 1994, by Steve Faller, President of Landmark Development Company, the general partner of Landmark/Fairway Limited Partnership, owner of the following described real estate: Lots 1 through 4, inclusive, Tiburon Patio Homes, Lot 6, Tiburon Patio Homes, Lots 8 through 17, inclusive, Tiburon Patio Homes, Lots 19 through 25, inclusive, Tiburon Patio Homes, Lots 27 through 55, inclusive, Tiburon Patio Homes and Lot 26, Tiburon Patio Homes, a Subdivision in Sarpy County, Nebraska, as surveyed platted and recorded.

  
 Notary Public

FILED SARPY CO. NE.

INSTRUMENT NUMBER

2003-61258

2003 OCT 22 A 10:37

*Glenn J. Bowring*

REGISTER OF DEEDS

COUNTER Sn C.E. Sn  
VERIFY Sn D.E. Sn  
PROOF Sn  
FEES \$ 42.50  
CHECK# 1247  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_

**AMENDMENT TO DECLARATION  
OF  
TIBURON PATIO HOMES**

This Amendment to Declaration is made effective on most recent date listed with the owners' signatures, by the signatures of not less than ninety percent (90%) of the owners of all of the following real estate lots. Homeowners signatures that constitute the 90% are on file at the management company:

Lots 1-25, Lots 27-55 and Lot 26, Tiburon Patio Homes, a Subdivision in Sarpy County, Nebraska, as surveyed platted and recorded.

**WITNESSETH:**

WHEREAS, a Declaration of Covenants, Conditions and Restrictions covering the above-described real estate was executed on April 6, 1993, and filed at Page 06928 through Page 06928K, inclusive, of Book 93 of the Miscellaneous Records in the office of the Register of Deeds of Sarpy County, Nebraska; and

WHEREAS, said Declaration provides for Amendments of the Declaration by instrument signed by the owners of Ninety Percent (90%) or more of the lots; and

WHEREAS, the undersigned are the owners of Ninety Percent (90%) or more of the lots subject to said Declaration, and it is the desire of the undersigned to make certain amendments, additions and clarifications to said Declaration.

NOW, THEREFORE, in consideration of the foregoing preambles, the undersigned declare that the following easements, restrictions, covenants and conditions as herein expressed shall apply in amendment of and in addition to the easements, restrictions, covenants and conditions contained in said Declaration to the extent and only to the extent that the same are inconsistent therewith:

RVR Property Source  
4852 S. 133 St Ste 107  
Omaha, Ne 68137-1773

61258

1. Article V shall be amended to read:

## ARTICLE V

### 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, gutters, downspouts, exterior building surfaces, trees, shrubs, weeds, mowing, erosion control, snow removal from the drives and walks, and other exterior improvements. Such exterior maintenance shall not include glass surfaces or roof replacement.

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 its Owner, or 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.

2. Article IV, Section 10 shall be amended to read:

Section 10. Insurance. Each homeowner must provide their own homeowners insurance to include coverage for both exterior and interior and liability in an amount that each homeowner desires. The Association does NOT have any coverage for homes or homeowner's liability or individuals in any manner.

3. Article XII, Section 3 shall be amended to read:

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 period of ten (10) years. This Declaration may be amended by an instrument signed by not less than sixty percent (60%) of the Lot Owners. Any amendment must be recorded with the Register of Deeds in and for Sarpy County, Nebraska.

Executed the day and year first above written.

2003-61258 B

Legal Description of Lots:

Lots 1-25

Lots 27-55 and Lot 26

Signature of Owners: On File at the Management Company

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of July, 2002, by Denise Papek, John Laughlin, John Cavanaugh, Loren Schnittgrund, and Steven Krantz [Board of Director's names], owners of the following described real estate: Lots #1-25, #27-55 and #26[Lot numbers], Tiburon Patio Homes, a Subdivision in Sarpy County, Nebraska, as surveyed platted and recorded.



  
\_\_\_\_\_  
Notary Public

Board of Directors:  
Printed Name & Signatures

John Laughlin

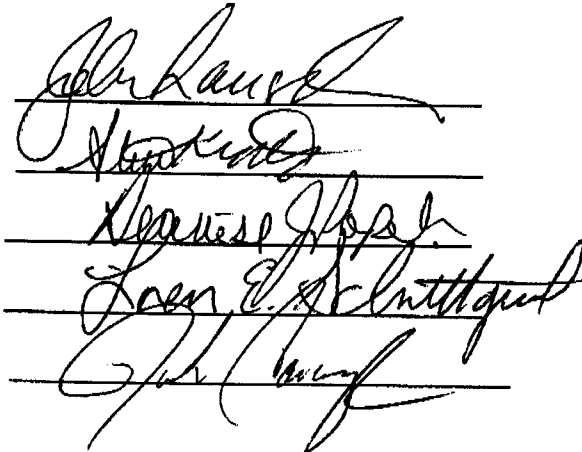
et.

