

FILED SARPY COUNTY NEBRASKA  
INSTRUMENT NUMBER

2015-25338

10/14/2015 3:08:20 PM

*Lloyd J. Dowding*

REGISTER OF DEEDS

COUNTER	<u>    </u>	C.E.	<u>    </u>
VERIFY	<u>    </u>	D.E.	<u>    </u>
PROOF	<u>    </u>		<u>    </u>
FEE \$	<u>1500.00</u>		
CHECK #	<u>    </u>		
CHG	<u>PAY</u>	CASH	<u>    </u>
REFUND	<u>    </u>	CREDIT	<u>    </u>
SHORT	<u>    </u>	NCR	<u>    </u>



**THIS PAGE ADDED  
FOR RECORDING  
INFORMATION.**

**DOCUMENT STARTS ON  
NEXT PAGE.**

**LLOYD J. DOWDING**

SARPY COUNTY REGISTER OF DEEDS

Steven J. Stastny, Deputy

1210 GOLDEN GATE DRIVE, # 1230

PAPILLION, NE 68046-2842

402-593-5773

*Best Construction Co, Inc  
17601 Storage Rd, Bay 1  
Omaha, Ne 68136  
(402) 894-0449*

DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF TIBURON RIDGE, A SUBDIVISION  
IN SARPY COUNTY, NEBRASKA

THIS DECLARATION, made on the date hereinafter set forth, is made by JMF L.L.C., a Nebraska limited liability company, hereinafter "Declarant" and Best Construction Co. Inc., a Nebraska corporation, hereinafter "Best."

PRELIMINARY STATEMENT

The Declarant is the owner of certain real property located within Sarpy County, Nebraska and described as follows:

Lots 95 through 100 and 103 through 112, inclusive, in Tiburon Ridge, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska; and,

Best is the owner of Lots 101 102 and 113, Tiburon Ridge, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

The lots described above are referred to hereinafter collectively as the "Lots" and each individually as a "Lot."

The Declarant desires to provide for the preservation of the values and amenities of the subdivision known as Tiburon Ridge, for the maintenance of the character and residential integrity of Tiburon Ridge, and for the acquisition, construction and maintenance of Common Facilities for the use and enjoyment of the residents of Tiburon Ridge. As used herein, the term "Common Facilities" shall mean all recreational facilities, dedicated and nondedicated roads, paths, ways and green areas, signs and entrances for Tiburon Ridge, as well as any and all other facilities acquired, constructed, improved, maintained, operated, repaired, or replaced by the Tiburon Ridge Homeowners' Association (the "Association") for the general use, benefit and enjoyment of the members of the Association.

NOW, THEREFORE, the Declarant hereby declares, and Best hereby consents, that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots, and the enjoyment of the residents of Tiburon Ridge. These restrictions, covenants, conditions and easements shall run with such Lots and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part thereof, as is more fully described herein. Each Lot is and shall be subject to all and each of the following conditions and other terms:

ARTICLE I.  
RESTRICTIONS AND COVENANTS

1. Each Lot shall be used exclusively for single-family residential purposes, except

for such Lots or parts thereof as may hereafter be conveyed or dedicated by Declarant, or its successors or assigns, for use in connection with a Common Facility, or as a church, school, park, golf course or for non-profit use.

2. No residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, dog house, tree house, pool house, antenna satellite receiving station or "discs," flag pole or any other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, reconstructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarant as follows:

A. An Owner desiring to erect an Improvement shall deliver one set of construction plans, landscaping plans and plot plans (herein collectively referred to as the "plans"), to the Board of Directors of the Villas at Tiburon Ridge Homeowners Association (the "Board"), as defined in Article IV below. Such plans shall include a description of the type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, the Owner shall notify the Board of the Owner's mailing address.

B. The Board shall review such plans in light of the conditions and restrictions of Article I of this Declaration and in relation to the type and exterior of improvements constructed, or approved for construction, on the Lots. In this regard, Declarant intends that the Lots shall be developed as a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by the Board in a reasonable manner to promote conformity and harmony of the external design of the improvements constructed within Tiburon Ridge Subdivision, which includes lots 1 through 113, inclusive, in Tiburon Ridge, and to protect the value, character and residential quality of all Lots in a manner consistent with this Declaration. If the Board determines that the proposed Improvement does not conform to the surrounding improvements or topography or will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, the Board may refuse approval of the proposed Improvement.

C. Written Notice of any approval of a proposed Improvement shall be mailed to the Owner at the address specified by the Owner upon submission of the plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of approval is not mailed within such period, the proposed Improvement shall be deemed disapproved by the Board.