Steven Krantz

Denise Papek

Loren Schnittgrund

John Cavanaugh

  
\_\_\_\_\_  
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\_\_\_\_\_



A

DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, made on the date hereinafter set forth, by The Fairway at Tiburon Homeowners Association, Inc., a Nebraska non-profit Corporation, hereinafter referred to as the "Declarant",

WITNESSETH:

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

<sup>18</sup> Sub Lots 1 through 25, inclusive, The Tiburon Patio Homes of Lot 1 <sup>18</sup>  
<sup>18</sup> Sub Lots 27 through 55, inclusive, The Tiburon Patio Homes of Lot 1 <sup>18</sup>  
<sup>18</sup> Sub Lot 26, The Tiburon Patio Homes of Lot 1 <sup>18</sup>

A Subdivision in Sarpy County, Nebraska, as surveyed, platted and recorded.

All of the above-described property has been zoned "RD-50" and, therefore, is available for single family detached and attached homes.

NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold or 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 real property and be binding on all parties having 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 The Fairway at Tiburon Homeowners Association, Inc., which is a non-profit corporation organized under the law of the State of Nebraska, formed for the purpose of providing 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 The Fairway at Tiburon Homeowners Association, Inc., its successors and assigns.

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

Section 3. "Properties" shall mean and refer to that certain real property hereinbefore described, and such jurisdiction of the Association.

B

Section 4. "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 described as follows:

Dedicated entry-boulevard, streets and parkways, The Fairway at Tiburon,  
a subdivision in Sarpy County, Nebraska,  
As surveyed, platted and recorded.

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

Section 6. "Declarant" shall mean and refer to homeowners of the association.

Section 7. "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 specifications for 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 of said dwelling, shall be defined as "Unimproved Lots".

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owner's 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 the recreational facilities by an Owner for any period during which any assessment against his or her 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 sixty per cent (60%) of the Members has been recorded.

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Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, 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

#### MEMBERSHIP AND VOTING RIGHTS

Section 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 be separated from ownership of any Lot, which is subject to assessment.

### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants for each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

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

The annual and special assessments, together with administrative costs, and reasonable attorney's 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 assessment, together with administrative fees, costs and reasonable attorney's 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.

Section 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.

Section 3. One-time Assessment for New Home Owner. A one-time assessment of \$105.00 will be collected at closing for all new homeowners. These monies are to be deposited into a security fund maintained by the Association for emergency use.

Section 4. Maximum annual Assessment. Annual assessments will hereafter be determined by Vote of the Membership at the Annual Meeting for the following year to commence the first day of January.

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- (a) From and after January 1 of the year immediately following the Annual Voters Meeting, the annual assessment may be increased by not more than the greater of either: 1) Five percent (5%); or 2) 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 Annual Voters Meeting, the following assessment may be increased above said percentage (Paragraph (a) above) by a vote of sixty percent (60%) of the Membership.
  - (c) The Board of Officers may fix the annual assessment at an amount not in excess of the maximum.

Section 5. 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 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 sixty percent (60%) of the voters of the Membership who are voting in person or by proxy at a meeting duly called for this purpose.

Section 6. 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 votes of the 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 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.

Section 7. Uniform Rate of Assessment. Both annual and special assessments, with respect to all improved Lots, shall be uniform in amount (patio homes or townhouses). Unusual maintenance of one (1) type of home (patio or townhouse) can result in a special assessment for those homes only to rectify the maintenance problem without causing harm to other improved Lots.

Section 8. 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 Annual Voters meeting. The Board of Officers shall fix the amount of annual assessment after the Membership approves the budget for the following year at the Annual Voters meeting. Written notice of the annual assessment shall be sent to every Owner subject thereto. The assessment due dates shall be established by the Board of Officers. 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.

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Section 9. Effort of Non-Payment of Assessments: Remedies of the Association. Any assessment not paid within thirty days (30) days after the due date shall bear an administrative fee from the due date at the rate of eighteen percent (18%) per annum. The Association may bring 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 or her Lot.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provide 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 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 due or from the lien thereof.