D. No Lot Owner or combination of Lot Owners, or other person or persons shall have any right to any action by Declarant or the Board, or to control, direct or influence the acts of the Declarant or the Board with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarant or the Board by virtue of the authority granted to each herein, or as a result of any act or failure to act by the Board with respect to any proposed Improvement.

E. Landscape plans submitted: as per section (A) above, the plans shall conform to the following standards:

- C
- \* Plans shall indicate any grade changes, walls and berms. All walls must be of brick, limestone, concrete pavers, boulders or other approved interlocking materials. No wood/railroad tie walls will be allowed.
  - \* Each site shall be landscaped with a mixture of plant materials consisting of a representative sample of shade trees, ornamental trees, evergreen trees, evergreen shrubs, deciduous shrubs and perennials/groundcovers.
  - \* Selected plant materials should provide a variety of form, shape and color during all four seasons.
  - \* Landscaping shall be installed during the first available planting season following substantial completion of the building.

The Lot owner is encouraged to develop a landscape design and plant palette, which generates and individual identity and reinforce the architectural and site planning of Tiburon Ridge. The streetscape is more than just a "front yard"; it is the total visual image presented from street view. There is no other view that has more impact on the community image than its appearance from the street. The concept of community identity involves, by its very nature, a common character and coherence. To strengthen this identity, these standards shall apply to Tiburon Ridge.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling that does not exceed two stories in height. Minimum square footage requirements for any structure constructed on the Lots shall be as follows:

A. Ranch Villa consisting of 1600 sq. feet (exclusive of garage) with two (2) car garage or more.

B. One and One Half (1 1/2) Story Villa consisting of 1700 sq. feet above grade (exclusive of garage) with two (2) car garage or more.

C. Two (2) Story Villa consisting of 2000 sq. feet above grade (exclusive of garage) with two (2) car garage or more.

4. The exposed front foundation walls and any foundation walls facing any street must be constructed of or faced with brick, stone or other material approved by the Board. The front elevation of each residence must be at least thirty percent (30%) constructed of or faced with clay-fired brick or stone or other material approved by the Board. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. Fireplace chimneys extending above the roofline shall be covered with brick, stone, stucco or other material approved in writing by the Board. The roof of all Improvements shall be covered with Heritage II or equivalent type shingles, or other material approved in writing by the Board. Hardboard, pressed wood, bonded wood and the like will not be approved by the Board for coverage of any roof. Pitches on main roof lines must be at least 6/12 or steeper unless a different slope is specifically approved by the Board.

5. No advertising signs, billboards, unsightly objects or nuisances shall be erected,

placed or permitted to remain on any Lot except one sign per Lot consisting of not more than six (6) square feet advertising a Lot as "For Sale". No premises shall be used in any way for any purpose that may endanger the health or unreasonably disturb the Owner or Owners of any Lot or any resident thereof. No business activities of any kind shall be conducted on any Lot, provided, however, this paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of buildings, if any, by Declarant, its agents or assigns, during the construction and sale of the Lots.

6. No exterior television or radio antenna or disc greater than 18" x 24" in size shall be permitted on any Lot other than in an enclosed structure hidden from public view.

7. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of forty-eight (48) hours shall be permitted on any Lot at any time; nor shall vehicles be abandoned on any Lot. No unused building material, junk or rubbish shall be left exposed on any Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be parked or stored on any part of a Lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except non-commercial vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this Paragraph 10 shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings or other improvements during the period of construction. All residential Lots shall provide at least a minimum number of off street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the Sarpy County, Nebraska.

9. No incinerator, trash burner or outside fuel tank shall be permitted on any Lot. No garbage or trash can or container shall be permitted unless completely screened from view, except for pick up purposes. No garden, lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish or cutting shall be deposited on any street, road or Lot. No clothesline shall be permitted outside of any dwelling at any time. Produce or vegetable gardens may only be maintained in rear yards.

10. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

11. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. No fence may be installed without the prior approval of the Board. In all events, installed fences must comply with applicable set back requirements imposed by Sarpy County, Nebraska. All fences must be constructed of black wrought iron. No fences or walls shall exceed a height of six (6) feet unless otherwise approved by Declarant. No fence shall be of the chain link or wire type.

12. No swimming pool may extend more than one foot above ground level. All swimming pool plans must be submitted to Declarant for approval.

13. No tennis or basketball court shall be allowed on any Lot.

14. Construction of any Improvement shall be completed within one (1) year from the date of commencement of excavation or construction of the Improvement. Grading plans must be submitted to and approved by the Board prior to commencement of Improvements to any Lot. No excavation dirt shall be spread across any Lot in such a fashion as to materially change the grade or contour of any Lot.

15. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each Lot and upon each street side of each corner Lot. The sidewalk shall be placed four (4) feet back of the street curb line and shall be constructed by the owner of the Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary to comply with any requirements of Sarpy County, Nebraska.

16. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted.

17. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except for one dog house constructed for one (1) dog; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by the Board, or its assigns. Dog houses shall only be allowed at the rear of the residence. Dog runs or kennels must be approved by the Board and must be placed at the back of the residence and preferably located under a deck. Kennel facilities must be properly maintained. No livestock or agricultural-type animals shall be allowed to be kept on any Lot, including pot-bellied pigs.

18. Any exterior air conditioning condenser unit shall be placed in the rear yard or a side yard. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, and no vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

19. No residence shall be constructed on a Lot unless the entire Lot, as originally platted, is owned by one Owner of such Lot, unless parts of two or more platted Lots have been combined into one Lot which is at least as wide as the narrowest Lot and is as large in area as the largest Lot.

20. No structure of a temporary character, carport, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time for a residence, either temporarily or permanently. An Owner may erect a swing set, playground equipment, pool house or other non prohibited structure on a Lot only after securing the prior written approval of the Board.

21. No tree situated upon any Lot may be moved, removed, cut or destroyed unless complete plans describing the exact tree or trees to be moved, removed, cut or destroyed and the reason therefore, shall have been submitted to and approved in writing by the Board in accordance with Section 2 of this Article I. For purposes of this Section, "tree" shall mean and refer to a tree of any type with a diameter larger than one (1) inch at a height of five (5) feet. Unless waived in writing by the Association, each Owner shall repair and maintain in good condition any and all trees, shrubs, and bushes placed in and along public sidewalk easement area on their Lot. Should any of such trees, shrubs or bushes be removed, die or deteriorate into poor condition, the Owner of the Lot shall, at its expense, replace such trees, bushes or shrubs with trees, bushes or shrubs of the same or similar quality. In the event such replacement does not occur upon thirty (30) days written notice from either the Declarant, the Association or the Villa Association, then either the Declarant, the Association or the Villa Association may cause such replacement to occur and charge the owner of the Lot for such replacement as allowed hereinafter.

22. All utility service lines from each Lot line to a dwelling or other Improvement shall be underground.

23. No garage doors shall be permitted to remain open except when entry to and exit from the garage is required.

24. No manufactured home, as that term is defined in Section 71-4603(1) of the Nebraska Revised Statutes, 1943, shall be permitted on any Lot.

25. Sufficient sediment control measures, including, but not limited to, installation and maintenance of silt fences, straw bale fences, storm water inlet protection and temporary seeding, to the extent deemed reasonably necessary by Declarant or the Board, shall be taken by the Owner or Owner's builder to ensure that all sediment resulting from any land disturbance or construction operation is retained on the Lot in question. All sediment control measures must be maintained until such Lot has been permanently stabilized with respect to soil erosion.

26. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, Qwest, and any company which has been granted a franchise to provide a cable television system or telephone service within the Lots, People's Natural Gas, and Sanitary and Improvement District No 278 of Sarpy County, Nebraska, their successor and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception on, over, through, under and across a five (5) foot wide strip of land abutting the front and the side boundary lines

of the Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior Lots that are adjacent to presently platted and recorded Lots; and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the Lots. The sixteen (16) foot wide easement will be reduced to an eight (8) foot wide strip when such adjacent land is surveyed, and recorded.

ARTICLE II.  
HOMEOWNERS' ASSOCIATION

1. The Association. Declarant shall cause the incorporation of Tiburon Ridge Homeowners' Association, a Nebraska not for profit corporation (the "Association"). The Association shall have as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots and those lots within Tiburon Ridge subdivision, including:

A. The acquisition, construction, landscaping, improvement, equipment, maintenance, operation, repair, upkeep and replacement of Common Facilities for the general use, benefit and enjoyment of the Members. Common Facilities may include recreational facilities such as swimming pools, tennis courts, health facilities, playgrounds and parks; dedicated and nondedicated roads, paths, ways and green areas; and signs and entrances for Tiburon Ridge. Common Facilities may be situated on property owned or leased by the Association, on public property, on private property subject to an easement in favor of the Association, or on property dedicated to a Sanitary and Improvement District.

B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of any Common Facilities, provided always that such rules are uniformly applicable to all Members. The rules and regulations may permit or restrict use of the Common Facilities to Members, their families, their guests, and/or by other persons, who may be required to pay a fee or other charge in connection with the use or enjoyment of the Common Facility.

C. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of Tiburon Ridge; and the protection and maintenance of the residential character of Tiburon Ridge.