Section 11. Insurance. Each homeowner must provide their own homeowners insurance to include coverage for both exterior and interior and liability in an amount that each homeowner desires. The Association does NOT have any coverage for homes or homeowner's liability or individuals in any manner.

## ARTICLE V

### EXTERIOR MAINTENANCE

Section 1. In addition to maintenance upon the Common Area, the Association shall provide care of lawns, weeds, mowing, tree and shrub trimming, snow removal, fertilizing of trees and lawn and sprinkler system. Trees will be replaced once by the Association up to and including one hundred fifty dollars (\$150.00) per tree. This tree replacement is good for up to the two trees per Lot as stated in Article 10 Section 14. This is a lifetime of the Lot restriction.

Section 2. In the event the need for maintenance or repair of a Lot or the improvements thereon is caused through the willful or negligent acts of its Owner, or 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 the Owner's responsibility. If this repair work is not started in a timely fashion, the Association will expedite the repair work and charge the Owner of the Lot the associated costs.

## ARTICLE VI

### ARCHITECTURAL CONTROL

(a) Before the construction of the original structure on each Lot, no building, landscaping, 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 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 Officers of the

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Association, or by an architectural committee, hereinafter referred as "Committee" composed of two (2) representatives appointed by the Board and one (1) Officer (voted at large). In the event said Board, or its designated 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.

(b) After 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 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 the harmony of external design and location in relation to surrounding structures and topography by the Board of Officers of the Association, or by an architectural committee.

(c) 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 improvement may be required of the applicant at the discretion of the Committee. Submittals for approval shall be made in duplicate and the comments and actions of the committee will be identically marked on both copies of said submittals. One copy will be returned to the applicant, and one copy will be retained as part of the permanent records of the Committee. Each applicant shall submit to the Committee the following documents, materials and/or drawings:

- (1) Site plan indicating specific improvement and indicating Lot number, street address, grading and surface drainage; and
- (2) 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.

## ARTICLE VII

### RESTRICTIONS FOR RESIDENTIAL UNITS

Section 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 total living area above the basement level with a minimum of 1,200 square feet on the main level, exclusive of the garage area.

Section 2. Other residence styles not described in Section 1 above, will be permitted only if approved by the Committee and shall not be approved unless they are compatible with other residences to be built on the Property in the opinion of the Association and/or Committee in its sole and absolute discretion.

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Section 3. All residences shall, as a minimum, have attached, enclosed, side-by-side, two car garages which must contain a minimum of 400 square feet built at approximately the main level of the residence.

Section 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 wall is 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 included porches, stoops, breezeways, courtyards, patios, decks, basements and garages. 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.

Section 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 requirement for the non-front street exposure is fifteen feet (15') from the side 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 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 Association 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 Association and/or Committee.

Section 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 located on a corner Lot, and the exposed portion of the foundation on the sides and rear of every other dwelling shall covered with clay-fired brick, stone, siding or shall be painted.

Section 7. In the event that a fireplace is constructed as 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 the flue shall be constructed of, or finished with, the same material as is the dwelling at the point from which the fireplace and/or 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.

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Section 8. No structure of a temporary character, trailer, basement, tent, shack, barn or other out building shall be erected on any of the 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 the said Lots. No pre-cut dwelling shall be assembled on any of the said Lots. No full or partial subterranean dwelling or log house shall be constructed or erected on any of the said Lots. No dwelling shall be moved from outside of the Properties onto any of the said Lots. No wire structure shall be erected, enclosing the patio or deck areas for the purpose of containing or excluding animals.

Section 9. No flat or mansard roof shall be permitted on any dwelling. All dwellings shall be roofed with wood shakes, wood shingles or other roofing material, which have the approval of the Association and/or Committee in its sole and absolute discretion. Replacement roofs may consist of roofing materials that are guaranteed for a minimum period of fifty (50) years or at least a one hundred ten (110) mile per hour wind warranty.

## ARTICLE VIII

### 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 Association.

Section 2. Building or Uses Other Than for Residential Purposes. No building or structure or part of any sort may ever be placed, erected or used for business, professions, trade or commercial purpose on any of the property within the Properties. This also applies to any building part used for business or businesses that generate billed income. Sales people may use their residence when office space is not available at their place of employment. 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

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 the Association 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 building site, parking area, street or Common Area in the 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 (larger than eighteen (18) inches) 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. Invisible fences are permitted with ARC approval.

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. Any exceptions to this must be approved by the Board of Officers. All pets shall be leashed when outside of the home and patio areas and

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provisions 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. Electronic fences will be permitted on the Lot, with approval by the Association and/or Committee.

Section 5. Noxious Activity. No noxious or offensive activity shall be carried on the Properties or adjacent to 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 not become, an annoyance or nuisance to the neighborhood.

Section 6. Billboard 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" sign shall be permitted temporarily in the yards of dwellings which are being offered for sale.

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 Structures. No trailer, basement, tent, shack, garage, barn or other outbuilding, whether temporary or permanent in nature, shall be constructed or used at any time as a residence.

Section 9. All garage doors must remain closed at all times except when cars are entering or exiting from the garage space. No garage cans or trash receptacles are to be permitted outside unless fully screened from view in a manner approved in writing by the Fairway at Tiburon Homeowners Association, Inc. Private barbeque grills used in the Common Area, and outside use or storage of barbeque 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. 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 12. No residential dwelling shall be occupied by any person, as a dwelling for such person until construction of such dwelling has been completed, except for minor finish details as determined and approved by the Association and/or Committee.

Section 13. All driveways shall be constructed of concrete or brick.

Section 14. The front, side and rear yards of all Lots shall be sodded, and a minimum of one (1) tree, not less than two (2) caliper inches in diameter, shall be planted in the front yard. All yards shall be sodded and the trees planted within one (1) year from the date that construction of the residence on the Lot was initiated.

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## ARTICLE IX

### EASEMENTS AND LICENSES

(a) A perpetual license and easement is hereby reserved in favor of and granted to the Qwest 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 replaced within sixty (60) days after their removal, then this easement automatically terminates and become void as to such unused or abandoned easement ways. No permanent buildings shall be placed on perpetual easement ways, but the same may be used for garden shrubs, landscaping and other purposes that do not then or later interfere with the aforesaid uses or rights herein granted.

(b) All telephone, cable television and electric power service lines from property lines from property line to dwelling shall be underground.

(c) 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 X

### 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 ways 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 by an instrument signed by not less than sixty percent (60%) of the Lot Owners. Any amendment must be recorded with the Register of Deeds in and for Sarpy County, Nebraska.

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Section 4. After the original construction, including any fences or walls, any area lying outside the residential structure, fence or wall, although not Common Area, shall be kept, maintained and used as Common Area.

STATE OF NEBRASKA )

COUNTY OF SARPY )

The foregoing instrument was acknowledges before me this 4 day of Aug 2005 by Michael Taylor Sec., \_\_\_\_\_, and \_\_\_\_\_ (Board of Officer's names) owners of the following real estate: Lots #1-25, #27-55 and #26[Lot numbers], Fairway at Tiburon, a subdivision in Sarpy County, Nebraska, as surveyed, platted and recorded.

Dianna Jobe  
Notary Public



Board of Officers:

Printed Name & Signatures

Michael A. Taylor  
Michael A. Taylor

\_\_\_\_\_  
\_\_\_\_\_  
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FOR BYLAWS OF  
THE FAIRWAY AT TIBURON HOMEOWNERS  
ASSOCIATION, INC.

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**BYLAWS**  
**OF**

**THE FAIRWAY AT TIBURON HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I**

**1.     General Plan of Ownership**

The name of the corporation is The Fairway at Tiburon Homeowners Association, Inc., herein referred to as the "Association". The principal office of the Association shall be located in Omaha, Nebraska.

**1.2   Application**

The Provisions of these Bylaws are applicable to the planned residential development known as The Fairway at Tiburon, located in Omaha, Nebraska (the "Properties"). All present and future owners and their tenants, future tenants, employees and any other person who might use the facilities of the Properties in any manner, are subject to the regulations set forth in these Bylaws and in the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for The Fairway at Tiburon (the "Declaration" herein) Recorded or to be Recorded in the office of Sarpy County Recorder and applicable to the Properties. The mere acquisition or rental of any Lot in the Properties or the mere act of occupancy of any Lot will signify that these Bylaws are accepted, ratified and will be complied with.

**1.3   Meaning of Terms**

Unless otherwise specifically provided herein, the capitalized terms in these Bylaws shall have the same meanings as are given to such terms in the Declaration.

**ARTICLE II**

**2.     Voting by Association Membership**

**2.1   Voting Rights**

The number of votes held or represented by each member and the manner in which votes shall be held or cast shall be as set forth in the Declaration.

**2.2   Majority of quorum**

Unless otherwise expressly provided in these Bylaws or the Declaration, any action which may be taken by the Association may be taken by a majority of a quorum of the Members of the Association.