2. Membership and Voting. The Owner of each Lot shall be a Member of this Association. The Association shall include further phases of Tiburon Ridge as may be developed by the Declarant. For purposes of this Declaration, the term "Owner" of a Lot means and refers to the record owner, whether one or more persons or entities, of fee simple title to a Lot, but excluding however those parties having any interest in any Lot merely as security for the performance of an obligation (such as a contract seller, the trustee or beneficiary of a deed of trust, or a mortgagee). The purchaser of a Lot under a land contract or similar instrument shall be considered to be the "Owner" of the Lot for purposes of this Declaration. Membership shall be appurtenant to ownership of each Lot, and may not be separated from ownership of each Lot.



H

The Owner of each Lot, whether one or more persons or entities, shall be entitled to one (1) vote on each matter properly coming before the Members of the Association, except that the Declarant shall have three votes for each Lot owned by the Declarant until the total number of Lots owned by non-Declarants equals 80% of the total number of Lots included in the Association (including further phases of Tiburon Ridge as developed by the Declarant), at which time all Lots shall be entitled to one vote.

3. Additional Lots. Declarant reserves the right, without consent or approval of any Owner or Member, to expand the property to which this Declaration is applicable to include additional residential lots in any subdivision which is contiguous to any of the Lots. Such expansion may be effected from time to time by the Declarant by recordation with the Register of Deeds of Sarpy County, Nebraska, of an Amendment to Declaration, executed and acknowledged by Declarant, setting forth the identity of the additional residential lots which shall become subject to this Declaration. In addition, the Amendment to Declaration may declare that all or any part of the additional residential lots which shall become subject to the Declaration shall be Boundary Lots and subject to additional restrictions and obligations.

Upon the filing of any Amendment to Declaration which expands the property subject to this Declaration, the additional residential lots identified in the Amendment shall be considered to be and shall be included in the "Lots" for all purposes under this Declaration, and the Owners of the additional residential lots shall be Members of the Association, and the Villa Association set forth in the following Article III, with all rights, privileges and obligations accorded or accruing to Members of the each respectively.

4. Purposes and Responsibilities. The Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, as in effect from time to time and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Association. The powers and duties to be exercised by the Board of Directors of the Association, and upon authorization of the Board of Directors of the Association by the Officers, shall include but shall not be limited to the following:

A. The acquisition, development, maintenance, repair, replacement, operation and administration of Common Facilities, and the enforcement of the rules and regulations relating to the Common Facilities.

B. The landscaping, mowing, watering, repair and replacement of parks, medians and islands in cul-de-sacs, outlots and other public property and improvements on parks or public property within or near Tiburon Ridge.

C. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration.

D. The expenditure, commitment and payment of Association funds to accomplish the purposes of the Association including, but not limited to, payment for purchase of insurance covering any Common Facility against property damage and

I

casualty, and purchase of liability insurance coverage for the Association, the Board of Directors of the Association and the Members.

E. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Association as set forth in this Declaration, as the same may be amended from time to time.

F. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Association.

G. The deposit, investment and reinvestment of Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

H. The employment of professionals and consultants to advise and assist the Officers and Board of Directors of the Association in the performance of their duties and responsibilities for the Association.

I. General administration and management of the Association and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

J. The doing and performing of such acts, and the execution of such instruments and documents, as may be necessary or appropriate to accomplish the purposes of the Association.

5. Mandatory Duties of Association. The Association shall maintain and repair any entrance landscaping, entrance monuments, and signs that have been installed by Declarant in generally good and neat condition and any property or lots which the Association may own.

6. Imposition of Dues and Assessments. The Association may fix, levy and charge the Owner of each Lot with dues and assessments (herein referred to respectively as "dues and assessments") under the following provisions of this Declaration, which dues and assessments shall be equitably set among the Lots and the other lots within the Tiburon Ridge Phase I subdivision. Except as otherwise specifically provided, the dues and assessments shall be fixed by the Board of Directors of the Association and shall be payable at the times and in the manner prescribed by the Board of Directors of the Association, and which dues shall be paid by Direct Deposit.

7. Abatement of Dues and Assessments. Notwithstanding any other provision of this Declaration, the Board of Directors of the Association may abate all or part of the dues and assessments with respect to any Lot or lot, and shall abate all dues and assessments due in respect of any Lot or lot during the period it is owned by the Declarant. Lots owned by the Declarant shall not be subject to imposition of dues, assessments or Association liens.

J

8. Liens and Personal Obligations for Dues and Assessments. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each Lot at the time when the dues or assessments first become due and payable. The dues and assessments, together with interest thereon, costs and reasonable attorneys' fees, shall also be a charge and continuing lien upon the Lot in respect of which the dues and assessments are charged. The personal obligation for delinquent assessments shall not pass to the successor in title to the Owner at the time the dues and assessments become delinquent unless such dues and assessments are expressly assumed by the successors, but all successors shall take title subject to the lien for such dues and assessments, and shall be bound to inquire of the Association as to the amount of any unpaid dues or assessments.

9. Purpose of Dues. The dues collected by the Association may be committed and expended to accomplish the purposes of the Association and to perform the powers and responsibilities of the Association described in this Article.

10. Maximum Annual Dues. Unless excess dues have been authorized by the Members in accordance with Section 11 below, the aggregate annual dues which may become due and payable in any year shall not exceed the greater of:

- A. Two Hundred Dollars (\$200.00) per Lot;
- B. In each calendar year beginning on January 1, 2016, One Hundred Twenty-Five Percent (125%) of the aggregate dues charged in the previous calendar year.

11. Assessments for Extraordinary Costs. In addition to the dues, the Board of Directors of the Association may levy an assessment or assessments for the purpose of defraying, in whole or in part, the costs of any acquisition, construction, reconstruction, repair, painting, maintenance, improvement, or replacement of any Common Facility, including fixtures and personal property related thereto, and related facilities. In addition to the annual dues fixed in accordance with Article II, Section 10, above, the aggregate assessments in each calendar year shall be limited in amount to Two Hundred Dollars (\$200.00) per Lot unless the Board of Directors of the Association decides by unanimous vote to exceed such amount.

12. Uniform Rate of Assessment. Assessments and dues shall be fixed at a uniform rate as to all Lots and lots of Tiburon Ridge Phase I subdivision, but dues may be abated as to individual Lots, as provided above.

13. Certificate as to Dues and Assessments. The Association shall, upon written request and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the dues and assessments on a specified Lot have been paid to the date of request, the amount of any delinquent sums, and the due date and amount of the next succeeding dues, assessment or installment thereof. The dues and assessments shall be and become a lien as of the date such amounts first become due and payable.

14. Effect of Nonpayment of Assessments-Remedies of the Association. Any

installment of dues or assessments, which is not paid when due, shall be delinquent. Delinquent dues and assessment shall bear interest from the due date at the rate of Fifteen percent (15%) per annum, compounded annually. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Lots, and pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action and shall be indemnified against the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. No Owner may waive or otherwise escape liability for the charge and lien provided for herein by nonuse of the Common Facilities or abandonment of his Lot. The mortgagee of any Lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of its rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association.

15. Subordination of the Lien to Mortgage. The lien of dues and assessments provided for herein shall be subordinate to the lien of any mortgage, contract or deed of trust given as collateral for a home improvement or purchase money loan. Sale or transfer of any Lot shall not affect or terminate the dues and assessment lien.

ARTICLE III.  
VILLA ASSOCIATION

1. The Villa Association. Best shall cause the incorporation of the Villas at Tiburon Ridge Homeowners' Association, a Nebraska not for profit corporation (the "Villa Association"). The Villa Association shall have as its purpose the promotion of the health, safety, recreation, welfare and enjoyment of the residents of the Lots, including:

A. The acquisition, construction, landscaping, improvement, equipment, operation, repair, upkeep and replacement and the maintenance and repair of the improvements to the Lots as set forth herein.

B. The promulgation, enactment, amendment and enforcement of rules and regulations relating to the use and enjoyment of the Tiburon Ridge Villas, provided always that such rules are uniformly applicable to all Villa Members.

C. The exercise, promotion, enhancement and protection of the privileges and interests of the residents of the Tiburon Ridge Villas and the protection and maintenance of the residential character of Tiburon Ridge Villas.

2. Membership. Every Owner of a Lot which shall be a member of the Villa Association in addition to being a member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot. Members holding 1/10<sup>th</sup> of the votes entitled to be cast represented in person or by proxy shall constitute a quorum.

3. Voting. The Association shall have two classes of voting members, Class A Members and Class B Members, defined as follows:

L

A. CLASS A: Class A Members shall be all Owners, including the Declarant and Best. Each Class A Member shall be entitled to one vote for each Lot owned. When there shall be more than one person or entity holding an interest in any Lot, all such persons or entities or both, shall be Members; provided however that the vote for such Lot shall be exercised as such persons or entities or both, shall determine, but in no event shall more than one vote be cast with respect to any one Lot.