**2.3   Quorum**

Except as otherwise provided in these Bylaws, the presence in person or by proxy of at least sixty percent (60%) of the voting power of the Membership of the Association shall constitute

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a quorum of the Membership. Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

#### 2.4 Proxies

Votes may be cast in person or by proxy. Proxies must be in writing and filed with the Vice president/Secretary in advance of each meeting. Every proxy shall be revocable and shall automatically cease after completion of the meeting for which the proxy was filed.

### ARTICLE III

#### 3. Administration

##### 3.1 Association Responsibilities

In accordance with the provisions of the Declaration, the Association shall have the responsibility of administering the Properties, maintaining the Common Area and the Association Maintenance Areas, approving the Budget, establishing and collecting all assessments authorized under the Declaration, and arranging for overall architectural control of the Properties.

##### 3.2 Place of Meetings of Members

Meetings of the Members shall be held on the Properties or such other suitable place approximately thereto as practical and convenient to the Members as may be designated from time to time by the Board of Directors.

##### 3.3 Annual Meetings of Members

Annual Meetings of the Association shall be held on or about October 1<sup>st</sup> each calendar year. At each annual meeting there shall be elected by ballot of the Members a Board of Directors, in accordance with the requirements of Section 4.5 of Article IV of these Bylaws. The Members may also transact such other business of the Association as may properly come before them. Each first Mortgagee of a Lot in the Properties may designate a representative to attend all annual meetings of the Members.

##### 3.4 Special Meetings of Members

It shall be the duty of the Board to call a special meeting of the Members, as directed by resolution of a majority of a quorum of the Board of Directors, or upon a petition signed by Members representing at least ten percent (10%) of the total voting power of an Association. The notice of any adoption of such resolution or receipt of such petition and shall state the time and place of such meeting and the purpose thereof. The special meeting shall be held not less than thirty (30) days not more than sixty (60) days after adoption of such resolution or receipt of such petition. No business shall be transacted at a special meeting except as stated in the notice. Each first Mortgagee of a Lot in the Properties may designate a representative to attend all special meetings of the Members.

##### 3.5 Notice of Meetings of Members

It shall be the duty of the Secretary to send a notice of each annual or special meeting by first-class mail, postage prepaid, stating the purpose thereof as well as the day, hour and place where it is to be held, to each Member of record and to each first Mortgagee of a Lot which

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has filed a written request for notice with the Secretary, at least thirty (30) days but not more than sixty (60) days prior to such meeting. The notice set forth time limits for speakers and nomination procedures for the meeting. The notice of any such meeting at which Directors are to be elected shall include the names of all those who are nominees at the time the notice is given to Members. The mailing of a notice, postage prepaid, in the manner provided in this Section, shall be considered notice served, two (2) calendar days after said notice has been deposited in a regular depository of the United States Postal Service. Such notice shall be posted in a conspicuous place on the Common Area, and such notice shall be deemed served upon a Member upon posting if no address has been then furnished to the Secretary. The Board of Directors may fix a date as a record date for the determination of the Members entitled to notice of any meeting of Members. The record date so fixed shall be not less than thirty (30) days not more than sixty (60) days prior to the date of the meeting. Only Members who on the record date of the notice of the meeting are entitled to vote there at, shall be entitled to receive a notice of the meeting, notwithstanding any transfer of or issuance of Membership certificates on the books of the Association after the record date.

### 3.6 Adjourned Meetings

If any meeting of members cannot be organized because a quorum is not present, the Board of Directors may adjourn the meeting to a time not less than thirty (30) days nor more than sixty (60) days from the time the original meeting was called, at which meeting the quorum requirement shall be presence in person or by proxy of the Members holding at least thirty per cent (30%) of the voting power of the Association.

### 3.7 Order of Business

The order of business at all meetings of the Members shall be as follows: (a) roll call to determine the voting represented at the meeting; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of preceding meeting; (d) reports of officers; (e) reports of committees; (f) election of inspector of election (at annual meetings or special meetings held for such purpose); (h) unfinished business; and (i) new business.

### 3.8 Action Without Meeting

Any action, which may be taken at a meeting of the Members (except for the election of Directors) may be taken without a meeting authorized by the written consent of Members representing at least a majority of the voting power of the Association; provided, however, that if any greater proportion of the voting power of the Association is required by the Declaration, the Articles, the Bylaws or otherwise for such action, then such greater proportion of written consent be required.