B. CLASS B: Class B Members shall be the Declarant and Best who shall be entitled to two votes for each Lot owned by the Declarant or Best as applicable, in addition to the Class A vote for each Lot. The Class B membership shall terminate with the Declarant then continuing to be entitled only to one vote for each Lot owned by the Declarant as a Class A Member upon the occurrence of the first of the following dates:

(i) The date on which the total votes outstanding in the Class A membership shall equal the total votes outstanding in the Class B membership; or

(ii) December 31, 2020

4. Purposes & Responsibilities: The Villa Association shall have the powers conferred upon not for profit corporations by the Nebraska Nonprofit Corporation Act, and all powers and duties necessary and appropriate to accomplish the purposes and administer the affairs of the Villa Association. The powers and duties to be exercised by the board of directors of the Villa Association (the "Board"), and upon authorization of the Board by the Officers of the Villa Association, shall include but shall not be limited to the following:

A. The landscaping, mowing, repair and maintenance of the Lots as may be approved and authorized by the Board.

B. The enforcement of these Covenants and Declarations and all amendments thereto.

C. The fixing, levying, collecting, abatement, and enforcement of all charges, dues, or assessments made pursuant to the terms of this Declaration with respect to the Lots.

D. The expenditure, commitment and payment of Villa Association funds to accomplish the purposes of the Villa Association including, but not limited to, payment for purchase of insurance covering any improvement to a Lot against property damage and casualty, and purchase of liability insurance coverages for the Villa Association, the Board and the Members.

E. The exercise of all of the powers and privileges, and the performance of all of the duties and obligations of the Villa Association as set forth in this Declaration, as the same may be amended from time to time.

F. The acquisition by purchase or otherwise, holding, or disposition of any right, title or interest in real or personal property, wherever located, in connection with the affairs of the Villa Association.

G. The deposit, investment and reinvestment of Villa Association funds in bank accounts, securities, money market funds or accounts, mutual funds, pooled funds, certificates of deposit or the like.

H. The employment of professionals and consultants to advise and assist the Officers of the Villa Association and Board in the performance of their duties and responsibilities for the Villa Association.

I. General administration and management of the Villa Association and execution of such documents and doing and performance of such acts as may be necessary or appropriate to accomplish such administration or management.

J. The carrying out of the duties and obligations that are contained in the Bylaws of the Association.

K. The employment of the professional management company, as further described in subsection 16 below, to provide the day to day services to the Villas Members and the Board as required by this Declaration.

5. Mandatory Duties: The management company shall be solely responsible to employ and hire companies to perform the following outdoor maintenance: (1) snow removal from Villa Association walks and drives; (2) mowing of front, back and side of each Lot; (3) removal of all grass, leaves and yard waste; (4) annual spring charging of sprinkler system and fall blowout of sprinkler system (for clarification no sprinkler repair is included with this service) (5) annual spring exterior window washing and (6) all other exterior maintenance necessary to ensure uniformity and quality of the outdoor appearance of the Villas as may be approved and authorized from time to time by the Board.

6. Creation of the Lien and Personal Obligation of Assessments. The Declarant and Best hereby covenant for each assessable Lot and for each Owner of any assessable Lot, by acceptance of a deed therefore or by entering into a contract for the purchase thereof, whether or not it shall be so expressed in such deed or in such contract, that it is, and shall be, deemed to covenant and agree to pay to the Villa Association;

- A. Monthly assessments for exterior maintenance and other operational expenses with respect to each assessable Lot as deemed necessary by the Villa Association, as further described in subsection 8 below; and,
- B. Special assessments for capital improvements, as further described in subsection 9 below.

Such assessments shall be established and collected as hereinafter provided. The special

N

assessments and monthly assessments together with interest, costs and reasonable attorney's fees, shall be a charge on the Lots and shall be continuing lien upon the Lots against which each assessment shall be made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person, persons, or entity who, or which, was the Owner of the Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title, unless expressly assumed by them.

7. Purposes of Assessments. The assessments levied by the Villa Association shall be used exclusively to promote the health, safety, recreation and welfare of the residents of the Villas, the enforcement of this Declaration and such other obligations as may be from time to time approved and authorized by the Board.

8. Monthly Assessments. The Board shall have the authority to levy and assess from time to time against an assessable Lot any monthly maintenance assessment necessary for the purpose of meeting the requirements of this Declaration. Initial dues shall be One Hundred Fifty Dollars (\$150.00) per month for each Villa Lot. If a Lot has a fence, then the assessment shall include an additional Fifteen Dollars (\$15.00) per month per Lot.

9. Special Assessment for Capital Improvements. The Villa Association may levy special assessments from time to time against a Lot for the purpose of meeting the requirements of this subsection for the costs of any construction, reconstruction, repair or replacement of any capital improvements on or within any Villa Common Area, provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of each class of membership, who shall vote in person or by proxy at a meeting duly called for such purpose.

10. Notice and Quorum for Any Action Authorized. Written notice of any meeting called for the purpose of taking any action authorized under these Covenants shall be sent to all Members not less than 10 days nor more than 50 days in advance of such meeting. At the first such meeting called, the presence of Members, in person or by proxy, entitled to cast ten percent (10%) 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 such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting.

11. Rate of Assessment. The monthly assessments shall be paid pro-rata by the Owners of all Lots based upon the total number of Lots; provided, however, the Board may equitably adjust such prorations if it determines that certain Lots on which all of the improvements are not yet completed do not receive all of the benefits for which such assessments are levied. The monthly assessments may be collected on a monthly or other periodic basis by the Villa Association. The Board shall fix the amount of the monthly or other periodic assessments against each Lot. Written notice of the monthly assessment or any change in the monthly assessment adopted by the Board shall be sent not less than annually to the Owner of every Lot. The dates payments are due shall be established by the Board. The special assessments for capital improvements shall only be assessed against the Lot or Lots for which the costs of such construction, reconstruction, repair or replacement of any capital improvements

occurs. The Villa Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Villa Association, setting forth whether or not all assessments on a specified Lot have been paid. A properly executed certificate of the Villa Association as to the status of assessments, on a particular Lot shall be binding upon the Villa Association as of the date of its issue by the Villa Association.

12. Effect of Nonpayment of Assessment: Remedies of the Villa Association. Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent and shall bear interest at the maximum legal rate allowable by law in the State of Nebraska, which at the time of the execution of this Declaration, is sixteen percent (16%) per annum. Should any assessment remain unpaid more than sixty (60) days after the due date, the Villa Association may declare the entire unpaid portion of said assessment for said year to be immediately due and payable and thereafter delinquent. The Villa Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien of such assessment against any Lot through proceedings in any Court having jurisdiction of actions for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided herein by abandonment or title transfer of such Owner's Lot.

13. Subordination of the Lien to Mortgages. The lien on the assessments provided for herein shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device, on any Lot may rely on this provision without the necessity of the execution of any further subordination agreement by the Villa Association. Sale or transfer of any Lot shall not affect the status or priority of the lien for assessments made as provided herein. The Villa Association, if authorized by its Board, may release the lien of any delinquent assessments on any Lot as to which the first mortgage, first deed of trust or initial purchase money security device thereon is in default, if the Board determines that such assessment lien has no value to the Villa Association. No mortgagee shall be required to collect any assessments due. The Villa Association shall have the sole responsibility to collect all assessments due.

14. Maintenance: Monthly assessments may be assessed for, but not limited to, the following:

- A. Maintenance of lawn areas on each Lot. The Lot Owner shall be responsible for the maintenance of all trees, shrubs, other exterior landscaping, and such improvements within any assessable Lot.
- B. Maintenance of common areas, repairs, snow removal and grounds, improvements, and utility improvements.
- C. Electrical service for operation of common lighting, gates and other exterior improvements.
- D. Trash removal, unless otherwise provided by local governmental authority.



- E The Villa Association shall have no duty to repair, replace or maintain any exterior concrete surfaces located on a Lot, including walks, driveways, patios, foundations, or any doors, windows, and decks of any improvement on a Lot.
- F. The Villa Association shall further have the right to temporarily turn off any sprinkler system on a Lot for purposes of completing and carrying out any maintenance, as identified herein.

15. Special Assessments: Special assessments may be assessed for, but are not limited to, the following:

A. Maintenance of infrastructure within the confines of the area where the Lots are located, and snow removal.

B. Maintain, repair, including painting, of all exterior walls, with the exception that the Villa Association shall not assume the duty to repair or replace glass surfaces, including, but not limited to, window glass and door glass. The Villa Association shall not assume the duty to repair or replace any doors, door openers, and cooling units for air conditioning systems of any improvement on a Lot.

16. Association Management: Best shall have the right annually to select the exclusive management company for the Villa Association until such time as all Lots within the Association are sold and continuing thereafter for a period of five (5) years from the date of the final inspection of the last constructed Villa. Best shall retain this right until Best executes in writing an assignment of this right to the Villa Association which Best may provide at any time after recording of this Declaration, or upon the affirmative vote of seventy-five percent (75%) of the then Owners to terminate this provision after the expiration of the five (5) year period, which ever event occurs first.

17. Architectural Control: No building, fence, wall, or other structure shall be commenced, erected or maintained upon the Lots, nor shall any exterior addition or change or alteration therein be made, nor shall any trees, shrubs, or plantings be planted or maintained upon the Lots, until the plans and specifications therefore shall have been submitted to and approved in writing by the Board as further described in Article I, subsection 2 through 4 inclusive, above.

18. Insurance: The Villa Association may purchase and provide insurance of the type(s) and in the amounts that the Board deems necessary.

19. Access: The Villa Association, its officers, employees and agents, and contractors and repairmen designated by the Villa Association, shall have the right to go on any Lot for the purpose of performing maintenance and repair, making inspections and performing the duties of the Villa Association hereunder, and the Villa Association is hereby granted a specific easement for such purposes.