### 3.9 Ratification of Actions at Meetings

The transactions at any meeting of Members, either annual or special, however called and noticed, shall be as valid as though had at a meeting duly held after regular call and notice if all Members entitled to vote at any meeting consent to the transactions at the meeting either by (a) a writing on the records of the meeting or a writing filed with the Secretary of the Association; (b) presence at such meeting and oral consent entered in the minutes of such meeting; or (c) taking part in the declarations at such meeting without objection. At such meeting any business may be transacted which is not accepted from the written consent or to the consideration of which no objection for want of notice is made at the time. If any meeting be irregular for want of notice or such consent, provided a quorum was present at such meeting, the proceedings of the meeting may be ratified and approved and rendered likewise

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valid and the irregularity or defect therein waived by a writing signed by all Members, approval of Members may be written proxy or by written power of attorney.

3.10 Minutes, Presumption of Notice

Minutes or a similar record of the proceedings of meetings of Members, when signed by the President or Secretary, shall be presumed truthfully to evidence the matters set forth therein. A recitation in the minutes of any such meeting that notice of the meeting was properly given shall be prima facie evidence that such notice was given.

3.11 Waiver of Notice

Whenever any notice is required to be given under this Article III, a waiver thereof in writing, signed by the Members entitled to the notice, whether before or after the time stated herein, shall be deemed equivalent thereto.

3.12 Point of Order

All Member Meetings will be governed by Roberts Rules of Order.

ARTICLE IV

4. Officers

4.1 Designation

The principal officers of the Association shall be President, a Vice President/Secretary Treasurer and two (2) Members at large, all of whom shall be elected by the Members of the Association.

4.2 Election of Officers

The officers of the Association shall be elected annually by the Members of the Association for a period of one year. The five largest vote receivers shall become the new Board and the electee with the most votes shall be President, followed by Vice-President, Treasurer and Members at large.

4.2.1 Appointment of Officers

If for any reason a board member is unable to serve and a vacancy on the board is created; then the President, with the approval of the remaining board, has the authority to appoint a board member. This appointed board member shall serve until the next Annual Meeting. At that time, they can either run for election or choose not to be on the board.

4.3 Removal of Officers

To remove an elected officer of the Board, a special meeting of the Members shall be held in accordance with meeting Bylaws being adhered to. Than and only than can an officers be removed from office.

4.4 Compensation

Officers, agents and employees shall receive such reasonable compensation for their services as may be authorized or ratified by the Board; provided, however, that no officer shall receive any compensation for services performed in the conduct of the Association's business unless such compensation is approved by the vote or written consent of the Members representing at least a majority of the voting power of the Association, and provided further that (1) nothing herein contained shall be construed to preclude any officer from serving the Association in

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some other capacity and receiving compensation therefore, and (2) any officer may be reimbursed for his or her actual expenses incurred in the performance of his or her duties. Appointment of any officer, agent or employee shall not of itself create contractual rights of compensation for services performed by such officer, agent or employee.

4.5 President

The President shall be chief officer of the Association. He shall preside at all meeting of the Association. He shall have all of the general powers and duties which are usually vested in the office of the President of a corporation, including but not limited to the power, to appoint committees from among the members from time to time as he or she may in his or her directions decide is appropriate to assist in the conduct of the affairs of the Association. The President shall, have general supervision, direction and control of the Business of the Association. The President shall be ex officio a member of all standing committees, and he or she shall have such other powers and duties as may be prescribed by these Bylaws of the Association.

4.6 Vice President/Secretary

The Vice President shall take the place of the President and perform his duties whenever the President shall be absent, disabled, refuses or is unable to act. When this action would arise, the Vice President will appoint a board member to take the minutes. If neither the President nor Vice President is able to act, the Treasurer will do so on an interim basis. The Vice President shall also keep the minutes of all meetings of the Association. The Vice President shall give, or cause to be given, notices of meetings of the Members of the Association required by these Bylaws or by law to be given.

4.7 Treasurer

The Treasurer shall be the chief financial officer of the Association and shall have responsibility for Association funds and securities and shall be responsible for keeping, or causing to be kept, full and accurate accounts, tax records and business transactions of the Association, including disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board. The Treasurer shall disburse the funds of the Association as may be ordered by the Board, in accordance with the Declaration shall render to the President upon request, an account of all of his or her transactions as Treasurer and of financial conditions on the Association, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

4.8 Members at Large

The Members at Large shall hold voting power on the Board and attend all meeting of the Association as deemed necessary. One of these Members at Large will be responsible for maintaining a Record book of Members, listing the names and addresses of the Members as furnished to the Association, and such books shall be changed only at such time as satisfactory evidence of a change in ownership of a Lot is presented to the Board. The other Member at Large will be in charge of the Architectural Review Committee (ARC) comprised of two appointed Members of the Association. This committee will be responsible for approval of all changes or additions to the Lots of Members of the Association before said work is done. They will also with the full Board review any home building plans for new construction, so that they may conform to the Bylaws, Covenants or laws applicable to the Association.