ARTICLE IV.  
EASEMENTS

1. A perpetual license and easement is hereby reserved in favor of and granted to Omaha Public Power District, Qwest and any company which has been granted a franchise to provide a cable television system or telephone service within the Lots, Black Hill sEnergy, and Sanitary and Improvement District No. 278 of Sarpy, Nebraska, their successors and assigns, to erect and operate, maintain, repair and renew buried or underground sewers, water and gas mains and cables, lines or conduits and other electric and telephone utility facilities for the carrying and transmission of electric current for light, heat and power and for all telephone and telegraph and message service and for the transmission of signals and sounds of all kinds including signals provided by a cable television system and the reception thereof on, over, through, under and across a five (5) foot wide strip of land abutting the front and the side boundary lines of the Lots; an eight (8) foot wide strip of land abutting the rear boundary lines of all interior Lots and all exterior Lots that are adjacent to presently platted and recorded Lots; and a sixteen (16) foot wide strip of land abutting the rear boundary lines of all exterior Lots that are not adjacent to presently platted and recorded Lots. The term exterior Lots is herein defined as those Lots forming the outer perimeter of the Lots. The sixteen (16) foot wide easement will be reduced to an eight (8) foot wide strip when such adjacent land is surveyed, platted and recorded.

2. Other easements are provided for in the final plat of Tiburon Ridge which is filed in the Register of Deeds of Sarpy County, Nebraska

ARTICLE V.  
GENERAL PROVISIONS

1. Except for the authority and powers specifically granted only to the Declarant, Best, the Association or the Villa Association, each of the foregoing or any Owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover all loss or damages arising out of such violation. Failure by any party to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

2. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date this Declaration is recorded, but shall be automatically renewed for successive periods of five (5) years each unless terminated as provided below. This Declaration may be amended by Declarant and Best jointly, or any person, firm, corporation, partnership, or entity designated in writing by Declarant and Best, in any manner which they may determine in its full and absolute discretion for a period of five (5) years from the date hereof. Thereafter this Declaration may be amended or, after twenty-five (25) years, terminated, by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots, provided, however, that the provisions of Article I, Paragraph 22 shall not be amended or changed by Declarant, Best, any person, firm, corporation, partnership or entity designated in writing by Declarant and Best, or seventy-five (75%) of the Owners of the Lots.

R

3. By written consent of the Board of the Villa Association, for a period of five (5) years from the date hereof, any or all of the covenants, conditions, restrictions, and easements as they apply to the Lots may be waived, modified, or amended for any Lot or Lots, in any manner, for such a time period, and on such conditions, if any, which the Board may determine in its full and absolute discretion after considering the benefits and detriments which the waiver, modification or amendment will have on the Lots and the Owner requesting the waiver. The Board's decision on any requested waiver, modification or amendment shall be final and there shall be no right of appeal of the Board's decision. No responsibility, liability or obligation shall be assumed by or imposed upon the Board by virtue of the authority granted to the Board in this paragraph, or as a result of any act or failure to act by the Board with respect to any requested waiver, modification, or amendment.

4. Declarant, or its successors or assigns, may terminate its status as Declarant under this Declaration, at any time, by filing a Notice of Termination of Status as Declarant. Upon such filing, Declarant shall appoint the Villa Association or Best to serve as Declarant, and such appointee shall thereafter serve as Declarant with the same authority and powers as the original Declarant.

5. Invalidation of any covenant by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

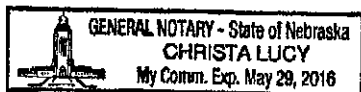
IN WITNESS WHEREOF, the Declarant has caused these presents to be executed as of the date set forth below, and Best has consented to these presents by execution hereof below.

JMF, L.L.C., a Nebraska  
Limited Liability Company, "Declarant"

By: *Paul S. McCune*  
Name: PAUL S. McCune Manager

STATE OF NEBRASKA )  
                  *Sarpy* ) SS.  
COUNTY OF ~~DOUGLAS~~ )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of October, 2015, by Paul S. McCune, personally known to me to be the Manager of JMF, L.L.C., a Nebraska limited liability company and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of the limited liability company.



*Christa Lucy*  
Notary Public

SEAL

2015-25338 S

Best Construction Co., Inc.,  
a Nebraska Corporation, "Best"

By: *Rick Bergholz*  
Name: Rick Bergholz, President

STATE OF NEBRASKA    )  
                          *Sarpy*    ) SS.  
COUNTY OF ~~DOUGLAS~~ )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of October, 2015, by Rick Bergholz, personally known to me to be the President of Best Construction Co., Inc., a Nebraska corporation and acknowledged the same to be his voluntary act and deed and the voluntary act and deed of the corporation.



*Christa Lucy*  
Notary Public

SEAL