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## ARTICLE V

### 5.1 Obligations of Members

#### (a) Assessments

All Members are obligated to pay, in accordance with the provisions of the Declaration, all assessments imposed by the Association, to meet all expenses of the Association.

- (b) All delinquent assessments shall be enforced, collected or foreclosed in the manner provided in the Declaration.

### 5.2. Maintenance and Repair

- (a) Every Member must perform promptly, at his or her sole cost and expense, such maintenance and repair work on his or her Lot, if any, as is required under the provisions of the Declaration. As further provided in the Declaration, all plans for alterations and repair of Improvements within the Properties must receive the prior written consent for the granting of such approval, in accordance with the Declaration.
- (b) As further provided in the Declaration, each Member shall reimburse the Association for any expenditure incurred in repairing or replacing any portion of the Common Area or Association Maintenance Areas which are damaged through the fault of such Member. Such expenditures shall include all court costs and reasonable attorneys' fees incurred in enforcing any provision of these Bylaws or the Declaration.

## ARTICLE VI

### 6. Amendments to Bylaws

Amendments of these Bylaws shall required the vote or written consent of at least a majority of the total voting power of the Association.

## ARTICLE VII

### 7. Mortgages

#### 7.1 Notice to Association

A Member who mortgages his Lot shall notify the Association through the Board, the name and address of his Mortgagee; and the Association shall maintain such information in a book entitled "Mortgagees of Lots". Upon request any such Member shall likewise notify the Association as to the release or discharge of any such Mortgage.

#### 7.2 Notice of Unpaid Assessments

The Board shall at the request of a Mortgagee of a Lot report any unpaid assessments due from the Owner of such Lot, in accordance with the provisions of the Declaration.

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## ARTICLE VIII

### 8. Conflicting Provisions

In case any of these Bylaws conflict with any provisions of the laws of the State of Nebraska, which conflicting Bylaws shall be null and void upon final court determination to such effect, but all other Bylaws shall remain in full force and effect. In case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## ARTICLE IX

### 9. Indemnification of Officers

Except to the extent such liability, damage or injury is covered by any type of insurance, the Association's Officers, agents and employees, including members of the ARC, shall be indemnified by the Members and the Association against all expense and liabilities, including attorney's fees, reasonably incurred by or imposed upon any of them in connection with any proceeding to which any of them may be a party, or in which any of them may become involved, by reason of their being or having been an Officer or employee of the Association, or any settlement thereof, whether or not they are an Officer or employee at the time such expenses are incurred, except in such cases wherein such person is adjudged to have committed willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of the Association determines that such settlement and reimbursement is in the best interest of the Association.

## ARTICLE X

### 10. Miscellaneous

#### 10.1 Execution of Documents

The Board may authorize any officer or agent to enter into any contract or execute any instrument in the name and on behalf of the Association, and such authority may be general or confined to specific instances; and unless so authorized by the Board, no officer, agent, committee member or employee shall have any power or authority to bind the Association by any contract or engagement or to pledge its credit or to render it liable for any purpose or in any amount.

#### 10.2 Inspection of Articles and Bylaws

The Association shall keep in its office for the transaction of business the original or a copy of the Articles and these Bylaws as amended or otherwise altered to date, certified by the Secretary, which shall be open to inspection by the Members and all Beneficiaries of first Mortgages in accordance with Article IV, Section 4.6 hereof.

#### 10.3 Fiscal Year

The Fiscal Year of the Association shall be determined by the Board and having been so determined, is subject to change from time to time as the Board shall determine.

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10.4     Membership Book

The Association shall keep and maintain in its office for the determination of business a book containing the name and address of each Member. Termination or transfer of ownership of any Lot by a Member shall be recorded in the book, together with the date on which such ownership was transferred, in accordance with the provisions of the Declaration.

ARTICLE XI

11.     Notice and Hearing Procedure

11.1   Suspension of Privileges

In event of an alleged violation of the Declaration, these Bylaws or Rules and Regulations of the Association, and after written notice of such alleged failure is delivered personally or mailed to the Member or any agent of the Member ("respondent") alleged to be in default in the manner herein receipt requested, or both, the Board shall have the right, after affording the respondent an opportunity for an appropriate hearing as hereinafter provided, and upon an affirmative vote of a majority of all Officers, to take any one or more of the following actions: (1) levy a Special Assessment as provided in the Declaration; (2) suspend said Member's voting privileges as a Member, as further provided in the Declaration; (3) enter upon a Lien to make necessary repairs or to perform maintenance which, according to the Declaration, is the responsibility of the Owner of such Lot; (4) record a notice of noncompliance encumbering the Lot of the respondent or (5) suspend or condition the right of said Member to use any recreational facilities in the Property. Any such suspension shall be for a period of not more than thirty (30) days for any non continuing infraction, but in the case of a continuing infraction including nonpayment of any assessment after the same becomes delinquent) may be imposed for so long as the violation continues. The failure of the Board to enforce the Rules and Regulations of the Association, these Bylaws or the Declaration shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these Bylaws shall be cumulative and none shall be exclusive. However, any individual Member must exhaust all available internal remedies of the Association prescribed by these Bylaws, or by the Rules and Regulations of the Association, before that Member may resort to a court of law for relief with respect to any alleged violation of the Declaration, these Bylaws or the Rules and Regulations of the Association by another Member, provided that the foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board or to any Member where the complaint alleges nonpayment of Annual Assessments, Special Assessments or Capital Improvement Assessments.

11.2   Written Complaint

A hearing to determine whether a right or privilege of the respondent under the Declaration or these Bylaws should be suspended or conditioned, or whether a Special Assessment should be levied, shall be initiated by the filing of a written complaint by any Member or by any officer or member of the Board with the President of the Association or other presiding member of the Board. The complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged, and a reference to the specific provisions of the Declaration, these Bylaws or the Rules and Regulations of the Association which the respondent is alleged to have violated. A copy of the complaint shall be delivered to the respondent in accordance with the notice procedures set forth in the Declaration, together with a statement which shall be substantially in the following form:

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“Unless a written request for a hearing signed by on behalf of the person named as respondent in the accompanying complaint is delivered or mailed to the Board of the Association within fifteen (15) days after the complaint, the Board may proceed upon the complaint without a hearing, and you will have thus waived your right to a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled ‘Notice of Defense’ to the Board at the following address:

Address of any Board Member currently serving

You may, but need not, be represented by counsel at any or all stages of these proceedings. If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writings or items on file in connection with this matter in the possession, custody or control of the Board, you may contact \_\_\_\_\_”

The respondent shall be entitled to a hearing on the merits of the matter if the Notice of Defense is timely with the Board. The respondent may file a separate statement by way of mitigation, even if he does not file a Notice of Defense.

#### 11.3 Notice of Hearing

The Board shall serve notice of hearing, as provided herein, on all parties at least ten (10) days prior to the hearing, if such hearing requested by the respondent. The hearing shall be held no sooner than thirty (30) days after the complaint is mailed or delivered to the respondent as provided in Section 12.2 of this Article XI. The notice to the respondent shall be substantially in the following form but may include other information:

“You are hereby notified that a hearing will be held before the Board of Officers of The Fairway at Tiburon Homeowners Association, Inc. at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ upon the charges made in the complaint served upon you. You may be present at the hearing, may but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to request the attendance of Witnesses and the production of books, Documents or other Directors of the Association”.

#### 11.4 Hearing

The hearing shall be held before the Board in executive session pursuant to this notice affording the Member a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together

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with a statement of the date and manner of delivery is entered by the officer who mailed or delivered such notice. The notice requirement shall be deemed satisfied if a violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. No action against the Member arising from the alleged violation shall take effect prior to the expiration of (a) fifteen (15) days after the Member's receipt of the notice of hearing, and (b) five (5) days after the hearing required herein.

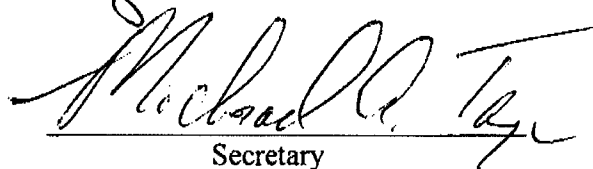
CERTIFICATE OF SECRETARY

I, the undersigned, do hereby certify that:

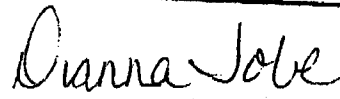
1. I am duly elected and acting Secretary of The Fairway at Tiburon Homeowners Association, Inc. a Nebraska non-profit corporation ("Association"); and

2. The forgoing Bylaws, comprising 10 pages including this page, constitute the Bylaws of the Association on 5-1-2005, 2004.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed the seal of this Association this 4<sup>th</sup> day of Aug., 2005

  
Secretary



  
8/4/05